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STATUTORY INSTRUMENTS

1989 No. 2405 (N.I. 19)

The Insolvency (Northern Ireland) Order 1989

- - - - - - *19th December 1989*

Annotations:

Modifications etc. (not altering text)

C1 Order modified (1.1.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(3)(e), **271(5)** (with arts. 8(8), 121(3), 307)

C2 Order modified by S.R. 1995/225 (as amended (8.1.2007) by Insolvent Partnerships (Amendment) Order (Northern Ireland) 2006 (S.R. 2006/515), **art. 4** (with art. 2))

C3 Order: power to amend conferred (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 21(2), (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

C4 Order applied (with modifications) (prosp) by Serious Crime Act 2007 (c. 27), **ss. 28(2)-(4)**, 94(1)

C5 Order modified (1.8.2007) by European Grouping of Territorial Cooperation Regulations 2007 (S.I. 2007/1949), reg. 7, **Sch. Pt. 2**

C6 Order applied (with modifications) (12.4.2007) by Cross-Border Insolvency Regulations (Northern Ireland) 2007 (S.R. 2007/115), **reg. 4**

F1

PART I

INTRODUCTORY

Annotations:

F1 Pts. I - V modified by S.R.2004/307 (as amended (1.10.2006) by Limited Liability Partnerships (Amendment) Regulations (Northern Ireland) 2006 S.R. 2006/377), reg. 3, {Sch. 2})

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[F2].

(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.

Annotations:

F2 partly exercised, SRs 1990/177; 1991/294, 300, 411; 2002/126

General interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954[F3] shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2 [F4] In this Order—

[[F5]"the Bankruptcy Acts" means the Bankruptcy Acts (Northern Ireland) 1857 to 1980;**]**

"business" includes a trade or profession;

[[F6]"the Companies Acts" means the Companies Acts (as defined in section 2 of the Companies Act 2006) as they have effect in Northern Ireland;**]**

"the Companies Order" means the Companies (Northern Ireland) Order 1986;

[F7]"conditional sale agreement" and"hire#purchase agreement" have the same meanings as in the Consumer Credit Act 1974[F8];

[[F5]"corporate member" means an insolvent member which is a company;**]**

"the Department" means the Department of Economic Development;

[[F9]"the EC Regulation" means Council Regulation (EC) No. 1346/2000;**]**

[[F10]"EEA State" means a state that is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;**]**

[[F5]"individual member" means an insolvent member who is an individual;

"insolvent member" means a member of an insolvent partnership, against whom an insolvency petition is being or has been presented;

"insolvency order" means—

(a) in the case of an insolvent partnership or a corporate member, a winding-up order; and

(b) in the case of an individual member, a bankruptcy order;

"insolvency petition" means—

(a) in the case of a petition presented against a corporate member, a petition for its winding up by the High Court; and

(b) in the case of a petition presented against an individual member, a petition to the Court for a bankruptcy order to be made against the individual,

where the petition is presented in conjunction with a petition for the winding up of the partnership by the Court as an unregistered company under the Order;**]**

"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**[**[F11], winding up or individual voluntary arrangement**]**, 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**[**[F11], winding up or individual voluntary arrangement**]**;

"prescribed"

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

(b) except as provided in sub#paragraph (a)**[**[F12] in Article 150A(9)**]** 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) **[**[F13]and paragraph 16 of Schedule A1**]**) to negative resolution;

[[F5]"responsible insolvency practitioner" means—

(a) in winding up, the liquidator; and

(b) in bankruptcy, the trustee,

and in either case includes the official receiver when so acting.**]**

"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[F14];

"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 **[**[F15]or where a company is in administration**]** 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.

Annotations:

F3 1954 c. 33 (NI)

F4 mod. by SR 2004/307

F5 SR 1991/366

F6 Art. 2(2): definition of "the Companies Acts" inserted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), **Sch. 4 para. 55** (with art. 12)

F7 1986 NI 6

F8 1974 c. 39

F9 SR 2002/223

F10 Art. 2(2): definition of "EEA State" inserted (18.10.2006) by Insolvency (Northern Ireland) Order 1989 (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/370), **reg. 3(2)** (with reg. 4)

F11 Words in art. 2(2) in definition of "the official receiver" substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, Sch. 8 para. 2 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2** - 7)

F12 Words in art. 2(2) in para. (b) of the definition of "prescribed" inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 7(2), (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F13 2002 NI 6

F14 1954 c. 33 (NI)

F15 Words in art. 2(3) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (Minor and Consequential Amendments) Order (Northern Ireland) 2006 (S.R. 2006/61), art. 2, **Sch. para. 2** (with art. 4)

[F16 Proceedings under EC Regulation: modified definition of property

2A. In the application of this Order to proceedings by virtue of Article 3 of the EC Regulation, a reference to property is a reference to property which may be dealt with in the proceedings.]

Annotations:

F16 SR 2002/334

"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

[F17(b) where a voluntary arrangement in relation to the company is proposed or approved under Part II, as nominee or supervisor.]

(2 F18 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

[F17(c) where a voluntary arrangement in relation to the individual is proposed or approved under Part VIII, as nominee or supervisor;]

(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.

[F19(3 A person acts as an insolvency practitioner in relation to an insolvent partnership by acting —

(a) as its liquidator, provisional liquidator or administrator, or

(b) as trustee of the partnership under Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995, or

[F20(c) where a voluntary arrangement in relation to the insolvent partnership is proposed or approved under Part II, as nominee or supervisor.]]

[F17(3A) In relation to a voluntary arrangement proposed under Part II or VIII, a person acts as nominee if he performs any of the functions conferred on nominees under the Part in question.]

(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[F21].

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

[[F22](6) Nothing in this Article applies to anything done (whether in the United Kingdom or elsewhere) in relation to insolvency proceedings under the EC Regulation in a member State other than the United Kingdom.**]**

Annotations:

F17 2002 NI 6
F18 mod. by SR 2004/307
F19 SR 1995/225
F20 SR 2003/550
F21 1986 c. 53
F22 SR 2002/334

Modifications etc. (not altering text)

C7 Art. 3 excluded (12.4.2007) by Cross-Border Insolvency Regulations (Northern Ireland) 2007 (S.R. 2007/115), **reg. 7**

"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).

[[F23](2) A person is an associate of an individual if that person is—

(a) the individual's husband or wife or civil partner,

(b) a relative of—

(i) the individual, or

(ii) the individual's husband or wife or civil partner, or

(c) the husband or wife or civil partner of a relative of—

(i) the individual, or

(ii) the individual's husband or wife or civil partner.**]**

(3) A person is an associate of any person with whom he is in partnership, and of the husband or wife**[**[F23] or civil partner**]** 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.

[F24](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[F25] or the Bankruptcy (Scotland) Act 1985[F26], 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 beexercised 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 eachcompany, and the groups either consist of the same personsor 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**[**[F23] and references to a civil partner include a former civil partner**][**[F27] and a reputed civil partner**]**.

(9) For the purposes of this Article any director of 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—

(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.

Annotations:

F23 2004 c. 33

F24 mod. by SR 2004/307

F25 1986 c. 45

F26 1985 c. 66

F27 SR 2005/479

Modifications etc. (not altering text)

C8 Art. 4 applied (6.4.2006) by Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations (Northern Ireland) 2006 (S.R. 2006/148), **reg. 1(1)(4)**

C9 Art. 4 applied by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), art. 234(8) (as substituted (30.12.2007) by Transfer of Undertakings and Service Provision Change (Protection of Employment) (Consequential Amendments etc.) Regulations (Northern Ireland) 2007 (S.R. 2007/494), **reg. 2(5)**)

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Interpretation for Parts II to VII

Interpretation

5.—(1 [F28] In Parts II to VII—

[F29] . . . . . .

. . . . . .

"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[F30];

"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 **[**[F31]or where a company is in administration**]**, 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 **[**[F32]or enters administration**]** ;

(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 **[**[F33]or in the administration**]** which bears interest, except in so far as it is payable in respect of any period after the company went into liquidation **[**[F34]or entered administration**]** ;

"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 **[**[F35]either of the sub-paragraphs**]** 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).

[[F36](2) Any expression (other than one defined above in this Article)—

(a) for whose interpretation provision is made by Part 1 of the Companies Order, or

(b) that is defined for the purposes of the Companies Acts,

has the same meaning in Parts 2 to 7.**]**

Annotations:

F28 mod. by SR 2004/307

F29 Art. 5(1): definitions of "administrator" and "administration order" repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 19, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2**-7)

F30 1971 c. 80

F31 Words in art. 5(1) in the definition of "debt" inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (Minor and Consequential Amendments) Order (Northern Ireland) 2006 (S.R. 2006/61), art. 2, **Sch. para. 3(a)** (with art. 4)

F32 Words in art. 5(1)(a) in the definition of "debt" inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (Minor and Consequential Amendments) Order (Northern Ireland) 2006 (S.R. 2006/61), art. 2, **Sch. para. 3(b)** (with art. 4)

F33 Words in art. 5(1)(c) in the definition of "debt" inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (Minor and Consequential Amendments) Order (Northern Ireland) 2006 (S.R. 2006/61), art. 2, **Sch. para. 3(c)** (with art. 4)

F34 Words in art. 5(1)(c) in the definition of "debt" inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (Minor and Consequential Amendments) Order (Northern Ireland) 2006 (S.R. 2006/61), art. 2, **Sch. para. 3(c)** (with art. 4)

F35 Words in art. 5(1) in definition of "a resolution for voluntary winding up" substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), **Sch. 4 para. 56(2)** (with art. 12)

F36 Art. 5(2) substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), **Sch. 4 para. 56(3)** (with art. 12)

"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,**[**[F37]or the appointment of an administrator or administrative receiver**]**.

(2 [F38] 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.

[[F39](3) The reference to a resolution for voluntary winding up in paragraph (2) includes a reference to a resolution which is deemed to occur by virtue of—

(a) paragraph 84(5)(b) of Schedule B1, or

(b) an order made following conversion of administration or a voluntary arrangement into winding up by virtue of Article 37 of the EC Regulation.**]**

Annotations:

F37 Words in art. 6(1) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 20(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F38 mod. by SR 2004/307

F39 Art. 6(3) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 20(3) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

"Connected with a company"

[F40]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.

Annotations:

F40 mod. by SR 2004/307

Modifications etc. (not altering text)

C10 Art. 7 applied (6.4.2006) by Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations (Northern Ireland) 2006 (S.R. 2006/148), **reg. 1(1)(4)**

"Member of a company"

8 [F41]. 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.

Annotations:

F41 mod. by SR 2004/307

Interpretation for Parts VIII to X

Interpretation

9 [F42].—(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;

[[F43]"insolvency administration" means the administration in bankruptcy of the insolvent estate of a deceased person;

"insolvency administration order" means an order for the administration in bankruptcy of the insolvent estate of a deceased debtor (being an individual at the date of his death);

"insolvency administration petition" means a petition for an insolvency administration order;**]**

"interim order" means an order under Article 226;

[[F43]"the Judgments Enforcement Order" means the Judgments Enforcement (Northern Ireland) Order 1981;

"the Land Registration Act" means the Land Registration Act (Northern Ireland) 1970;**]**

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

"the registrar" means the registrar appointed under Article 210(1);

[[F43]"the Registration of Deeds Act" means the Registration of Deeds Act (Northern Ireland) 1970; and

"the Rules" means the Insolvency Rules (Northern Ireland) 1999;**]**

"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.

Annotations:
F42 mod. by SR 2004/307
F43 SR 1991/365

"Security", etc.

10 [F44]**.**—(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.

Annotations:
F44 mod. by SR 2004/307

"Bankrupt's estate"

11 [F45]**.**—(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[F46] (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.

[[F47](5A) This Article has effect subject to Article 256A.**]**

(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.

Annotations:

F45 mod. by SR 2004/307

F46 1981 NI 6

F47 Art. 11(5A) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 17(10) (with art. 4); S.R. 2006/21, **art. 2** (with S.R 2006/22 {arts. 2} - 7)

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 [F48] 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.

Annotations:
F48 mod. by SR 2004/307

PARTS II TO VII

COMPANY INSOLVENCY; COMPANIES WINDING UP

F49

PART II

COMPANY VOLUNTARY ARRANGEMENTS

Annotations:
F49 Pts. I - V modified by S.R.2004/307 (as amended (1.10.2006) by Limited Liability Partnerships (Amendment) Regulations (Northern Ireland) 2006 S.R. 2006/377), reg. 3, {Sch. 2})

The proposal

Those who may propose an arrangement

14.—(1 [F50] The directors of a company**[**[F51](other than one which is in administration or being wound up)**]** may make a proposal under this Part to the company and to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs (referred to, in either case, as a"voluntary arrangement").

(2) A proposal under this Part is one which provides for some person ("the nominee") to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation; and the nominee must be a person who is qualified to act as an insolvency practitioner**[**[F52] or authorised to act as nominee, in relation to the voluntary arrangement**]**.

(3 Such a proposal may also be made—

[[F53](a) where the company is in administration, by the administrator,**]**

(b) where the company is being wound up, by the liquidator.

[[F54](4) In this Part "company" means—

(a) a company within the meaning of Article 3(1) of the Companies (Northern Ireland) Order 1986

(b) a company incorporated in an EEA State other than the United Kingdom; or

(c) a company not incorporated in an EEA State but having its centre of main interests in a member State other than Denmark.

(5) In paragraph (4) in relation to a company, "centre of main interests" has the same meaning as in the EC Regulation and, in the absence of proof to the contrary, is presumed to be the place of its registered office (within the meaning of that Regulation).

(6) If a company incorporated outside Northern Ireland has a principal place of business in England and Wales or Scotland (or both in England and Wales and in Scotland), no proposal under this Part shall be made in relation to it unless it also has a principal place of business in Northern Ireland.**]**

Annotations:

F50 mod. by SR 2004/307

F51 Words in art. 14(1) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 21(a) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F52 2002 NI 6

F53 Art. 14(3)(a) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 21(b) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F54 Art. 14(4) - (6) substituted (18.10.2006) for art. 14(4) by Insolvency (Northern Ireland) Order 1989 (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/370), reg. {3(3)} (with reg. 4)

[F55Moratorium

14A.—(1 F56 Where the directors of an eligible company intend to make a proposal for a voluntary arrangement, they may take steps to obtain a moratorium for the company.

(2) The provisions of Schedule A1 have effect with respect to—

(a) companies eligible for a moratorium under this Article,

(b) the procedure for obtaining such a moratorium,

(c) the effects of such a moratorium, and

(d) the procedure applicable (in place of Articles 15 to 19 and 20) in relation to the approval and implementation of a voluntary arrangement where such a moratorium is or has been in force.**]**

Annotations:

F55 2002 NI 6

F56 mod. by SR 2004/307

Procedure where nominee is not the liquidator or administrator

15.—(1 F57 This Article applies where the nominee under Article 14 is not the liquidator or administrator of the company**[**F58 and the directors do not propose to take steps to obtain a moratorium under Article 14A for the company**]**.

(2) The nominee shall, within 28 days (or such longer period as the High Court may allow) after he is given notice of the proposal for a voluntary arrangement, submit a report to the Court stating—

(a) **[**F59whether, in his opinion, the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,**]**

[F59(aa**]** whether, in his opinion, meetings of the company and of its creditors should be summoned to consider the proposal, and

(b if in his opinion such meetings should be summoned, the date on which, and time and place at which, he proposes the meetings should be held.

(3 For the purposes of enabling the nominee to prepare his report, the person intending to make the proposal shall submit to the nominee—

(a) a document setting out the terms of the proposed voluntary arrangement, and

(b) a statement of the company's affairs containing—

(i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and

(ii) such other information as may be prescribed.

[[F60](4) The High Court may—

(a on an application made by the person intending to make the proposal, in a case where the nominee has failed to submit the report required by this Article or has died, or

(b on an application made by that person or the nominee, in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.**]**

Annotations:
F57 mod. by SR 2004/307
F58 2002 NI 6
F59 2002 NI 6
F60 2002 NI 6

Summoning of meetings

16.—(1 [F61] Where the nominee under Article 14 is not the liquidator or administrator, and it has been reported to the High Court that such meetings as are mentioned in Article 15(2) should be summoned, the person making the report shall (unless the Court otherwise directs) summon those meetings for the time, date and place proposed in the report.

(2 Where the nominee is the liquidator or administrator, he shall summon meetings of the company and of its creditors to consider the proposal for such a time, date and place as he thinks fit.

(3) The persons to be summoned to a creditors' meeting under this Article are every creditor of the company of whose claim and address the person summoning the meeting is aware.

Annotations:
F61 mod. by SR 2004/307

Consideration and implementation of proposal

Decisions of meetings

17.—(1 [F62] The meetings summoned under Article 16 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).

(2) The modifications may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner**[**[F63] or authorised to act as nominee, in relation to the voluntary arrangement**]**; but shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in Article 14.

(3) A meeting so summoned shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security, except with the concurrence of the creditor concerned.

(4) A meeting so summoned shall not, except with the concurrence of the preferential creditor concerned, approve any proposal or modification under which—

(a) any preferential debt of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts, or

(b) a preferential creditor of the company is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

(5 Subject to paragraphs (3) and (4), each of the meetings shall be conducted in accordance with the rules.

(6 After the conclusion of either meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the High Court, and, immediately after reporting to the Court, shall give notice of the result of the meeting to such persons as may be prescribed.

(7) In this Article"preferential debts" has the meaning given by Article 346; and"preferential creditor" is to be construed accordingly.

Annotations:
F62 mod. by SR 2004/307
F63 2002 NI 6

[[F64]Approval of arrangement

17A.—(1) This Article applies to a decision, under Article 17, with respect to the approval of a proposed voluntary arrangement.

(2 [F65] The decision has effect if, in accordance with the rules—

(a) it has been taken by both meetings summoned under Article 16, or

(b) (subject to any order made under paragraph (4)) it has been taken by the creditors' meeting summoned under that Article.

(3 If the decision taken by the creditors' meeting differs from that taken by the company meeting, a member of the company may apply to the High Court.

(4 An application under paragraph (3) shall not be made after the end of the period of 28 days beginning with—

(a) the day on which the decision was taken by the creditors' meeting, or

(b) where the decision of the company meeting was taken on a later day, that day.

(5 Where a member of a regulated company, within the meaning given by paragraph 54 of Schedule A1, applies to the High Court under paragraph (3), the Financial Services Authority is entitled to be heard on the application.

(6 On an application under paragraph (3), the High Court may—

(a) order the decision of the company meeting to have effect instead of the decision of the creditors' meeting, or

(b) make such other order as it thinks fit.**]**

Annotations:
F64 2002 NI 6
F65 mod. by SR 2004/307

Effect of approval

18.—[F66(1) This Article applies where a decision approving a voluntary arrangement has effect under Article 17A.]

(2) The[F67]... voluntary arrangement—

(a) takes effect as if made by the company at the creditors' meeting, and

[F66(b) binds every person who in accordance with the rules—

(i) was entitled to vote at that meeting (whether or not he was present or represented at it), or

(ii) would have been so entitled if he had had notice of it,]

[F66as if he were a party to the voluntary arrangement.]

[F66(2A) If—

(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of paragraph (2)(b)(ii) has not been paid, and

(b) the arrangement did not come to an end prematurely,

the company shall at that time become liable to pay to that person the amount payable under the arrangement.]

(3) Subject to paragraph (4), if the company is being wound up or[F68is in administration], the High Court may do one or both of the following, namely—

(a) by order stay all proceedings in the winding up or[F69provide for the appointment of the administrator to cease to have effect];

(b) give such directions with respect to the conduct of the winding up or the administration as it thinks appropriate for facilitating the implementation of the... voluntary arrangement.

(4) The High Court shall not make an order under paragraph (3)(a)—

(a [F70 at any time before the expiration of 28 days from the day on which each of the reports required by Article 17(6) has been made to the Court, or

(b) at any time when an application under Article 19 or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

Annotations:

F66 2002 NI 6

F67 2002 NI 6

F68 Words in art. 18(3) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 22(a) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F69 Words in art. 18(3)(a) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 22(b) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F70 mod. by SR 2004/307

Challenge of decisions

19.—(1) Subject to this Article, an application to the High Court may be made, by any of the persons specified in paragraph (2), on one or both of the following grounds, namely—

(a) that a voluntary arrangement[F71 which has effect under Article 17A] unfairly prejudices the interests of a creditor, member or contributory of the company;

(b F72 that there has been some material irregularity at or in relation to either of the meetings.

(2) The persons who may apply under this Article are—

(a a person entitled, in accordance with the rules, to vote at either of the meetings;

[F73(aa) a person who would have been entitled, in accordance with the rules, to vote at the creditors' meeting if he had had notice of it;]

(b the nominee or any person who has replaced him under Article 15(4) or 17(2); and

(c if the company is being wound up or[F74is in administration], the liquidator or administrator.

(3) An application under this Article shall not be made

[F73(a] after the expiration of 28 days from the day on which each of the reports required by Article 17(6) has been made to the High Court[F73 or]

[F73(b) in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,]

[F73but (subject to that) an application made by a person within paragraph (2)(aa) on the ground that the voluntary arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.]

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(4 Where on such an application the High Court is satisfied as to either of the grounds mentioned in paragraph (1), it may do one or both of the following, namely—

(a) revoke or suspend[F71 any decision approving the voluntary arrangement which has effect under Article 17A] or, in a case falling within paragraph (1)(b), any[F71 decision taken by the meeting in question which has effect under that Article];

(b) give a direction to any person for the summoning of further meetings to consider any revised proposal the person who made the original proposal may make or, in a case falling within paragraph (1)(b), a further company or (as the case may be) creditors' meeting to reconsider the original proposal.

(5 Where at any time after giving a direction under paragraph (4)(b) for the summoning of meetings to consider a revised proposal the High Court is satisfied that the person who made the original proposal does not intend to submit a revised proposal, the Court shall revoke the direction and revoke or suspend any[F71 decision approving the voluntary arrangement which has effect under Article 17A].

(6) In a case where the High Court, on an application under this Article with respect to any meeting—

(a) gives a direction under paragraph (4)(b), or

(b) revokes or suspends an approval under paragraph (4)(a) or (5),

the Court may give such supplemental directions as it thinks fit and, in particular, directions with respect to things done[F71 under the voluntary arrangement since it took effect].

(7) Except in pursuance of the preceding provisions of this Article,[F71 a decision taken] at a meeting summoned under Article 16 is not invalidated by any irregularity at or in relation to the meeting.

Annotations:
F71 2002 NI 6
F72 mod. by SR 2004/307
F73 2002 NI 6
F74 Words in art. 19(2)(c) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 23 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

[F75False representations, etc.

19A.—(1 F76 If, for the purpose of obtaining the approval of the members or creditors of a company to a proposal for a voluntary arrangement, a person who is an officer of the company—

(a) makes any false representation, or

(b) fraudulently does, or omits to do, anything,

he shall be guilty of an offence.

(2) Paragraph (1) applies even if the proposal is not approved.

(3) For purposes of this Article "officer" includes a shadow director.**]**

Annotations:
F75 2002 NI 6
F76 mod. by SR 2004/307

Implementation of proposal

20.—(1) This Article applies where a voluntary arrangement**[**F77 has effect under Article 17A**]**.

(2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred—

[F77(a F78 on the nominee by virtue of the approval given at one or both of the meetings summoned under Article 16**]**

(b) by virtue of Article 15(4) or 17(2) on a person other than the nominee,

shall be known as the supervisor of the voluntary arrangement.

(3) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the High Court; and on the application the Court may—

(a) confirm, reverse or modify any act or decision of the supervisor,

(b) give him directions, or

(c) make such other order as it thinks fit.

(4) The supervisor—

(a) may apply to the High Court for directions in relation to any particular matter arising under the voluntary arrangement, and

(b) is included among the persons who may apply to the High Court for the winding up of the company or for an administration order to be made in relation to it.

(5) The High Court may, whenever—

(a) it is expedient to appoint a person to carry out the functions of the supervisor, and

(b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the Court,

make an order appointing a person who is qualified to act as an insolvency practitioner**[**[F77] or authorised to act as supervisor, in relation to the voluntary arrangement**]**, either in substitution for the existing supervisor or to fill a vacancy.

(6) The power conferred by paragraph (5) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

Annotations:
F77 2002 NI 6
F78 mod. by SR 2004/307

[[F79]Prosecution of delinquent officers of company

20A.—(1) This Article applies where a moratorium under Article 14A has been obtained for a company or the approval of a voluntary arrangement in relation to a company has taken effect under Article 17A or paragraph 46 of Schedule A1.

(2) If it appears to the nominee or supervisor that any past or present officer of the company has been guilty of any offence in connection with the moratorium or, as the case may be, voluntary arrangement for which he is criminally liable, the nominee or supervisor shall forthwith—

(a) report the matter to the Department, and

(b) provide the Department with such information and give the Department such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the nominee or supervisor and relating to the matter in question) as the Department requires.

(3) Where a report is made to the Department under paragraph (2), the Department may, for the purpose of investigating the matter reported to it and such other matters relating to the affairs of the company as appear to it to require investigation, exercise any of the powers which are exercisable by inspectors appointed under Article 424 or 425 of the Companies Order to investigate a company's affairs.

(4) For the purpose of such an investigation any obligation imposed on a person by any provision of the Companies Order to produce documents or give information to, or otherwise to assist, inspectors so appointed is to be regarded as an obligation similarly to assist the Department in its investigation.

(5) An answer given by a person to a question put to him in exercise of the powers conferred by paragraph (3) may be used in evidence against him.

(6) However, in criminal proceedings in which that person is charged with an offence to which this paragraph applies—

(a) no evidence relating to the answer may be adduced, and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(7) Paragraph (6) applies to any offence other than an offence under Article 7 or 10 of the Perjury (Northern Ireland) Order 1979 (NI 19) (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).

(8) Where the Director of Public Prosecutions for Northern Ireland institutes criminal proceedings following any report under paragraph (2), the nominee or supervisor, and every officer and agent of the company past and present (other than the defendant), shall give the Director all assistance in connection with the prosecution which he is reasonably able to give.

For this purpose "agent" includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(9) The High Court may, on the application of the Director of Public Prosecutions for Northern Ireland, direct any person referred to in paragraph (8) to comply with that paragraph if he has failed to do so.**]**

Annotations:
F79 2002 NI 6

Arrangements coming to an end prematurely

20B. For the purposes of this Part, a voluntary arrangement the approval of which has taken effect under Article 17A or paragraph 46 of Schedule A1 comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement by virtue of Article 18(2)(b)(i) or, as the case may be, paragraph 47(2)(b)(i) of Schedule A1.

[[F80]PART III

ADMINISTRATION

Annotations:
F80 Pt. III (art. 21) substituted (27.3.2006) for Pt. III (arts. 21 - 39) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(1) (with art. 4); S.R. 2006/21, **art. 2** (subject to S.R. 2006/22 {arts. 2} - 7)

Modifications etc. (not altering text)
C11 Pts. I - V modified by S.R.2004/307 (as amended (1.10.2006) by Limited Liability Partnerships (Amendment) Regulations (Northern Ireland) 2006 S.R. 2006/377), reg. 3, {Sch. 2})

Administration

21. Schedule B1 (which makes provision about the administration of companies) shall have effect.**]**

PART III

ADMINISTRATION ORDERS

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PART IV

RECEIVERSHIP

RECEIVERS AND MANAGERS

General Provisions

Disqualification of body corporate from acting as receiver

40. A body corporate is not qualified for appointment as receiver of the property of a company, and any body corporate which acts as such a receiver shall be guilty of an offence.

[[F104]Disqualification of bankrupt

41.—(1) A person shall be guilty of an offence if he acts as receiver or manager of the property of a company on behalf of debenture holders while—

(a) he is an undischarged bankrupt, or

(b) a bankruptcy restrictions order is in force in respect of him.

(2) This Article does not apply to a receiver or manager acting under an appointment made by the High Court.**]**

Annotations:

F104 Art. 41 substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 13(3), Sch. 6 para. 1 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Power of High Court to appoint official receiver

42. Where application is made to the High Court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the Court, the official receiver may be so appointed.

Receivers and managers appointed out of court

Time from which appointment is effective

43.—(1) The appointment of a person as a receiver or manager of a company's property under powers contained in an instrument—

(a) is of no effect unless it is accepted by that person before the end of the business day next following that on which the instrument of appointment is received by him or on his behalf, and

(b) subject to this, is deemed to be made at the time at which the instrument of appointment is so received.

(2) This Article applies to the appointment of 2 or more persons as joint receivers or managers of a company's property under powers contained in an instrument, subject to such modifications as may be prescribed.

Liability for invalid appointment

44. Where the appointment of a person as the receiver or manager of a company's property under powers contained in an instrument is discovered to be invalid (whether by virtue of the invalidity of the instrument or otherwise), the High Court may order the person by whom or on whose behalf the appointment was made to indemnify the person appointed against any liability which arises solely by reason of the invalidity of the appointment.

Application to High Court for directions

45.—(1) A receiver or manager of the property of a company appointed under powers contained in an instrument or the persons by whom or on whose behalf a receiver or manager has been so appointed, may apply to the High Court for directions in relation to any particular matter arising in connection with the performance of the functions of the receiver or manager.

(2) On such an application, the High Court may give such directions, or may make such order declaring the rights of persons before the Court or otherwise, as it thinks just.

Power of High Court to fix remuneration

46.—(1) The High Court may, on an application made by the liquidator of a company, by order fix the amount to be paid by way of remuneration to a person who, under powers contained in an instrument, has been appointed receiver or manager of the company's property.

(2) The High Court's power under paragraph (1), where no previous order has been made with respect thereto under that paragraph—

(a) extends to fixing the remuneration for any period before the making of the order or the application for it,

(b) is exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application, and

(c) subject to paragraph (3), where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extends to requiring him or his personal representatives to account for the excess or such part of it as may be specified in the order.

(3) The power conferred by sub#paragraph (2)(c) shall not be exercised as respects any period before the making of the application for the order under this Article, unless in the opinion of the High Court there are special circumstances making it proper for the power to be exercised.

(4) The High Court may on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under paragraph (1).

Liability for contracts, etc.

47.—(1) A receiver or manager appointed under powers contained in an instrument (other than an administrative receiver) is, to the same extent as if he had been appointed by order of the High Court—

(a) personally liable on any contract entered into by him in the performance of his functions (except in so far as the contract otherwise provides) and on any contract of employment adopted by him in the performance of those functions, and

(b) entitled in respect of that liability to indemnity out of the assets.

(2) For the purposes of paragraph (1)(a), the receiver or manager is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days from his appointment.

(3) Paragraph (1) does not limit any right to indemnity which the receiver or manager would have apart from it, nor limit his liability on contracts entered into without authority, nor confer any right to indemnity in respect of that liability.

(4) Where at any time a receiver or manager so appointed vacates office—

(a) his remuneration and any expenses properly incurred by him, and

(b) any indemnity to which he is entitled out of the assets of the company,

shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any charge or other security held by the person by or on whose behalf he was appointed.

Receivership accounts to be delivered to registrar

48.—(1) Except in the case of an administrative receiver, every receiver or manager of a company's property who has been appointed under powers contained in an instrument shall deliver to the registrar for registration the requisite accounts of his receipts and payments.

(2) The accounts shall be delivered within one month (or such longer period as the registrar may allow) after the expiration of 12 months from the date of his appointment and of every subsequent period of 6 months, and also within one month after he ceases to act as receiver or manager.

(3) The requisite accounts shall be an abstract in the prescribed form showing—

(a) receipts and payments during the relevant period of 12 or 6 months, or

(b) where the receiver or manager ceases to act, receipts and payments during the period from the end of the period of 12 or 6 months to which the last preceding abstract related (or, if no preceding abstract has been delivered under this Article, from the date of his appointment) up to the date of his so ceasing, and the aggregate amount of receipts and payments during all preceding periods since his appointment.

(4) A receiver or manager who contravenes this Article shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

Provisions applicable to every receivership

Notification that receiver or manager appointed

49.—(1) When a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the company's name appears, shall contain a statement that a receiver or manager has been appointed.

(2) If this Article is contravened, the company and any of the following persons, who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be guilty of an offence.

Payment of debts out of assets subject to floating charge

50 [F105]**.**—(1) This Article applies, in the case of a company, where a receiver is appointed on behalf of the holders of any debentures of the company secured by a charge which, as created, was a floating charge.

(2) If the company is not at the time in course of being wound up, its preferential debts (within the meaning of Article 346) shall be paid out of the assets coming to the hands of the receiver in priority to any claims for principal or interest in respect of the debentures.

(3) Payments made under this Article shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

Annotations:
F105 mod.by 1997 c. 32

Enforcement of duty to make returns

51.—(1) If a receiver or manager of a company's property—

(a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver or manager is by law required to file, deliver, make or give, fails to make good the default within 14 days from the service on him of a notice requiring him to do so, or

(b) having been appointed under powers contained in an instrument, has, after being required at any time by the liquidator of the company to do so, failed to render proper accounts of his receipts and payments and to vouch them and pay over to the liquidator the amount properly payable to him,

the High Court may, on an application made for the purpose, make an order directing the receiver or manager (as the case may be) to make good the default within such time as may be specified in the order.

(2) In the case of the default mentioned in paragraph (1)(a), application to the High Court may be made by any member or creditor of the company or by the registrar; and in the case of the default mentioned in paragraph (1)(b), the application shall be made by the liquidator.

(3) An order of the High Court under paragraph (1), may provide that all costs of and incidental to an application under that paragraph shall be borne by the receiver or manager, as the case may be.

(4) Nothing in this Article prejudices the operation of any statutory provision imposing penalties on receivers in respect of any such default as is mentioned in paragraph (1).

Administrative receivers: general

General powers

52 [F106]**.**—(1) The powers conferred on the administrative receiver of a company by the debentures by virtue of which he was appointed are deemed to include (except in so far as they are inconsistent with any of the provisions of those debentures) the powers specified in Schedule 1.

(2) In the application of Schedule 1 to the administrative receiver of a company—

(a) the words“he” and“him” refer to the administrative receiver, and

(b) references to the property of the company are to the property of which he is or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager.

(3) A person dealing with the administrative receiver in good faith and for value is not concerned to inquire whether the receiver is acting within his powers.

Annotations:
F106 mod.by 1997 c. 32

Power to dispose of charged property, etc.

53 [F107]**.**—(1) Where, on an application by the administrative receiver, the High Court is satisfied that the disposal (with or without other assets) of any relevant property which is subject to a security would be likely to promote a more advantageous realisation of the company's assets than would otherwise be effected, the Court may by order authorise the administrative receiver to dispose of the property as if it were not subject to the security.

(2) Paragraph (1) does not apply in the case of any security held by the person by or on whose behalf the administrative receiver was appointed, or of any security to which a security so held has priority.

(3) It shall be a condition of an order under this Article that—

(a) the net proceeds of the disposal, and

(b) where those proceeds are less than such amount as may be determined by the High Court to be the net amount which would be realised on a sale of the property in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security.

(4) Where a condition imposed in pursuance of paragraph (3) relates to 2 or more securities, that condition shall require the net proceeds of the disposal and, where sub#paragraph (b) of that paragraph applies, the sums mentioned in that sub#paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.

(5) An office copy of an order under this Article shall, within 14 days of the making of the order, be sent by the administrative receiver to the registrar.

(6) If the administrative receiver without reasonable excuse contravenes paragraph (5), he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

(7) In this Article"relevant property", in relation to the administrative receiver, means the property of which he is or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager.

Annotations:
F107 mod.by 1997 c. 32

Agency and liability for contracts

54 [F108]**.**—(1) The administrative receiver of a company—

(a) is deemed to be the company's agent, unless and until the company goes into liquidation;

(b) is personally liable on any contract entered into by him in the carrying out of his functions (except in so far as the contract otherwise provides) and**[**[F109], to the extent of any qualifying liability,**]** on any contract of employment adopted by him in the carrying out of those functions; and

(c) is entitled in respect of that liability to an indemnity out of the assets of the company.

(2) For the purposes of paragraph (1)(b) the administrative receiver is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days from his appointment.

[[F110](2A) For the purposes of paragraph (1)(b), a liability under a contract of employment is a qualifying liability if—

(a) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme,

(b) it is incurred while the administrative receiver is in office, and

(c) it is in respect of services rendered wholly or partly after the adoption of the contract.

(2B) Where a sum payable in respect of a liability which is a qualifying liability for the purposes of paragraph (1)(b) is payable in respect of services rendered partly before and partly after the adoption of the contract, liability under paragraph (1)(b) shall only extend to so much of the sum as is payable in respect of services rendered after the adoption of the contract.

(2C) For the purposes of paragraphs (2A) and (2B)—

(a) wages or salary payable in respect of a period of holiday or absence from work through sickness or other good cause are deemed to be wages or (as the case may be) salary in respect of services rendered in that period, and

(b) a sum payable in lieu of holiday is deemed to be wages or (as the case may be) salary in respect of services rendered in the period by reference to which the holiday entitlement arose.

(2D) In paragraph (2C)(a), the reference to wages or salary payable in respect of a period of holiday includes any sums which, if they had been paid, would have been treated for the purposes of the statutory provisions relating to social security as earnings in respect of that period.**]**

(3) This Article does not limit any right to indemnity which the administrative receiver would have apart from it, nor limit his liability on contracts entered into or adopted without authority, nor confer any right to indemnity in respect of that liability.

Annotations:
F108 mod.by 1997 c. 32
F109 1994 c.7
F110 1994 c.7

Vacation of office

55 [F111]**.**—(1) An administrative receiver of a company may at any time be removed from office by order of the High Court (but not otherwise) and may resign his office by giving notice of his resignation in the prescribed manner to such persons as may be prescribed.

(2) An administrative receiver shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.

(3) Where at any time an administrative receiver vacates office—

(a) his remuneration and any expenses properly incurred by him, and

(b) any indemnity to which he is entitled out of the assets of the company,

shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any security held by the person by or on whose behalf he was appointed.

(4) Where an administrative receiver vacates office otherwise than by death, he shall, within 14 days from his vacation of office, send a notice to that effect to the registrar.

(5) If an administrative receiver without reasonable excuse contravenes paragraph (4), he shall be guilty of an offence[F112] and, for continued contravention, he shall be guilty of a continuing offence.

Annotations:
F111 mod.by 1997 c. 32
F112 prosp. rep. by 1990 NI 10

Administrative receivers: ascertainment and investigation of company's affairs

Information to be given by administrative receiver

56 [F113]**.**—(1) Where an administrative receiver is appointed, he shall—

(a) forthwith send to the company and publish in the prescribed manner a notice of his appointment, and

(b) within 28 days from his appointment, unless the High Court otherwise directs, send such a notice to all the creditors of the company (so far as he is aware of their addresses).

(2) This Article and Article 57 do not apply in relation to the appointment of an administrative receiver to act—

(a) with an existing administrative receiver, or

(b) in place of an administrative receiver dying or ceasing to act,

except that, where they apply to an administrative receiver who dies or ceases to act before they have been fully complied with, the references in this Article and Article 57 to the administrative receiver include (subject to paragraph (3)) his successor and any continuing administrative receiver.

(3) If the company is being wound up, this Article and Article 57 apply notwithstanding that the administrative receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

(4) If the administrative receiver without reasonable excuse contravenes this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Annotations:
F113 mod.by 1997 c. 32

Statement of affairs to be submitted

57 [F114]**.**—(1) Where an administrative receiver is appointed, he shall forthwith require some or all of the persons mentioned in paragraph (3) to make out and submit to him a statement in the prescribed form as to the affairs of the company.

(2) A statement submitted under this Article shall be verified by affidavit by the persons required to submit it and shall show—

(a) particulars of the company's assets, debts and liabilities;

(b) the names and addresses of its creditors;

(c) the securities held by them respectively;

(d) the dates when the securities were respectively given; and

(e) such further or other information as may be prescribed.

(3) The persons referred to in paragraph (1) are—

(a) those who are or have been officers of the company;

(b) those who have taken part in the company's formation at any time within one year before the date of the appointment of the administrative receiver;

(c) those who are in the company's employment, or have been in its employment within that year, and are in the administrative receiver's opinion capable of giving the information required;

(d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company;

and in this paragraph"employment" includes employment under a contract for services.

(4) Where any persons are required under this Article to submit a statement of affairs to the administrative receiver, they shall do so (subject to paragraph (5)) before the expiration of 21 days from the day on which the prescribed notice of the requirement is given to them by the administrative receiver.

(5) The administrative receiver, if he thinks fit, may—

(a) at any time release a person from an obligation imposed on him under paragraph (1) or (2), or

(b) either when giving notice under paragraph (4) or subsequently, extend the period so mentioned;

and where the administrative receiver has refused to exercise a power conferred by this paragraph, the High Court, if it thinks fit, may exercise it.

(6) If a person without reasonable excuse contravenes any obligation imposed under this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Annotations:
F114 mod.by 1997 c. 32

Report by administrative receiver

58 [F115]**.**—(1) Where an administrative receiver is appointed, he shall, within 3 months (or such longer period as the High Court may allow) from his appointment, send to the registrar, to any trustees for secured creditors of the company and (so far as he is aware of their addresses) to all such creditors a report as to the following matters, namely—

(a) the events leading up to his appointment, so far as he is aware of them;

(b) the disposal or proposed disposal by him of any property of the company and the carrying on or proposed carrying on by him of any business of the company;

(c) the amounts of principal and interest payable to the debenture holders by whom or on whose behalf he was appointed and the amounts payable to preferential creditors; and

(d) the amount (if any) likely to be available for the payment of other creditors.

(2) The administrative receiver shall also, within 3 months (or such longer period as the High Court may allow) from his appointment, either—

(a) send a copy of the report (so far as he is aware of their addresses) to all unsecured creditors of the company; or

(b) publish in the prescribed manner a notice stating an address to which unsecured creditors of the company should write for copies of the report to be sent to them free of charge,

and (in either case), unless the Court otherwise directs, lay a copy of the report before a meeting of the company's unsecured creditors summoned for the purpose on not less than 14 days' notice.

(3) The High Court shall not give a direction under paragraph (2) unless—

(a) the report states the intention of the administrative receiver to apply for the direction, and

(b) a copy of the report is sent to the persons mentioned in sub#paragraph (a) of that paragraph, or a notice is published as mentioned in sub#paragraph (b) of that paragraph, not less than 14 days before the hearing of the application.

(4) Where the company has gone or goes into liquidation, the administrative receiver—

(a) shall, within 7 days from his compliance with paragraph (1) or, if later, the nomination or appointment of the liquidator, send a copy of the report to the liquidator, and

(b) where he does so within the time limited for compliance with paragraph (2), is not required to comply with that paragraph.

(5) A report under this Article shall include a summary of the statement of affairs made out and submitted to the administrative receiver under Article 57 and of his comments (if any) upon it.

(6) Nothing in this Article is to be taken as requiring any such report to include any information the disclosure of which would seriously prejudice the carrying out by the administrative receiver of his functions.

(7) Article 56(2) applies for the purposes of this Article also.

(8) If the administrative receiver without reasonable excuse contravenes this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Annotations:
F115 mod.by 1997 c. 32

Committee of creditors

59 [F116]**.**—(1) Where a meeting of creditors is summoned under Article 58, the meeting may, if it thinks fit, establish a committee ("the creditors' committee") to exercise the functions conferred on it by or under this Order.

(2) If such a committee is established, the committee may, on giving not less than 7 days' notice, require the administrative receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

Annotations:
F116 mod.by 1997 c. 32

[[F117]*Prohibition of appointment of administrative receiver*

Annotations:
F117 Arts. 59A - 59J and preceding cross - heading inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), **5(1)** (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Floating charge holder not to appoint administrative receiver

59A.—(1) The holder of a qualifying floating charge in respect of a company's property may not appoint an administrative receiver of the company.

(2) In paragraph (1) "holder of a qualifying floating charge in respect of a company's property" has the same meaning as in paragraph 15 of Schedule B1.

(3) This Article applies—

(a) to a floating charge created on or after a date appointed by the Department by order, and

(b) in spite of any provision of an agreement or instrument which purports to empower a person to appoint an administrative receiver (by whatever name).

(4) An order under paragraph (3)(a) may—

(a) make provision which applies generally or only for a specified purpose;

(b) make different provision for different purposes;

(c) make transitional provision.

(5) This Article is subject to the exceptions specified in Articles 59B to 59I.

First exception: capital market

59B.—(1) Article 59A does not prevent the appointment of an administrative receiver in pursuance of an agreement which is or forms part of a capital market arrangement if—

(a) a party incurs or, when the agreement was entered into was expected to incur, a debt of at least £50 million under the arrangement, and

(b) the arrangement involves the issue of a capital market investment.

(2) In paragraph (1)—

"capital market arrangement" means an arrangement of a kind described in paragraph 1 of Schedule 1A, and

"capital market investment" means an investment of a kind described in paragraph 2 or 3 of that Schedule.

Second exception: public-private partnership

59C.—(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

(a) is a public-private partnership project, and

(b) includes step-in rights.

(2) In this Article "public-private partnership project" means a project—

(a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or

(b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.

(3) In this Article—

"step-in rights" has the meaning given by paragraph 6 of Schedule 1A, and

"project company" has the meaning given by paragraph 7 of that Schedule.

Third exception: utilities

59D.—(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

(a) is a utility project, and

(b) includes step-in rights.

(2) In this Article—

(a) "utility project" means a project designed wholly or mainly for the purpose of a regulated business,

(b) "regulated business" means a business of a kind listed in paragraph 10 of Schedule 1A,

(c) "step-in rights" has the meaning given by paragraph 6 of that Schedule, and

(d) "project company" has the meaning given by paragraph 7 of that Schedule.

Fourth exception: urban regeneration projects

59E.—(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

(a) is designed wholly or mainly to develop land which at the commencement of the project is wholly or partly in a designated disadvantaged area in Northern Ireland, and

(b) includes step-in rights.

(2) In paragraph (1) "develop" means to carry out—

(a) building operations,

(b) any operation for the removal of substances or waste from land and the levelling of the surface of the land, or

(c) engineering operations in connection with the activities mentioned in sub-paragraph (a) or (b).

(3) In this Article—

"building" includes any structure or erection, and any part of a building as so defined, but does not include plant and machinery comprised in a building,

"building operations" includes—

(a) demolition of buildings,

(b) filling in of trenches,

(c) rebuilding,

(d) structural alterations of, or additions to, buildings and

(e) other operations normally undertaken by a person carrying on business as a builder,

"designated disadvantaged area" means an area designated as a disadvantaged area under section 92 of the Finance Act 2001 (c. 9),

"engineering operations" includes the formation and laying out of means of access to highways,

"project company" has the meaning given by paragraph 7 of Schedule 1A,

"step-in rights" has the meaning given by paragraph 6 of that Schedule,

"substance" means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour, and

"waste" includes any waste materials, spoil, refuse or other matter deposited on land.

Fifth exception: project finance

59F.—(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

(a) is a financed project, and

(b) includes step-in rights.

(2) In this Article—

(a) a project is "financed" if under an agreement relating to the project a project company incurs, or when the agreement is entered into is expected to incur, a debt of at least £50 million for the purposes of carrying out the project,

(b) "project company" has the meaning given by paragraph 7 of Schedule 1A, and

(c) "step-in rights" has the meaning given by paragraph 6 of that Schedule.

Sixth exception: financial market

59G. Article 59A does not prevent the appointment of an administrative receiver of a company by virtue of—

(a) a market charge within the meaning of Article 95 of the Companies (No. 2) (Northern Ireland) Order 1990 (NI 10),

(b) a system-charge within the meaning of the Financial Markets and Insolvency Regulations (Northern Ireland) 1996 (SR 1996 No. 252).

Seventh exception: registered housing association

59H. Article 59A does not prevent the appointment of an administrative receiver of a housing association which is registered as such under Chapter II of Part II of the Housing (Northern Ireland) Order 1992 (NI 15).

Eighth exception: licence companies

59I. Article 59A does not prevent the appointment of an administrative receiver of a licence company within the meaning of section 26 of the Transport Act 2000 (c. 38).

Articles 59A to 59I: supplementary

59J.—(1) Schedule 1A (which supplements Articles 59A to 59I) shall have effect.

(2) The Department may by order—

(a) insert into this Order provision creating an additional exception to Article 59A(1);

(b) provide for a provision of this Order which creates an exception to Article 59A(1) to cease to have effect;

(c) amend Article 59A in consequence of provision made under sub-paragraph (a) or (b);

(d) amend any of Articles 59B to 59I;

(e) amend Schedule 1A.

(3) An order under paragraph (2) may make—

(a) provision which applies generally or only for a specified purpose;

(b) different provision for different purposes;

(c) consequential or supplementary provision;

(d) transitional provision.

(4) An order under paragraph (2)—

(a) in the case of an order under paragraph (2)(e), shall be subject to negative resolution,

(b) in the case of an order under paragraph (2)(d) varying the sum specified in Article 59B(1)(a) or 59F(2)(a) (whether or not the order also makes consequential or transitional provision), shall be subject to negative resolution, and

(c) in the case of any other order under paragraph (2)(a) to (d), shall be subject to affirmative resolution.**]**

F118

PART V

WINDING UP OF COMPANIES REGISTERED UNDER THE COMPANIES ORDERS

Annotations:
F118 Pts. I - V modified by S.R.2004/307 (as amended (1.10.2006) by Limited Liability Partnerships (Amendment) Regulations (Northern Ireland) 2006 S.R. 2006/377), reg. 3, {Sch. 2})

CHAPTER I

PRELIMINARY

Modes of winding up

Alternative modes of winding up

60.—(1 [F119] The winding up of a company, within the meaning given by Article 3 of the Companies Order, may be either voluntary (Chapters II, III, IV and V) or by the High Court (Chapter VI).

(2) This Chapter, and Chapters VII to X, relate to winding up generally, except where otherwise stated.

Annotations:
F119 mod. by SR 2004/307

Contributories

Liability as contributories of present and past members

61 [F120]**.**—(1) When a company is wound up, every present and past member is liable to contribute to its assets to any amount sufficient for payment of its debts and liabilities, and the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.

(2) This is subject as follows—

(a) a past member is not liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding up;

(b) a past member is not liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(c) a past member is not liable to contribute, unless it appears to the High Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of the Companies Order and this Order;

(d) in the case of a company limited by shares, no contribution is required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member;

(e) nothing in the Companies Order or this Order invalidates any provision contained in a policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;

(f) a sum due to any member of the company (in his character of a member) by way of dividends, profits or otherwise is not deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(3) In the case of a company limited by guarantee, no contribution is required from any member exceeding the amount undertaken to be contributed by him to the company's assets in the event of its being wound up; but if it is a company with a share capital, every member of it is liable (in addition to the amount so undertaken to be contributed to the assets), to contribute to the extent of any sums unpaid on shares held by him.

Annotations:
F120 mod. by SR 2004/307

Directors with unlimited liability

62 [F121]**.**—(1) In the winding up of a limited company, any director (whether past or present) whose liability is under the Companies Order unlimited is liable, in addition to his liability (if any) to contribute as an ordinary member, to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company.

(2) However—

(a) a past director is not liable to make such further contribution if he has ceased to hold office for a year or more before the commencement of the winding up;

(b) a past director is not liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;

(c) subject to the company's articles, a director is not liable to make such further contribution unless the High Court deems it necessary to require that contribution in order to satisfy the company's debts and liabilities, and the expenses of the winding up.

Annotations:
F121 mod. by SR 2004/307

Liability of past directors and shareholders

63 [F122]**.**—(1) This Article applies where a company is being wound up and—

(a) it has under Chapter VII of Part VI of the Companies Order (redeemable shares; purchase by a company of its own shares) made a payment out of capital in respect of the redemption or purchase of any of its own shares (the payment being referred to in this Article as “the relevant payment”), and

(b) the aggregate amount of the company's assets and the amounts paid by way of contribution to its assets (apart from this Article) is not sufficient for payment of its debts and liabilities, and the expenses of the winding up.

(2) If the winding up commenced within one year from the date on which the relevant payment was made, then—

(a) the person from whom the shares were redeemed or purchased, and

(b) the directors who signed the statutory declaration made in accordance with Article 183(3) of the Companies Order for the purposes of the redemption or purchase (except

a director who shows that he had reasonable grounds for forming the opinion set out in the declaration),

are, so as to enable that insufficiency to be met, liable to contribute to the following extent to the company's assets.

(3) A person from whom any of the shares were redeemed or purchased is liable to contribute an amount not exceeding so much of the relevant payment as was made by the company in respect of his shares; and the directors are jointly and severally liable with that person to contribute that amount.

(4) A person who has contributed any amount to the assets in pursuance of this Article may apply to the High Court for an order directing any other person jointly and severally liable in respect of that amount to pay him such amount as the Court thinks just and equitable.

(5) Articles 61 and 62 do not apply in relation to liability accruing by virtue of this Article.

(6) This Article 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.

Annotations:
F122 mod. by SR 2004/307

Limited company formerly unlimited

64 [F123]**.**—(1) This Article applies in the case of a company being wound up which was at some former time registered as unlimited but has re#registered—

(a) as a public company under Article 53 of the Companies Order (or the former corresponding provision, Article 7 of the Companies (Northern Ireland) Order 1981[F124]), or

(b) as a limited company under Article 61 of the Companies Order (or the former corresponding provision, Article 119 of the Companies (Northern Ireland) Order 1978[F125]).

(2) Notwithstanding Article 61(2)(a), a past member of the company who was a member of it at the time of re#registration, if the winding up commences within 3 years from the day on which the company was re#registered, is liable to contribute to the assets of the company in respect of debts and liabilities contracted before that time.

(3) Subject to Article 61(2)(a) and to paragraph (2), but notwithstanding Article 61(2)(c), if no persons who were members of the company at that time are existing members of it, a person who at that time was a present or past member is liable to contribute as mentioned in paragraph (2) notwithstanding that the existing members have satisfied the contributions required to be made by them under the Companies Order and this Order.

(4) Notwithstanding Article 61(2)(d) and (3), there is no limit on the amount which a person who, at that time, was a past or present member of the company is liable to contribute as mentioned in paragraph (2).

Annotations:
F123 mod. by SR 2004/307
F124 1981 NI 19
F125 1978 NI 12

Unlimited company formerly limited

65 [F126]**.**—(1) This Article applies in the case of a company being wound up which was at some former time registered as limited but has been re#registered as unlimited under Article 59 of the

Companies Order (or the former corresponding provision, Article 118 of the Companies (Northern Ireland) Order 1978[F127]).

(2) A person who, at the time when the application for the company to be re#registered was lodged, was a past member of the company and did not after that again become a member of it is not liable to contribute to the assets of the company more than he would have been liable to contribute had the company not been re#registered.

Annotations:
F126 mod. by SR 2004/307
F127 1978 NI 12

Nature of contributory's liability

66. The liability of a contributory creates a debt accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

Contributories in case of death of a member

67.—(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives are liable in a due course of administration to contribute to the assets of the company in discharge of his liability and are contributories accordingly.

(2) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment out of it of the money due.

Effect of contributory's bankruptcy

68.—(1) This Article applies if a contributory becomes bankrupt, either before or after he has been placed on the list of contributories.

(2) His trustee in bankruptcy represents him for all purposes of the winding up, and is a contributory accordingly.

(3) The trustee may be called on to admit to proof against the bankrupt's estate, or otherwise allow to be paid out of the bankrupt's assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the company's assets.

(4) There may be proved against the bankrupt's estate the estimated value of his liability to future calls as well as calls already made.

Companies registered under Companies Order, Part XXII, Chapter II

69 [F128]**.**—(1) This Article applies in the event of a company being wound up which has been registered under Article 629 of the Companies Order (or previous corresponding provisions in the Companies Act (Northern Ireland) 1960[F129] or earlier Acts).

(2) Every person is a contributory, in respect of the company's debts and liabilities contracted before registration, who is liable—

(a) to pay, or contribute to the payment of, any debt or liability so contracted, or

(b) to pay, or contribute to the payment of, any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or

(c) to pay, or contribute to the amount of, the expenses of winding up the company, so far as relates to such debts or liabilities.

(3) Every contributory is liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as is mentioned in paragraph (2).

(4) In the event of the death, bankruptcy or insolvency of any contributory, provisions of this Order, with respect to the personal representatives of deceased contributories and to the trustees of bankrupt or insolvent contributories respectively, apply.

Annotations:

F128 mod. by SR 2004/307

F129 1960 c. 22 (NI)

CHAPTER II

VOLUNTARY WINDING UP (INTRODUCTORY AND GENERAL)

Resolutions for, and commencement of, voluntary winding up

Circumstances in which company may be wound up voluntarily

70.—(1 [F130] A company may be wound up voluntarily—

(a) when the period (if any) fixed for the duration of the company by its articles expires, or the event (if any) occurs, on the occurrence of which its articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring it to be wound up voluntarily;

(b) if the company resolves by special resolution that it be wound up voluntarily;

(c) [F131] . . . . . .

[[F132](1A) Before a company passes a resolution for voluntary winding up it must give written notice of the resolution to the holder of any qualifying floating charge to which Article 59A applies.

(1B) Where notice is given under paragraph (1A) a resolution for voluntary winding up may be passed only—

(a) after the end of the period of 5 business days beginning with the day on which the notice was given, or

(b) if the person to whom the notice was given has consented in writing to the passing of the resolution.**]**

[[F133](3) Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company's constitution) applies to a resolution under sub-paragraph (a) of paragraph (1) as well as a special resolution under sub-paragraph (b).**]**

Annotations:

F130 mod. by SR 2004/307

F131 Art. 70(1)(c) repealed (1.10.2007 with application as mentioned in Sch. 4 para. 58(4) of the amending S.I.) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1)(3), Sch. 4 para. 58(2), **Sch. 5** (with art. 12)

F132 Art. 70(1A)(1B) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 24 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2**-7)

F133 Art. 70(3) substituted (1.10.2007 with application as mentioned in Sch. 4 para. 58(4) of the amending S.I.) for art. 70(2) by Companies Act 2006 (Commencement No. 3, Consequential Amendments,

Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), **Sch. 4 para. 58(3)** (with art. 12)

Notice of resolution to wind up voluntarily

71.—(1 [F134] When a company has passed a resolution for voluntary winding up, it shall, within 14 days from the passing of the resolution, give notice of the resolution by advertisement in the Belfast Gazette.

(2) If default is made in complying with this Article, the company and every officer of it who is in default shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

(3) For the purposes of paragraph (2) the liquidator is deemed an officer of the company.

Annotations:
F134 mod. by SR 2004/307

Commencement of voluntary winding up

72 [F135]**.** A voluntary winding up is deemed to commence at the time of the passing of the resolution for voluntary winding up.

Annotations:
F135 mod. by SR 2004/307

Consequences of resolution to wind up

Effect on business and status of company

73.—(1) In the case of a voluntary winding up, the company shall from the commencement of the winding up cease to carry on its business, except so far as may be required for its beneficial winding up.

(2 [F136] However, the corporate state and corporate powers of the company, notwithstanding anything to the contrary in its articles, continue until the company is dissolved.

Annotations:
F136 mod. by SR 2004/307

Avoidance of share transfers, etc., after winding#up resolution

74 [F137]**.** Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the company's members, made after the commencement of a voluntary winding up is void.

Annotations:
F137 mod. by SR 2004/307

Declaration of solvency

Statutory declaration of solvency

75 [F138]**.**—(1) Where it is proposed to wind up a company voluntarily, the directors (or, in the case of a company having more than 2 directors, the majority of them) may at a directors' meeting make a statutory declaration to the effect that they have made a full inquiry into the company's affairs and that, having done so, they have formed the opinion that the company will be able to pay its debts in full, together with interest at the official rate (as defined in Article 5(1)), within such period, not exceeding 12 months from the commencement of the winding up, as may be specified in the declaration.

(2) Such a declaration by the directors has no effect for the purposes of this Order unless—

(a it is made within the 5 weeks immediately preceding the date of the passing of the resolution for winding up, or on that date but before the passing of the resolution, and

(b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3 The declaration shall be delivered to the registrar before the expiration of 15 days from the date on which the resolution for winding up is passed.

(4) A director making a declaration under this Article without having reasonable grounds for the opinion that the company will be able to pay its debts in full, together with interest at the official rate, within the period specified shall be guilty of an offence.

(5 If the company is wound up in pursuance of a resolution passed within 5 weeks from the making of the declaration, and its debts (together with interest at the official rate) are not paid or provided for in full within the period specified, it is to be presumed (unless the contrary is shown) that the director did not have reasonable grounds for his opinion.

(6) If a declaration required by paragraph (3) to be delivered to the registrar is not so delivered within the time specified by that paragraph, the company and every officer of it who is in default shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

Annotations:
F138 mod. by SR 2004/307

Distinction between “members'” and “creditors'” voluntary winding up

76 [F139]**.** A winding up in the case of which a directors' statutory declaration in accordance with Article 75 has been made is a “members' voluntary winding up”; and a winding up in the case of which such a declaration has not been made is a “creditors' voluntary winding up”.

Annotations:
F139 mod. by SR 2004/307

CHAPTER III

MEMBERS' VOLUNTARY WINDING UP

Appointment of liquidator

77.—(1 [F140] In a members' voluntary winding up, the company in general meeting shall appoint one or more liquidators for the purpose of winding up the company's affairs and distributing its assets.

(2 On the appointment of a liquidator all the powers of the directors cease, except so far as the company in general meeting or the liquidator sanctions their continuance.

Annotations:
F140 mod. by SR 2004/307

Power to fill vacancy in office of liquidator

78.—(1 [F141] If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2 For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3 The meeting shall be held in the manner provided by this Order or by the company's articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the High Court.

Annotations:
F141 mod. by SR 2004/307

General company meeting at each year's end

79.—(1 [F142] Subject to Articles 82 and 88, in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Department may allow.

(2) The liquidator shall lay before the meeting an account of his acts and dealings, and of the conduct of the winding up, during the preceding year.

(3) If the liquidator contravenes this Article, he shall be guilty of an offence.

Annotations:
F142 mod. by SR 2004/307

Final meeting prior to dissolution

80.—(1 [F143] As soon as the company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving an explanation of it.

(2) The meeting shall be called by advertisement in the Belfast Gazette, specifying its time, place and object and published at least one month before the meeting.

(3) Within one week from the meeting, the liquidator shall send to the registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date.

(4) If the copy is not sent or the return is not made in accordance with paragraph (3), the liquidator shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

(5) If a quorum is not present at the meeting, the liquidator shall, in lieu of the return mentioned in paragraph (3), make a return that the meeting was duly summoned and that no quorum was

present;and upon such a return being made, the provisions of paragraph (3) as to the making of the return are deemed complied with.

(6 If the liquidator fails to call a general meeting of the company as required by paragraph (1), he shall be guilty of an offence.

Annotations:
F143 mod. by SR 2004/307

Effect of company's insolvency

81.—(1 [F144] This Article applies where the liquidator is of the opinion that the company will be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors' declaration under Article 75.

(2) The liquidator shall—

(a) summon a meeting of creditors not later than 28 days from the day on which he formed that opinion;

(b) not less than 7 days before the day on which the creditors' meeting is to be held—

(i) send notices of that meeting to the creditors by post; and

(ii) cause notice of that meeting to be advertised once in the Belfast Gazette and once at least in 2 newspapers circulating in each district in which the company's principal place of business in the United Kingdom was situated during the relevant period; and

(c) during the period before the day on which the creditors' meeting is to be held, furnish creditors free of charge with such information concerning the affairs of the company as they may reasonably require;

and the notice of the creditors' meeting shall state the duty imposed by sub#paragraph (c).

(3) The liquidator shall also—

(a) make out a statement in the prescribed form as to the affairs of the company;

(b) lay that statement before the creditors' meeting; and

(c) attend and preside at that meeting.

(4) The statement as to the affairs of the company shall be verified by affidavit by the liquidator and shall show—

(a) particulars of the company's assets, debts and liabilities;

(b) the names and addresses of the company's creditors;

(c) the securities held by them respectively;

(d) the dates when the securities were respectively given; and

(e) such further or other information as may be prescribed.

(5) Where the company had no place of business in the United Kingdom during the relevant period, the reference in paragraph (2)(b)(ii) to the company's principal place of business in the United Kingdom is replaced by a reference to its registered office.

(6 In this Article “the relevant period” means the period of 6 months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.

(7) If the liquidator without reasonable excuse contravenes this Article, he shall be guilty of an offence.

Annotations:
F144 mod. by SR 2004/307

Conversion to creditors' voluntary winding up

82. As from the day on which the creditors' meeting is held under Article 81, this Order has effect as if—

(a [F145] the directors' declaration under Article 75 had not been made; and

(b the creditors' meeting and the company meeting at which it was resolved that the company be wound up voluntarily were the meetings mentioned in Article 84;

and accordingly the winding up becomes a creditors' voluntary winding up.

Annotations:
F145 mod. by SR 2004/307

CHAPTER IV

CREDITORS' VOLUNTARY WINDING UP

Application of this Chapter

83.—(1) Subject to paragraph (2), this Chapter applies in relation to a creditors' voluntary winding up.

(2) Articles 84 and 85 do not apply where, under Article 82, a members' voluntary winding up has become a creditors' voluntary winding up.

Meeting of creditors

84.—(1) The company shall—

(a [F146] cause a meeting of its creditors to be summoned not later than 14 days from the day on which there is to be held the company meeting at which the resolution for voluntary winding up is to be proposed;

(b) not less than 7 days before the day on which the creditors' meeting is to be held—

(i) cause the notices of that meeting to be sent by post; and

(ii) cause notice of that meeting to be advertised once in the Belfast Gazette and once at least in 2 newspapers circulating in each district in which the company's principal place of business in the United Kingdom was situated during the relevant period.

(2) The notice of the creditors' meeting shall state either—

(a) the name and address of a person qualified to act as an insolvency practitioner in relation to the company who, during the period before the day on which that meeting is to be held, will furnish creditors free of charge with such information concerning the company's affairs as they may reasonably require; or

(b) a place in each district mentioned in paragraph (1)(b)(ii) where, on the 2 business days falling next before the day on which that meeting is to be held, a list of the names and addresses of the company's creditors will be available for inspection free of charge.

(3) Where the company had no place of business in the United Kingdom during the relevant period, the reference in paragraph (1)(b)(ii) to the company's principal place of business in the United Kingdom is replaced by a reference to its registered office.

(4 In this Article "the relevant period" means the period of 6 months immediately preceding the day on which were sent thenotices summoning the company meeting at which it was resolved that the company be wound up voluntarily.

(5) If the company without reasonable excuse contravenes paragraph (1) or (2), it shall be guilty of an offence.

Annotations:
F146 mod. by SR 2004/307

Directors to lay statement of affairs before creditors

85.—(1 [F147] The directors of the company shall—

(a) make out a statement in the prescribed form as to the affairs of the company;

(b) cause that statement to be laid before the creditors' meeting under Article 84; and

(c) appoint one of their number to preside at that meeting;

and it is the duty of the director so appointed to attend the meeting and preside over it.

(2 The statement as to the affairs of the company shall be verified by affidavit by some or all of the directors and shall show—

(a) particulars of the company's assets, debts and liabilities;

(b) the names and addresses of the company's creditors;

(c) the securities held by them respectively;

(d) the dates when the securities were respectively given; and

(e) such further or other information as may be prescribed.

(3 If—

(a) the directors without reasonable excuse contravene paragraph (1) or (2); or

(b) any director without reasonable excuse contravenes paragraph (1), so far as requiring him to attend and preside at the creditors' meeting,

the directors or (as the case may be) the director shall be guilty of an offence.

Annotations:
F147 mod. by SR 2004/307

Appointment of liquidator

86.—(1 [F148] The creditors and the company at their respective meetings mentioned in Article 84 may nominate a person to be liquidator for the purpose of winding up the company's affairs and distributing its assets.

(2) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the company.

(3 In the case of different persons being nominated, any director, member or creditor of the company may, within 7 days from the date on which the nomination was made by the creditors, apply to the High Court for an order either—

(a) directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or

(b) appointing some other person to be liquidator instead of the person nominated by the creditors.[F149]

Annotations:
F148 mod. by SR 2004/307
F149 prosp. addition by 2005 NI 10

Appointment of liquidation committee

87.—(1) The creditors at the meeting to be held under Article 84 or at any subsequent meeting may, if they think fit, appoint a committee ("the liquidation committee") of not more than 5 persons to exercise the functions conferred on it by or under this Order.

(2 [F150] If such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee, not exceeding 5.

(3) However, the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the liquidation committee; and if the creditors so resolve —

(a) the persons mentioned in the resolution are not then, unless the High Court otherwise directs, qualified to act as members of the committee; and

(b) on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

Annotations:
F150 mod. by SR 2004/307

Creditors' meeting where winding up converted under Article 82

88. Where, in the case of a winding up which was, under Article 82, converted to a creditors' voluntary winding up, a creditors' meeting is held in accordance with Article 81, any appointment made or committee established by that meeting is deemed to have been made or established by a meeting held in accordance with Article 84.

Cesser of directors' powers

89. On the appointment of a liquidator, all the powers of the directors cease, except so far as the liquidation committee (or, if there is no such committee, the creditors) sanction their continuance.

Vacancy in office of liquidator

90. If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by, or by the direction of, the High Court), the creditors may fill the vacancy.

Meetings of company and creditors at each year's end

91.—(1 [F151] If the winding up continues for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Department may allow.

(2) The liquidator shall lay before each of the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(3) If the liquidator contravenes this Article, he shall be guilty of an offence.

(4) Where under Article 82 a members' voluntary winding up has become a creditors' voluntary winding up, and the creditors' meeting under Article 81 is held 3 months or less before the end of the first year from the commencement of the winding up, the liquidator is not required by this Article to summon a meeting of creditors at the end of that year.

Annotations:
F151 mod. by SR 2004/307

Final meeting prior to dissolution

92.—(1 [F152] As soon as the company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving an explanation of it.

(2) Each such meeting shall be called by advertisement in the Belfast Gazette specifying the time, place and object of the meeting, and published at least one month before it.

(3) Within one week from the date of the meetings (or, if they are not held on the same date, from the date of the later one) the liquidator shall send to the registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates.

(4) If the copy is not sent or the return is not made in accordance with paragraph (3), the liquidator shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

(5) However, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return required by paragraph (3), make a return that the meeting was duly summoned and that no quorum was present; and upon such return being made the provisons of that paragraph as to the making of the return are, in respect of that meeting, deemed complied with.

(6 If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this Article, he shall be guilty of an offence.

Annotations:
F152 mod. by SR 2004/307

CHAPTER V

PROVISIONS APPLYING TO BOTH KINDS OF VOLUNTARY WINDING UP

Distribution of company's property

93. Subject to the provisions of this Order as to preferential payments, the company's property in a voluntary winding up shall on the winding up be applied in satisfaction of the company's liabilities pari passu and, subject to that application, shall (unless the company's articles otherwise provide) be distributed among the members according to their rights and interests in the company.

Appointment or removal of liquidator by the High Court

94.—(1) If from any cause whatever there is no liquidator acting, the High Court may appoint a liquidator.

(2) The High Court may, on cause shown, remove a liquidator and appoint another.

Notice by liquidator of his appointment

95.—(1) The liquidator shall, within 14 days from his appointment, publish in the Belfast Gazette and deliver to the registrar for registration a notice of his appointment in the form prescribed.

(2) If the liquidator contravenes this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Acceptance of shares, etc., as consideration for sale of company's property

96 [F153]**.**—(1) This Article applies, in the case of a company proposed to be, or being, wound up voluntarily, where the whole or part of the company's business or property is proposed to be transferred or sold

[[F154](a)**]** to another company ("the transferee company"), whether or not the latter is a company within the meaning of the Companies Order.**[**[F154], or**]**

[[F154](b) to a limited liability partnership (the transferee limited liability partnership).**]**

(2) With the requisite sanction, the liquidator of the company being, or proposed to be, wound up ("the transferor company") may receive, in compensation or part compensation for the transfer or**[**[F154] sale—**]**

[[F154](a) in the case of the transferee company, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company, or

(b) in the case of the transferee limited liability partnership, membership in the transferee limited liability partnership for distribution among the members of the transferor company.**]**

(3) The sanction requisite under paragraph (2) is—

(a) in the case of a members' voluntary winding up, that of a special resolution of the company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, and

(b) in the case of a creditors' voluntary winding up, that of either the High Court or the liquidation committee.

(4) Alternatively to paragraph (2), the liquidator may (with that sanction) enter into any other arrangement whereby the members of the transferor**[**[F154] company may—**]**

[[F154](a) in the case of the transferee company, in lieu of receiving cash, shares, policies or other like interests (or in addition thereto) participate in the profits of, or receive any other benefit from, the transferee company, or

(b) in the case of the transferee limited liability partnership, in lieu of receiving cash or membership (or in addition thereto), participate in some other way in the profits of, or receive any other benefit from, the transferee limited liability partnership.**]**

(5) A sale or arrangement in pursuance of this Article is binding on members of the transferor company.

(6) A special resolution is not invalid for the purposes of this Article by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators; but, if an order is made within a year for winding up the company by the High Court, the special resolution is not valid unless sanctioned by the Court.

Annotations:
F153 mod. by SR 2004/307
F154 SR 2004/307

Dissent from arrangement under Article 96

97.—(1 [F155] This Article applies in the case of a voluntary winding up where, for the purposes of Article 96(2) or (4), there has been passed a special resolution of the transferor company providing the sanction requisite for the liquidator under that Article.

(2 If a member of the transferor company who did not vote in favour of the special resolution expresses his dissent from it in writing, addressed to the liquidator and left at the company's registered office within 7 days from the passing of the resolution, he may require the liquidator either to abstain from carrying the resoltuion into effect or to purchase his interest at a price to be determined by agreement or by arbitration under this Article.

(3 If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution.

(4 For the purposes of an arbitration under this Article, the provisions of the Companies Clauses Consolidation Act 1845[F156] with respect to the settlement of disputes by arbitration are incorporated with this Order, and—

(a) in the construction of those provisions this Order is deemed the special Act and "the company" means the transferor company, and

(b) any appointment by the incorporated provisions directed to be made under the hand of the secretary or any 2 of the directors may be made in writing by the liquidator (or, if there is more than one liquidator, then any 2 or more of them).

Annotations:
F155 mod. by SR 2004/307
F156 1845 c. 16

Reference of questions to the High Court

98.—(1) The liquidator or any contributory or creditor may apply to the High Court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) The High Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or many make such other order on the application as it thinks just.

(3) An office copy of an order made by virtue of this Article staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar for registration.

No liquidator appointed or nominated by company

99.—(1) This Article applies where, in the case of a voluntary winding up, no liquidator has been appointed or nominated by the company.

(2) The powers of the directors shall not be exercised, except with the sanction of the High Court or (in the case of a creditors' voluntary winding up) so far as may be necessary to secure compliance with Article 84 (creditors' meeting) and Article 85 (statement of affairs), during the period before the appointment or nomination of a liquidator of the company.

(3) Paragraph (2) does not apply in relation to the powers of the directors—

(a) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of, and

(b) to do all such other things as may be necessary for the protection of the company's assets.

(4) If the directors of the company without reasonable excuse contravene this Article, they shall be guilty of an offence.

Expenses of voluntary winding up

100. All expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims.

Saving for certain rights

101. The voluntary winding up of a company does not bar the right of any creditor or contributory to have it wound up by the High Court; but in the case of an application by a contributory the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

CHAPTER VI

WINDING UP BY THE HIGH COURT

Grounds and effect of winding#up petition

Circumstances in which company may be wound up by the High Court

102 [F157]**.** A company may be wound up by the High Court if—

(a) the company has by special resolution resolved that the company be wound up by the Court,

(b) being a public company which was registered as such on its original incorporation, the company has not been issued with a certificate under Article 127 of the Companies Order (public company share capital requirements) and more than a year has expired since it was so registered,

(c) it is an old public company, within the meaning of Article 3 of the Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986[F158],

(d) the company does not commence its business within one year from its incorporation or suspends its business for a year,

(e) **[**[F159]except in the case of a private company limited by shares or by guarantee,**]** the number of members is reduced below 2,

(f) the company is unable to pay its debts,

[[F160](fa) at the time at which a moratorium for the company under Article 14A comes to an end, no voluntary arrangement approved under Part II has effect in relation to the company**]**

(g) the Court is of the opinion that it is just and equitable that the company should be wound up.

Annotations:

F157 mod. by SR 2004/307
F158 1986 NI 9
F159 SR 1992/405
F160 2002 NI 6

Definition of inability to pay debts; the statutory demand

103.—(1) A company is deemed unable to pay its debts—

(a [F161] if a creditor (by assignment or otherwise) to whom the company is indebted in a sum exceeding £750 then due has served on the company, by leaving it at the company's registered office, a demand (known as "the statutory demand") in the prescribed form requiring the company to pay the sum due and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor, or

(b) if, in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the company under Article 19 of the Judgments Enforcement (Northern Ireland) Order 1981[F162], or

(c) if, in England and Wales, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part, or

(d) if, in Scotland, the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made, or

(e) if it is otherwise proved to the satisfaction of the High Court that the company is unable to pay its debts as they fall due.

(2) A company is also deemed unable to pay its debts if it is proved to the satisfaction of the High Court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

(3) The money sum for the time being specified in paragraph (1)(a) is subject to increase or reduction by order under Article 362(1)(a).

Annotations:
F161 mod. by SR 2005/68
F162 1981 NI 6

Application for winding up

104.—(1) Subject to the provisions of this Article, an application to the High Court for the winding up of a company shall be by petition presented either by the company, or the directors, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories**[**[F163], or by a liquidator (within the meaning of Article 2(b) of the EC Regulation) appointed in proceedings by virtue of Article 3(1) of the EC Regulation or a temporary administrator (within the meaning of Article 38 of the EC Regulation)**]**,**[**[F164] or by the chief clerk in exercise of the power conferred by section 35(4A) of the Criminal Justice Act (Northern Ireland) 1945 (enforcement of fines imposed on companies) or a clerk of petty sessions in exercise of the power conferred by Article 92A of the Magistrates' Courts (Northern Ireland) Order 1981 (enforcement of fines imposed on companies)**]** or by all of any of those parties, together or separately.

(2 [F165] Except as mentioned in paragraph (3), a contributory is not entitled to present a winding# up petition unless either—

(a) the number of members is reduced below 2, or

(b) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for at least 6 months during the 18 months before the commencement of the winding up, or have devolved on him through the death of a former holder.

(3 A person who is liable under Article 63 to contribute to a company's assets in the event of its being wound up may petition on either of the grounds set out in Article 102(f) and (g), and paragraph (2) does not then apply; but unless the person is a contributory otherwise than under Article 63, he may not in his character as contributory petition on any other ground.

(4 Paragraph (3) is deemed included in Chapter VII of Part VI of the Companies Order (redeemable shares; purchase by a company of its own shares) for the purposes of the Department's power to make regulations under Article 189 of that Order.

[[F166](4AA) A winding up petition may be presented by the Registrar of Credit Unions for Northern Ireland in a case falling within Article 104C(1) or (2).**]**

[[F167](4A A winding-up petition on the ground set out in Article 102(fa) may only be presented by one or more creditors**]**

(5) A winding#up petition may be presented by the Department—

(a if the ground of the petition is that in Article 102(b) or (c), or

[[F168](b) in a case falling within Article 104A**[**[F169] or 104B**].]**

[[F170](5A) A winding-up petition may be presented by the Regulator of Community Interest Companies in a case falling within section 50 of the Companies (Audit, Investigations and Community Enterprise) Act 2004.**]**

(6) Where a company is being wound up voluntarily, a winding#up petition may be presented by the official receiver as well as by any other person authorised in that behalf under the other provisions of this Article; but the High Court shall not make a winding#up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

Annotations:

F163 SR 2002/334
F164 1994 NI 15
F165 mod. by SR 2004/307
F166 Art. 104(4AA) inserted (18.8.2006) by The European Cooperative Society Regulations 2006 (S.I. 2006/2078), **reg. 33(4)**
F167 2002 NI 6
F168 1990 NI 10
F169 SR 2004/417
F170 Art. 104(5A) inserted (6.4.2007) by Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/1093), arts. 1(3), 6(2), **Sch. 4 para. 56** (with art. 11(1))

[[F171]Petition for winding up on grounds of public interest

104A.—(1) Where it appears to the Department from—

(a) any report made or information obtained under Part XV[F172] of the Companies Order (company investigations, &c.),

Sub-para.(b) rep. by 1993 c.36

[[F173](c [F174] any report made by inspectors under—

(i) section 167, 168, 169 or 284 of the Financial Services and Markets Act 2000, or

(ii) where the company is an open-ended investment company (within the meaning of that Act), regulations made as a result of section 262(2)(k) of that Act;

(cc any information or documents obtained under section 165, 171, 172, 173 or 175 of that Act;**]**

(d) any information obtained under section 2 of the Criminal Justice Act 1987 or section 52 of the Criminal Justice (Scotland) Act 1987 (fraud investigations), or

(e) any information obtained under section 83 of the Companies Act 1989 (powers exercisable for purpose of assisting overseas regulatory authorities),

that it is expedient in the public interest that a company should be wound up, it may present a petition for it to be wound up if the court thinks it just and equitable for it to be so.

(2) This Article does not apply if the company is already being wound up by the court.**]**

Annotations:
F171 1990 NI 10
F172 prosp. insertion by 2005 NI 17
F173 SI 2001/3649
F174 mod. by SR 2004/307

[F175Petition for winding up of SE

104B.—(1) Where—

(a) an SE whose registered office is in Northern Ireland is not in compliance with Article 7 of Council Regulation (EC) No 2157/2001 on the Statute for a European Company (the "EC Regulation") (location of head office and registered office), and

(b) it appears to the Department that the SE should be wound up,

the Department may present a petition for it to be wound up if the court thinks it is just and equitable for it to be so.

(2) This Article does not apply if the SE is already being wound up by the court.

(3) In this Article "SE" has the same meaning as in the EC Regulation.**]**

Annotations:
F175 SR 2004/417

[F176Petition for winding up of SCE

104C.—(1) Where, in the case of an SCE whose registered office is in Northern Ireland—

(a) there has been such a breach as is mentioned in Article 73(1) of Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative (SCE) (the "European Cooperative Society Regulation") (winding up by the court or other competent authority), and

(b) it appears to the Registrar of Credit Unions for Northern Ireland that the SCE should be wound up,

the Registrar may present a petition for the SCE to be wound up if the court thinks it is just and equitable for it to be so.

(2) Where, in the case of an SCE whose registered office is in Northern Ireland—

(a) the SCE is not in compliance with Article 6 of the European Cooperative Society Regulation (location of head office and registered office), and

(b) it appears to the Registrar of Credit Unions for Northern Ireland that the SCE should be wound up,

the Registrar may present a petition for the SCE to be wound up if the court thinks it is just and equitable for it to be so.

(3) This Article does not apply if the SCE is already being wound up by the court.

(4) In this Article "SCE" has the same meaning as in the European Cooperative Society Regulation.**]**

Annotations:
F176 Art. 104C inserted (18.8.2006) by The European Cooperative Society Regulations 2006 (S.I. 2006/2078), **reg. 33(3)**

Powers of High Court on hearing of petition

105.—(1) On hearing a winding#up petition the High Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order, or any other order that it thinks fit; but the Court shall not refuse to make a winding#up order on the ground only that the company's assets have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) If the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the High Court, if it is of the opinion—

(a) that the petitioners are entitled to relief either by winding up the company or by some other means, and

(b) that in the absence of any other remedy it would be just and equitable that the company should be wound up,

shall make a winding#up order; but this does not apply if the Court is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

Power to stay or restrain proceedings against company

106.—(1) At any time after the presentation of a winding#up petition, and before a winding#up order has been made, the company, or any creditor or contributory, may—

(a) where any action or proceeding against the company is pending in the High Court or Court of Appeal, apply to the Court in which the action or proceeding is pending for a stay of proceedings therein, and

(b) where any other action or proceeding is pending against the company, apply to the High Court to restrain further proceedings in the action or proceeding;

and the Court to which application is so made may (as the case may be) stay or restrain the proceedings accordingly on such terms as it thinks fit.

(2 [F177] In the case of a company registered under Article 629 of the Companies Order (pre#1862 companies; companies formed under legislation other than the Companies Acts) or the previous corresponding legislation, where the application to stay or restrain is by a creditor, this Article extends to actions and proceedings against any contributory of the company.

Annotations:
F177 mod. by SR 2004/307

Avoidance of property dispositions, etc.

107 [F178]**.—[**[F179](1)**]** In a winding up by the High Court, any disposition of the company's property, and any transfer of shares, or alteration in the status of the company's members, made after the commencement of the winding up is, unless the Court otherwise orders, void.

[[F180](2) This Article has no effect in respect of anything done by an administrator of a company while a winding-up petition is suspended under paragraph 41 of Schedule B1.**]**

Annotations:

F178 mod. by SR 2004/307

F179 Art. 107 renumbered (27.3.2006) as para. (1) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 26 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F180 Art. 107(2) added (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 26 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Avoidance of sequestration or distress

108. Where a company is being wound up by the High Court, any sequestration or distress put in force against the estate or effects of the company after the commencement of the winding up is void.

Commencement of winding up

Commencement of winding up by the High Court

109.—(1 [F181] If, before the presentation of a petition for the winding up of a company by the High Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company is deemed to have commenced at the time of the passing of the resolution; and unless the Court, on proof of fraud or mistake, directs otherwise, all proceedings taken in the voluntary winding up are deemed to have been validly taken.

[[F182](1A) Where the Court makes a winding-up order by virtue of paragraph 14(1)(e) of Schedule B1, the winding up is deemed to commence on the making of the order.**]**

(2) In any other case, the winding up of a company by the High Court is deemed to commence at the time of the presentation of the petition for winding up.

Annotations:

F181 mod. by SR 2004/307

F182 Art. 109(1A) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 27 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Consequences of winding#up order

110.—(1) On the making of a winding#up order, an office copy of the order must forthwith be forwarded by the company (or otherwise as may be prescribed) to the registrar for registration.

(2) When a winding#up order has been made or a provisionalliquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company or its property, except by leave of the High Court and subject to such terms as the Court may impose.

(3 [F183] When an order has been made for winding up a company registered under Article 629 of the Companies Order, no action or proceeding shall be commenced or proceeded with against the

company or its property or any contributory of the company, in respect of any debt of the company, except by leave of the High Court, and subject to such terms as the Court may impose.

(4) An order for winding up a company operates in favour of all the creditors and of all contributories of the company as if made on the joint petition of a creditor and of a contributory.

Annotations:
F183 mod. by SR 2004/307

Investigation procedures

Company's statement of affairs

111.—(1) Where the High Court has made a winding#up order or appointed a provisional liquidator, the official receiver may require some or all of the persons mentioned in paragraph (3) to make out and submit to him a statement in the prescribed form as to the affairs of the company.

(2) The statement shall be verified by affidavit by the persons required to submit it and shall show—

(a) particulars of the company's assets, debts and liabilities;

(b) the names and addresses of the company's creditors;

(c) the securities held by them respectively;

(d) the dates when the securities were respectively given; and

(e) such further or other information as may be prescribed or as the official receiver may require.

(3) The persons referred to in paragraph (1) are—

(a) those who are or have 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 relevant date;

(c) those who are in the company's employment, or have been in its employment within that year, and are in the official receiver's opinion capable of giving the information required;

(d) those who are or have been within that year officers of, or in the employment of, a company which is, or within that year was, an officer of the company.

(4) Where any persons are required under this Article to submit a statement of affairs to the official receiver, they shall do so (subject to paragraph (5)) before the expiration of 21 days from the day on which the prescribed notice of the requirement is given to them by the official receiver.

(5) The official receiver, if he thinks fit, may—

(a) at any time release a person from an obligation imposed on him under paragraph (1) or (2); or

(b) either when giving the notice mentioned in paragraph (4) or subsequently, extend the period so mentioned;

and where the official receiver has refused to exercise a power conferred by this paragraph, the High Court, if it thinks fit, may exercise it.

(6) In this Article—

"employment" includes employment under a contract for services; and

"the relevant date" means—

(a) in a case where a provisional liquidator is appointed, the date of his appointment; and

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(b) in a case where no such appointment is made, the date of the winding#up order.

(7) If a person without reasonable excuse contravenes any obligation imposed under this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Investigation by official receiver

112.—(1) Where a winding#up order is made by the High Court, it is the duty of the official receiver to investigate—

(a) if the company has failed, the causes of the failure; and

(b) generally, the promotion, formation, business, dealings and affairs of the company,

and to make such report (if any) to the Court as he thinks fit.

(2) The report is, in any proceedings, prima facie evidence of the facts stated in it.

Public examination of officers

113.—(1) Where a company is being wound up by the High Court, the official receiver may at any time before the dissolution of the company apply to the Court for the public examination of any person who—

(a) is or has been an officer of the company; or

(b) has acted as liquidator or administrator of the company or as receiver or manager; or

(c) not being a person falling within sub#paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company.

(2) Unless the High Court otherwise orders, the official receiver shall make an application under paragraph (1) if he is requested in accordance with the rules to do so by—

(a) one#half, in value, of the company's creditors; or

(b) three#quarters, in value, of the company's contributories.

(3) On an application under paragraph (1), the High Court shall direct that a public examination of the person to whom the application relates shall be held on a day appointed by the Court; and that person shall attend on that day and be publicly examined as to the promotion, formation or management of the company or as to the conduct of its business and affairs, or his conduct or dealings in relation to the company.

(4) The following may take part in the public examination of a person under this Article and may question that person concerning the matters mentioned in paragraph (3), namely—

(a) the official receiver;

(b) the liquidator of the company;

(c) any person who has been appointed as special manager of the company's property or business;

(d) any creditor of the company who has tendered a proof;

(e) any contributory of the company.

Enforcement of Article 113

114.—(1) If a person without reasonable excuse fails at any time to attend his public examination under Article 113, he is guilty of a contempt of court and liable to be punished accordingly.

(2) In a case where a person without reasonable excuse fails at any time to attend his examination under Article 113 or there are reasonable grounds for believing that a person has absconded, or is

about to abscond, with a view to avoiding or delaying his examination under that Article, the High Court may 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.

(3) In such a case the High Court may authorise the person arrested under the warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the Court may order.

Appointment of liquidator

Appointment and powers of provisional liquidator

115.—(1) Subject to the provisons of this Article, the High Court may, at any time after the presentation of a winding#up petition, appoint a liquidator provisionally.

(2) The appointment of a provisional liquidator may be made at any time before the making of a winding#up order; and either the official receiver or any other fit person may be appointed.

(3) The provisional liquidator shall carry out such functions as the High Court may confer on him.

(4) When a liquidator is provisionally appointed by the High Court, his powers may be limited by the order appointing him.

Functions of official receiver in relation to office of liquidator

116.—(1) The following provisions of this Article have effect, subject to Article 119, on a winding#up order being made by the High Court.

(2) The official receiver, by virtue of his office, becomes the liquidator of the company and continues in office until another person becomes liquidator under the provisions of this Part.

(3) The official receiver is, by virtue of his office, the liquidator during any vacancy.

(4) At any time when he is the liquidator of the company, the official receiver may summon separate meetings of the company's creditors and contributories for the purpose of choosing a person to be liquidator of the company in place of the official receiver.

(5) It is the duty of the official receiver—

(a) as soon as practicable within the period of 12 weeks from the day on which the winding#up order was made, to decide whether to exercise his power under paragraph (4) to summon meetings, and

(b) if in pursuance of sub#paragraph (a) he decides not to exercise that power, to give notice of his decision, before the end of that period, to the High Court and to the company's creditors and contributories, and

(c) (whether or not he has decided to exercise that power) to exercise his power to summon meetings under paragraph (4) if he is at any time requested, in accordance with the rules, to do so by one#quarter, in value, of the company's creditors;

and accordingly, where the duty imposed by sub#paragraph (c) arises before the official receiver has performed a duty imposed by sub#paragraph (a) or (b), he is not required to perform the latter duty.

(6) A notice given under paragraph (5)(b) to the company's creditors shall contain an explanation of the creditors' power under paragraph (5)(c) to require the official receiver to summon meetings of the company's creditors and contributories.

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Appointment by Department

117.—(1) In a winding up by the High Court the official receiver may, at any time when he is liquidator of the company, apply to the Department for the appointment of a person as liquidator in his place.

(2) If meetings are held in pursuance of a decision under Article 116(5)(a), but no person is chosen to be liquidator as a result of those meetings, it is the duty of the official receiver to decide whether to refer the need for an appointment to the Department.

(3) On an application under paragraph (1), or a reference made in pursuance of a decision under paragraph (2), the Department shall either make an appointment or decline to make one.

(4) Where a liquidator has been appointed by the Department under paragraph (3), the liquidator shall give notice of his appointment to the company's creditors or, if the High Court so allows, shall advertise his appointment in accordance with the directions of theCourt.

(5) In that notice or advertisement the liquidator shall—

(a) state whether he proposes to summon a general meeting of the company's creditors under Article 120 for the purpose of determining (together with any meeting of contributories) whether a liquidation committee should be established under that Article, and

(b) if he does not propose to summon such a meeting, set out the power of the company's creditors under that Article to require him to summon one.

Choice of liquidator at meetings of creditors and contributories

118.—(1) This Article applies where a company is being wound up by the High Court and separate meetings of the company's creditors and contributories are summoned for the purpose of choosing a person to be liquidator of the company.

(2) The creditors and the contributories at their respective meetings may nominate a person to be liquidator.

(3) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the contributories.

(4) In the case of different persons being nominated, any contributory or creditor may, within 7 days from the date on which the nomination was made by the creditors, apply to the High Court for an order either—

(a) appointing the person nominated as liquidator by the contributories to be a liquidator instead of, or jointly with, the person nominated by the creditors; or

(b) appointing some other person to be liquidator instead of the person nominated by the creditors.

Appointment by the High Court following administration or voluntary arrangement

119.—**[**[F184](1) Where a winding-up order is made immediately upon the appointment of an administrator ceasing to have effect, the High Court may appoint as liquidator of the company the person whose appointment as administrator has ceased to have effect.**]**

(2) Where a winding#up order is made at a time when there is a supervisor of a voluntary arrangement approved in relation to the company under Part II, the High Court may appoint as liquidator of the company the person who is the supervisor at the time when the winding#up order is made.

(3) Where the High Court makes an appointment under this Article, the official receiver does not become the liquidator as otherwise provided by Article 116(2), and he has no duty under Article 116(5)(a) or (b) in respect of the summoning of creditors' or contributories' meetings.

Annotations:

F184 Art. 119(1) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 28 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Liquidation committees

Liquidation committee

120.—(1) Where a winding#up order has been made and separate meetings of creditors and contributories have been summoned for the purpose of choosing a person to be liquidator, those meetings may establish a committee ("the liquidation committee") to exercise the functions conferred on it by or under this Order.

(2) The liquidator (not being the official receiver) may at any time, if he thinks fit, summon separate general meetings of the company's creditors and contributories for the purpose of determining whether such a committee should be established and, if it is so determined, of establishing it.

The liquidator (not being the official receiver) shall summon such a meeting if he is requested, in accordance with the rules, to do so by one#tenth, in value, of the company's creditors.

(3) Where meetings are summoned under this Article, or for the purpose of choosing a person to be liquidator, and either the meeting of creditors or the meeting of contributories decides that a liquidation committee should be established, but the other meeting does not so decide or decides that a committee should not be established, the committee shall be established in accordance with the rules, unless the High Court otherwise orders.

(4) The liquidation committee is not to be able or required to carry out its functions at any time when the official receiver is liquidator; but at any such time its functions are vested in the Department except to the extent that the rules otherwise provide.

(5) Where there is for the time being no liquidation committee, and the liquidator is a person other than the official receiver, the functions of such a committee are vested in the Department except to the extent that the rules otherwise provide.

The liquidator's functions

General functions in winding up by the High Court

121.—(1) The functions of the liquidator of a company which is being wound up by the High Court are to secure that the assets of the company are got in, realised and distributed to the company's creditors and, if there is a surplus, to the persons entitled to it.

(2) It is the duty of the liquidator of a company which is being wound up by the High Court, if he is not the official receiver—

(a) to furnish the official receiver with such information,

(b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records, and

(c) to give the official receiver such other assistance,

as the official receiver may reasonably require for the purposes of carrying out his functions in relation to the winding up.

Custody of company's property

122. When a winding#up order has been made, or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator (as the case may be) shall take into his custody or under his control all the property to which the company is or appears to be entitled.

Vesting of company property in liquidator

123.—(1) When a company is being wound up by the High Court, the Court may on the application of the liquidator by order direct that all or any part of the property belonging to the company or heldby trustees on its behalf shall vest in the liquidator by his official name; and thereupon the property to which the order relates vests accordingly.

(2) The liquidator may, after giving such indemnity (if any) as the High Court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

Duty to summon final meeting

124.—(1) Subject to paragraph (2), if it appears to the liquidator of a company which is being wound up by the High Court that the winding up of the company is for practical purposes complete and the liquidator is not the official receiver, the liquidator shall summon a final general meeting of the company's creditors which—

(a) shall receive the liquidator's report of the winding up, and

(b) shall determine whether the liquidator should have his release under Article 148.

(2) The liquidator may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice of any finaldistribution of the company's property but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the liquidator is able to report to the meeting that the winding up of the company is for practical purposes complete.

(3) In the carrying out of his functions in the winding up it is the duty of the liquidator to retain sufficient sums from the company's property to cover the expenses of summoning and holding the meeting required by this Article.

General powers of High Court

Power to stay winding up

125.—(1) The High Court may at any time after an order for winding up, on the application either of the liquidator or the official receiver or any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

(2) The High Court may, before making an order, require the official receiver to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) An office copy of every order made under this Article shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar for registration.

Settlement of list of contributories and application of assets

126.—(1 [F185] As soon as may be after making a winding#up order, the High Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of the Companies Order or this Order, and shall cause the company's assets to be collected, and applied in discharge of its liabilities.

(2) If it appears to the High Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

(3) In settling the list, the High Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

Annotations:
F185 mod. by SR 2004/307

Debts due from contributory to company

127.—(1 [F186] The High Court may, at any time after making a winding#up order, make an order on any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due from him (or from the estate of the person whom he represents) to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of the Companies Order or this Order.

(2 The High Court in making such an order may—

(a) in the case of an unlimited company, allow to the contributory by way of set#off any money due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit, and

(b) in the case of a limited company, make to any director whose liability is unlimited or to his estate the like allowance.

(3 In the case of any company, whether limited or unlimited, when all the creditors are paid in full (together with interest at the official rate), any money due on any account whatever to a contributory from the company may be allowed to him by way of set#off against any subsequent call.

Annotations:
F186 mod. by SR 2004/307

Power to make calls

128.—(1) The High Court may, at any time after making a winding#up order, and either before or after it has ascertained the sufficiency of the company's assets, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the company's debts and liabilities, and the expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the High Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay it.

Payment into bank of money due to company

129.—(1) The High Court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into such bank as the Court may appoint for the purpose to the account of the liquidator instead of to the liquidator, and such an order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All money and securities paid or delivered into any such bank as is mentioned in paragraph (1) in the event of a winding up by the High Court are subject in all respects to the orders of the Court.

Order on contributory to be conclusive evidence

130.—(1) An order made by the High Court on a contributory is conclusive evidence that the money (if any) thereby appearing to be due or ordered to be paid is due, but subject to any right of appeal.

(2) All other pertinent matters stated in the order are to be taken as truly stated as against all persons and in all proceedings.

Power to exclude creditors not proving in time

131. The High Court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

Adjustment of rights of contributories

132. The High Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it.

Inspection of books by creditors, etc.

133.—(1) The High Court may, at any time after making a winding#up order, make such order for inspection of the company's books and papers by creditors and contributories as the Court thinks just; and any books and papers in the company's possession may be inspected by creditors and contributories accordingly, but not further or otherwise.

(2) Nothing in this Article excludes or restricts any statutory rights of—

(a) a Northern Ireland department; or

(b) a department of the Government of the United Kingdom; or

(c) a person acting under the authority of either such department.

Payment of expenses of winding up

134. The High Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the winding up in such order of priority as the Court thinks just.

Power to arrest absconding contributory

135. The High Court, at any time either before or after making a winding#up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls, may cause the contributory to be arrested and his books and papers and movable personal property to be seized and him and them to be kept safely until such time as the Court may order.

Powers of High Court to be cumulative

136. Powers conferred by this Order and **[**[F187]the Companies Acts**]** on the High Court are in addition to, and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sum.

Annotations:
F187 Words in art. 136 substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), **Sch. 4 para. 59** (with art. 12)

Delegation of powers to liquidator

137.—(1) Provision may be made by rules for enabling or requiring all or any of the powers and duties conferred and imposed on the High Court by the Companies Order and this Order in respect of the following matters—

(a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories,

(b [F188] the settling of lists of contributories and the rectifying of the register of members where required, and the collection and application of the assets,

(c) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator,

(d) the making of calls,

(e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the Court, and subject to the Court's control.

(2 But the liquidator shall not, without the special leave of the High Court, rectify the register of members, and shall not make any call without either that special leave or the sanction of the liquidation committee.

Annotations:
F188 mod. by SR 2004/307

CHAPTER VII

LIQUIDATORS

Preliminary

Style and title of liquidators

138. The liquidator of a company shall be described—

(a) where a person other than the official receiver is liquidator, by the style of "the liquidator" of the particular company, or

(b) where the official receiver is liquidator, by the style of "the official receiver and liquidator" of the particular company;

and in neither case shall he be described by an individual name.

Corrupt inducement affecting appointment

139. A person who gives, or agrees or offers to give, to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator shall be guilty of an offence.

Liquidator's powers and duties

Voluntary winding up

140.—(1) This Article has effect where a company is being wound up voluntarily, but subject to Article 141 in the case of a creditors' voluntary winding up.

(2) The liquidator may—

(a [F189] in the case of a members' voluntary winding up, with the sanction of an **[**[F190]special resolution**]** of the company, and

(b) in the case of a creditor's voluntary winding up, with the sanction of the High Court or the liquidation committee (or, if there is no such committee, a meeting of the company's creditors),

exercise any of the powers specified in Part I of Schedule 2 (payment of debts, compromise of claims, etc.).

(3) The liquidator may, without sanction, exercise either of the powers specified in Part II of Schedule 2 (institution and defence of proceedings; carrying on the business of the company) and any of the general powers specified in Part III of Schedule 2.

(4) The liquidator may—

(a) exercise the High Court's power of settling a list of contributories (which list is prima facie evidence of the liability of the persons named in it to be contributories),

(b) exercise the Court's power of making calls,

(c summon general meetings of the company for the purpose of obtaining its sanction by **[**[F191]special resolution**]** or for any other purpose he may think fit.

(5) The liquidator shall pay the company's debts and adjust the rights of the contributories among themselves.

(6) Where the liquidator in exercise of the powers conferred on him by this Order disposes of any property of the company to a person who is connected with the company (within the meaning given by Article 7), he shall, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers.

Annotations:

F189 mod. by SR 2004/307

F190 Words in art. 140(2)(a) substituted (1.10.2007 with application as mentioned in Sch. 4 para. 60(2) of the amending S.I.) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), **Sch. 4 para. 60(1)(a)** (with art. 12)

F191 Words in art. 140(4)(c) substituted (1.10.2007 with application as mentioned in Sch. 4 para. 60(2) of the amending S.I.) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), **Sch. 4 para. 60(1)(b)** (with art. 12)

Creditors' voluntary winding up

141.—(1) This Article applies where, in the case of a creditors' voluntary winding up, a liquidator has been nominated by the company.

(2) The powers conferred on the liquidator by Article 140 shall not be exercised, except with the sanction of the High Court, during the period before the holding of the creditors' meeting under Article 84.

(3) Paragraph (2) does not apply in relation to the power of the liquidator—

(a) to take into his custody or under his control all the property to which the company is or appears to be entitled;

(b) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; and

(c) to do all such other things as may be necessary for the protection of the company's assets.

(4) The liquidator shall attend the creditors' meeting held under Article 84 and shall report to the meeting on any exercise by him of his powers (whether or not under this Article or under Article 98 or 140).

(5) If default is made—

(a) by the company in complying with paragraph (1) or (2) of Article 84, or

(b [F192] by the directors in complying with paragraph (1) or (2) of Article 85,

the liquidator shall, within 7 days from the relevant day, apply to the High Court for directions as to the manner in which that default is to be remedied.

(6) "The relevant day" means the day on which the liquidator was nominated by the company or the day on which he first became aware of the default, whichever is the later.

(7) If the liquidator without reasonable excuse contravenes this Article, he shall be guilty of an offence.

Annotations:
F192 mod. by SR 2004/307

Winding up by the High Court

142.—(1) Where a company is being wound up by the High Court, the liquidator may—

(a) with the sanction of the Court or the liquidation committee, exercise any of the powers specified in Parts I and II of Schedule 2 (payment of debts; compromise of claims, etc.; institution and defence of proceedings; carrying on of the business of the company), and

(b) with or without that sanction, exercise any of the general powers specified in Part III of Schedule 2.

(2) Where the liquidator (not being the official receiver), in exercise of the powers conferred on him by this Order—

(a) disposes of any property of the company to a person who is connected with the company (within the meaning given by Article 7), or

(b) employs a solicitor to assist him in the carrying out of his functions,

he shall, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers.

(3) The exercise by the liquidator in a winding up by the High Court of the powers conferred by this Article is subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

Supplementary powers

143.—(1) This Article applies in the case of a company which is being wound up by the High Court.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes; and it is his duty to summon meetings at such times as the creditors or contributories by resolution (either at the meeting appointing the liquidator or otherwise) may direct, or whenever requested in writing to do so by one#tenth in value of the creditors or contributories (as the case may be).

(3) The liquidator may apply to the High Court (in the prescribed manner) for directions in relation to any particular matter arising in the winding up.

(4) Subject to the provisions of this Order, the liquidator shall use his own discretion in the management of the assets and their distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the High Court; and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just.

[[F193](5A) Where at any time after a winding#up petition has been presented to the High Court against any person (including an insolvent partnership or other body which may be wound up under Part VI of the Order as an unregistered company), whether by virtue of the provisions of the Insolvent Partnerships Order (Northern Ireland) 1995 or not, the attention of the Court is drawn to the fact that the person in question is a member of an insolvent partnership, the Court may make an order as to the future conduct of the insolvency proceedings and any such order may apply any provisions of that Order with any necessary modifications.

(5B) Any order or directions under paragraph (5A) may be made or given on the application of the official receiver, any responsible insolvency practitioner, the trustee of the partnership or any other interested person and may include provisions as to the administration of the joint estate of the partnership, and in particular how it and the separate estate of any member are to be administered.

(5C) Where the High Court makes an order**[**[F194] under section 367(3)(a) of the Financial Services and Markets Act 2000**]** for the winding up of an insolvent partnership, the Court may make an order as to the future conduct of the winding#up proceedings, and any such order may apply any provisions of the Insolvent Partnerships Order (Northern Ireland) 1995 with any necessary modifications.**]**

Annotations:
F193 SR 1995/225
F194 SI 2002/1555

Enforcement of liquidator's duty to make returns, etc.

144.—(1) If a liquidator who has made any default—

(a) in filing, delivering or making any return, account or other document, or

(b) in giving any notice which he is by law required to file, deliver, make or give,

fails to make good the default within 14 days from the service on him of a notice requiring him to do so, the High Court has the following powers.

(2) On an application made by any creditor or contributory of the company, or by the registrar, the High Court may make an order directing the liquidator to make good the default within such time as may be specified in the order.

(3) The High Court's order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(4) Nothing in this Article prejudices the operation of any statutory provision imposing penalties on a liquidator in respect of any such default as is mentioned in paragraph (1).

Removal: vacation of office

Removal, etc. (voluntary winding up)

145.—(1) This Article applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up voluntarily.

(2) Subject to paragraph (3), the liquidator may be removed from office only by an order of the High Court or—

(a [F195] in the case of a members' voluntary winding up, by a general meeting of the company summoned specially for that purpose, or

(b) in the case of a creditors' voluntary winding up, by a general meeting of the company's creditors summoned specially for that purpose in accordance with the rules.

(3) Where the liquidator was appointed by the High Court under Article 94, a meeting such as is mentioned in paragraph (2) shall be summoned for the purpose of replacing him only if he thinks fit or the Court so directs or the meeting is requested, in accordance with the rules—

(a) in the case of a members' voluntary winding up, by members representing not less than one#half of the total voting rights of all the members having at the date of the request a right to vote at the meeting, or

(b) in the case of a creditors' voluntary winding up, by not less than one#half, in value, of the company's creditors.

(4) A liquidator shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.

(5) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the registrar.

(6) Where—

(a in the case of a members' voluntary winding up, a final meeting of the company has been held under Article 80, or

(b in the case of a creditors' voluntary winding up, final meetings of the company and of the creditors have been held under Article 92,

the liquidator whose report was considered at the meeting or meetingsshall vacate office as soon as he has complied with paragraph (3) ofthat Article and has given notice to the registrar that the meeting or meetings have been held and of the decisions (if any) of the meeting or meetings.

Annotations:
F195 mod. by SR 2004/307

Removal, etc. (winding up by the High Court)

146.—(1) This Article applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up by the High Court, or of a provisional liquidator.

(2) Subject to paragraphs (3) and (4), the liquidator may be removed from office only by an order of the High Court or by a general meeting of the company's creditors summoned specially for that purpose in accordance with the rules; and a provisional liquidator may be removed from office only by an order of the Court.

(3) Where—

(a) the official receiver is liquidator otherwise than in succession under Article 116(3) to a person who held office as a result of a nomination by a meeting of the company's creditors or contributories, or

(b) the liquidator was appointed by the High Court otherwise than under Article 118(4)(a) or 119(1), or was appointed by the Department,

a general meeting of the company's creditors shall be summoned for the purpose of replacing him only if he thinks fit, or the Court so directs, or the meeting is requested, in accordance with the rules, by not less than one#quarter, in value, of the creditors.

(4) If appointed by the Department, the liquidator may be removed from office by a direction of the Department.

(5) A liquidator or provisional liquidator, not being the official receiver, shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.

(6) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the High Court.

(7) Where a final meeting has been held under Article 124 (liquidator's report on completion of winding up), the liquidator whose report was considered at the meeting shall vacate office as soon as he has given notice to the High Court and the registrar that the meeting has been held and of the decisions (if any) of the meeting.

Release of liquidator

Release (voluntary winding up)

147.—(1) This Article applies with respect to the release of the liquidator of a company which is being wound up voluntarily.

(2) A person who has ceased to be a liquidator shall have his release with effect from the following time, that is to say—

(a [F196] in the case of a person who has been removed from office by a general meeting of the company or by a general meeting of the company's creditors that has not resolved against his release or who has died, the time at which notice is given to the registrar in accordance with the rules that that person has ceased to hold office;

(b) in the case of a person who has been removed from office by a general meeting of the company's creditors that has resolved against his release, or by the High Court, or who has vacated office under Article 145(4), such time as the Department may, on the application of that person, determine;

(c) in the case of a person who has resigned, such time as may be prescribed;

(d) in the case of a person who has vacated office under Article 145(6)(a), the time at which he vacated office;

(e) in the case of a person who has vacated office under sub#paragraph (b) of Article 145(6)—

(i) if the final meeting of the creditors referred to in that sub#paragraph has resolved against that person's release, such time as the Department may, on an application by that person, determine, and

(ii) if that meeting has not resolved against that person's release, the time at which he vacated office.

(3) Where a liquidator has his release under paragraph (2), he is, with effect from the time specified in that paragraph, discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator.

(4) Nothing in this Article prevents the exercise, in relation to a person who has had his release under paragraph (2), of the High Court's powers under Article 176 (summary remedy against delinquent directors, liquidators, etc.).

Annotations:
F196 mod. by SR 2004/307

Release (winding up by the High Court)

148.—(1) This Article applies with respect to the release of the liquidator of a company which is being wound up by the High Court, or of a provisional liquidator.

(2) Where the official receiver has ceased to be liquidator and a person becomes liquidator in his stead, the official receiver has his release with effect from the following time, that is to say—

(a) in a case where that person was nominated by a general meeting of creditors or contributories, or was appointed by the Department, the time at which the official receiver gives notice to the High Court that he has been replaced;

(b) in a case where that person is appointed by the Court, such time as the Court may determine.

(3) If the official receiver while he is a liquidator gives notice to the Department that the winding up is for practical purposes complete, he has his release with effect from such time as the Department may determine.

(4) A person other than the official receiver who has ceased to be a liquidator has his release with effect from the following time, that is to say—

(a) in the case of a person who has been removed from office by a general meeting of creditors that has not resolved against his release or who has died, the time at which notice is given to the High Court in accordance with the rules that that person has ceased to hold office;

(b) in the case of a person who has been removed from office by a general meeting of creditors that has resolved against his release, or by the High Court or the Department, or who has vacated office under Article 146(5), such time as the Department may, on an application by that person, determine;

(c) in the case of a person who has resigned, such time as may be prescribed;

(d) in the case of a person who has vacated office under Article 146(7)—

(i) if the final meeting referred to in that paragraph has resolved against that person's release, such time as the Department may, on an application by that person, determine, and

(ii) if that meeting has not so resolved, the time at which that person vacated office.

(5) A person who has ceased to hold office as a provisional liquidator has his release with effect from such time as the High Court may, on an application by him, determine.

(6) Where the official receiver or a liquidator or provisional liquidator has his release under this Article, he is, with effect from the time specified in the preceding provisions of this Article, discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator or provisional liquidator.

(7) Nothing in this Article prevents the exercise, in relation to a person who has had his release under this Article, of the High Court's powers under Article 176 (summary remedy against delinquent directors, liquidators, etc.).

CHAPTER VIII

PROVISIONS OF GENERAL APPLICATION IN WINDING UP

Preferential debts

Preferential debts (general provision)

149.—(1) In a winding up the company's preferential debts (within the meaning of Article 346) shall be paid in priority to all other debts.

(2) Preferential debts—

(a) rank equally among themselves after the expenses of the winding up and shall be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to that charge.

Preferential charge on goods distrained

150.—(1) This Article applies where a company is being wound up by the High Court, and is without prejudice to Article 108 (avoidance of sequestration or distress).

(2) Where any person has distrained upon the goods or effects of the company within the 3 months immediately preceding the date of the winding#up order, those goods or effects, or the proceeds of their sale, shall be charged for the benefit of the company with the preferential debts of the company to the extent that the company's property is for the time being insufficient for meeting them.

(3) Where by virtue of a charge under paragraph (2) any person surrenders any goods or effects to a company or makes a payment to a company, that person ranks, in respect of the amount of the proceeds of sale of those goods or effects by the liquidator or (as the case may be) the amount of the payment, as a preferential creditor of the company, except as against so much of the company's property as is available for the payment of preferential creditors by virtue of the surrender or payment.

[F197 Property subject to floating charge]

Annotations:

F197 Art. 150A and preceding cross - heading inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 7(1), (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

[F198 Payment of expenses of winding up

150ZA.—(1) The expenses of winding up, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over any claims to property comprised in or subject to any floating charge created by the company and shall be paid out of any such property accordingly.

(2) In paragraph (1)—

(a) the reference to assets of the company available for payment of general creditors does not include any amount made available under Article 150A(2)(a);

(b) the reference to claims to property comprised in or subject to a floating charge is to the claims of—

(i) the holders of debentures secured by, or holders of, the floating charge, and

(ii) any preferential creditors entitled to be paid out of that property in priority to them.

(3) Provision may be made by rules restricting the application of paragraph (1), in such circumstances as may be prescribed, to expenses authorised or approved—

(a) by the holders of debentures secured by, or holders of, the floating charge and by any preferential creditors entitled to be paid in priority to them, or

(b) by the Court.

(4) References in this Article to the expenses of the winding up are to all expenses properly incurred in the winding up, including the remuneration of the liquidator.]

Annotations:

F198 Art. 150ZA inserted (6.4.2008) by Companies Act 2006 (c. 46), **ss. 1282(2)**, 1300(2); S.I. 2007/3495, **art. 3(1)(v)** (with Sch. 4 para. 43)

[F199 Share of assets for unsecured creditors

150A.—(1) This Article applies where a floating charge relates to property of a company—

(a) which has gone into liquidation,

(b) which is in administration,

(c) of which there is a provisional liquidator, or

(d) of which there is a receiver.

(2) The liquidator, administrator or receiver—

(a) shall make a prescribed part of the company's net property available for the satisfaction of unsecured debts, and

(b) shall not distribute that part to the proprietor of a floating charge except in so far as it exceeds the amount required for the satisfaction of unsecured debts.

(3) Paragraph (2) shall not apply to a company if—

(a) the company's net property is less than the prescribed minimum, and

(b) the liquidator, administrator or receiver thinks that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.

(4) Paragraph (2) shall also not apply to a company if or in so far as it is disapplied by—

(a) a voluntary arrangement in respect of the company, or

(b) a compromise or arrangement agreed under Article 418 of the Companies Order (compromise with creditors and members).

(5) Paragraph (2) shall also not apply to a company if—

(a) the liquidator, administrator or receiver applies to the High Court for an order under this paragraph on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits, and

(b) the Court orders that paragraph (2) shall not apply.

(6) In paragraphs (2) and (3) a company's net property is the amount of its property which would, but for this Article, be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company.

(7) An order under paragraph (2) prescribing part of a company's net property may, in particular, provide for its calculation—

(a) as a percentage of the company's net property, or

(b) as an aggregate of different percentages of different parts of the company's net property.

(8) An order under this Article shall be subject to negative resolution.

(9) In this Article—

"floating charge" means a charge which is a floating charge on its creation and which is created after the first order under paragraph (2)(a) comes into operation, and

"prescribed" means prescribed by order by the Department.

(10) An order under this Article may include transitional or incidental provision.**]**

Annotations:

F199 Art. 150A and cross heading inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 7(1), (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Special managers

Power to appoint special manager

151.—(1) Where a company has gone into liquidation or a provisional liquidator has been appointed, the High Court may, on an application under this Article, appoint any person to be the special manager of the business or property of the company.

(2) The application may be made by the liquidator or provisional liquidator in any case where it appears to him that the nature of the business or property of the company, or the interests of the company's creditors or contributories or members generally, require the appointment of another person to manage the company's business or property.

(3) The special manager has such powers as may be entrusted to him by the High Court.

(4) The High Court's power to entrust powers to the special manager includes power to direct that any provision of this Order that has effect in relation to the provisional liquidator or liquidator of a company shall have the like effect in relation to the special manager for the purposes of the carrying out by him of any of the functions of the provisional liquidator or liquidator.

(5) The special manager shall—

(a) give such security as may be prescribed;

(b) prepare and keep such accounts as may be prescribed; and

(c) produce those accounts in accordance with the rules to the Department or to such other persons as may be prescribed.

Disclaimer

Power to disclaim onerous property

152.—(1) Subject to the provisions of this Article and Article 153, where a company is being wound up, the liquidator may, by the giving of the prescribed notice, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it, or otherwise exercised rights of ownership in relation to it.

(2) The following is onerous property for the purposes of this Article—

(a) any unprofitable contract, and

(b) any other property of the company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this Article—

(a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; but

(b) does not, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.

(4) A notice of disclaimer shall not be given under this Article in respect of any property if—

(a) a person interested in the property has applied in writing to the liquidator or one of this predecessors as liquidator requiring the liquidator or that predecessor to decide whether he will disclaim or not, and

(b) the period of 28 days from the day on which that application was made, or such longer period as the High Court may allow, has expired without a notice of disclaimer having been given under this Article in respect of that property.

(5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this Article is deemed a creditor ofthe company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

Disclaimer of leaseholds

153.—(1) The disclaimer under Article 152 of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served (so far as the liquidator is aware of their addresses) on every person claiming under the company as underlessee or mortgagee and either—

(a) no application under Article 155 is made with respect to that property before the expiration of 14 days from the day on which the last notice served under this paragraph was served; or

(b) where such an application has been made, the High Court directs that the disclaimer shall take effect.

(2) Where the High Court gives a direction under paragraph (1)(b) it may also, instead of or in addition to any order it makes under Article 155, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

(3) For the purposes of this Article, property held under a fee farm grant creating the relation of landlord and tenant is property of a leasehold nature and a reference to an underlessee includes a person who holds a lease from the fee farm grantee.

Land subject to rentcharge

154.—(1) The following applies where, in consequence of the disclaimer under Article 152 of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person (referred to in paragraph (2) as “the proprietor”).

(2) The proprietor and the successors in title of the proprietor are not subject to any personal liability in respect of any sums becoming due under the rentcharge except sums becoming due after the proprietor, or some person claiming under or through the proprietor, has taken possession or control of the land or has entered into occupation of it.

Powers of High Court (general)

155.—(1) Where the liquidator has disclaimed property under Article 152 an application under this Article may be made to the High Court by—

(a) any person who claims an interest in the disclaimed property, or

(b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.

(2) Subject to paragraph (3) and Article 156, the High Court may on the application make an order, on such terms as it thinks fit, for the vesting of the disclaimed property in, or for its delivery to—

(a) a person entitled to it or a trustee for such a person, or

(b) a person subject to such a liability as is mentioned in paragraph (1)(b) or a trustee for such a person.

(3) The High Court shall not make an order under paragraph (2)(b) except where it appears to the Court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(4) The effect of any order under this Article shall be taken into account in assessing for the purpose of Article 152(5) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

(5) An order under this Article vesting property in any person need not be completed by conveyance, assignment or transfer.

Powers of High Court (leaseholds)

156.—(1) The High Court shall not make an order under Article 155 vesting property of a leasehold nature in any person claiming under the company as underlessee or mortgagee except on terms making that person—

(a) subject to the same liabilities and obligations as the company was subject to under the lease at the commencement of the winding up, or

(b) if the Court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him at the commencement of the winding up.

(2) For the purposes of an order under Article 155 relating to only part of any property comprised in a lease, the requirements of paragraph (1) apply as if the lease comprised only the property to which the order relates.

(3) Where paragraph (1) applies and no person claiming under the company as underlessee or mortgagee is willing to accept an order under Article 155 on the terms required by virtue of that paragraph, the High Court may, by order under that Article, vest the company's estate or interest in the property in any person who is liable (whether personally or in a representative capacity, and whether alone or jointly with the company) to perform the lessee's covenants in the lease.

(4) An order of the High Court under paragraph (3) may vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the company.

(5) Where paragraph (1) applies and a person claiming under the company as underlessee or mortgagee declines to accept an order under Article 155, that person is excluded from all interest in the property.

(6) Paragraph (3) of Article 153 shall apply for the purposes of this Article as it applies for the purposes of that Article.

Miscellaneous matters

Rescission of contracts by the High Court

157.—(1) The High Court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non# performance of the contract, or otherwise as the Court thinks just.

(2) Any damages payable under the order to such a person may be proved by him as a debt in the winding up.

Power to make over assets to employees

158 [F200]**.**—(1) On the winding up of a company (whether by the High Court or voluntarily), the liquidator may, subject to the provisions of this Article, make any payment whch the company has, before the commencement of the winding up, decided to make under **[**[F201]section 247 of the Companies Act 2006**]** (power to provide for employees or former employees on cessation or transfer of business).

[[F202](2) The liquidator may, after the winding up has commenced, make any such provision as is mentioned in section 247(1) if—

(a) the company's liabilities have been fully satisfied and provision has been made for the expenses of the winding up,

(b) the exercise of the power has been sanctioned by a resolution of the company, and

(c) any requirements of the company's memorandum or articles as to the exercise of the power conferred by section 247(1) are complied with.**]**

(3) Any payment which may be made by a company under this Article (that is, a payment after the commencement of its winding up) may be made out of the company's assets which are available to the members on the winding up.

(4) On a winding up by the High Court, the exercise by the liquidator of his powers under this Article is subject to the Court's control, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of the power.

(5) Paragraphs (1) and (2) have effect notwithstanding anything in any rule of law or in Article 93 of this Order (property of company after satisfaction of liabilities to be distributed among members).

Annotations:

F200 mod. by SR 2004/307

F201 Words in art. 158(1) substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), **Sch. 4 para. 61(2)** (with art. 12)

F202 Art. 158(2) substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), **Sch. 4 para. 61(3)** (with art. 12)

Notification that company is in liquidation

159.—[F203(1) When a company is being wound up, whether by the High Court or voluntarily—

(a) every invoice, order for goods, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company, or a liquidator of the company or a receiver or manager of the company's property, being a document on or in which the name of the company appears, and

(b) all the company's websites,

must contain a statement that the company is being wound up.**]**

(2) If default is made in complying with this Article, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be guilty of an offence.

Annotations:

F203 Art. 159(1) substituted (1.1.2007) by Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), **reg. 7(2)**

Interest on debts

160.—(1) In a winding up interest is payable in accordance with this Article on any debt proved in the winding up, including so much of any such debt as represents interest on the remainder.

(2) Any surplus remaining after the payment of the debts proved in a winding up shall, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the company went into liquidation.

(3) All interest under this Article ranks equally, whether or not the debts on which it is payable rank equally.

(4) The rate of interest payble under this Article in respect of any debt (“the official rate”) is whichever is the greater of—

(a) the rate applicable to a money judgment of the High Court on the day on which the company went into liquidation, and

(b) the rate applicable to that debt apart from the winding up.

Company's books to be evidence

161. Where a company is being wound up, all books and papers of the company and of the liquidators are, as between the contributories of the company, prima facie evidence of the truth of all matters purporting to be recorded in them.

Information as to pending liquidations

162.—(1) If the winding up of a company is not concluded within one year from its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in, and position of, the liquidation.

(2) If a liquidator contravenes this Article, he shall be guilty of an offence and for continued contravention, he shall be guilty of a continuing offence.

Resolutions passed at adjourned meetings

163 [F204]**.** Where a resolution is passed at an adjourned meeting of a company's creditors or contributories, the resolution is treated for all purposes as having been passed on the date on which it was in fact passed, and not as having been passed on any earlier date.

Annotations:
F204 mod. by SR 2004/307

Meeting to ascertain wishes of creditors or contributories

164.—(1) The High Court may—

(a) as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories (as proved to it by any sufficient evidence), and

(b) if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and appoint a person to act as chairman of any such meeting and report the result of it to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3 [F205] In the case of contributories, regard shall be had to the number of votes conferred on each contributory by the Companies Order or the company's articles.

Annotations:
F205 mod. by SR 2004/307

Affidavits, etc., in United Kingdom and elsewhere

165.—(1) An affidavit required to be sworn under or for the purposes of this Part may be sworn in Northern Ireland before any court, judge or person lawfully authorised to take and receive affidavits, and shall, if sworn in Great Britain or elsewhere in Her Majesty's dominions before any court, judge or person lawfully authorised to take and receive affidavits, or before any of Her Majesty's consuls or vice#consuls in any place outside Her Majesty's dominions, be treated as an affidavit sworn under or for the purposes of this Part.

(2) All courts, judges,**[**[F206] lay magistrates**]**, commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul or vice#consul attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

Annotations:
F206 2002 c. 26

CHAPTER IX

DISSOLUTION OF COMPANIES AFTER WINDING UP

Dissolution (voluntary winding up)

166.—(1) This Article applies, in the case of a company wound up voluntarily, where the liquidator has sent to the registrar his final account and return under Article 80 (members' voluntary) or Article 92 (creditors' voluntary).

(2) The registrar on receiving the account and return shall forthwith register them; and on the expiration of 3 months from the registration of the return the company is deemed to be dissolved.

(3) However, the High Court may, on the application of the liquidator or any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(4) The person on whose application an order of the High Court under this Article is made shall within 7 days from the making of the order deliver to the registrar an office copy of the order for registration; and if that person contravenes this paragraph he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Early dissolution

167.—(1) Where an order for the winding up of a company has been made by the High Court, the official receiver, if—

(a) he is the liquidator of the company, and

(b) it appears to him—

(i) that the realisable assets of the company are insufficient to cover the expenses of the winding up, and

(ii) that the affairs of the company do not require any further investigation,

may at any time apply to the registrar for the early dissolution of the company.

(2) Before making that application, the official receiver shall give not less than 28 days' notice of his intention to do so to the company's creditors and contributories and, if there is an administrative receiver of the company, to that receiver.

(3) With the giving of that notice the official receiver ceases (subject to any directions under Article 168) to be required toperform any duties imposed on him in relation to the company, its creditors or contributories by virtue of any provision of this Order, apart from a duty to make an application under paragraph (1).

(4) On the receipt of the official receiver's application under paragraph (1) the registrar shall forthwith register it and, subject to paragraph (5), at the expiration of 3 months from the day of the registration of the application, the company shall be dissolved.

(5) The Department may, on the application of the official receiver or any other person who appears to the Department to be interested, give directions under Article 168 at any time before the end of that period.

Consequence of notice under Article 167

168.—(1) Where a notice has been given under Article 167(2), the official receiver or any creditor or contributory of the company, or the administrative receiver of the company (if there is one) may apply to the Department for directions under this Article.

(2) The grounds on which that application may be made are—

(a) that the realisable assets of the company are sufficient to cover the expenses of the winding up;

(b) that the affairs of the company do require further investigation; or

(c) that for any other reason the early dissolution of the company is inappropriate.

(3) Directions under this Article—

(a) are directions making such provision as the Department thinks fit for enabling the winding up of the company to proceed as if no notice had been given under Article 167(2), and

(b) may, in the case of an application under Article 167(4), include a direction deferring the date at which the dissolution of the company is to take effect for such period as the Department thinks fit.

(4) An appeal to the High Court lies from any decision of the Department on an application for directions under this Article.

(5) The person on whose application any directions are given under this Article, or in whose favour an appeal with respect to an application for such directions is determined, shall, within 7 days from the giving of the directions or the determination of the appeal, deliver to the registrar for registration such a copy of the directions or determination as is prescribed.

(6) If a person without reasonable excuse contravenes paragraph (5), he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Dissolution otherwise than under Article 167

169.—(1) Where the registrar receives—

(a) a notice served for the purposes of Article 146(7) (final meeting of creditors and vacation of office by liquidator), or

(b) a notice from the official receiver that the winding up of a company by the High Court is complete,

the registrar shall, on receipt of the notice, forthwith register it; and, subject to paragraphs (2) to (4), at the expiration of 3 months from the day of the registration of the notice, the company shall be dissolved.

(2) The Department may, on the application of the official receiver or any other person who appears to the Department to be interested, give a direction deferring the date at which the dissolution of the company is to take effect for such period as the Department thinks fit.

(3) An appeal to the High Court lies from any decision of the Department on an application for a direction under paragraph (2).

(4) The person—

(a) on whose application a direction is given under paragraph (2); or

(b) in whose favour an appeal with respect to an application for such a direction is determined;

shall, within 7 days from the giving of the direction, the determination of the appeal or the making of the order, deliver to the registrar for registration such a copy of the direction or determination as is prescribed.

(5) If a person without reasonable excuse contravenes paragraph (4), he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

CHAPTER X

MALPRACTICE BEFORE AND DURING LIQUIDATION; PENALISATION OF COMPANIES AND COMPANY OFFICERS; INVESTIGATIONS AND PROSECUTIONS

Annotations:

Modifications etc. (not altering text)
C12 mod. by SR 2004/307

Offences of fraud, deception, etc.

Fraud, etc., in anticipation of winding up

170.—(1 [F207] When a company is ordered to be wound up by the High Court, or passes a resolution for voluntary winding up, any person who, being a past or present officer of the company, has, within the 12 months immediately preceding the commencement of the winding up—

(a) concealed any part of the company's property to the value of £500 or more, or concealed any debt due to or from the company, or

(b) fraudulently removed any part of the company's property to the value of £500 or more, or

(c) concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the company's property or affairs, or

(d) made any false entry in any book or paper affecting or relating to the company's property or affairs, or

(e) fraudulently parted with, altered or made any omission in any document affecting or relating to the company's property or affairs, or

(f) pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business),

shall be guilty of an offence.

(2) Such a person as is mentioned in paragraph (1) shall be guilty of an offence if within the period mentioned in that paragraph he has been privy to the doing by others of any of the things mentioned in sub#paragraphs (c), (d) and (e) of that paragraph; and he shall be guilty of an offence if, at any time after the commencement of the winding up, he does any of the things mentioned in sub#paragraphs (a) to (f) of that paragraph, or is privy to the doing by others of any of the things mentioned in sub#paragraphs (c) to (e) of that paragraph.

(3) For the purposes of this Article, “officer” includes a shadow director.

(4) It is a defence—

(a) for a person charged under sub#paragraph (a) or (f) of paragraph (1) (or under paragraph (2) in respect of the things mentioned in either of those sub#paragraphs) to prove that he had no intent to defraud, and

(b) for a person charged under sub#paragraph (c) or (d) of paragraph (1) (or under paragraph (2) in respect of the things mentioned in either of those sub#paragraphs) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

(5) Where a person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (1)(f), every person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in such circumstances, shall be guilty of an offence and shall, on conviction on indictment, be liable to the same penalty as if he had been convicted of handling stolen goods.

(6) The money sums specified in sub#paragraphs (a) and (b) of paragraph (1) are subject to increase or reduction by order under Article 362(1)(a).

Annotations:

F207 mod. by SR 2004/307

Transactions in fraud of creditors

171.—(1 [F208] When a company is ordered to be wound up by the High Court or passes a resolution for voluntary winding up, a person who, being at the time an officer of the company,—

(a) within the 5 years immediately preceding the commencement of the winding up, has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the enforcement of a judgment against, the company's property, or

(b) has concealed or removed any part of the company's property since, or within the 2 months immediately preceding, the date of any unsatisfied judgment or order for the payment of money obtained against the company,

shall be guilty of an offence.

(2) It is a defence for a person charged under paragraph (1) to prove that, at the time of the conduct constituting the offence, he had no intent to defraud the company's creditors.

Annotations:
F208 mod. by SR 2004/307

Misconduct in course of winding up

172.—(1) When a company is being wound up, whether by the High Court or voluntarily, any person who, being a past or present officer of the company,—

(a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the company's property, and how and to whom and for what consideration and when the company disposed of any part of that property (except such part as has been disposed of in the ordinary way of the company's business), or

(b) does not deliver up to the liquidator (or as he directs) all such part of the company's property as is in his custody or under his control, and which he is required by law to deliver up, or

(c) does not deliver up to the liquidator (or as he directs) all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up, or

(d) knowing or believing that a false debt has been proved by any person in the winding up, fails to inform the liquidator as soon as practicable, or

(e) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the company's property or affairs,

shall be guilty of an offence.

(2) Any person mentioned in paragraph (1) who, after the commencement of the winding up, attempts to account for any part of the company's property by fictitious losses or expenses shall be guilty of an offence; and if he so attempts at any meeting of the company's creditors within the 12 months immediately preceding the commencement of the winding up he shall be guilty of an offence.

(3) For the purposes of this Article, “officer” includes a shadow director.

(4) It is a defence—

(a) for a person charged under sub#paragraph (a), (b) or (c) of paragraph (1) to prove that he had no intent to defraud, and

(b) for a person charged under sub#paragraph (e) of that paragraph to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

Falsification of company's books

173. When a company is being wound up, an officer or contributory of the company who destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, accounting records or document belonging to the company with intent to defraud or deceive any person shall be guilty of an offence.

Material omissions from statement relating to company's affairs

174.—(1) When a company is being wound up, whether by the High Court or voluntarily, any person who, being a past or present officer of the company, makes any material omission in any statement relating to the company's affairs shall be guilty of an offence.

(2 [F209] When a company has been ordered to be wound up by the High Court, or has passed a resolution for voluntary winding up, any person mentioned in paragraph (1) who, prior to the winding up, has made any material omission in any such statement shall be guilty of an offence.

(3) For the purposes of this Article, "officer" includes a shadow director.

(4) It is a defence for a person charged under this Article to prove that he had no intent to defraud.

Annotations:
F209 mod. by SR 2004/307

False representations to creditors

175.—(1) When a company is being wound up, whether by the High Court or voluntarily, any person who, being a past or present officer of the company,—

(a) makes any false representation or commits any other fraud for the purpose of obtaining the consent of the company's creditors or any of them to an agreement with reference to the company's affairs or to the winding up; or

(b) prior to the winding up, has made any false representation, or committed any other fraud, for the purpose mentioned in sub#paragraph (a);

shall be guilty of an offence.

(2) For the purposes of this Article, "officer" includes a shadow director.

Penalisation of directors and officers

Summary remedy against delinquent directors, liquidators, etc.

176.—(1) This Article applies if in the course of the winding up of a company it appears that a person who—

(a) is or has been an officer of the company,

(b) has acted as liquidator[F210]... or administrative receiver of the company, or

(c) not being a person falling within sub#paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company,

has misapplied or retained, or become accountable for, any money or other property of the company, or been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company.

(2) The reference in paragraph (1) to any misfeasance or breach of any fiduciary or other duty in relation to the company includes, in the case of a person who has acted as liquidator[F211]... of the

company, any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of his functions as liquidator... of the company.

(3) The High Court may, on the application of the official receiver or the liquidator, or of any creditor or contributory, examine into the conduct of the person falling within paragraph (1) and order him—

(a) to repay, restore or account for the money or property, or any part of it, with interest at such rate as the Court thinks just, or

(b) to contribute such sum to the company's assets by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the Court thinks just.

(4) The power to make an application under paragraph (3) in relation to a person who has acted as liquidator[F212]... of the company is not exercisable, except with the leave of the High Court, after**[**[F213]he**]** has had his release.

(5) The power of a contributory to make an application under paragraph (3) is not exercisable except with the leave of the High Court, but is exercisable notwithstanding that he will not benefit from any order the Court may make on the application.

(6) In this Article "company" includes a building society within the meaning of the Building Societies Act 1986[F214] and "officer" includes a director (but not a shadow director) of a building society.

Annotations:

F210 Words in art. 176(1)(b) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 29(a), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F211 Words in art. 176(2) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 29(b), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F212 Words in art. 176(4) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 29(c)(i), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F213 Word in art. 176(4) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 29(c)(ii) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F214 1986 c. 53

Fraudulent trading

177. If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the High Court, on the application of the liquidator, may declare that any persons who were knowingly parties to the carrying on of the business in such manner are to be liable to make such contributions (if any) to the company's assets as the Court thinks proper.

Wrongful trading

178.—(1) Without prejudice to Article 177 and subject to paragraph (3), if in the course of the winding up of a company it appears that paragraph (2) applies in relation to a person who is or has been a director of the company, the High Court, on the application of the liquidator, may declare that that person is to be liable to make such contribution (if any) to the company's assets as the Court thinks proper.

(2 [F215] This paragraph applies in relation to a person if—

(a) the company has gone into insolvent liquidation,

(b) at some time before the commencement of the winding up of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation, and

(c) that person was a director of the company at that time,

but the High Court shall not make a declaration under this Article in any case where the time mentioned in sub#paragraph (b) was before the coming into operation of this Article.

(3) The High Court shall not make a declaration under this Article with respect to any person if it is satisfied that after the condition specified in paragraph (2)(b) was first satisfied in relation to him that person took every step with a view to minimising the potential loss to the company's creditors as (assuming him to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation) he ought to have taken.

(4) For the purposes of paragraphs (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company, and

(b) the general knowledge, skill and experience that that director has.

(5) The reference in paragraph (4) to the functions carried out in relation to a company by a director of the company includes any functions which he does not carry out but which have been entrusted to him.

(6) For the purposes of this paragraph a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(7) In this Article—

"company" includes a building society within the meaning of the Building Societies Act 1986[F216];

"director"

(a) includes a shadow director; and

(b) includes a director (but not a shadow director) of a building society.

Annotations:
F215 mod. by SR 2004/307
F216 1986 c. 53

. . . . . [F217]

Annotations:
F217 mod. by SR 2004/307

Proceedings under Articles 177 and 178

179.—(1 [F218] On the hearing of an application under Article 177 or 178, the liquidator may himself give evidence or call witnesses.

(2 Where under either Article the High Court makes a declaration, it may give such further directions as it thinks proper for giving effect to the declaration; and in particular, the Court may—

(a) provide for the liability of any person under the declaration to be a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf, and

(b) make such further order as may be necessary for enforcing any charge imposed under this paragraph.

(3) For the purposes of paragraph (2), "assignee"

(a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but

(b) does not include an assignee for valuable consideration (not including consideration by way of marriage**[**[F219] or the formation of a civil partnership**]**) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4 Where the High Court makes a declaration under either Article in relation to a person who is a creditor of the company, it may direct that the whole or any part of any debt owed by the company to that person and any interest thereon shall rank in priority after all other debts owed by the company and after any interest on those debts.

(5 Articles 177 and 178 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under the Article is to be made.

(6) In this Article "company" includes a building society within the meaning of the Building Societies Act 1986[F220].

Annotations:
F218 mod. by SR 2004/307
F219 2004 c. 33
F220 1986 c. 53

Restriction on re#use of company names

180.—(1) This Article applies to a person where a company ("the liquidating company") has gone into insolvent liquidation on or after the coming into operation of this Article and he was a director or shadow director of the company at any time within the period of 12 months immediately preceding the day before it went into liquidation.

(2) For the purposes of this Article, a name is a prohibited name in relation to such a person if—

(a) it is a name by which the liquidating company was known at any time in that period, or

(b) it is a name which is so similar to a name falling within sub#paragraph (a) as to suggest an association with that company.

(3) Except with the leave of the High Court or in such circumstances as may be prescribed, a person to whom this Article applies shall not at any time within 5 years from the day on which the liquidating company went into liquidation—

(a) be a director of any other company that is known by a prohibited name, or

(b) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of any such company, or

(c) in any way, whether directly or indirectly, be concerned or take part in the carrying on of a business carried on (otherwise than by a company) under a prohibited name.

(4) If a person contravenes this Article he shall be guilty of an offence.

(5) On an application for leave under paragraph (3), the Department or the official receiver may appear and call the attention of the High Court to any matters which seem to be relevant.

(6) References in this Article, in relation to any time, to a name by which a company is known are to the name of the company at that time or to any name under which the company carries on business at that time.

(7) For the purposes of this Article a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(8) In this Article—

"company" includes a company which may be wound up under Part VI or a building society within the meaning of the Building Societies Act 1986[F221];

"director" includes a director (but not a shadow director) of a building society.

Annotations:
F221 1986 c. 53

Personal liability for debts, following contravention of Article 180

181.—(1) A person is personally responsible for all the relevant debts of a company if at any time—

(a) in contravention of Article 180, he is involved in the management of the company, or

(b) as a person who is involved in the management of the company, he acts or is willing to act on instructions given (without the leave of the High Court) by a person whom he knows at that time to be in contravention in relation to the company of Article 180.

(2) Where a person is personally responsible under this Article for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under this Article or otherwise, is so liable.

(3) For the purposes of this Article the relevant debts of a company are—

(a) in relation to a person who is personally responsible under sub#paragraph(a) of paragraph (1), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company, and

(b) in relation to a person who is personally responsible under sub#paragraph (b) of paragraph (1), such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in that sub#paragraph.

(4) For the purposes of this Article, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.

(5) For the purposes of this Article a person who, as a person involved in the management of a company, has at any time acted on instructions given (without the leave of the High Court) by a person whom he knew at that time to be in contravention in relation to the company of Article 180

is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.

(6) In this Article—

"company" includes a company which may be wound up under Part VI or a building society within the meaning of the Building Societies Act 1986[F222];

"director" includes a director (but not a shadow director) of a building society.

Annotations:
F222 1986 c. 53

Investigation and prosecution of malpractice

Prosecution of delinquent officers and members of company

182.—(1 [F223] If it appears to the High Court in the course of a winding up by the Court that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may (either on the application of a person interested in the winding up or of its own motion) direct the liquidator to refer the matter to**[**[F224] the Department**]**.

(2 If in the case of a winding up by the High Court it appears to the liquidator, not being the official receiver, that any past or present officer of the company, or any member of it, has been guilty of any offence in relation to the company for which he is criminally liable, the liquidator shall report the matter to the official receiver.

(3 If it appears to the liquidator in the course of a voluntary winding up that any past or present officer of the company, or any member of it, has been guilty of any offence in relation to the company for which he is criminally liable, he shall—

[[F224](a) forthwith report the matter to the Department, and

(b) furnish to the Department such information and give to it such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the liquidator and relating to the matter in question) as the Department requires.**]**

[[F224](4) Where a report is made to the Department under paragraph (3), the Department may, for the purpose of investigating the matter reported to it and such other matters relating to the affairs of the company as appear to it to require investigation, exercise any of the powers which are exercisable by inspectors appointed under Article 424 or 425 of the Companies Order to investigate a company's affairs.**]**

(5 If it appears to the High Court in the course of a voluntary winding up that—

(a) any past or present officer of the company, or any member of it, has been guilty of any offence in relation to the company for which he is criminally liable, and

(b) no report with respect to the matter has been made by the liquidator[F225]... under paragraph (3),

the Court may (on the application of any person interested in the winding up or of its own motion) direct the liquidator to make such a report.

(6) On a report being made under paragraph (5), this Article has effect as though the report had been made in pursuance of paragraph (3).

Annotations:
F223 mod. by SR 2004/307
F224 2002 NI 6
F225 2002 NI 6

Obligations arising under Article 182

183.—(1) For the purpose of an investigation by the Department**[**[F226] in consequence of a report made to it under Article 182(3)**]**, any obligation imposed on a person by any provision of the Companies Order to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in**[**[F226] Article 182(4)**]** is to be regarded as an obligation similarly to assist the Department in its investigation.

(2) An answer given by a person to a question put to him in exercise of the powers conferred by Article 182(4) may be used in evidence against him.

[[F227](2A) However, in criminal proceedings in which that person is charged with an offence to which this paragraph applies—

(a) no evidence relating to the answer may be adduced, and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(2B) Paragraph (2A) applies to any offence other than an offence under Article 7 or 10 of the Perjury (Northern Ireland) Order 1979 (NI 19) (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).**]**

(3) Where criminal proceedings are instituted by**[**[F226] the Director of Public Prosecutions for Northern Ireland**]** or the Department following any report or reference under Article 182, the liquidator and every officer and agent of the company past and present (other than the defendant) shall give to**[**[F226] the Director of Public Prosecutions for Northern Ireland**]** or the Department (as the case may be) all assistance in connection with the prosecution which he is reasonably able to give.

(4) In paragraph (3), "agent" includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(5) If a person fails or neglects to give assistance in the manner required by paragraph (3), the High Court may, on the application of the**[**[F226] Director of Public Prosecutions for Northern Ireland**]** or the Department (as the case may be) direct the person to comply with that paragraph; and if the application is made with respect to a liquidator, the Court may (unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him to do so) direct that the costs shall be borne by the liquidator personally.

Annotations:
F226 2002 NI 6
F227 2002 NI 6

PART VI

WINDING UP OF UNREGISTERED COMPANIES

Meaning of "unregistered company"

184. For the purposes of this Part, "unregistered company" includes any association and any company, with the following exceptions—

(a) a railway company incorporated by a statutory provision,

(b) a company registered in any part of the United Kingdom under the Joint Stock Companies Acts or under the legislation (past or present) relating to companies in Northern Ireland.

Winding up of unregistered companies

185.—(1) Subject to the provisions of this Part, any unregistered company may be wound up under this Order; and all the provisions of this Order and the Companies Order about winding up apply to an unregistered company with the exceptions and additions mentioned in paragraphs (2) to (4).

(2) If an unregistered company has a principal place of business situated in England and Wales or Scotland, it shall not be wound up under this Part unless it has a principal place of business situated in Northern Ireland, and the principal place of business in Northern Ireland is, for all the purposes of the winding up, deemed to be the registered office of the company.

(3) No unregistered company shall be wound up under this Order voluntarily**[**[F228], except in accordance with the EC Regulation**]**.

(4) The circumstances in which an unregistered company may be wound up are as follows—

(a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(b) if the company is unable to pay its debts;

(c) if the High Court is of opinion that it is just and equitable that the company should be wound up.

Annotations:
F228 SR 2002/334

Inability to pay debts: unpaid creditor for £750 or more

186.—(1) An unregistered company is deemed (for the purposes of Article 185) unable to pay its debts if there is a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding £750 then due and—

(a) the creditor has served on the company, by leaving at its principal place of business in Northern Ireland, or by delivering to the secretary or some director or principal officer of the company, or by otherwise serving in such manner as the High Court may approve or direct, a written demand in the prescribed form requiring the company to pay the sum due, and

(b) the company has for 3 weeks from the service of the demand neglected to pay the sum or to secure or compound for it to the creditor's satisfaction.

(2) The money sum for the time being specified in paragraph (1) is subject to increase or reduction by order under Article 362(1)(a); but no increase in the sum so specified affects any case in which the winding#up petition was presented before the coming into operation of the increase.

Inability to pay debts: debt remaining unsatisfied after action brought

187. An unregistered company is deemed (for the purposes of Article 185) unable to pay its debts if an action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and—

(a) notice in writing of the institution of the action or proceeding has been served on the company by leaving it at the company's principal place of business in Northern Ireland (or by delivering it to the secretary, or some director or principal officer of the company, or by otherwise serving it in such manner as the High Court may approve or direct), and

(b) the company has not within 3 weeks from service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs and damages to be incurred by him because of it.

Inability to pay debts: other cases

188.—(1) An unregistered company is deemed (for the purposes of Article 185) unable to pay its debts—

(a) if, in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the company under Article 19 of the Judgments Enforcement (Northern Ireland) Order 1981[F229];

(b) if, in England and Wales, execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company, or any member of it as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;

(c) if, in Scotland, the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;

(d) it is otherwise proved to the satisfaction of the High Court that the company is unable to pay its debts as they fall due.

(2) An unregistered company is also deemed unable to pay its debts if it is proved to the satisfaction of the High Court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

Annotations:
F229 1981 NI 6

Company incorporated outside Northern Ireland may be wound up though dissolved

189.—[[F230](1**]** Where a company incorporated outside Northern Ireland which has been carrying on business in Northern Ireland ceases to carry on business in Northern Ireland, it may be wound up as an unregistered company under this Order, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

[[F230](2) This Article is subject to the EC Regulation.**]**

Annotations:
F230 SR 2002/334

Contributories in winding up of unregistered company

190.—(1) In the event of an unregistered company being wound up, every person is deemed a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of members among themselves, or to pay or contribute to the payment of the costs of winding up the company.

(2) Every contributory is liable to contribute to the company's assets all sums due from him in respect of any such liability as is mentioned in paragraph (1).

(3) In the event of the death, bankruptcy or insolvency of any contributory, the provisions of this Order with respect to the personal representatives of deceased contributories, and to the trustees of bankrupt or insolvent contributories, respectively apply.

Power of High Court to stay or restrain proceedings

191. The provisions of this Part with respect to staying or restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of awinding#up order extend, in the case of an unregistered company, where the application to stay or restrain is presented by a creditor, to actions and proceedings against any contributory of the company.

Actions stayed on winding#up order

192. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the High Court, and subject to such terms as the Court may impose.

Provisions of this Part to be cumulative

193.—(1) The provisions of this Part with respect to unregistered companies are in addition to and not in restriction of any provisions in Part V with respect to winding up companies by the High Court; and the Court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under the Companies Order.

(2) However, an unregistered company is not, except in the event of its being wound up, deemed to be a company under the Companies Order, and then only to the extent provided by this Part.

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) [F231] . . . . . .

(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.

Annotations:

F231 Art. 194(1) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 30, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

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[F232]... 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[F233]... 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.

Annotations:

F232 Word in art. 195(1) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F233 Word in art. 195(2) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Validity of office#holder's acts

196. The acts of an individual as[F234]... administrative receiver, liquidator or provisional liquidator of a company are valid notwithstanding any defect in his appointment, nomination or qualifications.

Annotations:

F234 Word in art. 196 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 32, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Management by administrators, liquidators, etc.

Supplies of water, electricity, etc.

197 [F235]**.**—(1) This Article applies in the case of a company where—

[[F236](a) the company enters administration, or**]**

(b) an administrative receiver is appointed, or

[[F237](ba) a moratorium under Article 14A is in force, or**]**

(c) a voluntary arrangement**[**[F238] approved under Part II**]**, 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**[**[F237] the nominee,**]**, 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**[**[F239] a public electricity supplier within the meaning of Part II of the Electricity (Northern Ireland) Order 1992**]**,

[[F240](aa) a supply of gas by the holder of a licence under Article 8 of the Gas (Northern Ireland) Order 1996;**]**

[[F241](b) a supply of water or sewerage services by a water or sewerage undertaker;**]**

[[F242](c) a supply of communications services by a provider of a public electronic communications service,**]**

[[F242]and in this paragraph "communications services" do not include electronic communications services to the extent that they are used to broadcast or transmit programme services (within the meaning of the Communications Act 2003).**]**

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

[[F243](a) the date on which the company entered administration**]**

(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),

[[F237](ba) the date on which the moratorium came into force**]**

(c) the date on which the voluntary arrangement**[**[F238] took effect**]**,

(d) the date on which the company went into liquidation,

(e) the date on which the provisional liquidator was appointed.

Annotations:

F235 mod.by SR 1990/177; SR 1991/411

F236 Art. 197(1)(a) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 33(a) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2**-7)

F237 2002 NI 6

F238 2002 NI 6

F239 1992 NI 1

F240 1996 NI 2

F241 Art. 197(3)(b) substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 27(1)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F242 2003 c. 21

F243 Art. 197(4)(a) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 33(b) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2**-7)

Getting in the company's property

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

[[F244](a) the company enters administration, or**]**

(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.

Annotations:

F244 Art. 198(1)(a) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 34 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

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—

[[F245](a) the date on which the company entered administration,**]**

(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.

Annotations:

F245 Art. 199(4)(a) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 35 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

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—

[[F246](a) the company enters administration, 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.

Annotations:

F246 Art. 202(1)(a) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 36 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

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,[F247] . . . . . .

[F248(c) in either case, at a time between the making of an administration application in respect of the company and the making of an administration order on that application, and

(d) in either case, at a time between the filing with the Court of a copy of notice of intention to appoint an administrator under paragraph 15 or 23 of Schedule B1 and the making of an appointment under that paragraph.]

(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—

[F249(a) in a case where Article 202 or 203 applies by reason of an administrator of a company being appointed by administration order, the date on which the administration application is made,

(b) in a case where Article 202 or 203 applies by reason of an administrator of a company being appointed under paragraph 15 or 23 of Schedule B1 following filing with the High Court of a copy of a notice of intention to appoint under that paragraph, the date on which the copy of the notice is filed,

(c) in a case where Article 202 or 203 applies by reason of an administrator of a company being appointed otherwise than as mentioned in sub-paragraph (a) or (b), the date on which the appointment takes effect,

(d) in a case where Article 202 or 203 applies by reason of a company going into liquidation either following conversion of administration into winding up by virtue of Article 37 of the EC Regulation or at the time when the appointment of an administrator ceases to have effect, the date on which the company entered administration (or, if relevant, the date on which the application for the administration order was made or a copy of the notice of intention to appoint was filed), and

(e) in a case where Article 202 or 203 applies by reason of a company going into liquidation at any other time, the date of the commencement of the winding up.]

Annotations:

F247 Word after art. 204(1)(b) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 37(3), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F248 Art. 204(1)(c)(d) substituted (27.3.2006) for art.204(1)(c) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 37(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F249 Art. 204(3)(a)(b)(c)(d)(e) substituted (27.3.2006) for art. 204(3)(a)(aa)(b) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 37(4) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

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**[**[F250] in good faith and for value**]**, 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**[**[F250] in good faith and for value**]** 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.

[[F251](2A) Where a person has acquired an interest in property from a person other than the company in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt—

(a) he had notice of the relevant surrounding circumstances and of the relevant proceedings, or

(b) he was connected with, or was an associate of, either the company in question or the person with whom that company entered into the transaction or to whom that company gave the preference,

then, unless the contrary is shown, it shall be presumed for the purposes of sub#paragraph (a) or (as the case may be) sub#paragraph (b) of paragraph (2) that the interest was acquired or the benefit was received otherwise than in good faith.**]**

[[F252](3) For the purposes of paragraph (2A)(a), the relevant surrounding circumstances are (as the case may require)—

(a) the fact that the company in question entered into the transaction at an undervalue; or

(b) the circumstances which amounted to the giving of the preference by the company in question;

and paragraphs (3A) to (3C) have effect to determine whether, for those purposes, a person has notice of the relevant proceedings.

[[F253](3A) Where Article 202 or 203 applies by reason of a company's entering administration, a person has notice of the relevant proceedings if he has notice that—

(a) an administration application has been made,

(b) an administration order has been made,

(c) a copy of a notice of intention to appoint an administrator under paragraph 15 or 23 of Schedule B1 has been filed, or

(d) notice of the appointment of an administrator has been filed under paragraph 19 or 30 of that Schedule.**]**

[[F254](3B) Where Article 202 or 203 applies by reason of a company's going into liquidation at the time when the appointment of an administrator of the company ceases to have effect, a person has notice of the relevant proceedings if he has notice that—

(a) an administration application has been made,

(b) an administration order has been made,

(c) a copy of a notice of intention to appoint an administrator under paragraph 15 or 23 of Schedule B1 has been filed,

(d) notice of the appointment of an administrator has been filed under paragraph 19 or 30 of that Schedule, or

(e) the company has gone into liquidation.**]**

(3C) In a case where Article 202 or 203 applies by reason of the company in question going into liquidation at any other time, a person has notice of the relevant proceedings if he has notice—

(a) where the company goes into liquidation on the making of a winding#up order, of the fact that the petition on which the winding#up order is made has been presented or of the fact that the company has gone into liquidation;

(b) in any other case, of the fact that the company has gone into liquidation.**]**

(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.

Annotations:

F250 1994 c.12

F251 1994 c.12

F252 1994 c.12

F253 Art. 205(3A) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 38(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F254 Art. 205(3B) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 38(3) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

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**[**[F255]the day on which the company entered administration or 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.

Annotations:

F255 Words in art. 206(2) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 39 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

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 sub# paragraph (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,[F256]...

[[F257](c) in either case, at a time between the making of an administration application in respect of the company and the making of an administration order on that application, or

(d) in either case, at a time between the filing with the High Court of a copy of notice of intention to appoint an administrator under paragraph 15 or 23 of Schedule B1 and the making of an appointment under that paragraph.]

(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—

[[F258](a) in a case where this Article applies by reason of an administrator of a company being appointed by administration order, the date on which the administration application is made,

(b) in a case where this Article applies by reason of an administrator of a company being appointed under paragraph 15 or 23 of Schedule B1 following filing with the High Court of a copy of notice of intention to appoint under that paragraph, the date on which the copy of the notice is filed,

(c) in a case where this Article applies by reason of an administrator of a company being appointed otherwise than as mentioned in sub-paragraph (a) or (b), the date on which the appointment takes effect, and

(d) 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.

Annotations:

F256 Word in art. 207(3)(b) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 40(2), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F257 Art. 207(3)(c)(d) substituted (27.3.2006) for art. 207(3)(c) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 40(3) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F258 Art. 207(5)(a) - (d) substituted (27.3.2006) for art. 207(a)(b) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 40(4) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Unenforceability of liens on books, etc.

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

[[F259](a) the company enters administration, 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.

Annotations:

F259 Art. 208(1)(a) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 41 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

PARTS VIII TO X

INSOLVENCY OF INDIVIDUALS; BANKRUPTCY

Annotations:

Modifications etc. (not altering text)

C13 Pts. VIII-X (ss. 209-345) modified (prosp.) by Foyle Fisheries Act (Northern Ireland)1952 (c. 5), s. 52K(2) (as inserted by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9), arts. 1(3), **3(1)** (with art. 32)

PART VIII

INDIVIDUAL VOLUNTARY ARRANGEMENTS

Annotations:

Modifications etc. (not altering text)

C14 Pts. VIII-X (arts. 209-345) modified by Foyle Fisheries Act (Northern Ireland) 1952 (c. 5), s. 52K(2) (as inserted (prosp.) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **3(1)** (with art. 32))

CHAPTER I

DEEDS OF ARRANGEMENT

Deeds of arrangement to which this Chapter applies

209.—(1) A deed of arrangement to which this Chapter applies shall include any of the instruments mentioned in paragraph (2), whether under seal or not,—

(a) made by, for or in respect of the affairs of a debtor for the benefit of his creditors generally;

(b) made by, for or in respect of the affairs of a debtor who was insolvent at the date of the execution of the instrument for the benefit of any 3 or more of his creditors;

otherwise than in pursuance of Chapter II or Chapter I of Part IX.

(2) The instruments referred to in paragraph (1) are—

(a) an assignment of property;

(b) a deed of or agreement for a composition;

and in cases where creditors of the debtor obtain any control over his property or business—

(c) a deed of inspectorship entered into for the purpose of carrying on or winding up a business;

(d) a letter of licence authorising the debtor or any other person to manage, carry on, realise or dispose of a business with a view to the payment of debts; and

(e) any agreement or instrument entered into for the purpose of carrying on or winding up the debtor's business, or authorising the debtor or any other person to manage, carry on, realise or dispose of the debtor's business with a view to the payment of his debts.

(3) Articles 218, 221, 222(1)(a) and 223 shall not apply to a deed ofarrangement made for the benefit of any 3 or more of the debtor's creditors unless it is in fact for the benefit of the debtor's creditors generally.

(4) In determining for the purposes of this Chapter the number of creditors for whose benefit a deed is made, any 2 or more joint creditors shall be treated as a single creditor.

Registration of deeds of arrangement

Registrar and deputy registrar

210.—(1) The Department may for the purposes of the registration of deeds of arrangement under this Chapter appoint an officer of the Department as registrar.

(2) The Department may, if it thinks expedient to do so, appoint one or more than one officer of the Department to act as deputy to the registrar.

Mode of registration

211.—(1) Subject to paragraph (2), a deed of arrangement under this Chapter shall be registered by presenting to and filing with the registrar within 7 clear days from the execution of the deed—

(a) such number of copies as the registrar may determine of the deed, and of every schedule or inventory annexed to the deed or referred to in the deed; and

(b) an affidavit verifying the time of execution, and containing—

(i) the name, residential address and occupation of, the debtor; and

(ii) the address of the place or places where his business is carried on; and

(c) an affidavit by the debtor stating—

(i) the total estimated amount of property and liabilities included under the deed; and

(ii) the total amount of the composition (if any) payable under the deed; and

(iii) the names and addresses of his creditors.

(2) A deed of arrangement shall not be registered unless the original of the deed, duly stamped with the proper revenue duty, is produced to the registrar at the time of the registration.

Form of register

212. The registrar shall keep a register in which he shall record in respect of each deed of arrangement presented for registration—

(a) the date of the deed;

(b) the name, residential address and occupation of the debtor;

(c) the address of the place or places where his business was carried on at the date of the execution of the deed;

(d) the title of the firm or firms under which the debtor carried on business;

(e) the name and address of the trustee (if any) under the deed;

(f) the date of registration;

(g) the amount of property and liabilities included under the deed, as estimated by the debtor;

(h) such other particulars as may be prescribed.

Rectification of register

213. Where, on the application of any party interested, the High Court is satisfied that—

(a) the omission to register a deed of arrangement within the time required by this Chapter, or

(b) the omission or mis#statement of the name, residential address, place of business or occupation of any person,

was accidental, or due to inadvertence, or to some cause beyond the control of the debtor and not imputable to any negligence on his part, the Court may, on such terms and conditions as are just and expedient, extend the time for registration, or order the omission or mis#statement to be supplied or rectified by the insertion in the register of the true name, residential address and place of business or occupation.

Avoidance of deeds of arrangement

Avoidance of unregistered deeds of arrangement

214. A deed of arrangement shall be void unless—

(a) it is registered—

(i) within 7 clear days from the first execution of the deed by the debtor or any creditor; or

(ii) if it is executed in any place out of Northern Ireland, within 7 clear days from the time at which it would, in the ordinary course of post, arrive in Northern Ireland, if posted within one week after the execution of the deed; and

(b) it bears such stamp as is mentioned in Article 211(2).

Avoidance of deeds of arrangement unless assented to by a majority of the creditors

215.—(1) A deed of arrangement, which either is expressed to be or is in fact for the benefit of a debtor's creditors generally, shall be void unless, before the expiration of 21 days from the registration of the deed, or within such extended time as the High Court may allow, it has received the assent of a majority in number and value of the creditors of the debtor.

(2) The list of creditors annexed to the affidavit of the debtor filed on the registration of the deed of arrangement shall be prima facie evidence of the names of the creditors and the amounts of their claims.

(3) The assent of a creditor for the purposes of paragraph (1) shall be established by his executing the deed of arrangement or sending to the trustee his assent in writing attested by a witness, but not otherwise.

(4) The trustee shall file with the registrar at the time of the registration of a deed of arrangement, or, in the case of a deed of arrangement assented to after registration, within 28 days from registration or within such extended time as the High Court may allow, a statutory declaration by the trustee that the requisite majority of the creditors of the debtor have assented to the deed of arrangement, which declaration shall, in favour of a purchaser for value, be conclusive evidence, and, in other cases, be prima facie evidence, of the fact declared.

(5) In calculating a majority of creditors for the purposes of this Article, a creditor holding security upon the property of the debtor shall be reckoned as a creditor only in respect of the balance (if any) due to him after deducting the value of such security, and creditors whose debts amount to sums not exceeding £100 shall be reckoned in the majority in value but not in the majority in number.

Deeds otherwise void or voidable

216. Nothing in this Chapter shall give validity to any deed or instrument which is by law void or voidable.

Provisions as to trustees

Notice to creditors of avoidance of deed

217.—(1) When a deed of arrangement is void by virtue of this Chapter for any reason other than that, being for the benefit of creditors generally, it has not been registered within the time allowed for the purpose by Article 214, the trustee shall—

(a) as soon as practicable after he has become aware that the deed is void, give notice in writing thereof to each creditor whose name and address he knows; and

(b) file a copy of the notice with the registrar.

(2) If paragraph (1) is contravened the trustee shall be guilty of an offence.

Trustee acting when deed of arrangement void

218.—(1) If a trustee acts under a deed of arrangement—

(a) after it has to his knowledge become void by reason of non#compliance with any of the requirements of this Chapter or any statutory provision repealed by this Order, or

(b) after he has failed to give security within the time provided for by Article 221,

he shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

(2) It is a defence for a person charged under this Article to prove that the contravention was due to inadvertence, or that his action has been confined to taking such steps as were necessary for the protection of the estate.

Protection of trustees under void deeds

219. Where a deed of arrangement is void by reason—

(a) that the requisite majority of creditors have not assented to the deed, or

(b) in the case of a deed for the benefit of 3 or more creditors,—

(i) that the debtor was insolvent at the time of the execution of the deed, and

(ii) the deed was not registered as required by this Chapter,

but is not void for any other reason, and a bankruptcy order is made against the debtor upon a petition presented after the expiration of 3 months from the execution of the deed, the trustee under the deed shall not be liable to account to the trustee in the bankruptcy for any dealings with or payments made out of the debtor's property which would have been proper if the deed had been valid, if he proves that at the time of such dealings or payments he did not know, and had no reason to suspect, that the deed was void.

Payment of expenses incurred by trustees

220. Where a deed of arrangement is avoided by reason of the bankruptcy of the debtor, any expenses properly incurred by the trustee under the deed in the performance of any of the duties imposed on him by this Chapter shall be allowed or paid to him by the trustee in the bankruptcy as a first charge on the estate.

Security by trustee

221.—(1) The trustee under a deed of arrangement shall, within 7 days from the date on which the statutory declaration certifying the assent of the creditors is filed, give security with respect to the proper administration of the deed and to account fully for the assets which come to his hands, unless a majority in number and value of the debtor's creditors, either by resolution passed at a meeting convened by notice to all the creditors, or by writing addressed to the trustee, dispense with his giving such security.

(2) When a dispensation such as is mentioned in paragraph (1) has been so given, the trustee shall forthwith make and file with the registrar a certificate to that effect, which certificate shall, in favour of a purchaser for value, be conclusive evidence, and, in other cases, be prima facie evidence, of the facts certified.

(3) If a trustee under a deed of arrangement contravenes this Article, on the application of any creditor the High Court may, after hearing such persons as it may think fit, declare the deed of arrangement to be void or make an order appointing another trustee in the place of the trustee appointed by the deed of arrangement.

(4) In calculating a majority of creditors for the purposes of this Article, a creditor holding security upon the property of the debtor shall be reckoned as a creditor only in respect of the balance (if any) due to him after deducting the value of such security, and creditors whose debts amount to sums not exceeding £100 shall be reckoned in the majority in value but not in the majority in number.

Transmission of accounts

222.—(1) Every trustee under a deed of arrangement shall—

(a) at the expiration of 6 months from the date of the registration of the deed, and thereafter at the expiration of every subsequent period of 6 months until the estate has been finally wound up, send to each creditor who has assented to the deed a statement in the prescribed form of the trustee's accounts and of the proceedings under the deed down to the date of the statement; and

(b) when verifying his accounts transmitted to the Department under paragraph (2), state whether or not he has duly sent such statements, and the dates on which the statements were sent.

(2) Every trustee under a deed of arrangement shall, at such times as may be prescribed, transmit to the Department, or as it directs, an account of his receipts and payments as trustee, in the prescribed form and verified in the prescribed manner.

(3) If a trustee contravenes this Article he shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

Preferential payment to creditor

223. If a trustee under a deed of arrangement pays to any creditor out of the debtor's property a sum larger in proportion to the creditor's claim than that paid to other creditors entitled to the benefit of the deed, then, unless the deed authorises him to do so, or unless such payments are either made to a creditor entitled to enforce his claim by distress or are such as would be lawful under Chapter II and Parts IX and X, he shall be guilty of an offence.

Miscellaneous

Applications to the High Court

224. Any application by the trustee under a deed of arrangement, which either is expressed to be or is in fact for the benefit of the debtor's creditors generally, or by the debtor or by any creditor entitled to the benefit of such a deed of arrangement, for the enforcement of the trusts or the determination of questions under it, shall be made to the High Court.

Inspection of register, etc., certified copies and evidence

225.—(1) Any person may, on payment of the specified fee, at all reasonable times,—

(a) search the register, and

(b) inspect any registered deed of arrangement;

and copies certified by the registrar of, or extracts from, any deed registered under this Chapter shall on payment of the specified fee, be furnished to any person.

(2) The accounts transmitted to the Department under Article 222(2) may be inspected by the debtor or any creditor or other person interested on payment of the specified fee, and copies of the accounts shall, on payment of the specified fee, be furnished to the debtor, the creditors, or any other persons interested.

(3) Any copy or extract purporting to be a certified copy or extract shall, in all courts and before all arbitrators or other persons, be admitted as prima facie evidence thereof, and of the fact and date of registration as shown thereon.

CHAPTER II

VOLUNTARY ARRANGEMENTS

Moratorium for insolvent debtor

Interim order of High Court

226.—(1) In the circumstances specified in Articles 227 and 229, the High Court may in the case of a debtor (being an individual) make an interim order under this Article.

(2) An interim order has the effect that, during the period for which it is in force—

(a) no bankruptcy petition relating to the debtor may be presented or proceeded with,

[[F260](aa) **[**[F260]no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the High Court,**]** and

(b) no other proceedings, and no execution or other legal process, may be commenced or continued**[**[F260] and no distress may be levied**]** against the debtor or his property except with the leave of the High Court.

Annotations:
F260 2002 NI 6

Application for interim order

227.—(1) Application to the High Court for an interim order may be made where the debtor intends to make a proposal**[**[F261] under this Part, that is, a proposal**]** to his creditors for a composition in satisfaction of his debts or a scheme of arrangement of his affairs (referred to, in either case, as a "voluntary arrangement").

(2) The proposal must provide for some person ("the nominee") to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation**[**[F261] and the nominee must be a person who is qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement**]**.

(3) Subject to paragraphs (4) and (5), the application may be made—

(a) if the debtor is an undischarged bankrupt, by the debtor, the trustee of his estate, or the official receiver, and

(b) in any other case, by the debtor.

(4) An application shall not be made under paragraph (3)(a) unless the debtor has given notice of**[**[F262] the proposal**]** to the official receiver and, if there is one, the trustee of his estate.

(5) An application shall not be made while a bankruptcy petition presented by the debtor is pending, if the High Court has, under Article 247, appointed an insolvency practitioner to inquire into the debtor's affairs and report.

Annotations:
F261 2002 NI 6
F262 2002 NI 6

Effect of application

228.—(1) At any time when an application under Article 227 for an interim order is pending

[[F263](a) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the High Court, and**]**

[[F263](b**]** , the High Court may**[**[F263] forbid the levying of any distress on the debtor's property or its subsequent sale, or both, and**]** stay any action, proceedings, execution or other legal process against the property or person of the debtor.

(2) Any court in which proceedings are pending against an individual may, on proof that an application under Article 227 has been made in respect of that individual, either stay the proceedings or allow them to continue on such terms as it thinks fit.

Annotations:
F263 2002 NI 6

Cases in which interim order can be made

229.—(1) The High Court shall not make an interim order on an application under Article 227 unless it is satisfied—

(a) that the debtor intends to make**[**[F264] a proposal under this Part**]**;

(b) that on the day of the making of the application the debtor was an undischarged bankrupt or was able to petition for his own bankruptcy;

(c) that no previous application has been made by the debtor for an interim order within the 12 months immediately preceding that day; and

(d) that the nominee under the debtor's proposal[F265]... is willing to act in relation to the proposal.

(2) The High Court may make an order if it thinks that it would be appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal.

(3) Where the debtor is an undischarged bankrupt, the interim order may contain provision as to the conduct of the bankruptcy, and the administration of the bankrupt's estate, during the period for which the order is in force.

(4) Subject to paragraph (5), the provision contained in an interim order by virtue of paragraph (3) may include provision staying proceedings in the bankruptcy or modifying any provision in Parts VIII to X, and any provision of the rules in their application to the debtor's bankruptcy.

(5) An interim order shall not, in relation to a bankrupt, make provision relaxing or removing any of the requirements of provisions in Parts VIII to X, or of the rules, unless the High Court is satisfied that that provision is unlikely to result in any significant diminution in, or in the value of, the debtor's estate for the purposes of the bankruptcy.

(6) Subject to Articles 230, 233, 234 and 236, an interim order made on an application under Article 227 ceases to have effect on the expiration of 14 days from the day on which it is made.

Annotations:
F264 2002 NI 6
F265 2002 NI 6

Nominee's report on debtor's proposal

230.—(1) Where an interim order has been made on an application under Article 227, the nominee shall, before the order ceases to have effect, submit a report to the High Court stating—

(a) **[**[F266]whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented,**]**

[[F266](aa**]** whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, and

(b) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.

(2) For the purpose of enabling the nominee to prepare his report the debtor shall submit to the nominee—

(a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and

(b) a statement of his affairs containing—

(i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed, and

(ii) such other information as may be prescribed.

[[F267](3) The High Court may—

(a) on an application made by the debtor in a case where the nominee has failed to submit the report required by this Article or has died, or

(b) on an application made by the debtor or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(3A) The High Court may, on an application made by the debtor in a case where the nominee has failed to submit the report required by this Article, direct that the interim order shall continue, or (if it has ceased to have effect) be renewed, for such further period as the Court may specify in the direction.**]**

(4) The High Court may, on the application of the nominee, extend the period for which the interim order has effect so as to enable the nominee to have more time to prepare his report.

(5) If the High Court is satisfied on receiving the nominee's report that a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, the Court shall direct that the period for which the interim order has effect shall be extended, for such further period as it may specify in the direction, for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with the following provisions of this Chapter.

(6) The High Court may discharge the interim order if it is satisfied, on the application of the nominee—

(a) that the debtor has failed to comply with his obligations under paragraph (2), or

(b) that for any other reason it would be inappropriate for a meeting of the debtor's creditors to be summoned to consider the debtor's proposal.

Annotations:
F266 2002 NI 6
F267 2002 NI 6

[[F268]*Procedure where no interim order made*

Annotations:
F268 2002 NI 6

Debtor's proposal and nominee's report

230A.—(1) This Article applies where a debtor (being an individual)—

(a) intends to make a proposal under this Part (but an interim order has not been made in relation to the proposal and no application for such an order is pending), and

(b) if he is an undischarged bankrupt, has given notice of the proposal to the official receiver and, if there is one, the trustee of his estate,

unless a bankruptcy petition presented by the debtor is pending and the High Court has, under Article 247, appointed an insolvency practitioner to inquire into the debtor's affairs and report.

(2) For the purpose of enabling the nominee to prepare a report to the High Court, the debtor shall submit to the nominee—

(a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and

(b) a statement of his affairs containing—

(i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed, and

(ii) such other information as may be prescribed.

(3) If the nominee is of the opinion that the debtor is an undischarged bankrupt, or is able to petition for his own bankruptcy, the nominee shall, within 14 days (or such longer period as the High Court may allow) after receiving the document and statement mentioned in paragraph (2), submit a report to the Court stating—

(a) whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented,

(b) whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, and

(c) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.

(4) The High Court may—

(a) on an application made by the debtor in a case where the nominee has failed to submit the report required by this Article or has died, or

(b) on an application made by the debtor or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(5) The High Court may, on an application made by the nominee, extend the period within which the nominee is to submit his report.**]**

[F269 Creditors' meeting]

Annotations:
F269 2002 NI 6

Summoning of creditors' meeting

231.—(1) Where it has been reported to the High Court under Article 230**[F270** or 230A**]** that a meeting of the debtor's creditors should be summoned, the nominee (or his replacement under Article**[F271** 230(3) or 230A(4)**]**) shall, unless the Court otherwise directs, summon that meeting for the time, date and place proposed in his report.

(2) The persons to be summoned to the meeting are every creditor of the debtor of whose claim and address the person summoning the meeting is aware.

(3) For this purpose the creditors of a debtor who is an undischarged bankrupt include—

(a) every person who is a creditor of the bankrupt in respect of a bankruptcy debt, and

(b) every person who would be such a creditor if the bankruptcy had commenced on the day on which notice of the meeting is given.

Annotations:
F270 2002 NI 6

F271 2002 NI 6

Consideration and implementation of debtor's proposal

Decisions of creditors' meeting

232.—(1) A creditors' meeting summoned under Article 231 shall decide whether to approve the proposed voluntary arrangement.

(2) The meeting may approve the proposed voluntary arrangement with modifications, but shall not do so unless the debtor consents to each modification.

(3) Subject to paragraph (4), the modifications subject to which the proposed voluntary arrangement may be approved may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner**[**[F272] or authorised to act as nominee, in relation to the voluntary arrangement**]**.

(4) The modifications mentioned in paragraph (3) shall not include any modification by virtue of which the proposal ceases to be a proposal**[**[F272] under this Part**]**.

(5) The meeting shall not approve any proposal or modification which affects the right of a secured creditor of the debtor to enforce his security, except with the concurrence of the creditor concerned.

(6) Subject to paragraph (7), the meeting shall not approve any proposal or modification under which—

(a) any preferential debt of the debtor is to be paid otherwise than in priority to such of his debts as are not preferential debts, or

(b) a preferential creditor of the debtor is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

(7) The meeting may approve a proposal or modification such as is mentioned in paragraph (6) with the concurrence of the preferential creditor concerned.

(8) Subject to paragraphs (2) to (7), the meeting shall be conducted in accordance with the rules.

(9) In this Article "preferential debt" has the meaning given by Article 346; and "preferential creditor" is to be construed accordingly.

Annotations:
F272 2002 NI 6

Report of decisions to High Court

233.—(1) After the conclusion in accordance with the rules of the meeting summoned under Article 231, the chairman of the meeting shall report the result of it to the High Court and, immediately after so reporting, shall give notice of the result of the meeting to such persons as may be prescribed.

(2) If the report is that the meeting has declined (with or without modifications) to approve the debtor's proposal, the High Court may discharge any interim order which is in force in relation to the debtor.

Effect of approval

234.—(1) This Article has effect where the meeting summoned under Article 231 approves the proposed voluntary arrangement (with or without modifications).

(2) The approved arrangement—

(a) takes effect as if made by the debtor at the meeting, and

[F273(b) binds every person who in accordance with the rules—

(i) was entitled to vote at the meeting (whether or not he was present or represented at it), or

(ii) would have been so entitled if he had had notice of it,

as if he were a party to the arrangement.]

[F273(2A) If—

(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of paragraph (2)(b)(ii) has not been paid, and

(b) the arrangement did not come to an end prematurely,

the debtor shall at that time become liable to pay to that person the amount payable under the arrangement.]

(3) Chapter I does not apply to the approved voluntary arrangement.

(4) Any interim order in force in relation to the debtor immediately preceding the expiration of the period of 28 days from the day on which the report with respect to the creditors' meeting was made to the High Court under Article 233 ceases to have effect at the end of that period.

(5) Paragraph (4) applies except to such extent as the High Court may direct for the purposes of any application under Article 236.

(6) Where proceedings on a bankruptcy petition have been stayed by an interim order which ceases to have effect under paragraph (4), that petition is deemed, unless the High Court otherwise orders, to have been dismissed.

Annotations:
F273 2002 NI 6

[F274Additional effect on undischarged bankrupt

235.—(1) This Article applies where—

(a) the creditors' meeting summoned under Article 231 approves the proposed voluntary arrangement (with or without modifications), and

(b) the debtor is an undischarged bankrupt.

(2) Where this Article applies the High Court shall annul the bankruptcy order on an application made—

(a) by the bankrupt, or

(b) where the bankrupt has not made an application within the prescribed period, by the official receiver.

(3) An application under paragraph (2) may not be made—

(a) during the period specified in Article 236(3)(a) during which the decision of the creditors' meeting can be challenged by application under Article 236,

(b) while an application under that Article is pending, or

(c) while an appeal in respect of an application under that Article is pending or may be brought.

(4) Where this Article applies the Court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.**]**

Annotations:

F274 Art. 235 substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 21(1), Sch. 7 para. 1 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Challenge of meeting's decision

236.—(1) Subject to the following provisions of this Article, an application to the High Court may be made, by any of the persons specified in paragraph (2) on one or both of the following grounds, namely—

(a) that a voluntary arrangement approved by a creditors' meeting summoned under Article 231 unfairly prejudices the interests of a creditor of the debtor;

(b) that there has been some material irregularity at or in relation to such a meeting.

(2) The persons who may apply under this Article are—

(a) the debtor;

[[F275](b) a person who—

(i) was entitled, in accordance with the rules, to vote at the creditors' meeting, or

(ii) would have been so entitled if he had had notice of it,**]**

(c) the nominee (or his replacement under Article**[**[F275] 230(3), 230A(4)**]** or 232(3)); and

(d) if the debtor is an undischarged bankrupt, the trustee of his estate or the official receiver.

(3) An application under this Article shall not be made

[[F276](a**]** after the expiration of 28 days from the day on which the report of the creditors' meeting was made to the High Court under Article 233**[**[F276] or**]**

[[F276](b) in the case of a person who was not given notice of the creditor's meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,**]**

[[F276]but (subject to that) an application made by a person within paragraph (2)(b)(ii) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it has come to an end prematurely.**]**.

(4) Where on an application under this Article the High Court is satisfied as to either of the grounds mentioned in paragraph (1), it may do one or both of the following, namely—

(a) revoke or suspend any approval given by the meeting;

(b) give a direction to any person for the summoning of a further meeting of the debtor's creditors to consider any revised proposal the debtor may make or, in a case falling within paragraph (1)(b), to reconsider his original proposal.

(5) Where at any time after giving a direction under paragraph (4)(b) for the summoning of a meeting to consider a revised proposal the High Court is satisfied that the debtor does not intend to submit such a proposal, the Court shall revoke the direction and revoke or suspend any approval given at the previous meeting.

(6) Where the High Court gives a direction under paragraph (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect in relation to the debtor of any interim order.

(7) In any case where the High Court, on an application made under this Article with respect to a creditors' meeting, gives a direction under paragraph (4)(b) or revokes or suspends an approval under paragraph (4)(a) or (5), the Court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—

(a) things done since the meeting under any voluntary arrangement approved by the meeting, and

(b) such things done since the meeting as could not have been done if an interim order had been in force in relation to the debtor when they were done.

(8) Except in pursuance of the preceding provisions of this Article, an approval given at a creditors' meeting summoned under Article 231 is not invalidated by any irregularity at or in relation to the meeting.

Annotations:
F275 2002 NI 6
F276 2002 NI 6

[F277False representations etc.

236A.—(1) If for the purpose of obtaining the approval of his creditors to a proposal for a voluntary arrangement, the debtor—

(a) makes any false representation, or

(b) fraudulently does, or omits to do, anything,

he shall be guilty of an offence.

(2) Paragraph (1) applies even if the proposal is not approved.**]**

Annotations:
F277 2002 NI 6

Prosecution of delinquent debtors

236B.—(1) This Article applies where a voluntary arrangement approved by a creditors' meeting summoned under Article 231 has taken effect.

(2) If it appears to the nominee or supervisor that the debtor has been guilty of any offence in connection with the arrangement for which he is criminally liable, he shall forthwith—

(a) report the matter to the Department, and

(b) provide the Department with such information and give the Department such access to and facilities for inspecting and taking copies of documents (being information or documents in his possession or under his control and relating to the matter in question) as the Department requires.

(3) Where the Director of Public Prosecutions for Northern Ireland institutes criminal proceedings following any report under paragraph (2), the nominee or, as the case may be, supervisor shall give the Director all assistance in connection with the prosecution which he is reasonably able to give.

(4) The High Court may, on the application of the Director of Public Prosecutions for Northern Ireland, direct a nominee or supervisor to comply with paragraph (3) if he has failed to do so.

Arrangements coming to an end prematurely

236C. For the purposes of this Part, a voluntary arrangement approved by a creditors' meeting summoned under Article 231 comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement by virtue of Article 234(2)(b)(i).

Implementation and supervision of approved voluntary arrangement

237.—(1) This Article applies where a voluntary arrangement approved by a creditors' meeting summoned under Article 231 has taken effect.

(2) The person who is for the time being carrying out, in relation to the voluntary arrangement, the functions conferred by virtue of the approval on the nominee (or his replacement under Article**[**[F278] 230(3), 230A(4)**]** or 232(3)) shall be known as the supervisor of the voluntary arrangement.

(3) If the debtor, any of his creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the High Court; and on such an application the Court may—

(a) confirm, reverse or modify any act or decision of the supervisor,

(b) give him directions, or

(c) make such other order as it thinks fit.

(4) The supervisor may apply to the High Court for directions in relation to any particular matter arising under the voluntary arrangement.

(5) Without prejudice to section 40(2) of the Trustee Act (Northern Ireland) 1958[F279] (power of court to appoint trustees), the High Court may, whenever—

(a) it is expedient to appoint a person to carry out the functions of the supervisor, and

(b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the Court,

make an order appointing a person who is qualified to act as an insolvency practitioner**[**[F278] or authorised to act as supervisor, in relation to the voluntary arrangement**]**, either in substitution for the existing supervisor or to fill a vacancy.

(6) The power conferred by paragraph (5) is exercisable so as to increase the number of persons exercising the functions of the supervisor or, where there is more than one person exercising those functions, so as to replace one of more of those persons.

Annotations:

F278 2002 NI 6

F279 1958 c. 23 (NI)

[[F280]Fast-track voluntary arrangement

Annotations:

F280 Arts. 237A - 237G and preceding cross - heading inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 21, Sch. 7 para. 2 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Insolvency (Northern Ireland) Order 1989. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

Availability

237A. Article 237B applies where an individual debtor intends to make a proposal to his creditors for a voluntary arrangement and—

(a) the debtor is an undischarged bankrupt,

(b) the official receiver is specified in the proposal as the nominee in relation to the voluntary arrangement, and

(c) no interim order is applied for under Article 227.

Decision

237B.—(1) The debtor may submit to the official receiver—

(a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and

(b) a statement of his affairs containing such particulars as may be prescribed of his creditors, debts, other liabilities and assets and such other information as may be prescribed.

(2) If the official receiver thinks that the voluntary arrangement proposed has a reasonable prospect of being approved and implemented, he may make arrangements for inviting creditors to decide whether to approve it.

(3) For the purposes of paragraph (2) a person is a "creditor" only if—

(a) he is a creditor of the debtor in respect of a bankruptcy debt, and

(b) the official receiver is aware of his claim and his address.

(4) Arrangements made under paragraph (2)—

(a) must include the provision to each creditor of a copy of the proposed voluntary arrangement,

(b) must include the provision to each creditor of information about the criteria by reference to which the official receiver will determine whether the creditors approve or reject the proposed voluntary arrangement, and

(c) may not include an opportunity for modifications to the proposed voluntary arrangement to be suggested or made.

(5) Where a debtor submits documents to the official receiver under paragraph (1) no application under Article 227 for an interim order may be made in respect of the debtor until the official receiver has—

(a) made arrangements as described in paragraph (2), or

(b) informed the debtor that he does not intend to make arrangements (whether because he does not think the voluntary arrangement has a reasonable prospect of being approved and implemented or because he declines to act).

Result

237C. As soon as is reasonably practicable after the implementation of arrangements under Article 237B(2) the official receiver shall report to the High Court whether the proposed voluntary arrangement has been approved or rejected.

Approval of voluntary arrangement

237D.—(1) This Article applies where the official receiver reports to the High Court under Article 237C that a proposed voluntary arrangement has been approved.

(2) The voluntary arrangement—

(a) takes effect,

(b) binds the debtor, and

(c) binds every person who was entitled to participate in the arrangements made under Article 237B(2).

(3) The High Court shall annul the bankruptcy order in respect of the debtor on an application made by the official receiver.

(4) An application under paragraph (3) may not be made—

(a) during the period specified in Article 237F(3) during which the voluntary arrangement can be challenged by application under Article 237F(2),

(b) while an application under that Article is pending, or

(c) while an appeal in respect of an application under that Article is pending or may be brought.

(5) The High Court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.

(6) Chapter I of Part VIII does not apply to the voluntary arrangement.

(7) A reference in this Order or another statutory provision to a voluntary arrangement approved under this Part includes a reference to a voluntary arrangement which has effect by virtue of this Article.

Implementation

237E. Article 237 shall apply to a voluntary arrangement which has effect by virtue of Article 237D(2) as it applies to a voluntary arrangement approved by a creditors' meeting.

Revocation

237F.—(1) The High Court may make an order revoking a voluntary arrangement which has effect by virtue of Article 237D(2) on the ground—

(a) that it unfairly prejudices the interests of a creditor of the debtor, or

(b) that a material irregularity occurred in relation to the arrangements made under Article 237B(2).

(2) An order under paragraph (1) may be made only on the application of—

(a) the debtor,

(b) a person who was entitled to participate in the arrangements made under Article 237B(2),

(c) the trustee of the bankrupt's estate, or

(d) the official receiver.

(3) An application under paragraph (2) may not be made after the end of the period of 28 days beginning with the date on which the official receiver makes his report to the High Court under Article 237C.

(4) But a creditor who was not made aware of the arrangements under Article 237B(2) at the time when they were made may make an application under paragraph (2) during the period of 28 days beginning with the date on which he becomes aware of the voluntary arrangement.

Offences

237G.—(1) Article 236A shall have effect in relation to obtaining approval to a proposal for a voluntary arrangement under Article 237D.

(2) Article 236B shall have effect in relation to a voluntary arrangement which has effect by virtue of Article 237D(2) (for which purposes the words "by a creditors' meeting summoned under Article 231" shall be disregarded).**]**

PART IX

BANKRUPTCY

Annotations:

Modifications etc. (not altering text)

C15 Pts. VIII-X (arts. 209-345) modified by Foyle Fisheries Act (Northern Ireland) 1952 (c. 5), s. 52K(2) (as inserted (prosp.) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **3(1)** (with art. 32))

CHAPTER I

BANKRUPTCY PETITIONS; BANKRUPTCY ORDERS

Preliminary

Who may present a bankruptcy petition

238.—(1) A petition for a bankruptcy order (a bankruptcy petition) to be made against an individual may be presented to the High Court in accordance with the following provisions of this Part—

(a) by one of the individual's creditors or jointly by more than one of them,

(b) by the individual himself,

[[F281](ba) by a temporary administrator (within the meaning of Article 38 of the EC Regulation),

(bb) by a liquidator (within the meaning of Article 2(b) of the EC Regulation) appointed in proceedings by virtue of Article 3(1) of the EC Regulation,**]**

(c) by the supervisor of, or any person (other than the individual) who is for the time being bound by, a voluntary arrangement proposed by the individual and approved under Part VIII,[F282]...

(d) [F283]. . . . . .

(2) Subject to those provisions, the High Court may make a bankruptcy order on any such petition.

Annotations:

F281 SR 2002/334

F282 Word before art. 238(1)(d) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 3, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F283 Art. 238(1)(d) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 3, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Conditions to be satisfied in respect of debtor

239.—(1) A bankruptcy petition shall not be presented to the High Court under Article 238(1)(a) or (b) unless the debtor—

(a) is domiciled in Northern Ireland,

(b) is personally present in Northern Ireland on the day on which the petition is presented, or

(c) at any time in the 3 years immediately preceding that day—

(i) has been ordinarily resident, or has had a place of residence, in Northern Ireland, or

(ii) has carried on business in Northern Ireland.

(2) The reference in paragraph (1)(c) to an individual carrying on business includes—

(a) the carrying on of business by a firm or partnership of which the individual is a member, and

(b) the carrying on of business by an agent or manager for the individual or for such a firm or partnership.

[[F284](3) This Article is subject to Article 3 of the EC Regulation.**]**

Annotations:
F284 SR 2002/334

Other preliminary conditions

240.—(1) Where a bankruptcy petition relating to an individual is presented by a person who is entitled to present a petition under 2 or more sub#paragraphs of Article 238(1), the petition is to be treated for the purposes of this Part as a petition under such one of those sub#paragraphs as may be specified in the petition.

(2) A bankruptcy petition shall not be withdrawn without the leave of the High Court.

(3) The High Court may, if it appears to it appropriate to do so on the grounds that there has been a contravention of the rules or for any other reason, dismiss a bankruptcy petition or stay proceedings on such a petition; and, where it stays proceedings on a petition, it may do so on such terms and conditions as it thinks fit.

Creditor's petition

Grounds of creditor's petition

241.—(1) A creditor's petition must be in respect of one or more debts owed by the debtor, and the petitioning creditor or each of the petitioning creditors must be a person to whom the debt or (as the case may be) at least one of the debts is owed.

(2) Subject to Articles 242 to 244, a creditor's petition may be presented to the High Court in respect of a debt or debts only if, at the time the petition is presented—

(a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the bankruptcy level,

(b) the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain, future time, and is unsecured,

(c) the debt, or each of the debts, is a debt which the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay, and

(d) there is no outstanding application to set aside a statutory demand served (under Article 242) in respect of the debt or any of the debts.

(3) "The bankruptcy level" is £750; but the Department may by order subject to affirmative resolution substitute any amount specified in the order for that amount or (as the case may be) for the amount which by virtue of such an order is for the time being the amount of the bankruptcy level.

Definition of "inability to pay", etc.; the statutory demand

242.—(1) For the purposes of Article 241(2)(c), the debtor appears to be unable to pay a debt if, but only if, the debt is payable immediately and either—

(a) the petitioning creditor to whom the debt is owed has served on the debtor a demand (known as "the statutory demand") in the prescribed form requiring him to pay the debt or to secure or compound for it to the satisfaction of the creditor, at least 3 weeks have elapsed since the demand was served and the demand has been neither complied with nor set aside in accordance with the rules; or

(b) a certificate of unenforceability has been granted under Article 19 of the Judgments Enforcement (Northern Ireland) Order 1981[F285] in respect of the debt on a judgment or order of any court in favour of the petitioning creditor, or one or more of the petitioning creditors to whom the debt is owed.

(2) For the purposes of Article 241(2)(c) the debtor appears to have no reasonable prospect of being able to pay a debt if, but only if, the debt is not immediately payable and—

(a) the petitioning creditor to whom it is owed has served on the debtor a demand (also known as "the statutory de#mand") in the prescribed form requiring him to establish to the satisfaction of the creditor that there is a reasonable prospect that the debtor will be able to pay the debt when it falls due,

(b) at least 3 weeks have elapsed since the demand was served, and

(c) the demand has been neither complied with nor set aside in accordance with the rules.

Annotations:
F285 1981 NI 6

Creditor with security

243.—(1) A debt which is the debt, or one of the debts, in respect of which a creditor's petition is presented need not be unsecured if either—

(a) the petition contains a statement by the person having the right to enforce the security that he is willing, in the event of a bankruptcy order being made, to give up his security for the benefit of all the bankrupt's creditors, or

(b) the petition is expressed not to be made in respect of the secured part of the debt and contains a statement by that person of the estimated value at the date of the petition of the security for the secured part of the debt.

(2) In a case falling within paragraph (1)(b) the secured and unsecured parts of the debt are to be treated for the purposes of Articles 241 to 2 44 as separate debts.

Expedited petition

244. In the case of a creditor's petition presented wholly or partly in respect of a debt which is the subject of a statutory demand under Article 242, the petition may be presented before the expiration of the period of 3 weeks mentioned in that Article if there is a serious possibility that the debtor's property or the value of any of his property will be significantly diminished during that period and the petition contains a statement to that effect.

Proceedings on creditor's petition

245.—(1) The High Court shall not make a bankruptcy order on a creditor's petition unless it is satisfied that the debt, or one of the debts, in respect of which the petition was presented is either—

(a) a debt which, having been payable at the date of the petition or having since become payable, has been neither paid nor secured or compounded for, or

(b) a debt which the debtor has no reasonable prospect of being able to pay when it falls due.

(2) In a case in which the petition contains such a statement as is required by Article 244, the High Court shall not make a bankruptcy order within 3 weeks from the service of any statutory demand under Article 242.

(3) The High Court may dismiss the petition if it is satisfied that the debtor is able to pay all his debts or is satisfied—

(a) that the debtor has made an offer to secure or compound for a debt in respect of which the petition is presented,

(b) that the acceptance of that offer would have required the dismissal of the petition, and

(c) that the offer has been unreasonably refused;

and, in determining for the purposes of this paragraph whether the debtor is able to pay all his debts, the Court shall take into account his contingent and prospective liabilities.

(4) In determining for the purposes of this Article what constitutes a reasonable prospect that a debtor will be able to pay a debt when it falls due, it is to be assumed that the prospect given by the facts and other matters known to the creditor at the time he entered into the transaction resulting in the debt was a reasonable prospect.

(5) Nothing in Articles 241 to 244 and this Article prejudices the power of the High Court, in accordance with the rules, to authorise a creditor's petition to be amended by the omission of any creditor or debt and to be proceeded with as if things done for the purposes of those Articles and this Article had been done only by or in relation to the remaining creditors or debts.

Debtor's petition

Grounds of debtor's petition

[[F286]246. A joint debtor's petition in Form 8 in Schedule 3 to the Insolvent Partnerships Order (Northern Ireland) 1991 may be presented to the High Court by individual members only on the grounds that the partnership is unable to pay its debts.**]**

Annotations:
F286 SR 1991/366

Appointment of insolvency practitioner by the High Court

247.—(1) Subject to Article 248, on the hearing of a debtor's petition the High Court shall not make a bankruptcy order if it appears to the Court—

(a) that if a bankruptcy order were made the aggregate amount of the bankruptcy debts, so far as unsecured, would be less than the small bankruptcies level,

(b) that if a bankruptcy order were made, the value of the bankrupt's estate would be equal to or more than the minimum amount,

(c) that within the 5 years immediately preceding the presentation of the petition the debtor has neither been adjudged bankrupt nor made a composition with his creditors in satisfaction of his debts or a scheme of arrangement of his affairs, and

(d) that it would be appropriate to appoint a person to prepare a report under Article 248;

and in this paragraph "the minimum amount" and "the small bankruptcies level" mean such amounts as may for the time being be specified by order under Article 362(1)(b).

(2) Where on the hearing of the petition it appears to the High Court as mentioned in paragraph (1), the Court shall appoint a person who is qualified to act as an insolvency practitioner in relation to the debtor—

(a) to prepare a report under Article 248, and

(b) subject to Article 232(3), to act in relation to any voluntary arrangement to which the report relates either as trustee or otherwise for the purpose of supervising its implementation.

Action on report of insolvency practitioner

248.—(1) A person appointed under Article 247 shall inquire into the debtor's affairs and, within such period as the High Court may direct, shall submit a report to the Court stating whether the debtor is willing, for the purposes of Part VIII, to make a proposal for a voluntary arrangement.

(2) A report which states that the debtor is willing as is mentioned in paragraph (1) shall also state—

(a) whether, in the opinion of the person making the report, a meeting of the debtor's creditors should be summoned to consider the proposal, and

(b) if in that person's opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.

(3) On considering a report under this Article the High Court may—

(a) without any application, make an interim order under Article 226, if it thinks that it is appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal, or

(b) if it thinks it would be inappropriate to make such an order, make a bankruptcy order.

(4) An interim order made by virtue of this Article ceases to have effect at the end of such period as the High Court may specify for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with the applicable provisions of Part VIII.

(5) Where it has been reported to the High Court under this Article that a meeting of the debtor's creditors should be summoned, the person making the report shall, unless the Court otherwise directs, summon that meeting for the time, date and place proposed in his report; and the meeting is then deemed to have been sum#moned under Article 231, and paragraphs (2) and (3) of that Article, and Articles 232 to 237 apply accordingly.

Summary administration

249. [F287] . . . . . .

Annotations:

F287 Art. 249 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 4, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Other cases for special consideration

Default in connection with voluntary arrangement

250.—(1) The High Court shall not make a bankruptcy order on a petition under Article 238(1)(c) (supervisor of, or person bound by, voluntary arrangement proposed and approved) unless it is satisfied—

(a) that the debtor has failed to comply with his obligations under the voluntary arrangement, or

(b) that information which was false or misleading in any material particular or which contained material omissions—

(i) was contained in any statement of affairs or other document supplied by the debtor under Part VIII to any person, or

(ii) was otherwise made available by the debtor to his creditors at or in connection with a meeting summoned under that Part, or

(c) that the debtor has failed to do all such things as may for the purposes of the voluntary arrangement have been reasonably required of him by the supervisor of the arrangement.

(2) Where a bankruptcy order is made on a petition under Article 238(1)(c), any costs properly incurred as costs of the administration of the voluntary arrangement in question shall be a first charge on the bankrupt's estate.

Petition in respect of a solicitor

251. [F288] . . . . . .

Annotations:

F288 Art. 251 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 5, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Commencement and duration of bankruptcy; discharge

Commencement and continuance

252. The bankruptcy of an individual against whom a bankuptcy order has been made—

(a) commences with the day on which the order is made, and

(b) continues until the individual is discharged under the following provisions of this Chapter.

[F289Duration

253.—(1) A bankrupt is discharged from bankruptcy at the end of the period of one year beginning with the date on which the bankruptcy commences.

(2) If before the end of that period the official receiver files with the High Court a notice stating that investigation of the conduct and affairs of the bankrupt under Article 262 is unnecessary or concluded, the bankrupt is discharged when the notice is filed.

(3) On the application of the official receiver or the trustee of a bankrupt's estate, the High Court may order that the period specified in paragraph (1) shall cease to run until—

(a) the end of a specified period, or

(b) the fulfilment of a specified condition.

(4) The High Court may make an order under paragraph (3) only if satisfied that the bankrupt has failed or is failing to comply with an obligation under this Part.

(5) In paragraph (3)(b) "condition" includes a condition requiring that the High Court be satisfied of something.

(6) This Article is without prejudice to any power of the High Court to annul a bankruptcy order.

(7) Nothing in this Article applies to a bankrupt who is a solicitor.**]**

Annotations:

F289 Art. 253 substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 12(1), (with art. 4, Sch. 4 paras. 3 - 5); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Modifications etc. (not altering text)

C16 Art. 253 excluded (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 12(3), Sch. 4 para. 3 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

[F290Discharge where bankrupt is a solicitor]

254.—[F291(1) A bankrupt who is a solicitor is discharged from bankruptcy by an order of the High Court under this Article.

(1A) An application for an order under this Article may be made at any time.**]**

(2) On an application under this Article the High Court may—

(a) refuse to discharge the bankrupt from bankruptcy,

(b) make an order discharging him absolutely, or

(c) make an order discharging him subject to such conditions with respect to any income which may subsequently become due to him, or with respect to property devolving upon him, or acquired by him, after his discharge, as may be specified in the order.

(3) The High Court may provide for an order falling within paragraph (2)(b) or (c) to have immediate effect or to have its effect suspended for such period, or until the fulfilment of such conditions (including a condition requiring the Court to be satisfied as to any matter), as may be specified in the order.

Annotations:

F290 Art. 254 heading substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 12(2)(a) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F291 Art. 254(1)(1A) substituted (27.3.2006) for art. 254(1) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 12(2)(b) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Effect of discharge

255.—(1) Subject to the following provisions of this Article, where a bankrupt is discharged, the discharge releases him from all the bankruptcy debts, but has no effect—

(a) on the functions (so far as they remain to be carried out) of the trustee of his estate, or

(b) on the operation, for the purposes of the carrying out of those functions, of the provisions of this Part;

and, in particular, discharge does not affect the right of any creditor of the bankrupt to prove in the bankruptcy for any debt from which the bankrupt is released.

(2) Discharge does not affect the right of any secured creditor of the bankrupt to enforce his security for the payment of a debt from which the bankrupt is released.

(3) Discharge does not release the bankrupt from any bankruptcy debt which he incurred in respect of, or forebearance in respect of which was secured by means of, any fraud or fraudulent breach of trust to which he was a party.

(4) Discharge does not release the bankrupt from any liability in respect of a fine imposed for an offence or from any liability under a recognisance except, in the case of a penalty imposed for an offence under a statutory provision relating to the public revenue or of a recognisance, with the consent of the Treasury.

[[F292](4A) In paragraph (4) the reference to a fine includes a reference to a confiscation order under Part 2, 3 or 4 of the Proceeds of Crime Act 2002.**]**

(5) Discharge does not, except to such extent and on such conditions as the High Court may direct, release the bankrupt from any bankruptcy debt which—

(a) consists in a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, or to pay damages by virtue of Part II of the Consumer Protection (Northern Ireland) Order 1987[F293], being in either case damages in respect of personal injuries to any person, or

(b) arises under any order made in family proceedings or in domestic proceedings**[**[F294] or under a maintenance assessment made under the Child Support (Northern Ireland) Order 1991**]**.

(6) Discharge does not release the bankrupt from such other bankruptcy debts, not being debts provable in his bankruptcy, as are prescribed.

(7) Discharge does not release any person other than the bankrupt from any liability (whether as partner or co#trustee of the bankrupt or otherwise) from which the bankrupt is released by the discharge, or from any liability as surety for the bankrupt or as a person in the nature of such a surety.

(8) In this Article—

"domestic proceedings" means domestic proceedings within the meaning of the Magistrates' Courts (Northern Ireland) Order 1981[F295];

[[F296]"family proceedings" has the meaning given by Article 12(5) of the Family Law (Northern Ireland) Order 1993;**]**

"fine" includes any pecuniary penalty, pecuniary forfeiture or pecuniary compensation payable on a conviction; and

"personal injuries" includes death and any disease or other impairment of a person's physical or mental condition.

Annotations:
F292 2002 c. 29
F293 1987 NI 20
F294 1991 NI 23
F295 1981 NI 26
F296 1995 NI 2

[F297Post-discharge restrictions

255A. Schedule 2A (bankruptcy restrictions order and bankruptcy restrictions undertaking) shall have effect.**]**

Annotations:
F297 Art. 255A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 13(1), (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Power of High Court to annul bankruptcy order

256.—(1) The High Court may annul a bankruptcy order if it at any time appears to the Court—

(a) that, on any grounds existing at the time the order was made, the order ought not to have been made, or

(b) that, to the extent required by the rules, the bankruptcy debts and the expenses of the bankruptcy have all, since the making of the order, been either paid or secured for to the satisfaction of the Court.

(2) The High Court may annul a bankruptcy order whether or not the bankrupt has been discharged from the bankruptcy.

(3) F298. . . . . .

(4) Where the High Court annuls a bankruptcy order (whether under this Article or under Article 235**[**F299 or 237D**]**)—

(a) any sale or other disposition of property, payment made or other thing duly done, under any provision in Parts VIII to X, by or under the authority of the official receiver or a trustee of the bankrupt's estate or by the Court is valid, but

(b) if any of the bankrupt's estate is then vested, under any such provision, in such a trustee, it shall vest in such person as the Court may appoint or, in default of any such appointment, revert to the bankrupt on such terms (if any) as the Court may direct;

and the Court may include in its order such supplemental provisions as may be authorised by the rules.

(5) F300. . . . . .

Annotations:
F298 Art. 256(3) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 6(a), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)
F299 Words in art. 256(4) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, Sch. 8 para. 6(b) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F300 Art. 256(5) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 6(c), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

CHAPTER II

PROTECTION OF BANKRUPT'S ESTATE AND INVESTIGATION OF HIS AFFAIRS

[[F301]Bankrupt's home ceasing to form part of estate

256A.—(1) This Article applies where property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

(a) the bankrupt,

(b) the bankrupt's spouse **[**[F302]or civil partner**]** , or

(c) a former spouse **[**[F303]or former civil partner**]** of the bankrupt.

(2) At the end of the period of 3 years beginning with the date of the bankruptcy the interest mentioned in paragraph (1) shall—

(a) cease to be comprised in the bankrupt's estate, and

(b) vest in the bankrupt (without conveyance, assignment or transfer).

(3) Paragraph (2) shall not apply if during the period mentioned in that paragraph—

(a) the trustee realises the interest mentioned in paragraph (1),

(b) the trustee applies for an order for sale in respect of the dwelling-house,

(c) the trustee applies for an order for possession of the dwelling-house,

(d) the trustee applies for an order under Article 286 in Chapter IV in respect of that interest, or

(e) the trustee and the bankrupt agree that the bankrupt shall incur a specified liability to his estate (with or without the addition of interest from the date of the agreement) in consideration of which the interest mentioned in paragraph (1) shall cease to form part of the estate.

(4) Where an application of a kind described in paragraph (3)(b) to (d) is made during the period mentioned in paragraph (2) and is dismissed, unless the High Court orders otherwise the interest to which the application relates shall on the dismissal of the application—

(a) cease to be comprised in the bankrupt's estate, and

(b) vest in the bankrupt (without conveyance, assignment or transfer).

(5) If the bankrupt does not inform the trustee or the official receiver of his interest in a property before the end of the period of 3 months beginning with the date of the bankruptcy, the period of 3 years mentioned in paragraph (2)—

(a) shall not begin with the date of the bankruptcy, but

(b) shall begin with the date on which the trustee or official receiver becomes aware of the bankrupt's interest.

(6) The High Court may substitute for the period of 3 years mentioned in paragraph (2) a longer period—

(a) in prescribed circumstances, and

(b) in such other circumstances as the Court thinks appropriate.

(7) The rules may make provision for this Article to have effect with the substitution of a shorter period for the period of 3 years mentioned in paragraph (2) in specified circumstances (which may be described by reference to action to be taken by a trustee in bankruptcy).

(8) The rules may also, in particular, make provision—

(a) requiring or enabling the trustee of a bankrupt's estate to give notice that this Article applies or does not apply;

(b) about the effect of a notice under sub-paragraph (a);

(c) requiring the trustee of a bankrupt's estate to make an application to the Land Registry or the Registry of Deeds.

(9) Rules under paragraph (8)(b) may, in particular—

(a) disapply this Article;

(b) enable the High Court to disapply this Article;

(c) make provision in consequence of a disapplication of this Article;

(d) enable the Court to make provision in consequence of a disapplication of this Article;

(e) make provision (which may include provision conferring jurisdiction on a court or tribunal) about compensation.**]**

Annotations:

F301 Art. 256A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 17(1), (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F302 Words in art. 256A(1)(b) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 18(2)(a) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F303 Words in art. 256A(1)(c) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 18(2)(b) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Modifications etc. (not altering text)

C17 Art. 256A(2) modified (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 17(9)(a) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

C18 Art. 256A(4) - (9) modified (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 17(9) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Restrictions on dispositions of property

257.—(1) Where a person is adjudged bankrupt, any disposition of property made by that person in the period to which this Article applies is void except to the extent that it is or was made with the consent of the High Court, or is or was subsequently ratified by the Court.

(2) Paragraph (1) applies to a payment (whether in cash or otherwise) as it applies to a disposition of property and, accordingly, where any payment is void by virtue of that paragraph, the person paid shall hold the sum paid for the bankrupt as part of his estate.

(3) This Article applies to the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting, under Articles 278 to 308, of the bankrupt's estate in a trustee.

(4) The preceding provisions of this Article do not give a remedy against any person—

(a) in respect of any property or payment which he received before the commencement of the bankruptcy in good faith, for value and without notice that the petition had been presented, or

(b) in respect of any interest in property which derives from an interest in respect of which there is, by virtue of this paragraph, no remedy.

(5) Where after the commencement of his bankruptcy the bankrupt has incurred a debt to a banker or other person by reason of the making of a payment which is void under this Article, that debt is deemed for the purposes of any of Parts VIII to X to have been incurred before the commencement of the bankruptcy unless—

(a) that banker or person had notice of the bankruptcy before the debt was incurred, or

(b) it is not reasonably practicable for the amount of the payment to be recovered from the person to whom it was made.

(6) A disposition of property is void under this Article notwithstanding that the property is not or, as the case may be, would not be comprised in the bankrupt's estate; but nothing in this Article affects any disposition made by a person of property held by him on trust for any other person.

Restriction on proceedings and remedies

258.—(1) At any time when proceedings on a bankruptcy petition are pending or an individual has been adjudged bankrupt the High Court may stay any action, proceedings, execution or other legal process against the property or person of the debtor or, as the case may be, of the bankrupt.

(2) Any court in which proceedings are pending against any individual may, on proof that a bankruptcy petition has been presented in respect of that individual or that he is an undischarged bankrupt, either stay the proceedings or allow them to continue on such terms as it thinks fit.

(3) Subject to paragraph (4) and to Part VI of the Judgments Enforcement (Northern Ireland) Order 1981[F304] after the making of a bankruptcy order no person who is a creditor of the bankrupt in respect of a debt provable in the bankruptcy shall—

(a) have any remedy against the property or person of the bankrupt in respect of that debt, or

(b) before the discharge of the bankrupt, commence any action or other legal proceedings against the bankrupt except with the leave of the High Court and on such terms as the Court may impose.

(4) Nothing in Parts VIII to X affects any right of distress against property comprised in a bankrupt's estate and such right is exercisable notwithstanding that the property has vested in the trustee.

(5) Subject to paragraphs (6) and (7), paragraph (3) does not affect the right of a secured creditor of the bankrupt to enforce his security.

(6) Where any goods of an undischarged bankrupt are held by any person by way of pledge, pawn or other security, the official receiver may, after giving notice in writing of his intention to do so, inspect the goods.

(7) Where a notice such as is mentioned in paragraph (6) has been given to any person, that person is not entitled, without leave of the High Court, to realise his security unless he has given the trustee of the bankrupt's estate a reasonable opportunity of inspecting the goods and of exercising the bankrupt's right of redemption.

(8) References in this Article to the property or goods of the bankrupt are to any of his property or goods, whether or not comprised in his estate.

Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Insolvency (Northern Ireland) Order 1989. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

Annotations:
F304 1981 NI 6

Power to appoint interim receiver

259.—(1) The High Court may, if it is shown to be necessary for the protection of the debtor's property, at any time after the presentation of a bankruptcy petition and before making a bankruptcy order, appoint the official receiver to be interim receiver of the debtor's property.

(2) Where the High Court has, on a debtor's petition, appointed an insolvency practitioner under Article 247 and it is shown to the Court as mentioned in paragraph (1) of this Article, the Court may, without making a bankruptcy order, appoint that practitioner, instead of the official receiver, to be interim receiver of the debtor's property.

(3) The High Court may by an order appointing any person to be an interim receiver direct that his powers shall be limited or restrictedin any respect; but, save as so directed, an interim receiver has, in relation to the debtor's property, all the rights, powers, duties and immunities of a receiver and manager under Article 260.

(4) An order of the High Court appointing any person to be an interim receiver shall require that person to take immediate possession of the debtor's property or, as the case may be, the part of it to which his powers as interim receiver are limited.

(5) Where an interim receiver has been appointed, the debtor shall give him such inventory of his property and such other information, and shall attend on the interim receiver at such times, as the latter may for the purpose of carrying out his functions under this Article reasonably require.

(6) Where an interim receiver is appointed, Article 258(3) applies for the period between the appointment and the making of a bankruptcy order on the petition, or the dismissal of the petition, as if the appointment were the making of such an order.

(7) A person ceases to be interim receiver of a debtor's property if the bankruptcy petition relating to the debtor is dismissed, if a bankruptcy order is made on the petition or if the High Court by order otherwise terminates the appointment.

(8) References in this Article to the debtor's property are to all his property, whether or not it would be comprised in his estate if he were adjudged bankrupt.

Receivership pending appointment of trustee

260.—(1) Between the making of a bankruptcy order and the time at which the bankrupt's estate vests in a trustee under Articles 278 to 308, the official receiver is the receiver and (subject to Article 341 (special manager)) the manager of the bankrupt's estate and is under a duty to act as such.

(2) The function of the official receiver while acting as receiver or manager of the bankrupt's estate under this Article is to protect the estate; and for this purpose—

(a) he has the same powers as if he were a receiver or manager appointed by the High Court, and

(b) he is entitled to sell or otherwise dispose of any perishable goods comprised in the estate and any other goods so comprised the value of which is likely to diminish if they are not disposed of.

(3) The official receiver while acting as receiver or manager of the estate under this Article—

(a) shall take all such steps as he thinks fit for protecting any property which may be claimed for the estate by the trustee of that estate,

(b) is not, except in pursuance of directions given by the Department, required to do anything that involves his incurring expenditure,

(c) may, if he thinks fit (and shall, if so directed by the High Court) at any time summon a general meeting of the bankrupt's creditors.

(4) Where—

(a) the official receiver acting as receiver or manager of the estate under this Article seizes or disposes of any property which is not comprised in the estate, and

(b) at the time of the seizure or disposal the official receiver 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,

the official receiver is not to be 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 his negligence; and he has a lienon the property, or the proceeds of its sale, for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

(5) This Article does not apply where by virtue of Article 270 (appointment of trustee; special cases) the bankrupt's estate vests in a trustee immediately on the making of the bankruptcy order.

Statement of affairs

261 [F305]**.**—(1) Where a bankruptcy order has been made otherwise than on a debtor's petition, the bankrupt shall submit a statement of his affairs to the official receiver within 21 days from the commencement of the bankruptcy.

(2) The statement of affairs shall contain—

(a) such particulars of the bankrupt's creditors and of his debts and other liabilities and of his assets as may be prescribed, and

(b) such other information as may be prescribed.

(3) The official receiver may, if he thinks fit—

(a) release the bankrupt from his duty under paragraph (1), or

(b) extend the period specified in paragraph (1);

and where the official receiver has refused to exercise a power conferred by this Article, the High Court, if it thinks fit, may exercise it.

(4) A bankrupt who—

(a) without reasonable excuse fails to comply with the obligation imposed by this Article, or

(b) without reasonable excuse submits a statement of affairs that does not comply with the prescribed requirements,

is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

Annotations:
F305 mod. by SR 1991/365

[[F306]Investigatory duties of official receiver

262.—(1) The official receiver shall—

(a) investigate the conduct and affairs of each bankrupt (including his conduct and affairs before the making of the bankruptcy order), and

(b) make such report (if any) to the High Court as the official receiver thinks fit.

(2) Paragraph (1) shall not apply to a case in which the official receiver thinks an investigation under that paragraph unnecessary.

(3) Where a bankrupt makes an application for discharge under Article 254—

(a) the official receiver shall make a report to the Court about such matters as may be prescribed, and

(b) the Court shall consider the report before determining the application.

(4) A report by the official receiver under this Article shall in any proceedings be prima facie evidence of the facts stated in it.**]**

Annotations:

F306 Art. 262 substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 14, (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Public examination of bankrupt

263.—(1) Where a bankruptcy order has been made, the official receiver may at any time before the discharge of the bankrupt apply to the High Court for the public examination of the bankrupt.

(2) Unless the High Court otherwise orders, the official receiver shall make an application under paragraph (1) if notice requiring him to do so is given to him, in accordance with the rules, by one of the bankrupt's creditors with the concurrence of not less than one#half, in value, of those creditors (including the creditor giving notice).

(3) On an application under paragraph (1), the High Court shall direct that a public examination of the bankrupt shall be held on a day appointed by the Court; and the bankrupt shall attend on that day and be publicly examined as to his affairs, dealings and property.

(4) The following may take part in the public examination of the bankrupt and may question him concerning his affairs, dealings and property and the causes of his failure, namely—

(a) the official receiver,

(b) the trustee of the bankrupt's estate, if his appointment has taken effect,

(c) any person who has been appointed as special manager of the bankrupt's estate or business,

(d) any creditor of the bankrupt who has tendered a proof in the bankruptcy.

(5) If a bankrupt without reasonable excuse fails at any time to attend his public examination under this Article he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

Duties of bankrupt in relation to official receiver

264.—(1) Where a bankruptcy order has been made, the bankrupt is under a duty—

(a) to deliver possession of his estate to the official receiver, and

(b) to deliver up to the official receiver all books, papers and other records of which he has possession or control and which relate to his estate and affairs (including any which would be privileged from disclosure in any proceedings).

(2) In the case of any part of the bankrupt's estate which consists of things possession of which cannot be delivered to the official receiver, and in the case of any property that may be claimed for the bankrupt's estate by the trustee, it is the bankrupt's duty to do all such things as may reasonably be required by the official receiver for the protection of those things or that property.

(3) Paragraphs (1) and (2) do not apply where by virtue of Article 270 the bankrupt's estate vests in a trustee immediately on the making of the bankruptcy order.

[[F307](4) The bankrupt shall give the official receiver such inventory of his estate and such other information, and shall attend on the official receiver at such times, as the official receiver may reasonably require—

(a) for a purpose of this Chapter, or

(b) in connection with the making of a bankruptcy restrictions order.**]**

(5) Paragraph (4) applies to a bankrupt after his discharge.

(6) If the bankrupt without reasonable excuse fails to comply with any obligation imposed by this Article, he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

Annotations:

F307 Art. 264(4) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, Sch. 8 para. 7 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

CHAPTER III

TRUSTEES IN BANKRUPTCY

Tenure of office as trustee

Power to make appointments

265.—(1) The power to appoint a person as trustee of a bankrupt's estate (whether the first such trustee or a trustee appointed to fill any vacancy) is exercisable—

(a) [F308]... by a general meeting of the bankrupt's creditors;

(b) under Articles 268(2), 269(2) or 273(6) by the Department; or

(c) under Article 270, by the High Court.

(2) No person may be appointed as trustee of a bankrupt's estate unless he is, at the time of the appointment, qualified to act as an insolvency practitioner in relation to the bankrupt.

(3) Any power to appoint a person as trustee of a bankrupt's estate includes power to appoint 2 or more persons as joint trustees; but such an appointment must make provision as to the circumstances in which the trustees must act together and the circumstances in which one or more of them may act for the others.

(4) Subject to paragraph (5), the appointment of any person as trustee takes effect at the time specified in his certificate of appointment.

(5) The appointment of any person as trustee takes effect only if that person accepts the appointment in accordance with the rules.

(6) This Article is without prejudice to the provisions of this Chapter under which the official receiver is, in certain circumstances, to be trustee of the estate.

Annotations:

F308 Words in art. 265(1)(a) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 8, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Summoning of meeting to appoint first trustee

266.—(1) Subject to Articles 267(3) and 270(5), where a bankruptcy order has been made[F309]... the official receiver shall, as soon as practicable within the 12 weeks from the day on which the order was made, decide whether to summon a general meeting of the bankrupt's creditors for the purpose of appointing a trustee of the bankrupt's estate.

(2) Subject to Article 267, if the official receiver decides not to summon such a meeting, he shall, before the expiration of the period of 12 weeks mentioned in paragraph (1), give notice of his decision to the High Court and to every creditor of the bankrupt who is known to the official receiver or is identified in the bankrupt's statement of affairs.

(3) As from the giving to the High Court of a notice under paragraph (2), the official receiver is the trustee of the bankrupt's estate.

Annotations:

F309 Words in art. 266(1)(a) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 9, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Power of creditors to requisition meeting

267.—(1) Where in the case of any bankruptcy—

(a) the official receiver has not yet summoned, or has decided not to summon, a general meeting of the bankrupt's creditors for the purpose of appointing the trustee,[F310]...

(b) [F311]. . . . . .

any creditor of the bankrupt may request the official receiver to summon such a meeting for that purpose.

(2) If such a request appears to the official receiver to be made with the concurrence of not less than one#quarter, in value, of the bankrupt's creditors (including the creditor making the request), the official receiver shall summon the requested meeting.

(3) Accordingly, where the duty imposed by paragraph (2) has arisen, the official receiver is required neither to reach a decision for the purposes of Article 266(1) nor (if he has reached one) to serve any notice under Article 266(2).

Annotations:

F310 Art. 267(1)(b) and preceding word repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 10, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F311 Art. 267(1)(b) and preceding word repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 10, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Failure of meeting to appoint trustee

268.—(1) If a meeting summoned under Article 266 or 267 is held but no appointment of a person as trustee is made, the official receiver shall decide whether to refer the need for an appointment to the Department.

(2) On a reference made in pursuance of that decision, the Department shall either make an appointment or decline to make one.

(3) If—

(a) the official receiver decides not to refer the need for an appointment to the Department, or

(b) on such a reference the Department declines to make an appointment,

the official receiver shall give notice of his decision or, as the case may be, of the Department's decision to the High Court.

(4) As from the giving of notice under paragraph (3) in a case in which no notice has been given under Article 266(2), the official receiver shall be trustee of the bankrupt's estate.

Appointment of trustee by Department

269.—(1) At any time when the official receiver is the trustee of a bankrupt's estate by virtue of any provision of this Chapter he may apply to the Department for the appointment of a person as trustee instead of the official receiver.

(2) On an application under paragraph (1) the Department shall either make an appointment or decline to make one.

(3) Such an application may be made notwithstanding that the Department has declined to make an appointment either on a previous application under paragraph (1) or on a reference under Article 268 or under Article 273(4).

(4) Where the trustee of a bankrupt's estate has been appointed by the Department (whether under this Article or otherwise), the trustee shall give notice to the bankrupt's creditors of his appointment or, if the High Court so allows, shall advertise his appointment in accordance with the Court's directions.

(5) In that notice or advertisement the trustee shall—

(a) state whether he proposes to summon a general meeting of the bankrupt's creditors for the purpose of establishing a creditors' committee under Article 274, and

(b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.

Special cases

270.—(1) [F312]. . . . . .

(2) . . . . . .

(3) Where a bankruptcy order is made in a case in which an insolvency practitioner's report has been submitted to the High Court under Article 248[F313]..., the Court, if it thinks fit, may on making the order appoint the person who made the report as trustee.

(4) Where a bankruptcy order is made (whether or not on a petition under Article 238(1)(c)) at a time when there is a supervisor of a voluntary arrangement approved in relation to the bankrupt under Part VIII, the High Court, if it thinks fit, may on making the order appoint the supervisor of the arrangement as trustee.

(5) Where an appointment is made under paragraph (3) or (4), the official receiver is not under the duty imposed by Article 266(1) (to decide whether or not to summon a meeting of creditors).

(6) Where the trustee of a bankrupt's estate has been appointed by the High Court, the trustee shall give notice to the bankrupt's creditors of his appointment or, if the Court so allows, shall advertise his appointment in accordance with the directions of the Court.

(7) In that notice or advertisement he shall—

(a) state whether he proposes to summon a general meeting of the bankrupt's creditors for the purpose of establishing a creditors' committee under Article 274, and

(b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.

Annotations:

F312 Art. 270(1)(2) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 11(a), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F313 Words in art. 270(3) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 11(b), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Removal of trustee; vacation of office

271.—(1) Subject to paragraph (4), the trustee of a bankrupt's estate may be removed from office only by an order of the High Court or by a general meeting of the bankrupt's creditors summoned specially for that purpose in accordance with the rules.

(2) [F314] . . . . . .

(3) Where the official receiver is trustee by virtue of Article 266(3) or 268(4) or a trustee is appointed by the Department or (otherwise than under Article 270(4)) by the High Court, a general meeting of the bankrupt's creditors shall be summoned for the purpose of replacing the trustee only if—

(a) the trustee thinks fit, or

(b) the High Court so directs, or

(c) the meeting is requested by one of the bankrupt's creditors with the concurrence of not less than one#quarter, in value, of the creditors (including the creditor making the request).

(4) If the trustee was appointed by the Department, he may be removed by a direction of the Department.

(5) The trustee (not being the official receiver) shall vacate office if he ceases to be a person who is for the time being qualified to act as an insolvency practitioner in relation to the bankrupt.

(6) The trustee may, in the prescribed circumstances, resign his office by giving notice of his resignation to the High Court.

(7) The trustee shall vacate office on giving notice to the High Court that a final meeting has been held under Article 304 and of the decision (if any) of that meeting.

(8) The trustee shall vacate office if the bankruptcy order is annulled.

Annotations:

F314 Art. 271(2) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 12, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Release of trustee

272.—(1) Where the official receiver has ceased to be the trustee of a bankrupt's estate and a person is appointed in his stead, the official receiver shall have his release with effect from the following time, that is to say—

(a) where that person is appointed by a general meeting of the bankrupt's creditors or by the Department, the time at which the official receiver gives notice to the High Court that he has been replaced, and

(b) where that person is appointed by the High Court, such time as the Court may determine.

(2) If the official receiver while he is the trustee gives notice to the Department that the administration of the bankrupt's estate in accordance with Chapter IV is for practical purposes complete, he shall have his release with effect from such time as the Department may determine.

(3) A person other than the official receiver who has ceased to be the trustee shall have his release with effect from the following time, that is to say—

(a) in the case of a person who has been removed from office by a general meeting of the bankrupt's creditors that has not resolved against his release or who has died, the time at which notice is given to the High Court in accordance with the rules that that person has ceased to hold office;

(b) in the case of a person who has been removed from office by a general meeting of the bankrupt's creditors that has resolved against his release, or by the High Court, or by the Department, or who has vacated office under Article 271(5), such time as the Department may, on an application by that person, determine;

(c) in the case of a person who has resigned, such time as may be prescribed;

(d) in the case of a person who has vacated office under Article 271(7)—

(i) if the final meeting referred to in that paragraph has resolved against that person's release, such time as the Department may, on an application by that person, determine; and

(ii) if that meeting has not so resolved, the time at which the person vacated office.

(4) Where a bankruptcy order is annulled, the trustee at the time of the annulment has his release with effect from such time as the High Court may determine.

(5) Where the official receiver or the trustee has his release under this Article, he shall, with effect from the time specified in paragraphs (1) to (4), be discharged from all liability both in respect of acts or omissions of his in the administration of the estate and otherwise in relation to his conduct as trustee.

(6) Nothing in this Article prevents the exercise, in relation to a person who has had his release under this Article, of the High Court's powers under Article 277.

Vacancy in office of trustee

273.—(1) This Article applies where the appointment of any person as trustee of a bankrupt's estate fails to take effect or, such an appointment having taken effect, there is otherwise a vacancy in the office of trustee.

(2) The official receiver shall be trustee until the vacancy is filled.

(3) The official receiver may summon a general meeting of the bankrupt's creditors for the purpose of filling the vacancy and shall summon such a meeting if required to do so in pursuance of Article 287(9) (creditors' requisition).

(4) If at the expiration of 28 days from the day on which the vacancy first came to the official receiver's attention he has not summoned, and is not proposing to summon, a general meeting of creditors for the purpose of filling the vacancy, he shall refer the need for an appointment to the Department.

(5) [F315]. . . . . .

(6) On a reference to the Department under paragraph (4)[F316]... the Department shall either make an appointment or decline to make one.

(7) If on a reference under paragraph (4)... no appointment is made, the official receiver shall continue to be trustee of the bankrupt's estate, but without prejudice to his power to make a further reference.

(8) References in this Article to a vacancy include a case where it is necessary, in relation to any property which is or may be comprised in a bankrupt's estate, to revive the trusteeship of that estate after the holding of a final meeting summoned under Article 304 or the giving by the official receiver of notice under Article 272(2).

Annotations:

F315 Art. 273(5) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 13(a), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F316 Words in art. 273(6)(7) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 13(b), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Control of trustee

Creditors' committee

274.—(1) Subject to paragraph (2), a general meeting of a bankrupt's creditors (whether summoned under the preceding provisions of this Chapter or otherwise) may, in accordance with the rules, establish a committee ("the creditors' committee") to exercise the functions conferred on it by or under this Order.

(2) A general meeting of the bankrupt's creditors shall not establish such a committee, or confer any functions on such a committee, at any time when the official receiver is the trustee of the bankrupt's estate, except in connection with an appointment made by that meeting of a person to be trustee instead of the official receiver.

Exercise by Department of functions of creditors' committee

275.—(1) The creditors' committee is not to be able or required to carry out its functions at any time when the official receiver is trustee of the bankrupt's estate; but at any such time the functions of the committee under this Order shall be vested in the Department, except to the extent that the rules otherwise provide.

(2) Where in the case of any bankruptcy there is for the time being no creditors' committee and the trustee of the bankrupt's estate is a person other than the official receiver, the functions of such a committee shall be vested in the Department, except to the extent that the rules otherwise provide.

General control of trustee by the High Court

276.—(1) If a bankrupt or any of his creditors or any other person is dissatisfied by any act, omission or decision of a trustee of the bankrupt's estate, he may apply to the High Court; and on such an application the Court may confirm, reverse or modify any act or decision of the trustee, may give him directions or may make such other order as it thinks fit.

(2) The trustee of a bankrupt's estate may apply to the High Court for directions in relation to any particular matter arising under the bankruptcy.

[[F317](2A) Where at any time after a bankruptcy petition has been presented to the High Court against any person, whether under the provisions of the Insolvent Partnerships Order (Northern Ireland) 1995 or not, the attention of the Court is drawn to the fact that the person in question is

a member of an insolvent partnership, the Court may make an order as to the future conduct of the insolvency proceedings and any such order may apply any provisions of that Order with any necessary modifications.

(2B) Where a bankruptcy petition has been presented against more than one individual in the circumstances mentioned in paragraph (2A), the High Court may give such directions for consolidating the proceedings, or any of them, as it thinks just.

(2C) Any order or directions under paragraph (2A) or (2B) may be made or given on the application of the official receiver, any responsible insolvency practitioner, the trustee of the partnership, or any other interested person and may include provisions as to the administration of the joint estate of the partnership, and in paricular how it and the separate estate of any member are to be administered.**]**

Annotations:
F317 SR 1995/225

Liability of trustee

277.—(1) Where on an application under this Article the High Court is satisfied—

(a) that the trustee of a bankrupt's estate has misapplied or retained, or become accountable for, any money or other property comprised in the bankrupt's estate, or

(b) that a bankrupt's estate has suffered any loss in consequence of any misfeasance or breach of fiduciary or other duty by a trustee of the estate in the carrying out of his functions,

the Court may order the trustee, for the benefit of the estate, to repay, restore or account for money or other property (together with interest at such rate as the Court thinks just) or, as the case may require, to pay such sum by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the Court thinks just.

(2) Paragraph (1) is without prejudice to any liability arising apart from this Article.

(3) An application under this Article may be made by the official receiver, the Department, a creditor of the bankrupt or (whether or not there is, or is likely to be, a surplus for the purposes of Article 303(5) (final distribution)) the bankrupt himself.

(4) Where an application under paragraph (3) is to be made by the bankrupt or if it is to be made after the trustee has had his release under Article 272, the leave of the High Court is required for the making of the application.

(5) Where—

(a) the trustee seizes or disposes of any property which is not comprised in the bankrupt's estate, and

(b) at the time of the seizure or disposal the trustee 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,

the trustee is not liable to any person (whether under this Article or otherwise) 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 negligence of the trustee; and he has a lien on the property, or the proceeds of its sale, for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Insolvency (Northern Ireland) Order 1989. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

CHAPTER IV

ADMINISTRATION BY TRUSTEE

Preliminary

General functions of trustee

278.—(1) This Chapter applies in relation to any bankruptcy where either—

(a) the appointment of a person as trustee of a bankrupt's estate takes effect, or

(b) the official receiver becomes trustee of a bankrupt's estate.

(2) The function of the trustee is to get in, realise and distribute the bankrupt's estate in accordance with the following provisions of this Chapter; and in the carrying out of that function and in the management of the bankrupt's estate the trustee is entitled, subject to those provisions, to use his own discretion.

(3) It is the duty of the trustee, if he is not the official receiver—

(a) to furnish the official receiver with such information,

(b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records, and

(c) to give the official receiver such other assistance,

as the official receiver may reasonably require for the purpose of enabling him to carry out his functions in relation to the bankruptcy.

(4) The official name of the trustee shall be "the trustee of the estate of a bankrupt" (inserting the name of the bankrupt); but he may be referred to as "the trustee in bankruptcy" of the particular bankrupt.

Acquisition, control and realisation of bankrupt's estate

Vesting of bankrupt's estate in trustee

279.—(1) The bankrupt's estate shall vest in the trustee immediately on his appointment taking effect or, in the case of the official receiver, on his becoming trustee.

(2) Where any property which is, or is to be, comprised in the bankrupt's estate vests in the trustee (whether under this Article or under any other provision of this Part), it shall so vest without any conveyance, assignment or transfer.

[[F318] Property subject to restraint order

279A.—(1) This Article applies where—

(a) property is excluded from the bankrupt's estate by virtue of section 423(2)(a) of the Proceeds of Crime Act 2002 (property subject to a restraint order),

(b) an order under section 50, 52, 128, 198 or 200 of that Act has not been made in respect of the property, and

(c) the restraint order is discharged.

(2) On the discharge of the restraint order the property vests in the trustee as part of the bankrupt's estate.

(3) But paragraph (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).

Annotations:
F318 2002 c. 29

Property in respect of which receivership or administration order made

279B.—(1) This Article applies where—

(a) property is excluded from the bankrupt's estate by virtue of section 423(2)(b), (c) or (d) of the Proceeds of Crime Act 2002 (property in respect of which an order for the appointment of a receiver or administrator under certain provisions of that Act is in force),

(b) a confiscation order is made under section 6, 92 or 156 of that Act,

(c) the amount payable under the confiscation order is fully paid, and

(d) any of the property remains in the hands of the receiver or administrator (as the case may be).

(2) The property vests in the trustee as part of the bankrupt's estate.

Property subject to certain orders where confiscation order discharged or quashed

279C.—(1) This Article applies where—

(a) property is excluded from the bankrupt's estate by virtue of section 423(2)(a), (b), (c) or (d) of the Proceeds of Crime Act 2002 (property in respect of which a restraint order or an order for the appointment of a receiver or administrator under that Act is in force),

(b) a confiscation order is made under section 6, 92 or 156 of that Act, and

(c) the confiscation order is discharged under section 30, 114 or 180 of that Act (as the case may be) or quashed under that Act or in pursuance of any enactment relating to appeals against conviction or sentence.

(2) Any such property in the hands of a receiver appointed under Part 2 or 4 of that Act or an administrator appointed under Part 3 of that Act vests in the trustee as part of the bankrupt's estate.

(3) But paragraph (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).**]**

After#acquired property

280.—(1) Subject to this Article and Article 282, the trustee may by notice in writing claim for the bankrupt's estate any property which has been acquired by, or has devolved upon, the bankrupt since the commencement of the bankruptcy.

(2) A notice under this Article shall not be served in respect of—

(a) any property falling within paragraph (2) or (3) of Article 11,

[[F319](aa) any property vesting in the bankrupt by virtue of Article 256A in Chapter II,**]**

(b) any property which by virtue of any other statutory provision is excluded from the bankrupt's estate, or

(c) without prejudice to Article 254(2)(c) (order of High Court on application for discharge), any property which is acquired by, or devolves upon, the bankrupt after his discharge.

(3) Subject to paragraph (4), upon the service on the bankrupt of a notice under this Article the property to which the notice relates shall vest in the trustee as part of the bankrupt's estate; and the trustee's title to that property has relation back to the time at which the property was acquired by, or devolved upon, the bankrupt.

(4) Where, whether before or after service of a notice under this Article—

(a) a person acquires property in good faith, for value and without notice of the bankruptcy, or

(b) a banker enters into a transaction in good faith and without such notice,

the trustee is not in respect of that property or transaction entitled by virtue of this Article to any remedy against that person or banker, or any person whose title to any property derives from that person or banker.

(5) References in this Article to property do not include any property which, as part of the bankrupt's income, may be the subject of an income payments order under Article 283.

Annotations:

F319 Art. 280(2)(aa) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 17(4) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Vesting in trustee of certain items of excess value

281.—(1) Subject to Article 282, where—

(a) property is excluded by virtue of Article 11(2) (tools of trade, household effects, etc.) from the bankrupt's estate, and

(b) it appears to the trustee that the realisable value of the whole or any part of that property exceeds the cost of a reasonable replacement for that property or that part of it,

the trustee may by notice in writing claim that property or, as the case may be, that part of it for the bankrupt's estate.

(2) Upon the service on the bankrupt of a notice under this Article, the property to which the notice relates vests in the trustee as part of the bankrupt's estate; and, except against a purchaser in good faith, for value and without notice of the bankruptcy, the trustee's title to that property has relation back to the commencement of the bankruptcy.

(3) The trustee shall apply funds comprised in the estate to the purchase by or on behalf of the bankrupt of a reasonable replacement for any property vested in the trustee under this Article; and the duty imposed by this paragraph has priority over the obligation of the trustee to distribute the estate.

(4) For the purposes of this Article property is a reasonable replacement for other property if it is reasonably adequate for meeting the needs met by the other property.

Time#limit for notice under Article 280 or 281

282.—(1) Except with the leave of the High Court, a notice shall not be served—

(a) under Article 280, after the expiration of 42 days from the day on which it first came to the knowledge of the trustee that the property in question had been acquired by, or had devolved upon, the bankrupt;

(b) under Article 281, after the expiration of 42 days from the day on which the property in question first came to the knowledge of the trustee.

(2) For the purposes of this Article—

(a) anything which comes to the knowledge of the trustee is deemed in relation to any successor of his as trustee to have come to the knowledge of the successor at the same time; and

(b) anything which comes (otherwise than under sub#paragraph (a)) to the knowledge of a person before he is the trustee is deemed to come to his knowledge on his appointment taking effect or, in the case of the official receiver, on his becoming trustee.

Income payments orders

283.—(1) The High Court may[F320]... make an order ("an income payments order") claiming for the bankrupt's estate so much of the income of the bankrupt during the period for which the order is in force as may be specified in the order.

[[F321](1A) An income payments order may be made only on an application instituted—

(a) by the trustee, and

(b) before the discharge of the bankrupt.**]**

(2) The High Court shall not make an income payments order the effect of which would be to reduce the income of the bankrupt**[**[F322] when taken together with any payments to which paragraph (8) applies**]** below what appears to the Court to be necessary for meeting the reasonable domestic needs of the bankrupt and his family.

(3) An income payments order shall, in respect of any payment of income to which it is to apply, either—

(a) require the bankrupt to pay the trustee an amount equal to so much of that payment as is claimed by the order, or

(b) require the person making the payment to pay so much of it as is so claimed to the trustee, instead of to the bankrupt.

(4) Where the High Court makes an income payments order it may, if it thinks fit, discharge or vary any attachment of earnings order that is for the time being in force to secure payments by the bankrupt.

(5) Sums received by the trustee under an income payments order form part of the bankrupt's estate.

[[F323](6) An income payments order shall specify the period during which it is to have effect; and that period—

(a) may end after the discharge of the bankrupt, but

(b) may not end after the period of 3 years beginning with the date on which the order is made.

(6A) An income payments order may (subject to paragraph (6)(b)) be varied on the application of the trustee or the bankrupt (whether before or after discharge).

(6B) Where the Court has made an income payments order in relation to a bankrupt who is a solicitor, nothing in paragraph (6) shall affect the continuance of a condition with respect to income specified in an order made under Article 254(2)(c).**]**

(7) For the purposes of this Article the income of the bankrupt comprises every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment**[**[F324] and**[**[F325] (despite anything in Article 12 or 13 of the Welfare Reform and Pensions (Northern Ireland) Order 1999)**]** any payment under a pension scheme but excluding any scheme to which paragraph (8) applies.**]**

[[F324](8) This paragraph applies to—

(a) payments by way of guaranteed minimum pension; and

(b) payments giving effect to the bankrupt's protected rights as a member of a pension scheme.

(9) In this Article, "guaranteed minimum pension" and "protected rights" have the same meaning as in the Pension Schemes (Northern Ireland) Act 1993.**]**

Annotations:

F320 Words in art. 283(1) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 15(2), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F321 Art. 283(1A) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 15(3) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F322 1995 NI 22

F323 Art. 283(6)(6A)(6B) substituted (27.3.2006) for art. 283(6) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 15(4) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F324 1995 NI 22

F325 1999 NI 11

[F326Income payments agreement

283A.—(1) In this Article "income payments agreement" means a written agreement between a bankrupt and his trustee or between a bankrupt and the official receiver which provides—

(a) that the bankrupt is to pay to the trustee or the official receiver an amount equal to a specified part or proportion of the bankrupt's income for a specified period, or

(b) that a third person is to pay to the trustee or the official receiver a specified proportion of money due to the bankrupt by way of income for a specified period.

(2) A provision of an income payments agreement of a kind specified in paragraph (1)(a) or (b) may be enforced as if it were a provision of an income payments order.

(3) While an income payments agreement is in force the High Court may, on the application of the bankrupt, his trustee or the official receiver, discharge or vary an attachment of earnings order that is for the time being in force to secure payments by the bankrupt.

(4) The following provisions of Article 283 shall apply to an income payments agreement as they apply to an income payments order—

(a) paragraph (5) (receipts to form part of estate), and

(b) paragraphs (7) to (9) (meaning of income).

(5) An income payments agreement must specify the period during which it is to have effect; and that period—

(a) may end after the discharge of the bankrupt, but

(b) may not end after the period of 3 years beginning with the date on which the agreement is made.

(6) An income payments agreement may (subject to paragraph (5)(b)) be varied—

(a) by written agreement between the parties, or

(b) by the High Court on an application made by the bankrupt, the trustee or the official receiver.

(7) The High Court—

(a) may not vary an income payments agreement so as to include provision of a kind which could not be included in an income payments order, and

(b) shall grant an application to vary an income payments agreement if and to the extent that the Court thinks variation necessary to avoid the effect mentioned in Article 283(2).**]**

Annotations:

F326 Art. 283A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 16, (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Acquisition by trustee of control

284.—(1) The trustee shall take possession of all books, papers and other records which relate to the bankrupt's estate or affairs andwhich belong to him or are in his possession or under his control (including any which would be privileged from disclosure in any proceedings).

(2) In relation to, and for the purpose of acquiring or retaining possession of, the bankrupt's estate, the trustee is in the same position as if he were a receiver of property appointed by the High Court; and the Court may, on his application, enforce such acquisition or retention accordingly.

(3) Where any part of the bankrupt's estate consists of stock or shares in a company, shares in a ship or any other property transferable in the books of a company, office or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

(4) Where any part of the estate consists of things in action, they are deemed to have been assigned to the trustee; but notice of the deemed assignment need not be given except in so far as it is necessary, in a case where the deemed assignment is from the bankrupt himself, for protecting the priority of the trustee.

(5) Where any goods comprised in the estate are held by any person by way of pledge, pawn or other security and no notice has been served in respect of those goods by the official receiver under paragraph (6) of Article 258 (restriction on realising security), the trustee may serve such a notice in respect of the goods; and whether or not a notice has been served under this paragraph or that paragraph, the trustee may, if he thinks fit, exercise the bankrupt's right of redemption in respect of any such goods.

(6) A notice served by the trustee under paragraph (5) has the same effect as a notice served by the official receiver under Article 258(6).

Obligation to surrender control to trustee

285.—(1) Without prejudice to the general duties of the bankrupt under Article 306, the bankrupt shall deliver up to the trustee possession of any property, books, papers or other records of which he has possession or control and of which the trustee is required to take possession.

(2) If any of the following is in possession of any property, books, papers or other records of which the trustee is required to take possession, namely—

(a) the official receiver,

(b) a person who has ceased to be trustee of the bankrupt's estate, or

(c) a person who has been the supervisor of a voluntary arrangement approved in relation to the bankrupt under Part VIII,

the official receiver or, as the case may be, that person shall deliver up possession of the property, books, papers or records to the trustee.

(3) Any banker or agent of the bankrupt or any other person who holds any property to the account of, or for, the bankrupt shall pay or deliver to the trustee all property in his possession or under his control which forms part of the bankrupt's estate and which he is not by law entitled to retain as against the bankrupt or trustee.

(4) If any person without reasonable excuse fails to comply with any obligation imposed by this Article, he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

Charge on bankrupt's home

286.—(1) Where any property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse**[**[F327] or by his civil partner or former civil partner**]** is comprised in the bankrupt's estate and the trustee is, for any reason, unable for the time being to realise that property, the trustee may apply to the High Court for an order imposing a charge on the property for the benefit of the bankrupt's estate.

(2) If on an application under this Article the High Court imposes a charge on any property, the benefit of that charge shall be comprised in the bankrupt's estate and is enforceable**[**[F328], up to the charged value from time to time,**]** for the payment of any amount which is payable otherwise than to the bankrupt out of the estate and of interest on that amount at the prescribed rate.

[[F329](2A) In paragraph (2) "the charged value" means—

(a) the amount specified in the charging order as the value of the bankrupt's interest in the property at the date of the order, plus

(b) interest on that amount from the date of the charging order at the prescribed rate.

(2B) In determining the value of an interest for the purposes of this Article the High Court shall disregard any matter which it is required to disregard by the rules.**]**

(3) An order under this Article made in respect of property vested in the trustee shall provide, in accordance with the rules, for the property to cease to be comprised in the bankrupt's estate and, subject to the charge (and any prior charge), to vest in the bankrupt.

(4) An order under this Article may be made either absolutely or subject to conditions as to notifying the bankrupt or any person holding any interest in the property to which the order relates or as to the time when the charge is to become enforceable, or as to other matters.

(5) Subject to any provision made by rules, a charge imposed by an order under this Article shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the bankrupt by writing under his hand.

(6) The High Court may at any time, on the application of the bankrupt or of any person holding any interest in the property to which the order relates make an order discharging or varying the order imposing a charge on the property.

(7) Where an order under this Article has been protected by an entry registered under the Land Registration Act (Northern Ireland) 1970[F330] or the Registration of Deeds Acts, an order under paragraph (6) discharging that order may direct that the entry be vacated.

[[F331](8) But an order under paragraph (6) may not vary a charged value.**]**

Annotations:

F327 2004 c. 33

F328 Words in art. 286(2) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 17(2)(a) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F329 Art. 286(2A)(2B) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 17(2)(b) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)
F330 1970 c. 18 (NI)
F331 Art. 286(8) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 17(2)(c) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

[[F332]Low value home: application for sale, possession or charge

286A.—(1) This Article applies where—

(a) property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

(i) the bankrupt,

(ii) the bankrupt's spouse **[**[F333]or civil partner**]** , or

(iii) a former spouse **[**[F334]or former civil partner**]** of the bankrupt, and

(b) the trustee applies for an order for the sale of the property, for an order for possession of the property or for an order under Article 286 in respect of the property.

(2) The High Court shall dismiss the application if the value of the interest is below such amount as may for the time being be specified for the purposes of this paragraph by order under Article 362(1)(b).

(3) In determining the value of an interest for the purposes of this Article the High Court shall disregard any matter which it is required to disregard by the order which specifies the amount for the purposes of paragraph (2).**]**

Annotations:

F332 Art. 286A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 17(3) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)
F333 Words in art. 286A(1)(a)(ii) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 18(3)(a) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)
F334 Words in art. 286A(1)(a)(iii) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 18(3)(b) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Powers of trustee

287.—(1) The trustee may—

(a) with the permission of the creditors' committee or the High Court, exercise any of the powers specified in Part I of Schedule 3, and

(b) without that permission, exercise any of the general powers specified in Part II of Schedule 3.

(2) With the permission of the creditors' committee or the High Court, the trustee may appoint the bankrupt—

(a) to superintend the management of his estate or any part of it,

(b) to carry on his business (if any) for the benefit of his creditors, or

(c) in any other respect to assist in administering the estate in such manner and on such terms as the trustee may direct.

(3) A permission given for the purposes of paragraph (1)(a) or (2) shall not be a general permission but shall relate to a particular proposed exercise of the power in question; and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required in either case has been given.

(4) Subject to paragraph (5), where the trustee has done anything without the permission required by paragraph (1)(a) or (2), the High Court or the creditors' committee may, for the purpose of enabling him to meet his expenses out of the bankrupt's estate, ratify what the trustee has done.

(5) The committee shall not ratify the trustee's action under paragraph (4) unless it is satisfied that the trustee has acted in a case of urgency and has sought its ratification without undue delay.

(6) Part III of Schedule 3 has effect with respect to the things which the trustee is able to do for the purposes of, or in connection with, the exercise of any of his powers under Parts VIII to X.

(7) Where the trustee (not being the official receiver) in exercise of the powers conferred on him by any provision in Parts VIII to X—

(a) disposes of any property comprised in the bankrupt's estate to an associate of the bankrupt, or

(b) employs a solicitor,

he shall, if there is for the time being a creditors' committee, give notice to the committee of that exercise of his powers.

(8) Without prejudice to the generality of paragraph (6) and Part III of Schedule 3, the trustee may, if he thinks fit, at any time summon a general meeting of the bankrupt's creditors.

(9) Subject to the preceding provisions in Part VIII and this Part, he shall summon such a meeting if he is requested to do so by a creditor of the bankrupt and the request is made with the concurrence of not less than one#tenth, in value, of the bankrupt's creditors (including the creditor making the request).

(10) Nothing in this Order is to be construed as restricting the capacity of the trustee to exercise any of his powers outside Northern Ireland.

Disclaimer of onerous property

Disclaimer (general power)

288.—(1) Subject to paragraph (4) and Articles 289 to 291, the trustee may, by the giving of the prescribed notice, disclaim any onerous property and do so notwithstanding that he has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.

(2) The following is onerous property for the purposes of this Article, that is to say—

(a) any unprofitable contract, and

(b) any other property comprised in the bankrupt's estate which is unsaleable or not readily saleable, or is such that it may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this Article—

(a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the bankrupt and his estate in or in respect of the property disclaimed, and

(b) discharges the trustee from all personal liability in respect of that property as from the commencement of his trusteeship,

but does not, except so far as is necessary for the purpose of releasing the bankrupt, the bankrupt's estate and the trustee from any liability, affect the rights or liabilities of any other person.

(4) A notice of disclaimer shall not be given under this Article in respect of any property that has been claimed for the estate under Article 280 (after#acquired property) or 281 (personal property of bankrupt exceeding reasonable replacement value), except with the leave of the High Court.

(5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this Article is deemed to be a creditor of the bankrupt to the extent of the loss or damage and accordingly may prove for the loss or damage as a bankruptcy debt.

Notice requiring trustee's decision

289.—(1) Notice of disclaimer shall not be given under Article 288 in respect of any property if—

(a) a person interested in the property has applied in writing to the trustee or one of his predecessors as trustee requiring the trustee or that predecessor to decide whether he will disclaim or not, and

(b) the period of 28 days from the day on which that application was made has expired without a notice of disclaimer having been given under Article 288 in respect of that property.

(2) The trustee is deemed to have adopted any contract which by virtue of this Article he is not entitled to disclaim.

Disclaimer of leaseholds

290.—(1) The disclaimer of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person claiming under the bankrupt as underlessee of mortgagee and either—

(a) no application under Article 293 is made with respect to the property before the expiration of 14 days from the day on which the last notice served under this paragraph was served, or

(b) where such an application has been made, the High Court directs that the disclaimer is to take effect.

(2) Where the High Court gives a direction under paragraph (1)(b) it may also, instead of or in addition to any order it makes under Article 293, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

(3) For the purposes of this Article, property held under a fee farm grant creating the relation of landlord and tenant is property of a leasehold nature and a reference to an underlessee includes a person who holds a lease from the fee farm grantee.

Disclaimer of dwelling house

291. Without prejudice to Article 290, the disclaimer of any property in a dwelling house does not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person in occupation of or claiming a right to occupy the dwelling house and either—

(a) no application under Article 293 is made with respect to the property before the expiration of 14 days from the day on which the last notice served under this Article was served, or

(b) where such an application has been made, the High Court directs that the disclaimer is to take effect.

Disclaimer of land subject to rentcharge

292.—(1) The following applies where, in consequence of the disclaimer under Article 288 of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person (referred to in paragraph (2) as “the proprietor”).

(2) The proprietor, and the successors in title of the proprietor, are not subject to any personal liability in respect of any sums becoming due under the rentcharge, except sums becoming due after the proprietor, or some person claiming under or through the proprietor, has taken possession or control of the land or has entered into occupation of it.

High Court order vesting disclaimed property

293.—(1) This Article and Article 294 apply where the trustee has disclaimed property under Article 288.

(2) An application may be made to the High Court under this Article by—

(a) any person who claims an interest in the disclaimed property,

(b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer, or

(c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.

(3) Subject to the following provisions of this Article and to Article 294, the High Court may, on an application under this Article, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to—

(a) a person entitled to it or a trustee for such a person,

(b) a person subject to such a liability as is mentioned in paragraph (2)(b) or a trustee for such a person, or

(c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.

(4) The High Court shall not make an order by virtue of paragraph (3)(b) except where it appears to the Court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(5) The effect of any order under this Article shall be taken into account in assessing for the purposes of Article 288(5) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

(6) An order under this Article vesting property in any person need not be completed by any conveyance, assignment or transfer.

Order under Article 293 in respect of leaseholds

294.—(1) The High Court shall not make an order under Article 293 vesting property of a leasehold nature in any person, except on terms making that person—

(a) subject to the same liabilities and obligations as the bankrupt was subject to under the lease on the day the bankruptcy petition was presented, or

(b) if the Court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him on that day.

(2) For the purposes of an order under Article 293 relating to only part of any property comprised in a lease, the requirements of paragraph (1) apply as if the lease comprised only the property to which the order relates.

(3) Where paragraph (1) applies and no person is willing to accept an order under Article 293 on the terms required by that paragraph, the High Court may (by order under Article 293) vest the estate or interest of the bankrupt in the property in any person who is liable (whether personally or

in a representative capacity and whether alone or jointly with the bankrupt) to perform the lessee's covenants in the lease.

(4) An order of the High Court under paragraph (3) may vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the bankrupt.

(5) Where paragraph (1) applies and a person declines to accept any order under Article 293, that person shall be excluded from all interest in the property.

(6) Paragraph (3) of Article 290 shall apply for the purposes of this Article as it applies for the purposes of that Article.

Distribution of bankrupt's estate

Proof of debts

295.—(1) Subject to this Article and Article 296, the proof of any bankruptcy debt by a secured or unsecured creditor of the bankrupt and the admission or rejection of any proof shall take place in accordance with the rules.

(2) Where a bankruptcy debt bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the commencement of the bankruptcy.

(3) The trustee shall estimate the value of any bankruptcy debt which, by reason of its being subject to any contingency or contingencies or for any other reason, does not bear a certain value.

(4) Where the value of a bankruptcy debt is estimated by the trustee under paragraph (3) or, by virtue of Article 276, by the High Court, the amount provable in the bankruptcy in respect of the debt is the amount of the estimate.

Mutual credit and set#off

296.—(1) This Article applies where before the commencement of the bankruptcy there have been mutual credits, mutual debts or othermutual dealings between the bankrupt and any creditor of the bankrupt proving or claiming to prove for a bankruptcy debt.

(2) An account shall be taken of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other.

(3) Sums due from the bankrupt to another party shall not be included in the account taken under paragraph (2) if that other party had notice at the time they became due that a bankruptcy petition relating to the bankrupt was pending.

(4) Only the balance (if any) of the account taken under paragraph (2) is provable as a bankruptcy debt or, as the case may be, to be paid to the trustee as part of the bankrupt's estate.

Distribution by means of dividend

297.—(1) Whenever the trustee has sufficient funds in hand for the purpose he shall, subject to the retention of such sums as may be necessary for the expenses of the bankruptcy, declare and distribute dividends among the creditors in respect of the bankruptcy debts which they have respectively proved.

(2) The trustee shall give notice of his intention to declare and distribute a dividend.

(3) Where the trustee has declared a dividend, he shall give notice of the dividend and of how it is proposed to distribute it; and a notice given under this paragraph shall contain the prescribed particulars of the bankrupt's estate.

(4) In the calculation and distribution of a dividend the trustee shall make provision—

(a) for any bankruptcy debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs,

(b) for any bankruptcy debts which are the subject of claims which have not yet been determined, and

(c) for disputed proofs and claims.

Claims by unsatisfied creditors

298.—(1) A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but—

(a) when he has proved that debt he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive; and

(b) any dividend or dividends payable under sub#paragraph (a) shall be paid before that money is applied to the payment of any such further dividend.

(2) No action lies against the trustee for a dividend, but if the trustee refuses to pay a dividend the High Court may, if it thinks fit, order him to pay it and also to pay, out of his own money—

(a) interest on the dividend, at the rate applicable to a money judgment of the Court at the time it was withheld, from that time, and

(b) the costs of the proceedings in which the order to pay is made.

Distribution of property in specie

299.—(1) Without prejudice to Articles 288 to 292 (disclaimer), the trustee may, with the permission of the creditors' committee, divide in its existing form among the bankrupt's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(2) A permission given for the purposes of paragraph (1) shall not be a general permission but shall relate to a particular proposed exercise of the power in question; and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required by paragraph (1) has been given.

(3) Where the trustee has done anything without the permission required by paragraph (1), the High Court or the creditors' committee may, for the purpose of enabling him to meet his expenses out of the bankrupt's estate, ratify what the trustee has done.

(4) The committee shall not ratify the trustee's action under paragraph (3) unless it is satisfied that the trustee acted in a case of urgency and has sought its ratification without undue delay.

Priority of debts

300.—(1) In the distribution of the bankrupt's estate, his preferential debts (within the meaning of Article 346) shall be paid in priority to other debts.

(2) Preferential debts rank equally between themselves after the expenses of the bankruptcy and shall be paid in full unless the bankrupt's estate is insufficient for meeting them, in which case they abate in equal proportions between themselves.

(3) Debts which are neither preferential debts nor debts to which Article 302 applies also rank equally between themselves and, after the preferential debts, shall be paid in full unless the bankrupt's

estate is insufficient for meeting them, in which case they abate in equal proportions between themselves.

(4) Any surplus remaining after the payment of the debts that are preferential or rank equally under paragraph (3) shall be applied in paying interest on those debts in respect of the period during which they have been outstanding since the commencement of the bankruptcy; and interest on preferential debts ranks equally with interest on debts other than preferential debts.

(5) The rate of interest payable under paragraph (4) in respect of any debt is whichever is the greater of the following—

(a) the rate applicable to a money judgment of the High Court at the commencement of the bankruptcy, and

(b) the rate applicable to that debt apart from the bankruptcy.

(6) This Article and Article 302 are without prejudice to any provision of this Order or any other statutory provision under which the payment of any debt or the making of any other payment is, in the event of bankruptcy, to have a particular priority or to be postponed.

Preferential charge on goods distrained

301.—(1) Where any person has distrained upon the goods or effects of an individual who is adjudged bankrupt within 3 months from the distraint, those goods or effects, or the proceeds of their sale, shall be charged for the benefit of the bankrupt's estate with the preferential debts of the bankrupt to the extent that the bankrupt's estate is for the time being insufficient for meeting them.

(2) Where by virtue of a charge under paragraph (1) any person surrenders any goods or effects to the trustee of a bankrupt's estate or makes a payment to such a trustee, that person ranks, in respect of the amount of the proceeds of the sale of those goods or effects by the trustee or (as the case may be) the amount of the payment, as a preferential creditor of the bankrupt, except as against so much of the bankrupt's estate as is available for the payment of preferential creditors by virtue of the surrender or payment.

Debts to spouse[F335 or civil partner]

302.—(1) This Article applies to bankruptcy debts owed in respect of credit provided by a person who (whether or not the bankrupt's spouse**[**F335 or civil partner**]** at the time the credit was provided) was the bankrupt's spouse**[**F335 or civil partner**]** at the commencement of the bankruptcy.

(2) Such debts—

(a) rank in priority after the debts and interest required to be paid in pursuance of Article 300(3) and (4), and

(b) are payable with interest at the rate specified in Article 300(5) in respect of the period during which they have been outstanding since the commencement of the bankruptcy;

and the interest payable under sub#paragraph (b) has the same priority as the debts on which it is payable.

Annotations:
F335 2004 c. 33

Final distribution

303.—(1) When the trustee has realised all the bankrupt's estate or so much of it as can, in the trustee's opinion, be realised without needlessly protracting the trusteeship, he shall give notice in the prescribed manner either—

(a) of his intention to declare a final dividend, or

(b) that no dividend, or further dividend, will be declared.

(2) The notice under paragraph (1) shall contain the prescribed particulars and shall require claims against the bankrupt's estate to be established by a date ("the final date") specified in the notice.

(3) The High Court may, on the application of any person, postpone the final date.

(4) After the final date, the trustee shall—

(a) defray any outstanding expenses of the bankruptcy out of the bankrupt's estate, and

(b [F336] if he intends to declare a final dividend, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved in the bankruptcy.

(5) If a surplus remains after payment in full and with interest of all the bankrupt's creditors and the payment of the expenses of the bankruptcy, the bankrupt is entitled to the surplus.

[[F337](6) Paragraph (5) is subject to Article 35 of the EC Regulation (surplus in secondary proceedings to be transferred to main proceedings).**]**

Annotations:
F336 mod. by SR 1991/365
F337 SR 2002/334

Final meeting

304.—(1) Subject to the provisions of this Article and to Article 305, this Article applies where—

(a) it appears to the trustee that the administration of the bankrupt's estate in accordance with this Chapter is for practical purposes complete, and

(b) the trustee is not the official receiver.

(2) The trustee shall summon a final general meeting of the bankrupt's creditors which—

(a) shall receive the trustee's report of his administration of the bankrupt's estate, and

(b) shall determine whether the trustee should have his release under Article 272.

(3) The trustee may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice under Article 303(1); but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the trustee is able to report to the meeting that the administration of the bankrupt's estate is for practical purposes complete.

(4) In the administration of the estate it is the trustee's duty to retain sufficient sums from the estate to cover the expenses of summoning and holding the meeting required by this Article.

Saving for bankrupt's home

305.—(1) This Article applies where—

(a) there is comprised in the bankrupt's estate property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse**[**[F338] or by his civil partner or former civil partner**]**, and

(b) the trustee has been unable for any reason to realise that property.

(2) The trustee shall not summon a meeting under Article 304 unless either—

(a) the High Court has made an order under Article 286 imposing a charge on that property for the benefit of the bankrupt's estate, or

(b) the Court has declined, on an application under that Article, to make such an order, or

(c) the Department has issued a certificate to the trustee stating that it would be inappropriate or inexpedient for such an application to be made in the case in question.

Annotations:
F338 2004 c. 33

Supplemental

Duties of bankrupt in relation to trustee

306.—(1) The bankrupt shall—

(a) give to the trustee such information as to his affairs,

(b) attend on the trustee at such times, and

(c) do all such other things,

as the trustee may for the purposes of carrying out his functions under Parts VIII to X reasonably require.

(2) Where at any time after the commencement of the bankruptcy any property is acquired by, or devolves upon, the bankrupt or there is an increase of the bankrupt's income, the bankrupt shall, within the prescribed period, give the trustee notice of the property or, as the case may be, of the increase.

(3) Paragraph (1) applies to a bankrupt after his discharge.

(4) If the bankrupt without reasonable excuse fails to comply with any obligation imposed by this Article, he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

Stay of distribution in case of second bankruptcy

307.—(1) This Article and Article 308 apply where a bankruptcy order is made against an undischarged bankrupt; and in both Articles—

(a) "the later bankruptcy" means the bankruptcy arising from that order,

(b) "the earlier bankruptcy" means the bankruptcy (or, as the case may be, most recent bankruptcy) from which the bankrupt has not been discharged at the commencement of the later bankruptcy, and

(c) "the existing trustee" means the trustee (if any) of the bankrupt's estate for the purposes of the earlier bankruptcy.

(2) Without prejudice to Article 257 (restrictions on dispositions of property following bankruptcy order), where the existing trustee has been given the prescribed notice of the presentation of the petition for the later bankruptcy, any distribution or other disposition by him of anything to which paragraph (3) applies, if made after the giving of the notice, is void except to the extent that it was made with the consent of the High Court or is or was subsequently ratified by the Court.

(3) This paragraph applies to—

(a) any property which is vested in the existing trustee under Article 280(3) (after#acquired property);

(b) any money paid to the existing trustee in pursuance of an income payments order under Article 283; and

(c) any property or money which is, or in the hands of the existing trustee represents, the proceeds of sale or application of property or money falling within sub#paragraph (a) or (b).

Adjustment between earlier and later bankruptcy estates

308.—(1) With effect from the commencement of the later bankruptcy anything to which Article 307(3) applies which, immediately before the commencement of that bankruptcy, is comprised in the bankrupt's estate for the purposes of the earlier bankruptcy is to be treated as comprised in the bankrupt's estate for the purposes of the later bankruptcy and, until there is a trustee of that estate, is to be dealt with by the existing trustee in accordance with the rules.

(2) Any sums which in pursuance of an income payments order under Article 283 are payable after the commencement of the later bankruptcy to the existing trustee shall form part of the bankrupt's estate for the purposes of the later bankruptcy; and the High Court may give such consequential directions for the modification of the order as it thinks fit.

(3) Anything comprised in a bankrupt's estate by virtue of paragraph (1) or (2) is so comprised subject to a first charge in favour of the existing trustee for any bankruptcy expenses incurred by him in relation thereto.

(4) Except as provided by paragraphs (1) and (2) and in Article 307, property which is, or by virtue of Article 281 (personal property of bankrupt exceeding reasonable replacement value) is capable of being, comprised in the bankrupt's estate for the purposes of the earlier bankruptcy, or of any bankruptcy prior to it, shall not be comprised in his estate for the purposes of the later bankruptcy.

(5) The creditors of the bankrupt in the earlier bankruptcy and the creditors of the bankrupt in any bankruptcy prior to the earlier one, are not to be creditors of his in the later bankruptcy in respect of the same debts; but the existing trustee may prove in the later bankruptcy for—

(a) the unsatisfied balance of the debts (including any debt under this paragraph) provable against the bankrupt's estate in the earlier bankruptcy;

(b) any interest payable on that balance; and

(c) any unpaid expenses of the earlier bankruptcy.

(6) Any amount provable under paragraph (5) ranks in priority after all the other debts provable in the later bankruptcy and after interest on those debts and, accordingly, shall not be paid unless those debts and that interest have first been paid in full.

CHAPTER V

EFFECT OF BANKRUPTCY ON CERTAIN RIGHTS, TRANSACTIONS, ETC.

Rights of occupation

Rights of occupation, etc., of bankrupt's spouse [F339or civil partner]

309.—(1) Nothing occurring in the initial period of the bankruptcy (that is to say, the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting of the bankrupt's estate in a trustee) is to be taken as having given rise to any**[F340[F341** home rights**]** under the Family Homes and Domestic Violence (Northern Ireland) Order 1998**]** in relation to a dwelling house comprised in the bankrupt's estate.

(2) Where**[F341** a spouse's or civil partner's home rights**][F340** under the Order of 1998**]** are a charge on the estate or interest of the other spouse**[F341** or civil partner**]**, or of trustees for the other spouse**[F341** or civil partner**]**, and the other spouse**[F341** or civil partner**]** is adjudged bankrupt—

(a) the charge continues to subsist notwithstanding the bankruptcy and, subject to the provisions of that Order, binds the trustee of the bankrupt's estate and persons deriving title under that trustee, and

(b) any application for an order under**[**[F340] Article 11**]** of that Order shall be made to the High Court.

(3) Notwithstanding any provision of the Partition Act 1868[F342], where a person and his spouse or former spouse**[**[F341] or civil partner or former civil partner**]** have a legal or equitable estate in a dwelling house vested in them jointly or as tenants in common and that person is adjudged bankrupt, in a suit for partition maintained by the trustee of the bankrupt's estate the High Court may make such order as it thinks fit.

(4) On an application such as is mentioned in paragraph (2) or in a suit such as is mentioned in paragraph (3) the High Court shall make such order under paragraph (3) or**[**[F340] Article 11 of the Order of 1998**]** as it thinks just and reasonable having regard to—

(a) the interests of the bankrupt's creditors,

(b) the conduct of the spouse or former spouse **[**[F343]or civil partner or former civil partner**]**, so far as contributing to the bankruptcy,

(c) the needs and financial resources of the spouse or former spouse **[**[F343]or civil partner or former civil partner**]**,

(d) the needs of any children, and

(e) all the circumstances of the case other than the needs of the bankrupt.

(5) Where such an application is made or such a suit is maintained after the expiration of one year from the first vesting under Chapter IV of the bankrupt's estate in a trustee, the High Court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

Annotations:

F339 Words in art. 309 heading inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 18(4)(b) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F340 1998 NI 6

F341 2004 c. 33

F342 1868 c. 40

F343 Words in art. 309(4)(b)(c) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 18(4)(a) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Rights of occupation of bankrupt

310.—(1) This Article applies where—

(a) a person who is entitled to occupy a dwelling house by virtue of a beneficial estate or interest is adjudged bankrupt, and

(b) any persons under the age of 18 with whom that person had at some time occupied that dwelling house had their home with that person at the time when the bankruptcy petition was presented and at the commencement of the bankruptcy.

(2) Whether or not the bankrupt's**[**[F344] spouse or civil partner (if any) has home rights**][**[F345] under the Family Homes and Domestic Violence (Northern Ireland) Order 1998**]**

(a) the bankrupt has the following rights as against the trustee of his estate—

(i) if in occupation, a right not to be evicted or excluded from the dwelling house or any part of it, except with the leave of the High Court,

(ii) if not in occupation, a right with the leave of the Court to enter into and occupy the dwelling house, and

(b) the bankrupt's rights are a charge, having the like priority as an equitable interest created immediately before the commencement of the bankruptcy, on so much of his estate or interest in the dwelling house as vests in the trustee.

[[F345](3) The Order of 1998 has effect, with the necessary modifications, as if—

(a) the rights conferred by sub-paragraph (a) of paragraph (2) were**[**[F344] home rights**]** under that Order,

(b) any application for leave such as is mentioned in that sub-paragraph were an application for an order under Article 11 of that Order, and

(c) any charge under sub-paragraph (b) of that paragraph on the estate or interest of the trustee were a charge under that Order on the estate or interest of a spouse**[**[F344] or civil partner**].]**

(4) Any application for leave such as is mentioned in paragraph (2)(a) or otherwise by virtue of this Article for an order under**[**[F345] Article 11 of the Order of 1998**]** shall be made to the High Court.

(5) On such an application the High Court shall make such order under**[**[F345] Article 11 of the Order of 1998**]** as it thinks just and reasonable having regard to the interests of the creditors, to the bankrupt's financial resources, to the needs of the children and to all the circumstances of the case other than the needs of the bankrupt.

(6) Where such an application is made after the expiration of one year from the first vesting (under Chapter IV) of the bankrupt's estate in a trustee, the High Court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

Annotations:
F344 2004 c. 33
F345 1998 NI 6

Payments in respect of premises occupied by bankrupt

311. Where any premises comprised in a bankrupt's estate are occupied by him (whether by virtue of Article 310 or otherwise) on condition that he makes payments towards satisfying any liability arising under a mortgage of the premises or otherwise towards the outgoings of the premises, the bankrupt does not, by virtue of those payments, acquire any interest in the premises.

Adjustment of prior transactions, etc.

Transactions at an undervalue

312.—(1) Subject to the following provisions of this Article and to Articles 314 and 315, where an individual is adjudged bankrupt and he has at a relevant time (defined in Article 314) entered into a transaction with any person at an undervalue, the trustee of the bankrupt's estate may apply to the High Court for an order under this Article.

(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 that individual had not entered into that transaction.

(3) For the purposes of this Article and Articles 314 and 315, an individual enters into a transaction with a person at an undervalue if—

(a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration.

(b) he enters into a transaction with that person in consideration of marriage**[**[F346] or the formation of a civil partnership**]**, or

(c) he 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 individual.

Annotations:
F346 2004 c. 33

Preferences

313.—(1) Subject to the following provisions of this Article and Articles 314 and 315, where an individual is adjudged bankrupt and he has at a relevant time (defined in Article 314) given a preference to any person, the trustee of the bankrupt's estate may apply to the High Court for an order under this Article.

(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 that individual had not given that preference.

(3) For the purposes of this Article and Articles 314 and 315, an individual gives a preference to a person if—

(a) that person is one of the individual's creditors or a surety or guarantor for any of his debts or other liabilities, and

(b) the individual 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 individual's bankruptcy, will be better than the position he would have been in if that thing had not been done.

(4) The High Court shall not make an order under this Article in respect of a preference given to any person unless the individual who 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 (3)(b).

(5) An individual who has given a preference to a person who, at the time the preference was given, was an associate of his (otherwise than by reason only of being his employee) 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 (4).

(6) 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 312, 313

314.—(1) Subject to the provisions of this Article, the time at which an individual 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, at a time within the 5 years immediately preceding the day of the presentation of the bankruptcy petition on which the individual is adjudged bankrupt,

(b) in the case of a preference which is not a transaction at an undervalue and is given to a person who is an associate of the individual (otherwise than by reason only of being his employee), at a time within the 2 years immediately preceding that day, and

(c) in any other case of a preference which is not a transaction at an undervalue, at a time within the 6 months immediately preceding that day.

(2) Where an individual enters into a transaction at an undervalue or gives a preference at a time mentioned in sub#paragraph (a), (b) or (c) of paragraph (1) (not being, in the case of a transaction at an undervalue, a time less than 2 years before the expiration of the period of 5 years mentioned in sub#paragraph (a)), that time is not a relevant time for the purposes of Articles 312 and 313 unless the individual—

(a) is insolvent at that time, or

(b) becomes insolvent 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 an individual with a person who is an associate of his (otherwise than by reason only of being his employee).

(3) For the purposes of paragraph (2), an individual is insolvent if—

(a) he is unable to pay his debts as they fall due, or

(b) the value of his assets is less than the amount of his liabilities, taking into account his contingent and prospective liabilities.

Orders under Articles 312, 313

315.—(1) Without prejudice to the generality of Article 312(2) or 313(2), an order under either of those Articles with respect to a transaction or preference entered into or given by an individual who is subsequently adjudged bankrupt may (subject as follows)—

(a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the trustee of the bankrupt's estate as part of that estate;

(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 individual;

(d) require any person to pay, in respect of benefits received by him from the individual, such sums to the trustee of his estate 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 trustee of the bankrupt's estate, or on whom obligations are imposed by the order, is to be able to prove in the bankruptcy 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 312 or 313 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the individual 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 that individual and was acquired**[**[F347] in good faith and for value**]**, 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**[**[F347] in good faith and for value**]** to pay a sum to the trustee of the bankrupt's estate, except where he 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 that individual.

[[F348](2A) Where a person has acquired an interest in property from a person other than the individual in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt—

(a) he had notice of the relevant surrounding circumstances and of the relevant proceedings, or

(b) he was an associate of, or was connected with, either the individual in question or the person with whom that individual entered into the transaction or to whom that individual gave the preference,

then, unless the contrary is shown, it shall be presumed for the purposes of sub#paragraph (a) or (as the case may be) sub#paragraph (b) of paragraph (2) that the interest was acquired or the benefit was received otherwise than in good faith.**]**

(3) Any sums required to be paid to the trustee in acordance with an order under Article 312 or 313 shall be comprised in the bankrupt's estate.

[[F349](4) For the purposes of paragraph (2A)(a), the relevant surrounding circumstances are (as the case may require)—

(a) the fact that the individual in question entered into the transaction at an undervalue; or

(b) the circumstances which amounted to the giving of the preference by the individual in question.

(5) For the purposes of paragraph (2A)(a), a person has notice of the relevant proceedings if he has notice—

(a) of the fact that the petition on which the individual in question is adjudged bankrupt has been presented; or

(b) of the fact that the individual in question has been adjudged bankrupt.

(6) Article 7 shall apply for the purposes of paragraph (2A)(b) as it applies for the purposes of Parts II to VII.**]**

Annotations:
F347 1994 c. 12
F348 1994 c. 12
F349 1994 c. 12

[[F350]**Recovery of excessive pension contributions**

315A [F351]**.**—(1) Where an individual who is adjudged bankrupt—

(a) has rights under an approved pension arrangement, or

(b) has excluded rights under an unapproved pension arrangement,

the trustee of the bankrupt's estate may apply to the High Court for an order under this Article.

(2) If the High Court is satisfied—

(a) that the rights under the arrangement are to any extent, and whether directly or indirectly, the fruits of relevant contributions, and

(b) that the making of any of the relevant contributions ("the excessive contributions") has unfairly prejudiced the individual's creditors,

the Court may make such order as it thinks fit for restoring the position to what it would have been had the excessive contributions not been made.

(3) Paragraph (4) applies where the High Court is satisfied that the value of the rights under the arrangement is, as a result of rights of the individual under the arrangement or any other pension arrangement having at any time become subject to a debit under Article 26(1)(a) of the Welfare Reform Order (debits giving effect to pension-sharing), less than it would otherwise have been.

(4) Where this paragraph applies—

(a) any relevant contributions which were represented by the rights which became subject to the debit shall, for the purposes of paragraph (2), be taken to be contributions of which the rights under the arrangement are the fruits, and

(b) where the relevant contributions represented by the rights under the arrangement (including those so represented by virtue of sub-paragraph (a)) are not all excessive contributions, relevant contributions which are represented by the rights under the arrangement otherwise than by virtue of sub-paragraph (a) shall be treated as excessive contributions before any which are so represented by virtue of that sub-paragraph.

(5) In paragraphs (2) to (4) "relevant contributions" means contributions to the arrangement or any other pension arrangement—

(a) which the individual has at any time made on his own behalf, or

(b) which have at any time been made on his behalf.

(6) The High Court shall, in determining whether it is satisfied under paragraph (2)(b), consider in particular—

(a) whether any of the contributions were made for the purpose of putting assets beyond the reach of the individual's creditors or any of them, and

(b) whether the total amount of any contributions—

(i) made by or on behalf of the individual to pension arrangements, and

(ii) represented (whether directly or indirectly) by rights under approved pension arrangements or excluded rights under unapproved pension arrangements,

is an amount which is excessive in view of the individual's circumstances when those contributions were made.

(7) For the purposes of this Article and Articles 315B and 315C ("the recovery provisions"), rights of an individual under an unapproved pension arrangement are excluded rights if they are rights which are excluded from his estate by virtue of regulations under Article 13 of the Welfare Reform Order.

(8) In the recovery provisions—

"approved pension arrangement" has the same meaning as in Article 12 of the Welfare Reform Order,

"unapproved pension arrangement" has the same meaning as in Article 13 of that Order.**]**

Annotations:

F350 1999 NI 11

F351 functions transf. SR 1999/481

Orders under Article 315A

315B [F352]**.**—(1) Without prejudice to the generality of Article 315A(2), an order under Article 315A may include provision—

(a) requiring the person responsible for the arrangement to pay an amount to the individual's trustee in bankruptcy,

(b) adjusting the liabilities of the arrangement in respect of the individual,

(c) adjusting any liabilities of the arrangement in respect of any other person that derive, directly or indirectly, from rights of the individual under the arrangement,

(d) for the recovery by the person responsible for the arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the bankrupt's case with any requirement under Article 315C(1) or in giving effect to the order.

(2) In paragraph (1), references to adjusting the liabilities of the arrangement in respect of a person include (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.

(3) In paragraph (1)(c), the reference to liabilities of the arrangement does not include liabilities in respect of a person which result from giving effect to an order or provision falling within Article 25(1) of the Welfare Reform Order (pension sharing orders and agreements).

(4) The maximum amount which the person responsible for an arrangement may be required to pay by an order under Article 315A is the lesser of—

(a) the amount of the excessive contributions, and

(b) the value of the individual's rights under the arrangement (if the arrangement is an approved pension arrangement) or of his excluded rights under the arrangement (if the arrangement is an unapproved pension arrangement).

(5) An order under Article 315A which requires the person responsible for an arrangement to pay an amount ("the restoration amount") to the individual's trustee in bankruptcy must provide for the liabilities of the arrangement to be correspondingly reduced.

(6) For the purposes of paragraph (5), liabilities are correspondingly reduced if the difference between—

(a) the amount of the liabilities immediately before the reduction, and

(b) the amount of the liabilities immediately after the reduction,

is equal to the restoration amount.

(7) An order under Article 315A in respect of an arrangement—

(a) shall be binding on the person responsible for the arrangement, and

(b) overrides provisions of the arrangement to the extent that they conflict with the provisions of the order.

Annotations:
F352 functions transf. SR 1999/481

Orders under Article 315A: supplementary

315C [F353]**.**—(1) The person responsible for—

(a) an approved pension arrangement under which a bankrupt has rights,

(b) an unapproved pension arrangement under which a bankrupt has excluded rights, or

(c) a pension arrangement under which a bankrupt has at any time had rights,

shall, on the bankrupt's trustee in bankruptcy making a written request, provide the trustee with such information about the arrangement and rights as the trustee may reasonably require for, or in connection with, the making of applications under Article 315A.

(2) Nothing in—

(a) any provision of section 155 of the Pension Schemes (Northern Ireland) Act 1993 or Article 89 of thePensions (Northern Ireland) Order 1995 (which prevent assignment and the making of orders that restrain a person from receiving anything which he is prevented from assigning),

(b) any statutory provision (whether passed or made before or after the making of the Welfare Reform Order) corresponding to any of the provisions mentioned in sub-paragraph (a), or

(c) any provision of the arrangement in question corresponding to any of those provisions,

applies to the High Court exercising its powers under Article 315A.

(3) Where any sum is required by an order under Article 315A to be paid to the trustee in bankruptcy, that sum shall be comprised in the bankrupt's estate.

(4) Regulations may, for the purposes of the recovery provisions, make provision about the calculation and verification of—

(a) any such value as is mentioned in Article 315B(4)(b);

(b) any such amounts as are mentioned in Article 315B(6)(a) and (b).

(5) The power conferred by paragraph (4) includes power to provide for calculation or verification —

(a) in such manner as may, in the particular case, be approved by a prescribed person; or

(b) in accordance with guidance—

(i) from time to time prepared by a prescribed person, and

(ii) approved by the Department.

(6) References in the recovery provisions to the person responsible for a pension arrangement are to—

(a) the trustees, managers or provider of the arrangement, or

(b) the person having functions in relation to the arrangement corresponding to those of a trustee, manager or provider.

(7) In this Article and Articles 315A and 315B—

"the Department" means the Department of Health and Social Services;

"prescribed" means prescribed by regulations;

"the recovery provisions" means this Article and Articles 315A and 315B;

"regulations" means regulations made by the Department;

"the Welfare Reform Order" means the Welfare Reform and Pensions (Northern Ireland) Order 1999.

(8) Regulations under the recovery provisions may contain such incidental, supplemental and transitional provisions as appear to the Department necessary or expedient.

(9) Regulations under the recovery provisions shall be subject to negative resolution.

Annotations:

F353 functions transf. SR 1999/481

[F354Recovery of excessive contributions in pension-sharing cases

315D F355.—(1) For the purposes of Articles 312, 314 and 315, a pension-sharing transaction shall be taken—

(a) to be a transaction, entered into by the transferor with the transferee, by which the appropriate amount is transferred by the transferor to the transferee; and

(b) to be capable of being a transaction entered into at an undervalue only so far as it is a transfer of so much of the appropriate amount as is recoverable.

(2) For the purposes of Articles 313 to 315, a pension-sharing transaction shall be taken—

(a) to be something (namely a transfer of the appropriate amount to the transferee) done by the transferor; and

(b) to be capable of being a preference given to the transferee only so far as it is a transfer of so much of the appropriate amount as is recoverable.

(3) If on an application under Article 312 or 313 any question arises as to whether, or the extent to which, the appropriate amount in the case of a pension-sharing transaction is recoverable, the question shall be determined in accordance with paragraphs (4) to (8).

(4) The High Court shall first determine the extent (if any) to which the transferor's rights under the shared arrangement at the time of the transaction appear to have been (whether directly or indirectly) the fruits of contributions ("personal contributions")—

(a) which the transferor has at any time made on his own behalf, or

(b) which have at any time been made on the transferor's behalf,

to the shared arrangement or any other pension arrangement.

(5) Where it appears that those rights were to any extent the fruits of personal contributions, the High Court shall then determine the extent (if any) to which those rights appear to have been the fruits of personal contributions whose making has unfairly prejudiced the transferor's creditors ("the unfair contributions").

(6) If it appears to the High Court that the extent to which those rights were the fruits of the unfair contributions is such that the transfer of the appropriate amount could have been made out of rights under the shared arrangement which were not the fruits of the unfair contributions, then the appropriate amount is not recoverable.

(7) If it appears to the High Court that the transfer could not have been wholly so made, then the appropriate amount is recoverable to the extent to which it appears to the Court that the transfer could not have been so made.

(8) In making the determination mentioned in paragraph (5) the High Court shall consider in particular—

(a) whether any of the personal contributions were made for the purpose of putting assets beyond the reach of the transferor's creditors or any of them, and

(b) whether the total amount of any personal contributions represented, at the time the pension-sharing transaction was made, by rights under pension arrangements is an amount which is excessive in view of the transferor's circumstances when those contributions were made.

(9) In this Article and Articles 315E and 315F—

"appropriate amount", in relation to a pension-sharing transaction, means the appropriate amount in relation to that transaction for the purposes of Article 26(1) of the Welfare Reform Order (creation of pension credits and debits);

"pension-sharing transaction" means an order or provision falling within Article 25(1) of the Welfare Reform Order (orders and agreements which activate pension-sharing);

"shared arrangement", in relation to a pension-sharing transaction, means the pension arrangement to which the transaction relates;

"transferee", in relation to a pension-sharing transaction, means the person for whose benefit the transaction is made;

"transferor", in relation to a pension-sharing transaction, means the person to whose rights the transaction relates;

"the Welfare Reform Order" means the Welfare Reform and Pensions (Northern Ireland) Order 1999.**]**

Annotations:
F354 1999 NI 11
F355 functions transf. SR 1999/481

Orders under Article 312 or 313 in respect of pension-sharing transactions

315E [F356]**.**—(1) This Article and Article 315F apply if the High Court is making an order under Article 312 or 313 in a case where—

(a) the transaction or preference is, or is any part of, a pension-sharing transaction, and

(b) the transferee has rights under a pension arrangement ("the destination arrangement", which maybe the shared arrangement or any other pension arrangement) that are derived, directly or indirectly, from the pension-sharing transaction.

(2) Without prejudice to the generality of Article 312(2) or 313(2), or of Article 315, the order may include provision—

(a) requiring the person responsible for the destination arrangement to pay an amount to the transferor's trustee in bankruptcy,

(b) adjusting the liabilities of the destination arrangement in respect of the transferee,

(c) adjusting any liabilities of the destination arrangement in respect of any other person that derive, directly or indirectly, from rights of the transferee under the destination arrangement,

(d) for the recovery by the person responsible for the destination arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the transferor's case with any requirement under Article 315F(1) or in giving effect to the order,

(e) for the recovery, from the transferor's trustee in bankruptcy, by the person responsible for a pension arrangement, of costs incurred by that person in complying in the transferor's case with any requirement under Article 315F(2) or (3).

(3) In paragraph (2), references to adjusting the liabilities of the destination arrangement in respect of a person include (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.

(4) The maximum amount which the person responsible for the destination arrangement may be required to pay by the order is the smallest of—

(a) so much of the appropriate amount as, in accordance with Article 315D is recoverable,

(b) so much (if any) of the amount of the unfair contributions (within the meaning given by Article 315D(5)) as is not recoverable by way of an order under Article 315A containing provision such as is mentioned in Article 315B(1)(a), and

(c) the value of the transferee's rights under the destination arrangement so far as they are derived, directly or indirectly, from the pension-sharing transaction.

(5) If the order requires the person responsible for the destination arrangement to pay an amount ("the restoration amount") to the transferor's trustee in bankruptcy it must provide for the liabilities of the arrangement to be correspondingly reduced.

(6) For the purposes of paragraph (5), liabilities are correspondingly reduced if the difference between—

(a) the amount of the liabilities immediately before the reduction, and

(b) the amount of the liabilities immediately after the reduction,

is equal to the restoration amount.

(7) The order—

(a) shall be binding on the person responsible for the destination arrangement, and

(b) overrides provisions of the destination arrangement to the extent that they conflict with the provisions of the order.

Annotations:
F356 functions transf. SR 1999/481

Orders under Article 312 or 313 in pension-sharing cases: supplementary

315F [F357]**.**—(1) On the transferor's trustee in bankruptcy making a written request to the person responsible for the destination arrangement, that person shall provide the trustee with such information about—

(a) the arrangement,

(b) the transferee's rights under it, and

(c) where the destination arrangement is the shared arrangement, the transferor's rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under Articles 312 and 313.

(2) Where the shared arrangement is not the destination arrangement, the person responsible for the shared arrangement shall, on the transferor's trustee in bankruptcy making a written request to that person, provide the trustee with such information about—

(a) the arrangement, and

(b) the transferor's rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under Articles 312 and 313.

(3) On the transferor's trustee in bankruptcy making a written request to the person responsible for any intermediate arrangement, that person shall provide the trustee with such information about—

(a) the arrangement, and

(b) the transferee's rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under Articles 312 and 313.

(4) In paragraph (3) "intermediate arrangement" means a pension arrangement, other than the shared arrangement or the destination arrangement, in relation to which the following conditions are fulfilled—

(a) there was a time when the transferee had rights under the arrangement that were derived (directly or indirectly) from the pension-sharing transaction, and

(b) the transferee's rights under the destination arrangement (so far as derived from the pension-sharing transaction) are to any extent derived (directly or indirectly) from the rights mentioned in sub-paragraph (a).

(5) Nothing in—

(a) any provision of section 155 of thePension Schemes (Northern Ireland) Act 1993 or Article 89 of thePensions (Northern Ireland) Order 1995 (which prevent assignment and the making of orders which restrain a person from receiving anything which he is prevented from assigning),

(b) any statutory provision (whether passed or made before or after the making of the Welfare Reform Order) corresponding to any of the provisions mentioned in sub-paragraph (a), or

(c) any provision of the destination arrangement corresponding to any of those provisions,

applies to the High Court exercising its powers under Article 312 or 313.

(6) Regulations may, for the purposes of Articles 312 to 315, Articles 315D and 315E and this Article, make provision about the calculation and verification of—

(a) any such value as is mentioned in Article 315E(4)(c);

(b) any such amounts as are mentioned in Article 315E(6)(a) and (b).

(7) The power conferred by paragraph (6) includes power to provide for calculation or verification —

(a) in such manner as may, in the particular case, be approved by a prescribed person; or

(b) in accordance with guidance—

(i) from time to time prepared by a prescribed person, and

(ii) approved by the Department.

(8) In Article 315E and this Article, references to the person responsible for a pension arrangement are to—

(a) the trustees, managers or provider of the arrangement, or

(b) the person having functions in relation to the arrangement corresponding to those of a trustee, manager or provider.

(9) In this Article—

"the Department" means the Department of Health and Social Services;

"prescribed" means prescribed by regulations;

"regulations" means regulations made by the Department.

(10) Regulations under this Article may contain such incidental, supplemental and transitional provisions as appear to the Department necessary or expedient.

(11) Regulations under this Article shall be subject to negative resolution.

Annotations:
F357 functions transf. SR 1999/481

Extortionate credit transactions

316.—(1) This Article applies where a person is adjudged bankrupt who is or has been a party to a transaction for, or involving, the provision to him of credit.

(2) The High Court may, on the application of the trustee of the bankrupt's estate, make an order with respect to the transaction if the transaction is or was extortionate and was not entered into more than the 3 years immediately preceding the commencement of the bankruptcy.

(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 party to the transaction to pay to the trustee any sums paid to that person, by virtue of the transaction, by the bankrupt;

(d) provision requiring any person to surrender to the trustee any property held by him as security for the purposes of the transaction;

(e) provision directing accounts to be taken between any persons.

(5) Any sums or property required to be paid or surrendered to the trustee in accordance with an order under this Article shall be comprised in the bankrupt's estate.

(6) [F358] . . . . . .

(7) The powers conferred by this Article are exercisable in relation to any transaction concurrently with any powers exercisable under this Order in relation to that transaction as a transaction at an undervalue.

Annotations:

F358 Art. 316(6) repealed (6.4.2007) by Consumer Credit Act 2006 (c. 14), ss. 70, 71(2), **Sch. 4** (with Sch. 3 para. 15(5)); S.I. 2007/123, **art. 3(2)**, Sch. 2 (as amended by S.I. 2007/387, **art. 2(3)(e)(iii)**)

Avoidance of general assignment of book debts

317.—(1) This Article applies where a person engaged in any business makes a general assignment to another person of his existing or future book debts, or any class of them, and is subsequently adjudged bankrupt.

(2) The assignment is void against the trustee of the bankrupt's estate as regards book debts which were not paid before the presentation of the bankruptcy petition, unless the assignment has been registered under the Bills of Sale (Ireland) Acts 1879[F359] and 1883[F360].

(3) For the purposes of paragraphs (1) and (2)—

(a) "assignment" includes an assignment by way of security or charge on book debts, and

(b) "general assignment" does not include—

(i) an assignment of book debts due at the date of the assignment from specified debtors or of debts becoming due under specified contracts, or

(ii) an assignment of book debts included either in a transfer of a business made in good faith and for value or in an assignment of assets for the benefit of creditors generally.

(4) For the purposes of registration under the Acts of 1879 and 1883 an assignment of book debts is to be treated as if it were a bill of sale given otherwise than by way of security for the payment

of a sum of money; and the provisions of those Acts with respect to the registration of bills of sale apply accordingly with such necessary modifications as may be made by rules under those Acts.

Annotations:
F359 1879 c. 50
F360 1883 c. 7

Contracts to which bankrupt is a party

318.—(1) This Article applies where a contract has been made with a person who is subsequently adjudged bankrupt.

(2) The High Court may, on the application of any other party to the contract, make an order discharging obligations under the contract on such terms as to payment by the applicant or the bankrupt of damages for non#performance or otherwise as appear to the Court to be equitable.

(3) Any damages payable by the bankrupt by virtue of an order of the High Court under this Article are provable as a bankruptcy debt.

(4) Where an undischarged bankrupt is a contractor in respect of any contract jointly with any person, that person may sue or be sued in respect of the contract without the joinder of the bankrupt.

Apprenticeships, etc.

319.—(1) This Article applies where—

(a) a bankruptcy order is made in respect of an individual to whom another individual was an apprentice or articled clerk at the time when the petition on which the order was made was presented, and

(b) the bankrupt or the apprentice or clerk gives notice to the trustee terminating the apprenticeship or articles.

(2) Subject to paragraph (6), the indenture of apprenticeship or, as the case may be, the articles of agreement shall be discharged with effect from the commencement of the bankruptcy.

(3) If any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on an application made by or on behalf of the apprentice or clerk, pay such sum to the apprentice or clerk as the trustee thinks reasonable, having regard to—

(a) the amount of the fee,

(b) the proportion of the period in respect of which the fee was paid that has been served by the apprentice or clerk before the commencement of the bankruptcy, and

(c) the other circumstances of the case.

(4) The power of the trustee to make a payment under paragraph (3) has priority over his obligation to distribute the bankrupt's estate.

(5) Instead of making a payment under paragraph (3), the trustee may, if it appears to him expedient to do so on an application made by or on behalf of the apprentice or clerk, transfer the indenture or articles to a person other than the bankrupt.

(6) Where a transfer is made under paragraph (5), paragraph (2) has effect only as between the apprentice or clerk and the bankrupt.

Unenforceability of liens on books, etc.

320.—(1) Subject to paragraph (2), a lien or other right to retain possession of any of the books, papers or other records of a bankrupt is unenforceable to the extent that its enforcement would

denypossession of any books, papers or other records to the official receiver or the trustee of the bankrupt's estate.

(2) Paragraph (1) does not apply to a lien on documents which give a title to property and are held as such.

[[F361]Arbitration agreements to which bankrupt is party.

320A.—(1) This Article applies where a bankrupt had become party to a contract containing an arbitration agreement before the commencement of his bankruptcy.

(2) If the trustee in bankruptcy adopts the contract, the arbitration agreement is enforceable by or against the trustee in relation to matters arising from or connected with the contract.

(3) If the trustee in bankruptcy does not adopt the contract and a matter to which the arbitration agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings—

(a) the trustee with the consent of the creditors' committee, or

(b) any other party to the agreement,

may apply to the court which may, if it thinks fit in all the circumstances of the case, order that the matter be referred to arbitration in accordance with the arbitration agreement.

(4) In this Article—

"arbitration agreement" has the same meaning as in Part I of the Arbitration Act 1996; and

"the court" means the court which has jurisdiction in the bankruptcy proceedings.**]**

Annotations:
F361 1996 c. 23

CHAPTER VI

BANKRUPTCY OFFENCES

Preliminary

Scheme of this Chapter

321.—(1) Subject to Article 331(3), this Chapter applies where the High Court has made a bankruptcy order on a bankruptcy petition.

(2) This Chapter applies whether or not the bankruptcy order is annulled under Article 256, but proceedings for an offence under this Chapter shall not be instituted after the annulment.

(3) Without prejudice to his liability in respect of a subsequent bankruptcy, the bankrupt is not guilty of an offence under this Chapter in respect of anything done after his discharge; but nothing in Parts VIII to X prevents the institution of proceedings against a discharged bankrupt for an offence committed before his discharge.

[[F362](3A) Paragraph (3) is without prejudice to any provision of this Chapter which applies to a person in respect of whom a bankruptcy restrictions order is in force.**]**

(4) It is not a defence in proceedings for an offence under this Chapter that anything relied on, in whole or in part, as constituting that offence was done outside Northern Ireland.

(5) Proceedings for an offence under this Chapter or under the rules shall not be instituted except by the Department or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

Annotations:

F362 Art. 321(3A) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 13(3), Sch. 6 para. 2 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Definitions for the purposes of this Chapter

322. In this Chapter—

(a) references to property comprised in the bankrupt's estate or to property possession of which is required to be delivered up to the official receiver or the trustee of the bankrupt's estate include any property which would be such property if a notice in respect of it were given under Article 280 (after#acquired property) or 281 (personal property and effects of bankrupt having more than replacement value);

(b) "the initial period" means the period between the presentation of the bankruptcy petition and the commencement of the bankruptcy; and

(c) a reference to a number of months or years immediately preceding petition is to that period ending with the presentation of the bankruptcy petition.

Defence of innocent intention

323. Where in the case of an offence under any provision of this Chapter it is stated that this Article applies, it shall be a defence for the person charged to prove that, at the time of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

Wrongdoing by the bankrupt before and after bankruptcy

Non#disclosure

324.—(1) The bankrupt shall be guilty of an offence if—

(a) he does not to the best of his knowledge and belief disclose all the property comprised in his estate to the official receiver or the trustee, or

(b) he does not inform the official receiver or the trustee of any disposal of any property which but for the disposal would be so comprised, stating how, when, to whom and for what consideration the property was disposed of.

(2) Paragraph (1)(b) does not apply to any disposal in the ordinary course of a business carried on by the bankrupt or to any payment of the ordinary expenses of the bankrupt or his family.

(3) Article 323 applies to an offence under this Article.

Concealment of property

325.—(1) The bankrupt shall be guilty of an offence if—

(a) he does not deliver up possession to the official receiver or trustee, or as the official receiver or trustee may direct, of such part of the property comprised in his estate as is in his possession or under his control and possession of which he is required by law so to deliver up,

(b) he conceals any debt due to or from him or conceals any property the value of which is not less than the amount specified by order under Article 362(1)(b) and possession of which he is required to deliver up to the official receiver or trustee, or

(c) in the 12 months immediately preceding petition, or in the initial period, he did anything which would have been an offence under sub#paragraph (b) if the bankruptcy order had been made immediately before he did it.

(2) Article 323 applies to an offence under paragraph (1).

(3) The bankrupt shall be guilty of an offence if he removes, or in the initial period removed, any property the value of which was not less than the amount specified by order under Article 362(1)(b) and possession of which he has or would have been required to deliver up to the official receiver or the trustee.

(4) Article 323 applies to an offence under paragraph (3).

(5) The bankrupt shall be guilty of an offence if he without reasonable excuse fails, on being required to do so by the official receiver **[**[F363], the trustee**]** or the High Court—

(a) to account for the loss of any substantial part of his property incurred in the 12 months immediately preceding petition or in the initial period, or

(b) to give a satisfactory explanation of the manner in which such a loss was incurred.

Annotations:

F363 Words in art. 325(5) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, Sch. 8 para. 14 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Concealment of books and papers; falsification

326.—(1) The bankrupt shall be guilty of an offence if he does not deliver up possession to the official receiver or the trustee, or as the official receiver or trustee may direct, of all books, papers and other records of which he has possession or control and which relate to his estate or his affairs.

(2) The bankrupt shall be guilty of an offence if—

(a) he prevents, or in the initial period prevented, the production of any books, papers or records relating to his estate or affairs;

(b) he conceals, destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any books, papers or other records relating to his estate or affairs;

(c) he makes, or causes or permits the making of, any false entries in any book, document or record relating to his estate or affairs; or

(d) in the 12 months immediately preceding petition, or in the initial period, he did anything which would have been an offence under sub#paragraph (b) or (c) if the bankruptcy order had been made before he did it.

(3) The bankrupt shall be guilty of an offence if—

(a) he disposes of, or alters or makes any omission in, or causes or permits the disposal, altering or making of any omission in, any book, document or record relating to his estate or affairs, or

(b) in the 12 months immediately preceding petition, or in the initial period, he did anything which would have been an offence under sub#paragraph (a) if the bankruptcy order had been made before he did it.

(4) Article 323 applies to an offence under this Article.

[[F364](5) In their application to a trading record paragraphs (2)(d) and (3)(b) shall have effect as if the reference to 12 months were a reference to two years.

(6) In paragraph (5) "trading record" means a book, document or record which shows or explains the transactions or financial position of a person's business, including—

(a) a periodic record of cash paid and received,

(b) a statement of periodic stock-taking, and

(c) except in the case of goods sold by way of retail trade, a record of goods sold and purchased which identifies the buyer and seller or enables them to be identified.**]**

Annotations:

F364 Art. 326(5)(6) added (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, Sch. 8 para. 15 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

False statements

327.—(1) The bankrupt shall be guilty of an offence if he makes or has made any material omission in any statement made under any provision in Parts VIII to X and relating to his affairs.

(2) Article 323 applies to an offence under paragraph (1).

(3) The bankrupt shall be guilty of an offence if—

(a) knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails to inform the trustee as soon as practicable; or

(b) he attempts to account for any part of his property by fictitious losses or expenses; or

(c) at any meeting of his creditors in the 12 months immediately preceding petition or (whether or not at such a meeting) at any time in the initial period, he did anything which would have been an offence under sub#paragraph (b) if the bankruptcy order had been made before he did it; or

(d) he is, or at any time has been, guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to an agreement with reference to his affairs or to his bankruptcy.

Fraudulent disposal of property

328.—(1) The bankrupt shall by guilty of an offence if he makes or causes to be made, or has in the 5 years immediately preceding the commencement of the bankruptcy made or caused to be made, any gift or transfer of, or any charge on, his property.

(2) The reference to making a transfer of or charge on any property includes causing or conniving at the enforcement of a judgment, or the levying of any execution, against that property.

(3) The bankrupt shall be guilty of an offence if he conceals or removes, or has at any time before the commencement of the bankruptcy concealed or removed, any part of his property after, or within the 2 months immediately preceding, the date on which a judgment or order for the payment of money has been obtained against him, being a judgment or order which was not satisfied before the commencement of the bankruptcy.

(4) Article 323 applies to an offence under this Article.

Absconding

329.—(1) The bankrupt shall be guilty of an offence if—

(a) he leaves, or attempts or makes preparations to leave, Northern Ireland with any property the value of which is not less than the amount specified by order under Article 362(1)(b) and possession of which he is required to deliver up to the official receiver or the trustee, or

(b) in the 6 months immediately preceding petition, or in the initial period, he did anything which would have been an offence under sub#paragraph (a) if the bankruptcy order had been made immediately before he did it.

(2) Article 323 applies to an offence under this Article.

Fraudulent dealing with property obtained on credit

330.—(1) The bankrupt shall be guilty of an offence if, in the 12 months immediately preceding petition, or in the initial period, he disposed of any property which he had obtained on credit and, at the time he disposed of it, had not paid for.

(2) Article 323 applies to an offence under paragraph (1).

(3) A person shall be guilty of an offence if, in the 12 months immediately preceding petition or in the initial period, he acquired or received property from the bankrupt knowing or believing—

(a) that the bankrupt owed money in respect of the property, and

(b) that the bankrupt did not intend, or was unlikely to be able, to pay the money he so owed.

(4) In the case of an offence under paragraph (1) or (3) it shall be a defence for the person charged to prove that the disposal, acquisition or receipt of the property was in the ordinary course of a business carried on by the bankrupt at the time of the disposal, acquisition or receipt.

(5) In determining for the purposes of this Article whether any property is disposed of, acquired or received in the ordinary course of a business carried on by the bankrupt, regard may be had, in particular, to the price paid for the property.

(6) In this Article references to disposing of property include pawning or pledging it; and references to acquiring or receiving property shall be read accordingly.

Obtaining credit; engaging in business

331.—(1) The bankrupt shall be guilty of an offence if—

(a) either alone or jointly with any other person, he obtains credit to the extent of the amount specified by order under Article 362(1)(b) or more without giving the person from whom he obtains it the relevant information about his status; or

(b) he engages (whether directly or indirectly) in any business under a name other than that in which he was adjudged bankrupt without disclosing to all persons with whom he enters into any business transaction the name in which he was so adjudged.

(2) The reference to the bankrupt obtaining credit includes the following cases—

(a) where goods are bailed to him under a hire#purchase agreement, or agreed to be sold to him under a conditional sale agreement, and

(b) where he is paid in advance (whether in money or otherwise) for the supply of goods or services.

(3) A person whose estate has been sequestrated in Scotland, or who has been adjudged bankrupt in England and Wales, shall be guilty of an offence if, before his discharge, he does anything in Northern Ireland which would be an offence under paragraph (1) if he were an undischarged bankrupt and the sequestration of his estate or the adjudication in England and Wales were an adjudication under this Part.

(4) For the purposes of paragraph (1)(a), the relevant information about the status of the person in question is the information that he is an undischarged bankrupt or, as the case may be, that his estate has been sequestrated in Scotland and that he has not been discharged.

[[F365](5) This Article applies to the bankrupt after discharge while a bankruptcy restrictions order is in force in respect of him.

(6) For the purposes of paragraph (1)(a) as it applies by virtue of paragraph (5), the relevant information about the status of the person in question is the information that a bankruptcy restrictions order is in force in respect of him.**]**

Annotations:

F365 Art. 331(5)(6) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 13(3), Sch. 6 para. 3 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Failure to keep proper accounts of business

332. [F366] . . . . . .

Annotations:

F366 Art. 332 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 20(a), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Gambling

333. [F367] . . . . . .

Annotations:

F367 Art. 333 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 20(b), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

CHAPTER VII

POWERS OF HIGH COURT IN BANKRUPTCY

General control of High Court

334.—(1) Every bankruptcy is under the general control of the High Court and, subject to the provisions in Parts VIII to X, theCourt has full power to decide all questions of priorities and all other questions, whether of law or fact, arising in any bankruptcy.

(2) Without prejudice to any other provision in Parts VIII to X, an undischarged bankrupt or a discharged bankrupt whose estate is still being administered under Chapter IV shall do all such things as he may be directed to do by the High Court for the purposes of his bankruptcy or, as the case may be, the administration of that estate.

(3) The official receiver or the trustee of a bankrupt's estate may at any time apply to the High Court for a direction under paragraph (2).

(4) If any person without reasonable excuse fails to comply with any obligation imposed on him by paragraph (2), he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

Power of arrest

335.—(1) In the cases specified in paragraph (2) the High Court may cause a warrant to be issued to a constable—

(a) for the arrest of a debtor to whom a bankruptcy petition relates or of an undischarged bankrupt, or of a dischargedbankrupt whose estate is still being administered under Chapter IV, and

(b) for the seizure of any books, papers, records, money or goods in the possession of a person arrested under the warrant,

and 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 such time as the Court may order.

(2) The powers conferred by paragraph (1) are exercisable in relation to a debtor or undischarged or discharged bankrupt if, at any time after the presentation of the bankruptcy petition relating to him or the making of the bankruptcy order against him, it appears to the High Court—

(a) that there are reasonable grounds for believing that he has absconded, or is about to abscond, with a view to avoiding or delaying the payment of any of his debts or his appearance to a bankruptcy petition or to avoiding, delaying or disrupting any proceedings in bankruptcy against him or any examination of his affairs, or

(b) that he is about to remove his goods with a view to preventing or delaying possession being taken of them by the official receiver or the trustee of his estate, or

(c) that there are reasonable grounds for believing that he has concealed or destroyed, or is about to conceal or destroy, any of his goods or any books, papers or records which might be of use to his creditors in the course of his bankruptcy or in connection with the administration of his estate, or

(d) that he has, without the leave of the official receiver or the trustee of his estate, removed any goods in his possession which exceed in value such amount specified in an order under Article 362(1)(b) for the purposes of this sub#paragraph, or

(e) that he has failed, without reasonable excuse, to attend any examination ordered by the Court.

Seizure of bankrupt's property

336.—(1) At any time after a bankruptcy order has been made, the High Court may, on the application of the official receiver or the trustee of the bankrupt's estate, issue a warrant authorising the person to whom it is directed to seize any property comprised in the bankrupt's estate which is, or any books, papers or records relating to the bankrupt's estate or affairs which are, in the possession or under the control of the bankrupt or any other person who is required to deliver the property, books, papers or records to the official receiver or trustee.

(2) Any person executing a warrant under this Article may, for the purpose of seizing any property comprised in the bankrupt's estate or any books, papers or records relating to the bankrupt's estate or affairs, break open any premises where the bankrupt or anything that may be seized under the warrant is or is believed to be and any receptacle of the bankrupt which contains or is believed to contain anything that may be so seized.

(3) If, after a bankruptcy order has been made, the High Court is satisfied that any property comprised in the bankrupt's estate is, or any books, papers or records relating to the bankrupt's estate or affairs are, concealed in any premises not belonging to him, it may issue a warrant authorising any constable to search those premises for the property, books, papers or records.

(4) A warrant under paragraph (3) shall not be executed except in the prescribed manner and in accordance with its terms.

Inquiry into bankrupt's dealings and property

337.—(1) At any time after a bankruptcy order has been made the High Court may, on the application of the official receiver or the trustee of the bankrupt's estate, summon to appear before it—

(a) the bankrupt or the bankrupt's spouse or former spouse**[**[F368] or civil partner or former civil partner**]**,

(b) any person known or believed to have any property comprised in the bankrupt's estate in his possession or to be indebted to the bankrupt,

(c) any person appearing to the Court to be able to give informtion concerning the bankrupt or the bankrupt's dealings, affairs or property.

(2) The High Court may require any person such as is mentioned in paragraph (1)(b) or (c) to submit an affidavit to the Court containing an account of his dealings with the bankrupt or to produce any documents in his possession or under his control relating to the bankrupt or the bankrupt's dealings, affairs or property.

(3) Without prejudice to Article 335, paragraphs (4) and (5) apply 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.

(4) 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.

(5) 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.

Annotations:
F368 2004 c. 33

High Court's enforcement powers under Article 337

338.—(1) If it appears to the High Court, on consideration of any evidence obtained under Article 337 or this Article, that any person has in his possession any property comprised in the bankrupt's estate, the Court may, on the application of the official receiver or the trustee of the bankrupt's estate, order that person to deliver the whole or any part of the property to the official receiver or the trustee 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 obtained under Article 337 or this Article, that any person is indebted to the bankrupt, the Court may, on the application of the official receiver or the trustee of the bankrupt's estate, order that person to pay to the official receiver or trustee, at such time and in such manner as the Court may direct, the whole or 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 337 or this Article shall be examined on oath, either orally or by interrogatories, concerning the bankrupt or the bankrupt's dealings, affairs and property.

Provision corresponding to Article 337, where interim receiver appointed

339. Articles 337 and 338 apply where an interim receiver has been appointed under Article 259 as they apply where a bankruptcy order has been made, as if—

(a) references to the official receiver or the trustee were to the interim receiver, and

(b) references to the bankrupt and to his estate were (respectively) to the debtor and his property.

Order for production of documents by Inland Revenue

340.—(1) For the purposes of an examination under Article 263 (public examination of bankrupt) or proceedings under Articles 337 to 339, the High Court may, on the application of the official receiver or the trustee of the bankrupt's estate, order an inland revenue official to produce to the Court—

(a) any return, account or accounts submitted (whether before or after the commencement of the bankruptcy) by the bankrupt to any inland revenue official,

(b) any assessment or determination made (whether before or after the commencement of the bankruptcy) in relation to the bankrupt by any inland revenue official, or

(c) any correspondence (whether before or after the commencement of the bankruptcy) between the bankrupt and any inland revenue official.

(2) Where the High Court has made an order under paragraph (1) for the purposes of any examination or proceedings, the Court may, at any time after the document to which the order relates is produced to it, by order authorise the disclosure of the document, or of any part of its contents, to the official receiver, the trustee of the bankrupt's estate or the bankrupt's creditors.

(3) The High Court shall not address an order under paragraph (1) to an inland revenue official unless it is satisfied that that office is dealing, or has dealt, with the affairs of the bankrupt.

(4) Where any document to which an order under paragraph (1) relates is not in the possession of the official to whom the order is addressed, it is the duty of that official to take all reasonable steps to secure possession of it and, if he fails to do so, to report the reasons for his failure to the High Court.

(5) Where any document to which an order under paragraph (1) relates is in the possession of an inland revenue official other than the one to whom the order is addressed, it is the duty of the official in possession of the document, at the request of the official to whom the order is addressed, to deliver it to the official making the request.

(6) In this Article "inland revenue official" means any inspector or collector of taxes appointed by the Commissioners of Inland Revenue or any person appointed by the Commissioners to serve in any other capacity.

(7) This Article does not apply for the purposes of an examination under Articles 337 and 338 which takes place by virtue of Article 339 (interim receiver).

Power to appoint special manager

341.—(1) The High Court may, on an application under this Article, appoint any person to be the special manager—

(a) of a bankrupt's estate, or

(b) of the business of an undischarged bankrupt, or

(c) of the property or business of a debtor in whose case the official receiver has been appointed interim receiver under Article 259.

(2) An application under this Article may be made by the official receiver or the trustee of the bankrupt's estate in any case where it appears to the official receiver or trustee that the nature of the estate, property or business, or the interests of the creditors generally, require the appointment of another person to manage the estate, property or business.

(3) A special manager appointed under this Article has such powers as may be entrusted to him by the High Court.

(4) The power of the High Court under paragraph (3) to entrust powers to a special manager includes power to direct that any provision in Parts VIII to X that has effect in relation to the official receiver, interim receiver or trustee shall have the like effect in relation to the special manager for the purposes of the carrying out by the special manager of any of the functions of the official receiver, interim receiver or trustee.

(5) A special manager appointed under this Article shall—

(a) give such security as may be prescribed,

(b) prepare and keep such accounts as may be prescribed, and

(c) produce those accounts in accordance with the rules to the Department or to such other persons as may be prescribed.

Re#direction of bankrupt's letters, etc.

342.—(1) Where a bankruptcy order has been made, the High Court may, on the application of the official receiver or the trustee of the bankrupt's estate, order**[**[F369] a postal operator (within the meaning given by section 125(1) of the Postal Services Act 2000)**]** to re#direct and send or deliver to the official receiver or trustee or otherwise any postal packet (within the meaning of the**[**[F369] Postal Services Act 2000**]**) which would otherwise be sent or delivered by them to the bankrupt at such place or places as may be specified in the order.

(2) An order under this Article has effect for such period, not exceeding 3 months, as may be specified in the order.

Annotations:
F369 SI 2001/1149

PART X

INDIVIDUAL INSOLVENCY: GENERAL PROVISIONS

Annotations:

Modifications etc. (not altering text)
C19 Pts. VIII-X (arts. 209-345) modified by Foyle Fisheries Act (Northern Ireland) 1952 (c. 5), s. 52K(2) (as inserted (prosp.) by Foyle and Carlingford Fisheries (Northern Ireland) Order 2007 (S.I. 2007/915 (N.I. 9)), arts. 1(3), **3(1)** (with art. 32))

Supplies of water, electricity, etc.

343 [F370]**.**—(1) This Article applies where on any day ("the relevant day")—

(a) a bankruptcy order is made against an individual or an interim receiver of an individual's property is appointed, or

(b) a voluntary arrangement proposed by an individual is approved under Chapter II of Part VIII, or

(c) a deed of arrangement is made for the benefit of an individual's creditors;

and "the office#holder" means the official receiver, the trustee in bankruptcy, the interim receiver, the supervisor of the voluntary arrangement or the trustee under the deed of arrangement, as the case may be.

(2) If a request falling within paragraph (3) is made for the giving after the relevant day of any of the supplies mentioned in paragraph (4), 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 individual before the relevant day are paid.

(3) A request falls within this paragraph if it is made—

(a) by or with the concurrence of the office#holder, and

(b) for the purposes of any business which is or has been carried on by the individual, by a firm or partnership of which the individual is or was a member, or by an agent or manager for the individual or for such a firm or partnership.

(4) The supplies referred to in paragraph (2) are—

(a) a supply of electricity by**[**[F371] a public electricity supplier within the meaning of Part II of the Electricity (Northern Ireland) Order 1992[F372],

[[F373](aa) a supply of gas by a holder of a licence under Article 8 of the Gas (Northern Ireland) Order 1996;[F374]

[[F375](b) a supply of water or sewerage services by a water or sewerage undertaker;**]**

[[F376](c) a supply of communications services by a provider of a**[**[F377] public electronic communications service[F378],

and in this paragraph "communications services" do not include electronic communications services to the extent that they are used to broadcast or transmit programme services (within the meaning of the Communications Act 2003).[F379]**]]]]**

Annotations:

F370 mod. by SR 1990/177; SR 1991/411

F371 1992 NI 1

F373 1996 NI 2

F375 Art. 343(4)(b) substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 27(2)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F376 2003 c. 21

F377 SI 2004/945

Time#limits

344. Where by any provision in Parts VIII to X (other than Chapter I of Part VIII) or by the rules the time for doing anything is limited, the High Court may extend the time, either before or after it has expired, on such terms, if any, as it thinks fit.

Formal defects

345. The acts of a person as the trustee of a bankrupt's estate or as a special manager, and the acts of the creditors' committee established for any bankruptcy, are valid notwithstanding any defect in the appointment, election or qualifications of the trustee or manager or, as the case may be, of any member of the committee.

PARTS XI TO XIV

MISCELLANEOUS MATTERS BEARING ON BOTH COMPANY AND INDIVIDUAL INSOLVENCY

F380

PART XI

PREFERENTIAL DEBTS IN COMPANY AND INDIVIDUAL INSOLVENCY

Annotations:

F380 Pts. XI - XIV modified by S.R.2004/307 (as amended (1.10.2006) by Limited Liability Partnerships (Amendment) Regulations (Northern Ireland) 2006 S.R. 2006/377), reg. 3, {Sch. 2})

Categories of preferential debts

346.—(1 [F381] A reference in this Order to the preferential debts of a company or an individual is to the debts listed in Schedule 4**[**[F382] (contributions to occupational pension schemes; remuneration, &c. of employees; levies on coal and steel production)**]**; and references to preferential creditors are to be read accordingly.

(2 In Schedule 4 "the debtor" means the company or the individual concerned.

(3) Schedule 4 is to be read with Schedule 4 to the Social Security Pensions (Northern Ireland) Order 1975[F383] (occupational pension scheme contributions).

Annotations:

F381 mod. by SR 2004/307

F382 Words in art. 346(1) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F383 1975 NI 15

"The relevant date"

347.—(1) This Article explains references in Schedule 4 to the relevant date (being the date which determines the existence and amount of a preferential debt).

(2) For the purposes of Article 17 (meetings to consider company voluntary arrangement), the relevant date in relation to a company which is not being wound up is—

[[F384](a) if the company is in administration, the date on which it entered administration, and

(b) if the company is not in administration, the date on which the voluntary arrangement takes effect.**]**

[[F385](2A) For the purposes of paragraph 41 of Schedule A1 (meetings to consider company voluntary arrangement where a moratorium under Article 14A is in force), the relevant date in relation to a company is the date of filing.**]**

(3) In relation to a company which is being wound up, the following applies—

(a) if the winding up is by the High Court, and the winding#up order was made immediately upon the discharge of an administration order, the relevant date is**[**[F386]the date on which the company entered administration**]**;

[[F387](aa) if the winding up is by the Court and the winding-up order was made following conversion of administration into winding up by virtue of Article 37 of the EC Regulation, the relevant date is**[**[F386]the date on which the company entered administration**]**;

(ab [F388] if the company is deemed to have passed a resolution for voluntary winding up by virtue of an order following conversion of administration into winding up under Article 37 of the EC Regulation, the relevant date is**[**[F386]the date on which the company entered administration**]**;**]**

(b) if the case does not fall within sub#paragraph (a)**[**[F387], (aa) or (ab)**]** and the company—

(i) is being wound up by the Court, and

(ii) had not commenced to be wound up voluntarily before the date of the making of the winding#up order,

the relevant date is the date of the appointment (or first appointment) of a provisional liquidator or, if no such appointment has been made, the date of the winding#up order;

[[F389](ba) if the case does not fall within sub-paragraph (a), (aa), (ab) or (b) and the company is being wound up following administration pursuant to paragraph 84 of Schedule B1, the relevant date is the date on which the company entered administration;**]**

(c if the case does not fall within**[**[F390] sub-paragraph (a), (aa), (ab), (b) or (ba)**]**, the relevant date is the date of the passing of the resolution for the winding up of the company.

[[F391](3A) In relation to a company which is in administration (and to which no other provision of this Article applies) the relevant date is the date on which the company enters administration.**]**

(4) In relation to a company in receivership (where Article 50 applies), the relevant date is the date of the appointment of the receiver by debenture#holders.

(5 For the purposes of Article 232 (meeting to consider individual voluntary arrangements), the relevant date is, in relation to a debtor who is not an undischarged bankrupt

[[F392](a) where an interim order has been made under Article 226 with respect to his proposal, the date of that order, and

(b) in any other case, the date on which the voluntary arrangement takes effect.**]**

(6 In relation to a bankrupt, the following applies—

(a) where at the time the bankruptcy order was made there was an interim receiver appointed under Article 259, the relevant date is the date on which the interim receiver was first appointed after the presentation of the bankruptcy petition;

(b) otherwise, the relevant date is the date of the making of the bankruptcy order.

Annotations:

F384 Art. 347(2)(a)(b) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 42(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F385 2002 NI 6

F386 Words in art. 347(3)(a)(aa)(ab) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 42(3)(a) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F387 SR 2002/334

F388 mod. by SR 2004/307

F389 Art. 347(3)(ba) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 42(3)(b) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F390 Words in art. 347(3)(c) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 42(3)(c) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F391 Art. 347(3A) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 42(4) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F392 2002 NI 6

F393

PART XII

INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION

Annotations:

F393 Pts. XI - XIV modified by S.R.2004/307 (as amended (1.10.2006) by Limited Liability Partnerships (Amendment) Regulations (Northern Ireland) 2006 S.R. 2006/377), reg. 3, {Sch. 2})

Restrictions on unqualified persons acting as liquidator, trustee in bankruptcy, etc.

Acting as insolvency practitioner without qualification

348.—(1 [F394] A person who acts as an insolvency practitioner in relation to a company or an individual at a time when he is not qualified to do so shall be guilty of an offence.

[[F395](1A) This Article is subject to Article 348A.**]**

(2) This Article does not apply to the official receiver.

Annotations:

F394 mod. by SR 2004/307

F395 2002 NI 6

[[F396]Authorisation of nominees and supervisors

348A.—(1 [F397] Article 348 does not apply to a person acting, in relation to a voluntary arrangement proposed or approved under Part II or Part VIII, as nominee or supervisor if he is authorised so to act.

(2) For the purposes of paragraph (1) and those Parts, an individual to whom paragraph (3) does not apply is authorised to act as nominee or supervisor in relation to such an arrangement if—

(a) he is a member of a body recognised for the purpose by the Department, and

(b) there is in force security for the proper performance of his functions and that security meets the prescribed requirements with respect to his so acting in relation to the arrangement.

(3) This paragraph applies to a person if—

(a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,

(b) he is subject to—

(i) a disqualification order made under Part II of the Companies (Northern Ireland) Order 1989 (NI 18), or

(ii) a disqualification order made or a disqualification undertaking accepted under the Company Directors Disqualification (Northern Ireland) Order 2002 or the Company Directors Disqualification Act 1986 (c. 46), or

(c) he is a patient within the meaning of Part VIII of the Mental Health (Northern Ireland) Order 1986 (NI 4), Part VII of the Mental Health Act 1983 (c. 20) or section 125(1) of the Mental Health (Scotland) Act 1984 (c. 36).

(4) The Department may by order declare a body which appears to it to fall within paragraph (5) to be a recognised body for the purposes of paragraph (2)(a).

(5) A body may be recognised if it maintains and enforces rules for securing that its members—

(a) are fit and proper persons to act as nominees or supervisors, and

(b) meet acceptable requirements as to education and practical training and experience.

(6) For the purposes of this Article, a person is a member of a body only if he is subject to its rules when acting as nominee or supervisor (whether or not he is in fact a member of the body).

(7) An order made under paragraph (4) in relation to a body may be revoked by a further order if it appears to the Department that the body no longer falls within paragraph (5).

(8) An order of the Department under this Article has effect from such date as is specified in the order; and any such order revoking a previous order may make provision for members of the body in question to continue to be treated as members of a recognised body for a specified period after the revocation takes effect.**]**

Annotations:
F396 2002 NI 6
F397 mod. by SR 2004/307

[[F398]Official receiver as nominee or supervisor

348B.—(1) The official receiver is authorised to act as nominee or supervisor in relation to a voluntary arrangement approved under Chapter II of Part VIII provided that the debtor is an undischarged bankrupt when the arrangement is proposed.

(2) The Department may by order repeal the proviso in paragraph (1).

(3) An order under paragraph (2) shall be subject to negative resolution.**]**

Annotations:
F398 Art. 348B inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 21(1), Sch. 7 para. 3 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

The requisite qualification, and the means of obtaining it

Persons not qualified to act as insolvency practitioners

349.—(1) A person who is not an individual is not qualified to act as an insolvency practitioner.

(2) A person is not qualified to act as an insolvency practitioner at any time unless at that time—

(a) he is authorised so to act by virtue of membership of a professional body recognised under Article 350, being permitted so to act by or under the rules of that body, or

(b) he holds an authorisation granted by a competent authority under Article 352.

(3) A person is not qualified to act as an insolvency practitioner in relation to another person at any time unless—

(a) there is in force at that time security, and

(b) that security meets the prescribed requirements with respect to his so acting in relation to that other person.

(4) A person is not qualified to act as an insolvency practitioner at any time if at that time—

(a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,

[[F399](b) he is subject to a disqualification order made or a disqualification undertaking accepted under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002, or**]**

(c) he is a patient within the meaning of Part VII of the Mental Health Act 1983[F400], section 125(1) of the Mental Health (Scotland) Act 1984[F401] or Part VIII of the Mental Health (Northern Ireland) Order 1986[F402].

[[F403](5) A person is not qualified to act as an insolvency practitioner while a bankruptcy restrictions order is in force in respect of him.**]**

Annotations:

F399 2002 NI 4

F400 1983 c. 20

F401 1984 c. 36

F402 1986 NI 4

F403 Art. 349(5) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 13(3), Sch. 6 para. 4 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Recognised professional bodies

350.—(1) The Department may by order subject to negative resolution declare a body which appears to it to fall within paragraph (2) to be a recognised professional body for the purposes of this Article.

(2) A body which—

(a) has an established place of business in the United Kingdom; and

(b) is—

(i) by an order under section 391(1) of the Insolvency Act 1986[F404], declared to be a recognised professional body for the purposes of that section; or

(ii) a Northern Ireland professional body with members which are from Northern Ireland, being a body corresponding to a body such as is mentioned in head (i);

may be recognised if it regulates the practice of a profession and maintains and enforces rules for securing that such of its members as are permitted by or under the rules to act as insolvency practitioners—

(aa) are fit and proper persons so to act, and

(ab) meet acceptable requirements as to education and practical training and experience.

(3) References to members of a recognised professional body are to persons who, whether members of that body or not, are subject to its rules in the practice of the profession in question; and the reference in Article 349(2) to membership of a professional body recognised under this Article is to be read accordingly.

(4) An order of the Department under this Article has effect from such date as is specified in the order; and any such order revoking a previous order may make provision whereby members of the body in question continue to be treated as authorised to act as insolvency practitioners for a specified period after the revocation takes effect.

Annotations:
F404 1986 c. 45

Authorisation by competent authority

351.—(1) Application may be made to a competent authority for authorisation to act as an insolvency practitioner.

(2) The competent authorities for this purpose are—

(a) in relation to a case of any description specified in directions given by the Department, the body or person so specified in relation to cases of that description, and

(b) in relation to a case not falling within sub#paragraph (a), the Department.

(3) The application—

(a) shall be made in such manner as the competent authority may direct,

(b) shall contain or be accompanied by such information as that authority may reasonably require for the purpose of determining the application, and

(c) shall be accompanied by the prescribed fee;

and the authority may direct that notice of the making of the application shall be published in such manner as may be specified in the direction.

(4) At any time after receiving the application and before determining it the authority may require the applicant to furnish additional information.

(5) Directions and requirements given or imposed under paragraph (3) or (4) may differ as between different applications.

(6) Any information to be furnished to the competent authority under this Article shall, if it so requires, be in such form or verified in such manner as it may specify.

(7) An application may be withdrawn before it is granted or refused.

(8) Any sums received under this Article by a competent authority other than the Department may be retained by the authority; and any sums so received by the Department shall be applied in such manner as the Department of Finance and Personnel may direct.

[[F405](9) Paragraph (3)(c) shall not have effect in respect of an application made to the Department (but this paragraph is without prejudice to Article 361A).**]**

Annotations:
F405 Art. 351(9) added (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 26(3) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Grant, refusal and withdrawal of authorisation

352.—(1) The competent authority may, on an application duly made in accordance with Article 351 and after being furnished with all such information as it may require under that Article, grant or refuse the application.

(2) The authority shall grant the application if it appears to it from the information furnished by the applicant and having regard to such other information, if any, as it may have—

(a) that the applicant is a fit and proper person to act as an insolvency practitioner, and

(b) that the applicant meets the prescribed requirements with respect to education and practical training and experience.

(3) An authorisation granted under this Article, if not previously withdrawn, continues in force for such period not exceeding the prescribed maximum as may be specified in the authorisation.

(4) An authorisation so granted may be withdrawn by the competent authority if it appears to it—

(a) that the holder of the authorisation is no longer a fit and proper person to act as an insolvency practitioner, or

(b) without prejudice to sub#paragraph (a), that the holder—

(i) has failed to comply with any provision of this Part or of any regulations made under this Part or Part XIII, or

(ii) in purported compliance with any such provision, has furnished the competent authority with false, inaccurate or misleading information.

(5) An authorisation granted under this Article may be withdrawn by the competent authority at the request or with the consent of the holder of the authorisation.

Notices

353.—(1) Where a competent authority grants an authorisation under Article 352, it shall give written notice of that fact to the applicant, specifying the date on which the authorisation takes effect.

(2) Where the authority proposes to refuse an application, or to withdraw an authorisation under Article 352(4), it shall give the applicant or holder of the authorisation written notice of its intention to do so, setting out particulars of the grounds on which it proposes to act.

(3) In the case of a proposed withdrawal the notice shall state the date on which it is proposed that the withdrawal should take effect.

(4) A notice under paragraph (2) shall give particulars of the rights exercisable under Article 354 by a person on whom the notice is served.

Right to make representations

354.—(1) A person on whom a notice is served under Article 353(2) may within 14 days from the date of service make written representations to the competent authority.

(2) The competent authority shall have regard to any representations so made in determining whether to refuse the application or withdraw the authorisation, as the case may be.

F406

PART XIII

PUBLIC ADMINISTRATION

Annotations:
F406 Pts. XI - XIV modified by S.R.2004/307 (as amended (1.10.2006) by Limited Liability Partnerships (Amendment) Regulations (Northern Ireland) 2006 S.R. 2006/377), reg. 3, {Sch. 2})

Official receivers

Appointment, etc., of official receivers

355.—(1) The Department may appoint one or more than one officer of the Department as official receiver for Northern Ireland.

(2) The Department may give directions with respect to the disposal of the business of official receivers.

Functions and status of official receivers

356.—(1) In addition to any functions conferred on him by this Order, an official receiver shall carry out such other functions as may be conferred on him by the Department.

(2) In the exercise of the functions of his office an official receiver shall act under the general authority and direction of the Department, but shall also be an officer of the High Court.

(3) Any property vested in an officer of the Department in his official capacity as official receiver shall, on his dying, ceasing to hold office or being otherwise succeeded in relation to the bankruptcy or winding up in question by another official receiver, vest in his successor without any conveyance, assignment or transfer.

Deputy official receivers

357.—(1) The Department may, if it thinks it expedient to do so in order to facilitate the disposal of the business of official receiver, appoint one or more than one officer of the Department as deputy official receiver.

(2) Subject to any directions given by the Department under Article 355 or 356, a deputy official receiver has, on such conditions and for such period as may be specified in the terms of his appointment, the same status and functions as an official receiver.

Insolvency Account

Insolvency Account

358.—(1) An account, to be called the Insolvency Account, shall continue to be kept by the Department with such bank as may be agreed with the Department of Finance and Personnel.

(2) The Department may, with the agreement of the Department of Finance and Personnel, invest any money from time to time standing to the credit of the Insolvency Account.

(3) The Department shall in respect of each year ending on 31st March prepare an account, in such form and manner as the Department of Finance and Personnel may direct, of sums credited and debited to the Insolvency Account during that year.

(4) On or before 31st August in each year the Department shall transmit to the Comptroller and Auditor General for Northern Ireland the account prepared under paragraph (3) in respect of the year ending on the preceding 31st March and the Comptroller and Auditor General shall examine and certify such account and the Department shall lay copies thereof, together with the report of the Comptroller and Auditor General thereon, before the Assembly.

(5) On or before 31st March in each year the Department shall pay into the Consolidated Fund the amount of any lodgment made into the Insolvency Account of unclaimed dividends and unapplied or undistributed balances, which has remained unclaimed for a period of at least 2 years from the date of lodgment.

[[F407]Adjustment of balances

358A.—(1) The Department of Finance and Personnel may direct the payment out of the Consolidated Fund of sums into the Insolvency Account.

(2) The Department of Finance and Personnel shall certify to the Assembly the reason for any payment under paragraph (1).

(3) The Department may pay sums out of the Insolvency Account into the Consolidated Fund.**]**

Annotations:

F407 Art. 358A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 28 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Insolvency rules

Insolvency rules

359.—(1) The Lord Chancellor may, with the concurrence of the Department and after consultation with the committee appointed under Article 360, make rules for the purpose of giving effect to this Order**[**[F408] or the EC Regulation**]**.

[[F409](1A) Rules that affect court procedure may be made under paragraph (1) only with the concurrence of the Lord Chief Justice.

(1B) The Lord Chief Justice may nominate any of the following to exercise his functions under paragraph (1A)—

(a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;

(b) a Lord Justice of Appeal (as defined in section 88 of that Act).**]**

(2) Without prejudice to the generality of paragraph (1), or to any provision of this Order by virtue of which rules under this Article may be made with respect to any matter, rules under this Article may contain—

(a) any such provision as is specified in Schedule 5 or corresponds to provision contained immediately before the coming into operation of this Order in rules made, or having effect as if made under Article 613(1) and (2) of the Companies Order (old winding#up rules), and

(b [F410] any such provision as is specified in Schedule 6 or corresponds to provision contained immediately before the coming into operation of this Order in rules made under Article 33(1) and (2) of the Bankruptcy Amendment (Northern Ireland) Order 1980[F411] (old bankruptcy rules), and

(c) provision for enabling the Master (Bankruptcy) to exercise such of the jurisdiction conferred for the purposes of this Order on the High Court as may be prescribed and for enabling the review of any such jurisdiction, and

(d) such incidental, supplemental and transitional provision as may appear to the Lord Chancellor or, as the case may be, the Department necessary or expedient.

[[F408](2A For the purposes of paragraph (2), a reference in Schedule 5 or Schedule 6 to doing anything under or for the purposes of a provision of this Order includes a reference to doing anything under or for the purposes of the EC Regulation (in so far as the provision of this Order relates to a matter to which the EC Regulation applies).

(2B) Rules under this Article for the purpose of giving effect to the EC Regulation may not create an offence of a kind referred to in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972.**]**

(3) In Schedule 5 "liquidator" includes a provisional liquidator; and references in this Article to this Order are to be read as including **[**[F412]the Companies Acts**]** so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies.

(4) Rules under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946[F413] shall apply accordingly.

(5) Regulations made by the Department under a power conferred by rules under this Article shall be subject to affirmative resolution.

(6) Nothing in this Article prejudices any power to make rules of court.

Annotations:

F408 SR 2002/223

F409 Art. 359(1A)(1B) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 81; S.I. 2006/1014, **art. 2(a)**, Sch. 1

F410 mod. by SR 2004/307

F411 1980 NI 4

F412 Words in art. 359(3) substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), **Sch. 4 para. 62** (with art. 12)

F413 1946 c. 36

Modifications etc. (not altering text)

C20 Art. 359 applied in part. (1.10.2007) by Companies Act 2006 (c. 46), **ss. 997**, 1300(2); S.I. 2007/2194, **art. 2(1)(j)** (with art. 12)

Committee to review rules under Article 359

360.—(1) There shall**[**[F414]be a committee appointed by the Lord Chief Justice**]** to keep under review rules for the time being in force under Article 359 and to make recommendations to the Lord Chancellor as to any changes in the rules that may appear to the committee to be desirable.

(2) The committee shall consist of—

(a) the Chancery Judge;

(b) the Master (Bankruptcy);

(c) a practising barrister#at#law;

(d) a practising solicitor of the Supreme Court;

(e) a practising accountant; and

(f) such additional persons, if any, as appear to the**[**[F415]Lord Chief Justice**]** to have qualifications or experience that would be of value to the committee in considering any matter with which it is concerned.

[[F416](3) The Lord Chief Justice may nominate any of the following to exercise his functions under this Article—

(a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;

(b) a Lord Justice of Appeal (as defined in section 88 of that Act).**]**

Annotations:

F414 Words in art. 360(1) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 82(2); S.I. 2006/1014, **art. 2(a)**, Sch. 1

F415 Words in art. 360(2)(f) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 82(3); S.I. 2006/1014, **art. 2(a)**, Sch. 1

F416 Art. 360(3) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 82(4); S.I. 2006/1014, **art. 2(a)**, Sch. 1

Fees

Fees orders

361.—(1) The Department may, with the concurrence of the Department of Finance and Personnel, by order subject to affirmative resolution specify the fees which shall be paid in respect of—

(a) proceedings under this Order other than fees to which section 116 of the Judicature (Northern Ireland) Act 1978[F417] (court fees, etc.) applies; and

(b) the performance by the official receiver or the Department of functions under this Order;

and the Department of Finance and Personnel may direct by whom and in what manner the fees are to be collected and accounted for.

(2) The Department may, with the concurrence of the Department of Finance and Personnel, by order subject to negative resolution provide for sums to be deposited, by such persons, in such manner and in such circumstances as may be specified in the order, by way of security for—

(a) fees payable by virtue of this Article, and

(b [F418] fees payable to any person who has prepared an insolvency practitioner's report under Article 248.

(3) An order under this Article may contain such incidental, supplemental, and transitional provisions as may appear to the Department or (as the case may be) the Department of Finance and Personnel necessary or expedient.

(4) References in paragraph (1) to this Order are to be read as including **[**[F419]the Companies Acts**]** so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies.

(5) Nothing in this Article prejudices any power to make rules of court.

Annotations:

F417 1978 c. 23

F418 mod. by SR 2004/307

F419 Words in art. 361(4) substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), **Sch. 4 para. 62** (with art. 12)

[F420 Fees orders (supplementary)

361A.—(1) The Department—

(a) may, with the concurrence of the Department of Finance and Personnel, by order subject to negative resolution require a body to pay a fee in connection with the grant or maintenance of recognition of the body under Article 350, and

(b) may refuse recognition, or revoke an order of recognition under Article 350(1) by a further order, where a fee is not paid.

(2) The Department—

(a) may, with the concurrence of the Department of Finance and Personnel, by order subject to negative resolution require a person to pay a fee in connection with the grant or maintenance of authorisation of the person under Article 352, and

(b) may disregard an application or withdraw an authorisation where a fee is not paid.

(3) The Department may by order subject to negative resolution require the payment of fees in respect of—

(a) the operation of the Insolvency Account;

(b) payments into and out of that Account.

(4) The Department of Finance and Personnel may direct by whom and in what manner the fees are to be collected and accounted for.

(5) Paragraphs (3) and (5) of Article 361 apply to fees under this Article as they apply to fees under that Article.

(6) Nothing in this Article prejudices the provision contained in Article 361.**]**

Annotations:

F420 Art. 361A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 26(1) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Specification, increase and reduction of money sums relevant in the operation of this Order

Monetary limits

362.—(1) The Department may by order—

(a F421 increase or reduce any of the money sums for the time being specified in—

Article 103(1)(a) (minimum debt for service of demand on company by unpaid creditor);

Article 170(1)(a) and (b) (minimum value of company property concealed or fraudulently removed, affecting criminal liability of company's officer);

Article 186(1) (minimum debt for service of demand on unregistered company by unpaid creditor);

Article 215(5) (maximum debt for calculating majority of creditors for assent to deed of arrangement);

Article 221(4) (maximum debt for calculating majority of creditors for assent to dispense with security by trustee under deed of arrangement); or

(b specify amounts for the purposes of the following provisions—

Article 247 (minimum value of debtor's estate determining whether immediate bankruptcy order should be made; small bankruptcies level);

[[F422]Article 286A (value of property below which application for sale, possession or charge to be dismissed);**]**

Article 325(1)(b) and (3) (minimum amount of concealed debt, or value of property concealed or removed, determining criminal liability under the Article);

Article 329(1)(a) (minimum value of property taken by a bankrupt out of Northern Ireland, determining his criminal liability);

Article 331(1)(a) (maximum amount of credit which bankrupt may obtain without disclosure of his status);

Article 332(2)(a) (exemption of bankrupt from criminal liability for failure to keep proper accounts, if unsecured debts not more than the prescribed minimum);

Article 335(2)(d) (minimum value of goods removed by the bankrupt, determining his liability to arrest)**[**[F423] or**]**

[[F423](c) increase or reduce any of the money sums for the time being specified in the following provisions of Schedule A1—

paragraph 28(1) (maximum amount of credit which company may obtain without disclosure of moratorium);

paragraph 51(4) (minimum value of company property concealed or fraudulently removed, affecting criminal liability of company's officer).**]**

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(2) An order under this Article may contain such transitional provisions as may appear to the Department necessary or expedient.

(3) No order shall be made under this Article unless a draft of it has been laid before, and approved by a resolution of the Assembly.

Annotations:

F421 mod. by SR 2004/307

F422 Words in art. 362(1)(b) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 17(5) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F423 2002 NI 6

Insolvency practice

Regulations for purposes of Part XII

363. Without prejudice to the generality of any provision of Part XII by virtue of which regulations may be made with respect to any matter, regulations may contain—

(a) provision as to the matters to be taken into account in determining whether a person is a fit and proper person to act as an insolvency practitioner;

(b) provision prohibiting a person from so acting in prescribed cases, being cases in which a conflict of interest will or may arise;

(c) provision imposing requirements with respect to—

(i) the preparation and keeping by a person who acts as an insolvency practitioner of prescribed books, accounts and other records, and

(ii) the production of those books, accounts and records to prescribed persons;

(d) provision conferring power on prescribed persons—

(i) to require any person who acts or has acted as an insolvency practitioner to answer any inquiry in relation to a case in which he is so acting or has so acted, and

(ii) to apply to a court to examine such a person or any other person on oath concerning such a case;

(e) provision making non#compliance with any of the regulations a criminal offence; and

(f) such incidental, supplemental and transitional provisions as may appear to the Department necessary or expedient.

Other order#making powers

Insolvent partnerships

364 [F424]**.**—(1) The Lord Chancellor may, by order made with the concurrence of**[**[F425] the Lord Chief Justice and**]** the Department, provide that such provisions of this Order, Part VI of the Judgments Enforcement (Northern Ireland) Order 1981[F426], the Land Registration Act (Northern Ireland) 1970[F427] or the Registration of Deeds Acts as may be specified in the order shall apply in relation to insolvent partnerships with such modifications as may be so specified.

[[F428](1ZA) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under paragraph (1)—

(a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;

(b) a Lord Justice of Appeal (as defined in section 88 of that Act).**]**

[[F429](1A) An order under this Article may make provision in relation to the EC Regulation.

(1B) Provision made by virtue of this Article in relation to the EC Regulation may not create an offence of a kind referred to in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972.**]**

(2) An order under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946[F430] shall apply accordingly.

Annotations:

F424 mod. by SR 2004/307

F425 Words in art. 364(1) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 83(2); S.I. 2006/1014, **art. 2(a)**, Sch. 1

F426 1981 NI 6

F427 1970 c. 18 (NI)

F428 Art. 364(1ZA) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 83(3); S.I. 2006/1014, **art. 2(a)**, Sch. 1

F429 SR 2002/223

F430 1946 c. 36

Modifications etc. (not altering text)

C21 Art. 364 applied (with modifications) (prosp.) by Serious Crime Act 2007 (c. 27), **ss. 28(5)**, 94(1)

Insolvent estates of deceased persons

365 [F431]**.**—(1) The Lord Chancellor may, by order made with the concurrence of**[**[F432] the Lord Chief Justice and**]** the Department, provide that such provisions of this Order, Part VI of the Judgments Enforcement (Northern Ireland) Order 1981, the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts as may be specified in the order shall apply**[**[F433] in relation**]** to the administration of the insolvent estates of deceased persons with such modifications as may be so specified.

[[F434](1ZA) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under paragraph (1)—

(a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;

(b) a Lord Justice of Appeal (as defined in section 88 of that Act).**]**

[[F435](1A) An order under this Article may make provision in relation to the EC Regulation.

(1B) Provision made by virtue of this Article in relation to the EC Regulation may not create an offence of a kind referred to in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972.**]**

(2) An order under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act shall apply accordingly.

(3) For the purposes of this Article the estate of a deceased person is insolvent if, when realised, it will be insufficient to meet in full all the debts and other liabilities to which it is subject.

Annotations:

F431 mod. by SR 2004/307

F432 Words in art. 365(1) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 84(2); S.I. 2006/1014, **art. 2(a)**, Sch. 1

F433 2002 NI 6

F434 Art. 365(1ZA) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 84(3); S.I. 2006/1014, **art. 2(a)**, Sch. 1

F435 SR 2002/223

[F436]Insolvent estates: joint tenancies

365A.—(1) This Article applies where—

(a) an insolvency administration order has been made in respect of the insolvent estate of a deceased person,

(b) the petition for the order was presented after the commencement of this Article and within the period of 5 years beginning with the day on which he died, and

(c) immediately before his death he was beneficially entitled to an interest in any property as joint tenant.

(2) For the purpose of securing that debts and other liabilities to which the estate is subject are met, the High Court may, on an application by the trustee appointed pursuant to the insolvency

administration order, make an order under this Article requiring the survivor to pay to the trustee an amount not exceeding the value lost to the estate.

(3) In determining whether to make an order under this Article, and the terms of such an order, the High Court must have regard to all the circumstances of the case, including the interests of the deceased's creditors and of the survivor; but, unless the circumstances are exceptional, the Court must assume that the interests of the deceased's creditors outweigh all other considerations.

(4) The order may be made on such terms and conditions as the High Court thinks fit.

(5) Any sums required to be paid to the trustee in accordance with an order under this Article shall be comprised in the estate.

(6) The modifications of this Order which may be made by an order under Article 365 include any modifications which are necessary or expedient in consequence of this Article.

(7) In this Article "survivor" means the person who, immediately before the death, was beneficially entitled as joint tenant with the deceased or, if the person who was so entitled dies after the making of the insolvency administration order, his personal representatives.

(8) If there is more than one survivor—

(a) an order under this Article may be made against all or any of them, but

(b) no survivor shall be required to pay more than so much of the value lost to the estate as is properly attributable to him.

(9) In this Article—

"insolvency administration order" has the same meaning as in any order under Article 365 having effect for the time being,

"value lost to the estate" means the amount which, if paid to the trustee, would in the High Court's opinion restore the position to what it would have been if the deceased had been adjudged bankrupt immediately before his death.**]**

Annotations:
F436 2002 NI 6

[[F437]Formerly authorised banks]

366.—[[F438](1) The Department may, by order subject to negative resolution, after consultation with the Financial Services Authority provide that specified provisions in Parts II to VII shall apply with specified modifications in relation to any person who—

(a) has a liability in respect of a deposit which he accepted in accordance with the Banking Act 1979 or 1987, but

(b) does not have permission under Part IV of the Financial Services and Markets Act 2000 (regulated activities) to accept deposits.

(1A) Paragraph (1)(b) shall be construed in accordance with—

(a) section 22 of the Financial Services and Markets Act 2000 (classes of regulated activity and categories of investment),

(b) any relevant order under that section, and

(c) Schedule 2 to that Act (regulated activities).**]**

(2) [F439]. . . . . .

Annotations:
F437 SI 2004/355

F438 Art. 366(1)(1A) substituted (27.3.2006) for art. 366(1) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 43(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F439 Art. 366(2) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 43(3), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F440

PART XIV

MISCELLANEOUS

Annotations:

F440 Pts. XI - XIV modified by S.R.2004/307 (as amended (1.10.2006) by Limited Liability Partnerships (Amendment) Regulations (Northern Ireland) 2006 S.R. 2006/377), reg. 3, {Sch. 2})

Provisions against debt avoidance

Transactions defrauding creditors

367.—(1) This Article relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if—

(a) he makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration;

(b) he enters into a transaction with the other in consideration of marriage**[**[F441] or the formation of a civil partnership**]**; or

(c) he enters into a transaction with the other 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 himself.

(2) Where a person has entered into such a transaction, the High Court may, if satisfied as mentioned in paragraph (3), make such order as it thinks fit for—

(a) restoring the position to what it would have been if the transaction had not been entered into, and

(b) protecting the interests of persons who are victims of the transaction.

(3) In the case of a person entering into such a transaction, an order shall only be made if the High Court is satisfied that it was entered into by him for the purpose—

(a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or

(b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make.

(4) In relation to a transaction at an undervalue, references in this Article and Article 368 to a victim of the transaction are to a person who is, or is capable of being, prejudiced by it; and in Articles 368 and 369 the person entering into the transaction is referred to as “the debtor”.

Annotations:
F441 2004 c. 33

Those who may apply for an order under Article 367

368.—(1) An application for an order under Article 367 shall not be made in relation to a transaction except—

(a) in a case where the debtor has been adjudged bankrupt or is a body corporate which is being wound up or**[**[F442]is in administration**]**, by the official receiver, by the trustee of the bankrupt's estate or the liquidator or administrator of the body corporate or (with the leave of the High Court) by a victim of the transaction;

(b) in a case where a victim of the transaction is bound by a voluntary arrangement approved under Part II or Part VIII, by the supervisor of the voluntary arrangement or by any person who (whether or not so bound) is such a victim; or

(c) in any other case, by a victim of the transaction.

(2) An application made under any of the sub#paragraphs of paragraph (1) is to be treated as made on behalf of every victim of the transaction.

Annotations:
F442 Words in art. 368(1)(a) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 44 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Provision which may be made by order under Article 367

369.—(1) Without prejudice to the generality of Article 367, an order made under that Article with respect to a transaction may (subject as follows)—

(a) require any property transferred as part of the transaction to be vested in any person, either absolutely or for the benefit of all the persons on whose behalf the application for the order is treated as made;

(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 debtor;

(d) require any person to pay to any other person in respect of benefits received from the debtor such sums 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 to be under such new or revived obligations as the High 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 such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction.

(2) An order under Article 367 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the debtor entered into the transaction; but such an order—

(a) shall not prejudice any interest in property which was acquired from a person other than the debtor 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 in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.

(3) For the purposes of this Article the relevant circumstances in relation to a transaction are the circumstances by virtue of which an order under Article 367 may be made in respect of the transaction.

(4) In this Article "security" means any mortgage, charge, lien or other security.

Disqualifications, reviews and reports

[[F443]Assembly disqualification

370.—(1) If the High Court makes a bankruptcy restrictions order or interim order in respect of a member of the Assembly, the Court shall notify the presiding officer of the Assembly.

(2) If the Department accepts a bankruptcy restrictions undertaking made by a member of the Assembly, the Department shall notify the presiding officer of the Assembly.**]**

Annotations:

F443 Arts. 370 - 370A substituted (27.3.2006) for art. 370 by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 22 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

[[F444]Irrelevance of privilege

370A. A statutory provision about insolvency applies in relation to a member of the Assembly irrespective of any privilege of the Assembly.**]**

Annotations:

F444 Arts. 370 - 370A substituted (27.3.2006) for art. 370 by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 22 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Review, etc., by High Court of its orders

371. The High Court may review, rescind or vary any order made by it in the exercise of the jurisdiction under this Order.

Annual report

372. The Department shall cause an annual general report of matters for which it and its officers, including the official receiver, are responsible under this Order to be prepared and laid before the Assembly.

Legal proceedings

Prosecution and punishment of offences

373.—(1) Schedule 7 sets out in tabular form the manner in which offences under this Order are punishable on conviction.

(2) In relation to an offence under a provision of this Order specified in column 1 of Schedule 7 (the general nature of the offence being described in column 2)—

(a) column 3 shows whether the offence is punishable on conviction on indictment, or on summary conviction, or either in one way or the other;

(b) column 4 shows the maximum punishment by way of fine or imprisonment which may be imposed on a person convicted of the offence in the way specified in relation to it in column 3 (that is to say, on indictment or summarily) any reference to a period of years or months being to a term of imprisonment of that duration;

(c) column 5 shows (in relation to an offence for which there is an entry in that column) that a person convicted of the offence after continued contravention is liable to a daily default fine; that is to say he is liable on a second or subsequent conviction of the offence to the fine specified in that column for each day on which the contravention is continued (instead of the penalty specified for the offence in column 4).

(3) This Article and Schedule 7 shall be subject to any provision of this Order with respect to the prosecution and punishment of any offence specified in that Schedule.

(4) The power to charge a person by virtue of section 20(2) of the Interpretation Act (Northern Ireland) 1954[F445] of any offence committed by a body corporate under this Order does not extend to an offence committed under Articles 40, 49(2), 71(2), 75(4) and (6), 139, 159(2), 166(4), 170(1), (2) and (5), 171(1), 172(1), 173, 174(1) and 175(1).

(5) In Schedule 7 a reference to a fine without a qualifying reference shall be construed as a reference to an unlimited fine.

Annotations:
F445 1954 c. 33 (NI)

Summary proceedings

374.—(1) Summary proceedings for any offence under any of Parts II to VII may (without prejudice to any jurisdiction exercisable apart from this paragraph) be taken against a body corporate at any place at which the body has a place of business, and against any other person at any place at which he is for the time being.

(2) Notwithstanding anything in Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981[F446] (limitation of time for taking proceedings) summary proceedings for an offence under this Order, other than under Articles 34(6), 40, 41(1), 57(6), 75(4), 84(4), 85(3), 111(7), 139, 170(1) and (2), 171(1), 172(1), 173, 174(1),175(1), 180(4), 199(5), 223, 324(1), 325(1), (3) and (5), 326(1), (2) and (3), 327(1) and (3), 328(1) and (3), 329(1), 330(1) and (3), 331(1) and (3), 332, 333(1) and 348(1) may be instituted at any time within 3 years from the commission of the offence and within 12 months from the date on which evidence sufficient in the opinion of the Director of Public Prosecutions for Northern Ireland or, as the case may be, the Department to justify the proceedings comes to his or the Department's knowledge.

(3) For the purposes of this Article, a certificate of the Director of Public Prosecutions for Northern Ireland or, as the case may be, the Department as to the date on which such evidence as is referred to in paragraph (2) came to his or the Department's knowledge is conclusive evidence.

Annotations:
F446 1981 NI 26

Admissibility in evidence of statements of affairs, etc.

375.—**[**[F447](1**]** In any proceedings (whether or not under this Order)—

(a) a statement of affairs prepared for the purposes of any provision of this Order, and

(b) any other statement made in pursuance of a requirement imposed by or under any such provision or by or under rules made under this Order,

may be used in evidence against any person making or concurring in making the statement.

[[F448](2) However, in criminal proceedings in which any such person is charged with an offence to which this paragraph applies—

(a) no evidence relating to the statement may be adduced, and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Paragraph (2) applies to any offence other than—

(a) an offence under Article 34(6), 57(6), 58(8), 81(7), 84(5), 85(3)(a), 111(7), 162(2), 172(1)(a) or (d) or (2), 174, 199(5), 324(1), 325(1)(b) or (5) or 327(1) or (3)(a) or (b);

(b) an offence which is—

(i) created by rules made under this Order, and

(ii) designated for the purposes of this paragraph by such rules or by regulations;

(c) an offence which is—

(i) created by regulations made under any such rules, and

(ii) designated for the purposes of this paragraph by such regulations; or

(d) an offence under Article 3, 7 or 10 of the Perjury (Northern Ireland) Order 1979 (false statements made on oath or made otherwise than on oath).

(4) Regulations under paragraph (3)(b)(ii) shall after being made be laid before the Assembly.**]**

Annotations:
F447 1999 c. 23
F448 1999 c. 23

Supplemental

Judicial notice of court documents

376. In all proceedings under this Order, all courts, judges and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court shall take judicial notice—

(a) of the signature of any officer of the High Court in Northern Ireland or of the High Court or a county court in England and Wales, or of the Court of Session or a sheriff court in Scotland, and also

(b) of the official seal or stamp of the several offices of the High Court in Northern Ireland or England and Wales or of the Court of Session, appended to or impressed on any document made, issued or signed under the provisions of this Order or **[**[F449]the Companies Acts**]**, or any official copy of such a document.

Annotations:

F449 Words in art. 376(b) substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), **Sch. 4 para. 63** (with art. 12)

Exemption from stamp duty

377. Stamp duty shall not be charged on—

(a) any document, being a deed, conveyance, assignment, surrender, admission or other assurance relating solely to property which—

(i) in the case of a winding up by the High Court or of a creditors' voluntary winding up, forms part of the company's assets; or

(ii) is comprised in a bankrupt's estate;

and which, after the execution of that document, is or remains at law or in equity part of that company's assets or the property of the bankrupt or of the trustee in bankruptcy, as the case may require,

(b) any order, certificate or other instrument relating solely to—

(i) the assets of any company which is being wound up as mentioned in head (a)(i) or any proceedings under such a winding up, or

(ii) the property of a bankrupt or any bankruptcy proceedings.

Crown application

378. For the avoidance of doubt it is hereby declared that provisions of this Order bind the Crown, including the Crown in right of Her Majesty's government in the United Kingdom, so far as affecting or relating to the following matters, namely—

(a) remedies against, or against the property of, companies or individuals;

(b) priorities of debts;

(c) transactions at an undervalue or preferences;

(d) voluntary arrangements approved under Part II or Part VIII, and

(e) discharge from bankruptcy.

Transitional provisions and savings

379 [F450]**.** The transitional provisions and savings set out in Schedule 8 shall have effect, the Schedule comprising the following Parts—

Part I: company insolvency and winding up (matters arising before the date of the coming into operation of this Order, and continuance of proceedings in certain cases as before that date);

Part II: individual insolvency (matters so arising, and continuance of bankruptcy proceedings in certain cases as before that date); and

Part III: other general transitional provisions and savings.

Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Insolvency (Northern Ireland) Order 1989. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

Annotations:

F450 mod. by SR 2004/307

Art.380 rep. by 1996 NI 16

Art.381—Amendments

Art.382—Repeals

SCHEDULES

[F451SCHEDULE A1

MORATORIUM WHERE DIRECTORS PROPOSE VOLUNTARY ARRANGEMENTF452

Annotations:
F451 2002 NI 6
F452 mod. by SR 2004/307

PART I

INTRODUCTORY

Interpretation

1. In this Schedule—

the beginning of the moratorium has the meaning given by paragraph 19(1),

the date of filing means the date on which the documents for the time being referred to in paragraph 18(1) are filed or lodged with the High Court,

hire-purchase agreement includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,

market contract and market charge have the meanings given by Part V of the Companies (No. 2) (Northern Ireland) Order 1990,

moratorium means a moratorium under Article 14A,

the nominee includes any person for the time being carrying out the functions of a nominee under this Schedule,

the settlement finality regulations means the Financial Markets and Insolvency (Settlement Finality) Regulations 1999,

system-charge has the meaning given by the Financial Markets and Insolvency Regulations (Northern Ireland) 1996.

Eligible companies

2.—(1) A company is eligible for a moratorium if it meets the requirements of paragraph 3, unless—

(a) it is excluded from being eligible by virtue of[F453paragraphs 4 to 7], or

(b) it falls within sub-paragraph (2).

(2) A company falls within this sub-paragraph if—

(a) it effects or carries out contracts of insurance, but is not exempt from the general prohibition, within the meaning of section 19 of the Financial Services and Markets Act 2000, in relation to that activity,

(b) it has permission under Part IV of that Act to accept deposits,

(c) it has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 or the Banking Act 1987,

(d) it is a party to a market contract or any of its property is subject to a market charge or a system-charge,

(e) it is a participant (within the meaning of the settlement finality regulations) or any of its property is subject to a collateral security charge (within the meaning of those regulations).

(3) Paragraphs (a), (b) and (c) of sub-paragraph (2) must be read with—

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.

Annotations:

F453 Words in Sch. A1 para. 2(1)(a) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 11(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

3.—(1) A company meets the requirements of this paragraph if the qualifying conditions are met—

(a) in the year ending with the date of filing, or

(b) in the financial year of the company which ended last before that date.

(2) For the purposes of sub-paragraph (1)—

(a) the qualifying conditions are met by a company in a period if, in that period, it satisfies 2 or more of the requirements for being a small company specified for the time being in Article 255(3) of the Companies (Northern Ireland) Order 1986, and

(b) a company's financial year is to be determined in accordance with that Order.

(3) Paragraphs (4), (5) and (6) of Article 255 of that Order apply for the purposes of this paragraph as they apply for the purposes of that Article.

(4) A company does not meet the requirements of this paragraph if it is a holding company of a group of companies which does not qualify as a small group or a medium-sized group in respect of the financial year of the company which ended last before the date of filing.

(5) For the purposes of sub-paragraph (4) group has the meaning given by Article 270 of the Companies (Northern Ireland) Order 1986 (definitions for Part VIII) and a group qualifies as small or medium-sized if it qualifies as such under Article 257 of the Companies (Northern Ireland) Order 1986 (qualification of group as small or medium-sized).

4.—(1) A company is excluded from being eligible for a moratorium if, on the date of filing—

[[F454](a) the company is in administration,**]**

(b) the company is being wound up,

(c) there is an administrative receiver of the company,

(d) a voluntary arrangement has effect in relation to the company,

(e) there is a provisional liquidator of the company,

(f) a moratorium has been in force for the company at any time during the period of 12 months ending with the date of filing and—

(i) no voluntary arrangement had effect at the time at which the moratorium came to an end, or

(ii) a voluntary arrangement which had effect at any time in that period has come to an end prematurely,

[[F455](fa) an administrator appointed under paragraph 23 of Schedule B1 has held office in the period of 12 months ending with the date of filing,**]** or

(g) a voluntary arrangement in relation to the company which had effect in pursuance of a proposal under Article 14(3) has come to an end prematurely and, during the period of 12 months ending with the date of filing, an order under Article 18(3)(a) has been made.

(2) Sub-paragraph (1)(b) does not apply to a company which, by reason of a winding-up order made after the date of filing, is treated as being wound up on that date.

Annotations:

F454 Sch. A1 para. 4(1)(a) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 45(2)(a) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F455 Sch. A1 para. 4(1)(fa) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 45(2)(b) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Capital market arrangement

5. A company is also excluded from being eligible for a moratorium if, on the date of filing, it is a party to an agreement which is or forms part of a capital market arrangement under which—

(a) a party has incurred, or when the agreement was entered into was expected to incur, a debt of at least £10 million under the arrangement, and

(b) the arrangement involves the issue of a capital market investment.

Public private partnership

6. A company is also excluded from being eligible for a moratorium if, on the date of filing, it is a project company of a project which—

(a) is a public-private partnership project, and

(b) includes step-in rights.

Liability under an arrangement

7.—(1) A company is also excluded from being eligible for a moratorium if, on the date of filing, it has incurred a liability under an agreement of £10 million or more.

(2) Where the liability in sub-paragraph (1) is a contingent liability under or by virtue of a guarantee or an indemnity or security provided on behalf of another person, the amount of that liability is the full amount of the liability in relation to which the guarantee, indemnity or security is provided.

(3) In this paragraph—

(a) the reference to liability includes a present or future liability whether, in either case, it is certain or contingent,

(b) the reference to liability includes a reference to a liability to be paid wholly or partly in foreign currency (in which case the sterling equivalent shall be calculated as at the time when the liability is incurred).

Interpretation of capital market arrangement

8.—(1) For the purposes of paragraph 5 an arrangement is a capital market arrangement if—

(a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement, or

(b) at least one party guarantees the performance of obligations of another party, or

(c) at least one party provides security in respect of the performance of obligations of another party, or

(d) the arrangement involves an investment of a kind described in Articles 83 to 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (options, futures and contracts for differences).

(2) For the purposes of sub-paragraph (1)—

(a) a reference to a holding as trustee includes a reference to holding as nominee or agent,

(b) a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment, and

(c) a person holds a capital market investment if he has a legal or beneficial interest in it.

(3) In paragraph 5, 7, 14 and this paragraph—

agreement includes an agreement or undertaking effected by—

(a) contract,

(b) deed, or

(c) any other instrument intended to have effect in accordance with the law of Northern Ireland or another jurisdiction, and

party to an arrangement includes a party to an agreement which—

(a) forms part of the arrangement,

(b) provides for the raising of finance as part of the arrangement, or

(c) is necessary for the purposes of implementing the arrangement.

Capital market investment

9.—(1) For the purposes of paragraphs 5 and 8, an investment is a capital market investment if—

(a) it is within Article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (debt instruments), and

(b) it is rated, listed or traded or designed to be rated, listed or traded.

(2) In sub-paragraph (1)—

listed means admitted to the official list within the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (interpretation),

rated means rated for the purposes of investment by an internationally recognised rating agency,

traded means admitted to trading on a market established under the rules of a recognised investment exchange or on a foreign market.

(3) In sub-paragraph (2)—

foreign market has the same meaning as relevant market in Article 67(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (foreign markets),

recognised investment exchange has the meaning given by section 285 of the Financial Services and Markets Act 2000 (recognised investment exchange).

10.—(1) For the purposes of paragraphs 5 and 8 an investment is also a capital market investment if it consists of a bond or commercial paper issued to one or more of the following—

(a) an investment professional within the meaning of Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001,

(b) a person who is, when the agreement mentioned in paragraph 5 is entered into, a certified high net worth individual in relation to a communication within the meaning of Article 48(2) of that Order,

(c) a person to whom Article 49(2) of that Order applies (high net worth company, &c.),

(d) a person who is, when the agreement mentioned in paragraph 5 is entered into, a certified sophisticated investor in relation to a communication within the meaning of Article 50(1) of that Order, and

(e) a person in a State other than the United Kingdom who under the law of that State is not prohibited from investing in bonds or commercial paper.

(2) For the purposes of sub-paragraph (1)—

(a) in applying Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 for the purposes of sub-paragraph (1)(a)—

(i) in Article 19(5)(b), ignore the words after exempt person,

(ii) in Article 19(5)(c)(i), for the words from the controlled activity to the end substitute a controlled activity, and

(iii) in Article 19(5)(e) ignore the words from where the communication to the end, and

(b) in applying Article 49(2) of that Order for the purposes of sub-paragraph (1)(c), ignore Article 49(2)(e).

(3) In sub-paragraph (1)—

bond shall be construed in accordance with Article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, and

commercial paper has the meaning given by Article 9(3) of that Order.

Debt

11. The debt of at least £10 million referred to in paragraph 5—

(a) may be incurred at any time during the life of the capital market arrangement, and

(b) may be expressed wholly or partly in a foreign currency (in which case the sterling equivalent shall be calculated as at the time when the arrangement is entered into).

Interpretation of project company

12.—(1) For the purposes of paragraph 6 a company is a project company of a project if—

(a) it holds property for the purpose of the project,

(b) it has sole or principal responsibility under an agreement for carrying out all or part of the project,

(c) it is one of a number of companies which together carry out the project,

(d) it has the purpose of supplying finance to enable the project to be carried out, or

(e) it is the holding company of a company within any of paragraphs (a) to (d).

(2) But a company is not a project company of a project if—

(a) it performs a function within sub-paragraph (1)(a) to (d) or is within sub-paragraph (1)(e), but

(b) it also performs a function which is not—

(i) within sub-paragraph (1)(a) to (d),

(ii) related to a function within sub-paragraph (1)(a) to (d), or

(iii) related to the project.

(3) For the purposes of this paragraph a company carries out all or part of a project whether or not it acts wholly or partly through agents.

Public-private partnership project

13.—(1) In paragraph 6 public-private partnership project means a project—

(a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or

(b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.

(2) In sub-paragraph (1) resources includes—

(a) funds (including payment for the provision of services or facilities),

(b) assets,

(c) professional skill,

(d) the grant of a concession or franchise, and

(e) any other commercial resource.

(3) In sub-paragraph (1) public body means—

(a) a body which exercises public functions,

(b) a body specified for the purposes of this paragraph by the Department, and

(c) a body within a class specified for the purposes of this paragraph by the Department.

(4) A specification under sub-paragraph (3) may be—

(a) general, or

(b) for the purpose of the application of paragraph 6 to a specified case.

Step-in rights

14.—(1) For the purposes of paragraph 6 a project has step-in rights if a person who provides finance in connection with the project has a conditional entitlement under an agreement to—

(a) assume sole or principal responsibility under an agreement for carrying out all or part of the project, or

(b) make arrangements for carrying out all or part of the project.

(2) In sub-paragraph (1) a reference to the provision of finance includes a reference to the provision of an indemnity.

"Person"

15. For the purposes of paragraphs 5 to 14, a reference to a person includes a reference to a partnership or another unincorporated group of persons.

16.—(1) The Department may by regulations modify the qualifications for eligibility of a company for a moratorium.

(2) Regulations under this paragraph shall only be made if a draft containing the regulations has been laid before, and approved by a resolution of, the Assembly.

PART II

OBTAINING A MORATORIUM

Nominee's statement

17.—(1 [F456] Where the directors of a company wish to obtain a moratorium, they shall submit to the nominee—

(a) a document setting out the terms of the proposed voluntary arrangement,

(b) a statement of the company's affairs containing—

(i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and

(ii) such other information as may be prescribed, and

(c) any other information necessary to enable the nominee to comply with sub-paragraph (2) which he requests from them.

(2) The nominee shall submit to the directors a statement in the prescribed form indicating whether or not, in his opinion—

(a) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,

(b) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business, and

(c meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement.

(3) In forming his opinion on the matters mentioned in sub-paragraph (2), the nominee is entitled to rely on the information submitted to him under sub-paragraph (1) unless he has reason to doubt its accuracy.

(4) The reference in sub-paragraph (2)(b) to the company's business is to that business as the company proposes to carry it on during the moratorium.

Annotations:
F456 mod. by SR 2004/307

Documents to be submitted to High Court

18.—(1 [F457] To obtain a moratorium the directors of a company must file with the High Court—

(a) a document setting out the terms of the proposed voluntary arrangement,

(b) a statement of the company's affairs containing—

(i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and

(ii) such other information as may be prescribed,

(c) a statement that the company is eligible for a moratorium,

(d) a statement from the nominee that he has given his consent to act, and

(e) a statement from the nominee that, in his opinion—

(i) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,

(ii) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business, and

(iii meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement.

(2) Each of the statements mentioned in sub-paragraph (1)(b) to (e), except so far as it contains the particulars referred to in paragraph (b)(i), must be in the prescribed form.

(3) The reference in sub-paragraph (1)(e)(ii) to the company's business is to that business as the company proposes to carry it on during the moratorium.

(4) The Department may by regulations modify the requirements of this paragraph as to the documents required to be filed with the High Court in order to obtain a moratorium.

Annotations:
F457 mod. by SR 2004/307

Duration of moratorium

19.—(1) A moratorium comes into force when the documents for the time being referred to in paragraph 18(1) are filed or lodged with the High Court and references in this Schedule to the beginning of the moratorium shall be construed accordingly.

(2 [F458] A moratorium ends at the end of the day on which the meetings summoned under paragraph 39(1) are first held (or, if the meetings are held on different days, the later of those days), unless it is extended under paragraph 42.

(3 If either of those meetings has not first met before the end of the period of 28 days beginning with the day on which the moratorium comes into force, the moratorium ends at the end of the day on which those meetings were to be held (or, if those meetings were summoned to be held on different days, the later of those days), unless it is extended under paragraph 42.

(4 If the nominee fails to summon either meeting within the period required by paragraph 39(1), the moratorium ends at the end of the last day of that period.

(5) If the moratorium is extended (or further extended) under paragraph 42, it ends at the end of the day to which it is extended (or further extended).

(6) Sub-paragraphs (2) to (5) do not apply if the moratorium comes to an end before the time concerned by virtue of—

(a) paragraph 35(4) (effect of withdrawal by nominee of consent to act),

(b) an order under paragraph 36(3), 37(3) or 50 (challenge of actions of nominee or directors), or

(c a decision of one or both of the meetings summoned under paragraph 39.

(7) If the moratorium has not previously come to an end in accordance with sub-paragraphs (2) to (6), it ends at the end of the day on which a decision under paragraph 41 to approve a voluntary arrangement takes effect under paragraph 46.

(8) The Department may by order increase or reduce the period for the time being specified in sub-paragraph (3).

Annotations:
F458 mod. by SR 2004/307

Notification of beginning of moratorium

20.—(1 [F459] When a moratorium comes into force, the directors shall notify the nominee of that fact forthwith.

(2 If the directors without reasonable excuse fail to comply with sub-paragraph (1), each of them shall be guilty of an offence.

Annotations:
F459 mod. by SR 2004/307

21.—(1) When a moratorium comes into force, the nominee shall, in accordance with the rules—

(a) advertise that fact forthwith, and

(b) notify the registrar, the company and any petitioning creditor of the company of whose claim he is aware of that fact.

(2) In sub-paragraph (1)(b), petitioning creditor means a creditor by whom a winding-up petition has been presented before the beginning of the moratorium, as long as the petition has not been dismissed or withdrawn.

(3) If the nominee without reasonable excuse fails to comply with sub-paragraph (1)(a) or (b), he shall be guilty of an offence.

Notification of end of moratorium

22.—(1) When a moratorium comes to an end, the nominee shall, in accordance with the rules—

(a) advertise that fact forthwith, and

(b) notify the High Court, the registrar, the company and any creditor of the company of whose claim he is aware of that fact.

(2) If the nominee without reasonable excuse fails to comply with sub-paragraph (1)(a) or (b), he shall be guilty of an offence.

PART III

EFFECTS OF MORATORIUM

Effect on creditors, etc.

23.—(1) During the period for which a moratorium is in force for a company—

(a) no petition may be presented for the winding up of the company,

(b [F460] no meeting of the company may be called or requisitioned except with the consent of the nominee or the leave of the High Court and subject (where the Court gives leave) to such terms as the Court may impose,

(c no resolution may be passed or order made for the winding up of the company,

[[F461](d) no administration application may be made in respect of the company,

(da) no administrator of the company may be appointed under paragraph 15 or 23 of Schedule B1,**]**

(e) no administrative receiver of the company may be appointed,

(f) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the leave of the High Court and subject to such terms as the Court may impose,

(g) no other steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, except with the leave of the High Court and subject to such terms as the Court may impose, and

(h) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the leave of the High Court and subject to such terms as the Court may impose.

(2 Where a petition, other than an excepted petition, for the winding up of the company has been presented before the beginning of the moratorium, Article 107 shall not apply in relation to any disposition of property, transfer of shares or alteration in status made during the moratorium or at a time mentioned in paragraph 47(5)(a).

(3) Paragraph (a) of sub-paragraph (1) does not apply to an excepted petition and, where such a petition has been presented before the beginning of the moratorium or is presented during the moratorium, paragraphs (b) and (c) of that sub-paragraph do not apply in relation to proceedings on the petition.

(4) For the purposes of this paragraph, excepted petition means a petition under—

(a) Article 104A**[**[F462] or 104B**]**,

(b) [F463] . . . . . .

(c) . . . . . .

(d) section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in subsection (3)(b) of that section.

Annotations:

F460 mod. by SR 2004/307

F461 Sch. A1 para. 23(1)(d)(da) substituted (27.3.2006) for Sch. A1 para. 23(1)(d) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 45(3) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F462 SR 2004/417

F463 Sch. A1 para. 23(4)(b)(c) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 11(3), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

24.—(1) This paragraph applies where there is an uncrystallised floating charge on the property of a company for which a moratorium is in force.

(2) If the conditions for the holder of the charge to give a notice having the effect mentioned in sub-paragraph (4) are met at any time, the notice may not be given at that time but may instead be given as soon as practicable after the moratorium has come to an end.

(3) If any other event occurs at any time which (apart from this sub-paragraph) would have the effect mentioned in sub-paragraph (4), then—

(a) the event shall not have the effect in question at that time, but

(b) if notice of the event is given to the company by the holder of the charge as soon as is practicable after the moratorium has come to an end, the event is to be treated as if it had occurred when the notice was given.

(4) The effect referred to in sub-paragraphs (2) and (3) is—

(a) causing the crystallisation of the floating charge, or

(b) causing the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the company.

(5) Application may not be made for leave under paragraph 23(1)(g) or (h) with a view to obtaining—

(a) the crystallisation of the floating charge, or

(b) the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the company.

25. Security granted by a company at a time when a moratorium is in force in relation to the company may only be enforced if, at that time, there were reasonable grounds for believing that it would benefit the company.

Effect on company

26.—(1) Paragraphs 27 to 33 apply in relation to a company for which a moratorium is in force.

(2) The fact that a company enters into a transaction in contravention of any of paragraphs 27 to 32 does not—

(a) make the transaction void, or

(b) make it to any extent unenforceable against the company.

Company invoices, etc.

27.—(1) Every invoice, order for goods or business letter which—

(a) is issued by or on behalf of the company, and

(b) on or in which the company's name appears,

shall also contain the nominee's name and a statement that the moratorium is in force for the company.

(2) If default is made in complying with sub-paragraph (1), the company and (subject to sub-paragraph (3)) any officer of the company shall be guilty of an offence.

(3) An officer of the company is only liable under sub-paragraph (2) if, without reasonable excuse, he authorises or permits the default.

Obtaining credit during moratorium

28.—(1) The company may not obtain credit to the extent of £250 or more from a person who has not been informed that a moratorium is in force in relation to the company.

(2) The reference to the company obtaining credit includes the following cases—

(a) where goods are bailed to the company under a hire-purchase agreement, or agreed to be sold to the company under a conditional sale agreement, and

(b) where the company is paid in advance (whether in money or otherwise) for the supply of goods or services.

(3) Where the company obtains credit in contravention of sub-paragraph (1)—

(a) the company shall be guilty of an offence, and

(b) if any officer of the company knowingly and wilfully authorised or permitted the contravention, he shall be guilty of an offence.

(4) The money sum specified in sub-paragraph (1) is subject to increase or reduction by order under Article 362.

Disposals and payments

29.—(1) Subject to sub-paragraph (2), the company may only dispose of any of its property if—

(a) there are reasonable grounds for believing that the disposal will benefit the company, and

(b) the disposal is approved by the committee established under paragraph 45(1) or, where there is no such committee, by the nominee.

(2) Sub-paragraph (1) does not apply to a disposal made in the ordinary way of the company's business.

(3) If the company makes a disposal in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the High Court—

(a) the company shall be guilty of an offence, and

(b) if any officer of the company authorised or permitted the contravention, without reasonable excuse, he shall be guilty of an offence.

30.—(1) Subject to sub-paragraph (2), the company may only make any payment in respect of any debt or other liability of the company in existence before the beginning of the moratorium if—

(a) there are reasonable grounds for believing that the payment will benefit the company, and

(b) the payment is approved by the committee established under paragraph 45(1) or, where there is no such committee, by the nominee.

(2) Sub-paragraph (1) does not apply to a payment required by paragraph 31(6).

(3) If the company makes a payment in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the High Court—

(a) the company shall be guilty of an offence, and

(b) if any officer of the company authorised or permitted the contravention, without reasonable excuse, he shall be guilty of an offence.

Disposal of charged property, etc.

31.—(1) This paragraph applies where—

(a) any property of the company is subject to a security, or

(b) any goods are in the possession of the company under a hire-purchase agreement.

(2) If the holder of the security consents, or the High Court gives leave, the company may dispose of the property as if it were not subject to the security.

(3) If the owner of the goods consents, or the High Court gives leave, the company may dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.

(4) Where property subject to a security which, as created, was a floating charge is disposed of under sub-paragraph (2), the holder of the security has the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.

(5) Sub-paragraph (6) applies to the disposal under sub-paragraph (2) or (as the case may be) sub-paragraph (3) of—

(a) any property subject to a security other than a security which, as created, was a floating charge, or

(b) any goods in the possession of the company under a hire-purchase agreement.

(6) It shall be a condition of any consent or leave under sub-paragraph (2) or (as the case may be) sub-paragraph (3) that—

(a) the net proceeds of the disposal, and

(b) where those proceeds are less than such amount as may be agreed, or determined by the High Court, to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.

(7) Where a condition imposed in pursuance of sub-paragraph (6) relates to 2 or more securities, that condition requires—

(a) the net proceeds of the disposal, and

(b) where paragraph (b) of sub-paragraph (6) applies, the sums mentioned in that paragraph,

to be applied towards discharging the sums secured by those securities in the order of their priorities.

(8 [F464] Where the High Court gives leave for a disposal under sub-paragraph (2) or (3), the directors shall, within 14 days after leave is given, send an office copy of the order giving leave to the registrar.

(9 If the directors without reasonable excuse fail to comply with sub-paragraph (8), they shall be guilty of an offence.

Annotations:
F464 mod. by SR 2004/307

32.—(1) If the company—

(a) without any consent or leave under paragraph 31, disposes of any of its property which is subject to a security otherwise than in accordance with the terms of the security,

(b) without any consent or leave under paragraph 31, disposes of any goods in the possession of the company under a hire-purchase agreement otherwise than in accordance with the terms of the agreement, or

(c) fails to comply with any requirement imposed by paragraph 31,

it shall be guilty of an offence.

(2) If any officer of the company, without reasonable excuse, authorises or permits any such disposal or failure to comply, he shall be guilty of an offence.

Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Insolvency (Northern Ireland) Order 1989. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

Market contracts, etc.

33.—(1) If the company enters into any transaction to which this paragraph applies—

(a) the company shall be guilty of an offence, and

(b) if any officer of the company, without reasonable excuse, authorised or permitted the company to enter into the transaction, he shall be guilty of an offence.

(2) A company enters into a transaction to which this paragraph applies if it—

(a) enters into a market contract,

(b) gives a transfer order,

(c) grants a market charge or a system-charge, or

(d) provides any collateral security.

(3) The fact that a company enters into a transaction in contravention of this paragraph does not—

(a) make the transaction void, or

(b) make it to any extent unenforceable by or against the company.

(4) Where during the moratorium a company enters into a transaction to which this paragraph applies, nothing done by or in pursuance of the transaction is to be treated as done in contravention of paragraphs 23(1)(g), 25 or 27 to 32.

(5) Paragraph 31 does not apply in relation to any property which is subject to a market charge, a system-charge or a collateral security charge.

(6) In this paragraph, transfer order, collateral security and collateral security charge have the same meanings as in the settlement finality regulations.

PART IV

NOMINEES

Monitoring of company's activities

34.—(1) During a moratorium, the nominee shall monitor the company's affairs for the purpose of forming an opinion as to whether—

(a) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 41(7), the proposed arrangement with those modifications has a reasonable prospect of being approved and implemented, and

(b) the company is likely to have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business.

(2 [F465] The directors shall submit to the nominee any information necessary to enable him to comply with sub-paragraph (1) which he requests from them.

(3) In forming his opinion on the matters mentioned in sub-paragraph (1), the nominee is entitled to rely on the information submitted to him under sub-paragraph (2) unless he has reason to doubt its accuracy.

(4) The reference in sub-paragraph (1)(b) to the company's business is to that business as the company proposes to carry it on during the remainder of the moratorium.

Annotations:
F465 mod. by SR 2004/307

Withdrawal of consent to act

35.—(1) The nominee may only withdraw his consent to act in the circumstances mentioned in this paragraph.

(2) The nominee must withdraw his consent to act if, at any time during a moratorium—

(a) he forms the opinion that—

(i) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 41(7), the proposed arrangement with those modifications no longer has a reasonable prospect of being approved or implemented, or

(ii) the company will not have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business,

(b) he becomes aware that, on the date of filing, the company was not eligible for a moratorium, or

(c [F466] the directors fail to comply with their duty under paragraph 34(2).

(3) The reference in sub-paragraph (2)(a)(ii) to the company's business is to that business as the company proposes to carry it on during the remainder of the moratorium.

(4) If the nominee withdraws his consent to act, the moratorium comes to an end.

(5) If the nominee withdraws his consent to act he must, in accordance with the rules, notify the High Court, the registrar, the company and any creditor of the company of whose claim he is aware of his withdrawal and the reason for it.

(6) If the nominee without reasonable excuse fails to comply with sub-paragraph (5), he shall be guilty of an offence.

Annotations:
F466 mod. by SR 2004/307

Challenge of nominee's actions, etc.

36.—(1 [F467] If any creditor, director or member of the company, or any other person affected by a moratorium, is dissatisfied by any act, omission or decision of the nominee during the moratorium, he may apply to the High Court.

(2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.

(3) On an application under sub-paragraph (1) the High Court may—

(a) confirm, reverse or modify any act or decision of the nominee,

(b) give him directions, or

(c) make such other order as it thinks fit.

(4) An order under sub-paragraph (3) may (among other things) bring the moratorium to an end and make such consequential provision as the High Court thinks fit.

Annotations:
F467 mod. by SR 2004/307

37.—(1) Where there are reasonable grounds for believing that—

(a) as a result of any act, omission or decision of the nominee during the moratorium, the company has suffered loss, but

(b) the company does not intend to pursue any claim it may have against the nominee,

any creditor of the company may apply to the High Court.

(2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.

(3) On an application under sub-paragraph (1) the High Court may—

(a) order the company to pursue any claim against the nominee,

(b) (authorise any creditor to pursue such a claim in the name of the company, or

(c) make such other order with respect to such a claim as it thinks fit,

unless the Court is satisfied that the act, omission or decision of the nominee was in all the circumstances reasonable.

(4) An order under sub-paragraph (3) may (among other things)—

(a) impose conditions on any authority given to pursue a claim,

(b) direct the company to assist in the pursuit of a claim,

(c) make directions with respect to the distribution of anything received as a result of the pursuit of a claim,

(d) bring the moratorium to an end and make such consequential provision as the High Court thinks fit.

(5) On an application under sub-paragraph (1) the High Court shall have regard to the interests of the members and creditors of the company generally.

Replacement of nominee by High Court

38.—(1) The High Court may—

(a) on an application made by the directors in a case where the nominee has failed to comply with any duty imposed on him under this Schedule or has died, or

(b) on an application made by the directors or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(2) A person may only be appointed as a replacement nominee under this paragraph if he submits to the High Court a statement indicating his consent to act.

PART V

CONSIDERATION AND IMPLEMENTATION OF VOLUNTARY ARRANGEMENT

Summoning of meetings

39.—(1 [F468] Where a moratorium is in force, the nominee shall summon meetings of the company and its creditors for such a time, date (within the period for the time being specified in paragraph 19(3)) and place as he thinks fit.

(2) The persons to be summoned to a creditors' meeting under this paragraph are every creditor of the company of whose claim the nominee is aware.

Annotations:
F468 mod. by SR 2004/307

Conduct of meetings

40.—(1 [F469] Subject to the provisions of paragraphs 41 to 45, the meetings summoned under paragraph 39 shall be conducted in accordance with the rules.

(2) A meeting so summoned may resolve that it be adjourned (or further adjourned).

(3 After the conclusion of either meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the High Court, and, immediately after reporting to the Court, shall give notice of the result of the meeting to such persons as may be prescribed.

Annotations:
F469 mod. by SR 2004/307

Approval of voluntary arrangement

41.—(1 [F470] The meetings summoned under paragraph 39 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).

(2) The modifications may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(3) The modifications shall not include one by virtue of which the proposal ceases to be a proposal such as is mentioned in Article 14.

(4) A meeting summoned under paragraph 39 shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security, except with the concurrence of the creditor concerned.

(5) Subject to sub-paragraph (6), a meeting so summoned shall not approve any proposal or modification under which—

(a) any preferential debt of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts, or

(b) a preferential creditor of the company is to be paid an amount in respect of a preferential debt thatÂ§bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

(6) The meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(7 The directors of the company may, before the beginning of the period of 7 days which ends with the meetings (or either of them) summoned under paragraph 39 being held, give notice to the nominee of any modifications of the proposal for which the directors intend to seek the approval of those meetings.

(8) References in this paragraph to preferential debts and preferential creditors are to be read in accordance with Article 346.

Annotations:
F470 mod. by SR 2004/307

Extension of moratorium

42.—(1) Subject to sub-paragraph (2), a meeting summoned under paragraph 39 which resolves that it be adjourned (or further adjourned) may resolve that the moratorium be extended (or further extended), with or without conditions.

(2) The moratorium may not be extended (or further extended) to a day later than the end of the period of 2 months which begins—

(a [F471] where both meetings summoned under paragraph 39 are first held on the same day, with that day,

(b in any other case, with the day on which the later of those meetings is first held.

(3) At any meeting where it is proposed to extend (or further extend) the moratorium, before a decision is taken with respect to that proposal, the nominee shall inform the meeting—

(a) of what he has done in order to comply with his duty under paragraph 34 and the cost of his actions for the company, and

(b) of what he intends to do to continue to comply with that duty if the moratorium is extended (or further extended) and the expected cost of his actions for the company.

(4) Where, in accordance with sub-paragraph (3)(b), the nominee informs a meeting of the expected cost of his intended actions, the meeting shall resolve whether or not to approve that expected cost.

(5) If a decision not to approve the expected cost of the nominee's intended actions has effect under paragraph 46, the moratorium comes to an end.

(6) A meeting may resolve that a moratorium which has been extended (or further extended) be brought to an end before the end of the period of the extension (or further extension).

(7) The Department may by order increase or reduce the period for the time being specified in sub-paragraph (2).

Annotations:
F471 mod. by SR 2004/307

43.—(1) The conditions which may be imposed when a moratorium is extended (or further extended) include a requirement that the nominee be replaced as such by another person qualified

to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(2) A person may only be appointed as a replacement nominee by virtue of sub-paragraph (1) if he submits to the High Court a statement indicating his consent to act.

(3) At any meeting where it is proposed to appoint a replacement nominee as a condition of extending (or further extending) the moratorium—

(a) the duty imposed by paragraph 42(3)(b) on the nominee shall instead be imposed on the person proposed as the replacement nominee, and

(b) paragraphs 42(4) and (5) and 46(1)(e) apply as if the references to the nominee were to that person.

44.—(1) If a decision to extend, or further extend, the moratorium takes effect under paragraph 46, the nominee shall, in accordance with the rules, notify the registrar and the High Court.

(2) If the moratorium is extended, or further extended, by virtue of an order under paragraph 46(5), the nominee shall, in accordance with the rules, send an office copy of the order to the registrar.

(3) If the nominee without reasonable excuse fails to comply with this paragraph, he shall be guilty of an offence.

Moratorium committee

45.—(1) A meeting summoned under paragraph 39 which resolves that the moratorium be extended (or further extended) may, with the consent of the nominee, resolve that a committee be established to exercise the functions conferred on it by the meeting.

(2) The meeting may not so resolve unless it has approved an estimate of the expenses to be incurred by the committee in the exercise of the proposed functions.

(3) Any expenses, not exceeding the amount of the estimate, incurred by the committee in the exercise of its functions shall be reimbursed by the nominee.

(4) The committee shall cease to exist when the moratorium comes to an end.

Effectiveness of decisions

46.—(1) Sub-paragraph (2) applies to references to one of the following decisions having effect, that is, a decision, under paragraph 41, 42 or 45, with respect to—

(a) the approval of a proposed voluntary arrangement,

(b) the extension (or further extension) of a moratorium,

(c) the bringing of a moratorium to an end,

(d) the establishment of a committee, or

(e) the approval of the expected cost of a nominee's intended actions.

(2 [F472] The decision has effect if, in accordance with the rules—

(a) it has been taken by both meetings summoned under paragraph 39, or

(b) subject to any order made under sub-paragraph (5)) it has been taken by the creditors' meeting summoned under that paragraph.

(3 If a decision taken by the creditors' meeting under any of paragraphs 41, 42 or 45 with respect to any of the matters mentioned in sub-paragraph (1) differs from one so taken by the company meeting with respect to that matter, a member of the company may apply to the High Court.

(4 An application under sub-paragraph (3) shall not be made after the end of the period of 28 days beginning with—

(a) the day on which the decision was taken by the creditors' meeting, or

(b) where the decision of the company meeting was taken on a later day, that day.

(5 On an application under sub-paragraph (3), the High Court may—

(a) order the decision of the company meeting to have effect instead of the decision of the creditors' meeting, or

(b) make such other order as it thinks fit.

Annotations:
F472 mod. by SR 2004/307

Effect of approval of voluntary arrangement

47.—(1) This paragraph applies where a decision approving a voluntary arrangement has effect under paragraph 46.

(2) The approved voluntary arrangement—

(a) takes effect as if made by the company at the creditors' meeting, and

(b) binds every person who in accordance with the rules—

(i) was entitled to vote at that meeting (whether or not he was present or represented at it), or

(ii) would have been so entitled if he had had notice of it,

as if he were a party to the voluntary arrangement.

(3) If—

(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of sub-paragraph (2)(b)(ii) has not been paid, and

(b) the arrangement did not come to an end prematurely,

the company shall at that time become liable to pay to that person the amount payable under the arrangement.

(4) Where a petition for the winding up of the company, other than an excepted petition within the meaning of paragraph 23, was presented before the beginning of the moratorium, the High Court shall dismiss the petition.

(5) The High Court shall not dismiss a petition under sub-paragraph (4)—

(a [F473] at any time before the end of the period of 28 days beginning with the first day on which each of the reports of the meetings required by paragraph 40(3) has been made to the High Court, or

(b) at any time when an application under paragraph 48 or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

Annotations:
F473 mod. by SR 2004/307

Challenge of decisions

48.—(1) Subject to the following provisions of this paragraph, any of the persons mentioned in sub-paragraph (2) may apply to the High Court on one or both of the following grounds—

(a [F474] that a voluntary arrangement approved at one or both of the meetings summoned under paragraph 39 and which has taken effect unfairly prejudices the interests of a creditor, member or contributory of the company,

(b that there has been some material irregularity at or in relation to either of those meetings.

(2) The persons who may apply under this paragraph are—

(a a person entitled, in accordance with the rules, to vote at either of the meetings,

(b a person who would have been entitled, in accordance with the rules, to vote at the creditors' meeting if he had had notice of it, and

(c) the nominee.

(3) An application under this paragraph shall not be made—

(a after the end of the period of 28 days beginning with the first day on which each of the reports required by paragraph 40(3) has been made to the High Court, or

(b in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,

but (subject to that) an application made by a person within sub-paragraph (2)(b) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.

(4) Where on an application under this paragraph the High Court is satisfied as to either of the grounds mentioned in sub-paragraph (1), it may do any of the following—

(a) revoke or suspend—

(i) any decision approving the voluntary arrangement which has effect under paragraph 46, or

(ii in a case falling within sub-paragraph (1)(b), any decision taken by the meeting in question which has effect under that paragraph,

(b) give a direction to any person—

(i for the summoning of further meetings to consider any revised proposal for a voluntary arrangement which the directors may make, or

(ii in a case falling within sub-paragraph (1)(b), for the summoning of a further company or (as the case may be) creditors' meeting to reconsider the original proposal.

(5) Where at any time after giving a direction under sub-paragraph (4)(b)(i) the High Court is satisfied that the directors do not intend to submit a revised proposal, the Court shall revoke the direction and revoke or suspend any decision approving the voluntary arrangement which has effect under paragraph 46.

(6) Where the High Court gives a direction under sub-paragraph (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect of the moratorium.

(7) Sub-paragraph (8) applies in a case where the High Court, on an application under this paragraph—

(a) gives a direction under sub-paragraph (4)(b), or

(b) revokes or suspends a decision under sub-paragraph (4)(a) or (5).

(8) In such a case, the High Court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—

(a) things done under the voluntary arrangement since it took effect, and

(b) such things done since that time as could not have been done if a moratorium had been in force in relation to the company when they were done.

(9) Except in pursuance of the preceding provisions of this paragraph, a decision taken at a meeting summoned under paragraph 39 is not invalidated by any irregularity at or in relation to the meeting.

Annotations:
F474 mod. by SR 2004/307

Implementation of voluntary arrangement

49.—(1 [F475] This paragraph applies where a voluntary arrangement approved by one or both of the meetings summoned under paragraph 39 has taken effect.

(2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred—

(a) by virtue of the approval of the arrangement, on the nominee, or

(b) by virtue of paragraph 41(2), on a person other than the nominee,

shall be known as the supervisor of the voluntary arrangement.

(3) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the High Court.

(4) On an application under sub-paragraph (3) the High Court may—

(a) confirm, reverse or modify any act or decision of the supervisor,

(b) give him directions, or

(c) make such other order as it thinks fit.

(5) The supervisor—

(a) may apply to the High Court for directions in relation to any particular matter arising under the voluntary arrangement, and

(b) is included among the persons who may apply to the Court for the winding up of the company or for an administration order to be made in relation to it.

(6) The High Court may, whenever—

(a) it is expedient to appoint a person to carry out the functions of the supervisor, and

(b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the Court,

make an order appointing a person who is qualified to act as an insolvency practitioner, or authorised to act as supervisor, in relation to the voluntary arrangement, either in substitution for the existing supervisor or to fill a vacancy.

(7) The power conferred by sub-paragraph (6) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

Annotations:
F475 mod. by SR 2004/307

PART VI

MISCELLANEOUS

Challenge of directors' actions

50.—(1) This paragraph applies in relation to acts or omissions of the directors of a company during a moratorium.

(2) A creditor or member of the company may apply to the High Court for an order under this paragraph on the ground—

(a) that the company's affairs, business and property are being or have been managed by the directors in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or of some part of its creditors or members (including at least the petitioner), or

(b) that any actual or proposed act or omission of the directors is or would be so prejudicial.

(3) An application for an order under this paragraph may be made during or after the moratorium.

(4) On an application for an order under this paragraph the High Court may—

(a) make such order as it thinks fit for giving relief in respect of the matters complained of,

(b) adjourn the hearing conditionally or unconditionally, or

(c) make an interim order or any other order that it thinks fit.

(5) An order under this paragraph may in particular—

(a) regulate the management by the directors of the company's affairs, business and property during the remainder of the moratorium,

(b) require the directors to refrain from doing or continuing an act complained of by the petitioner, or to do an act which the petitioner has complained they have omitted to do,

(c) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the High Court may direct,

(d) bring the moratorium to an end and make such consequential provision as the High Court thinks fit.

(6) In making an order under this paragraph the High Court shall have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.

[[F476](7) Sub-paragraph (8) applies where—

(a) the appointment of an administrator has effect in relation to the company and that appointment was made in pursuance of—

(i) an administration application made, or

(ii) a notice of intention to appoint filed,

before the moratorium came into force, or

(b) the company is being wound up in pursuance of a petition presented before the moratorium came into force.

(8) No application for an order under this paragraph may be made by a creditor or member of the company; but such an application may be made instead by the administrator or (as the case may be) the liquidator.**]**

Annotations:

F476 Sch. A1 para. 50(7)(8) substituted (27.3.2006) for Sch. A1 para. 50(7) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 45(4) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Offences

51.—(1) This paragraph applies where a moratorium has been obtained for a company.

(2) If, within the period of 12 months ending with the day on which the moratorium came into force, a person who was at the time an officer of the company—

(a) did any of the things mentioned in paragraphs (a) to (f) of sub-paragraph (4), or

(b) was privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of that sub-paragraph,

he is to be treated as having committed an offence at that time.

(3) If, at any time during the moratorium, a person who is an officer of the company—

(a) does any of the things mentioned in paragraphs (a) to (f) of sub-paragraph (4), or

(b) is privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of that sub-paragraph,

he shall be guilty of an offence.

(4) Those things are—

(a) concealing any part of the company's property to the value of £500 or more, or concealing any debt due to or from the company, or

(b) fraudulently removing any part of the company's property to the value of £500 or more, or

(c) concealing, destroying, mutilating or falsifying any book or paper affecting or relating to the company's property or affairs, or

(d) making any false entry in any book or paper affecting or relating to the company's property or affairs, or

(e) fraudulently parting with, altering or making any omission in any document affecting or relating to the company's property or affairs, or

(f) pawning, pledging or disposing of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business).

(5) For the purposes of this paragraph, officer includes a shadow director.

(6) It is a defence—

(a) for a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in paragraph (a) or (f) of sub-paragraph (4) to prove that he had no intent to defraud, and

(b) for a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in paragraph (c) or (d) of sub-paragraph (4) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

(7) Where a person pawns, pledges or disposes of any property of a company in circumstances which amount to an offence under sub-paragraph (2) or (3), every person who takes in pawn or

pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in circumstances which—

(a) would, if a moratorium were obtained for the company within the period of 12 months beginning with the day on which the pawning, pledging or disposal took place, amount to an offence under sub-paragraph (2), or

(b) amount to an offence under sub-paragraph (3),

shall be guilty of an offence.

(8) The money sums specified in paragraphs (a) and (b) of sub-paragraph (4) are subject to increase or reduction by order under Article 362.

52.—(1) If, for the purpose of obtaining a moratorium, or an extension of a moratorium, for a company, a person who is an officer of the company—

(a) makes any false representation, or

(b) fraudulently does, or omits to do, anything,

he shall be guilty of an offence.

(2) Sub-paragraph (1) applies even if no moratorium or extension is obtained.

(3) For the purposes of this paragraph, officer includes a shadow director.

Void provisions in floating charge documents

53.—(1) A provision in an instrument creating a floating charge is void if it provides for—

(a) obtaining a moratorium, or

(b) anything done with a view to obtaining a moratorium (including any preliminary decision or investigation),

to be an event causing the floating charge to crystallise or causing restrictions which would not otherwise apply to be imposed on the disposal of property by the company or a ground for the appointment of a receiver.

(2) In sub-paragraph (1), receiver includes a manger and a person who is appointed both receiver and manager.

Functions of the Financial Services Authority

54.—(1) This Schedule has effect in relation to a moratorium for a regulated company with the modifications in sub-paragraphs (2) to (16).

(2) Any notice or other document required by virtue of this Schedule to be sent to a creditor of a regulated company must also be sent to the Authority.

(3) The Authority is entitled to be heard on any application to the High Court for leave under paragraph 31(2) or 31(3) (disposal of charged property, etc.).

(4) Where paragraph 36(1) (challenge of nominee's actions, etc.) applies, the persons who may apply to the High Court include the Authority.

(5) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(6) Where paragraph 37(1) (challenge of nominee's actions, etc.) applies, the persons who may apply to the High Court include the Authority.

(7) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(8) The persons to be summoned to a creditors' meeting under paragraph 39 include the Authority.

(9) A person appointed for the purpose by the Authority is entitled to attend and participate in (but not to vote at)—

(a) any creditors' meeting summoned under that paragraph,

(b) any meeting of a committee established under paragraph 45 (moratorium committee).

(10) The Authority is entitled to be heard on any application under paragraph 46(3) (effectiveness of decisions).

(11) Where paragraph 48(1) (challenge of decisions) applies, the persons who may apply to the High Court include the Authority.

(12) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(13) Where paragraph 49(3) (implementation of voluntary arrangement) applies, the persons who may apply to the High Court include the Authority.

(14) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(15) Where paragraph 50(2) (challenge of directors' actions) applies, the persons who may apply to the High Court include the Authority.

(16) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(17) This paragraph does not prejudice any right the Authority has (apart from this paragraph) as a creditor of a regulated company.

(18) In this paragraph—

the Authority means the Financial Services Authority, and

regulated company means a company which—

(a) is, or has been, an authorised person within the meaning given by section 31 of the Financial Services and Markets Act 2000,

(b) is, or has been, an appointed representative within the meaning given by section 39 of that Act, or

(c) is carrying on, or has carried on, a regulated activity, within the meaning given by section 22 of that Act, in contravention of the general prohibition within the meaning given by section 19 of that Act.

Subordinate legislation

55.—(1) Regulations made by the Department under this Schedule may make such consequential, incidental, supplemental and transitional provision as appears to the Department necessary or expedient.

(2) Any power of the Department to make regulations under this Schedule may be exercised by amending or repealing any provision contained in this Order (including one contained in this Schedule) or contained in the Company Directors Disqualification (Northern Ireland) Order 2002.

(3) An order made by the Department under this Schedule shall be subject to negative resolution.**]**

[F477SCHEDULE B1

ADMINISTRATION

Annotations:
F477 Sch. B1 inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(2), Sch. 1 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2**-7)

ARRANGEMENT OF SCHEDULE

Interpretation	Paragraph 1
Nature of administration	Paragraphs 2 to 10
Appointment of administrator by High Court	Paragraphs 11 to 14
Appointment of administrator by holder of floating charge	Paragraphs 15 to 22
Appointment of administrator by company or directors	Paragraphs 23 to 35
Administration application: special cases	Paragraphs 36 to 40
Effect of administration	Paragraphs 41 to 46
Process of administration	Paragraphs 47 to 59
Functions of administrator	Paragraphs 60 to 76
Ending administration	Paragraphs 77 to 87
Replacing administrator	Paragraphs 88 to 100
General	Paragraphs 101 to 111

INTRODUCTORY

Interpretation

1.—(1) In this Schedule—

"administrative receiver" has the meaning given by Article 5(1),

"administrator" has the meaning given by paragraph 2 and, where the context requires, includes a reference to a former administrator,

F478 . . . . . .

"correspondence" includes correspondence by telephonic or other electronic means,

"creditors' meeting" has the meaning given by paragraph 51,

"enters administration" has the meaning given by paragraph 2,

"floating charge" means a charge which is a floating charge on its creation,

"in administration" has the meaning given by paragraph 2,

"hire-purchase agreement" includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,

"holder of a qualifying floating charge" in respect of a company's property has the meaning given by paragraph 15,

"market value" means the amount which would be realised on a sale of property in the open market by a willing vendor,

"the purpose of administration" means an objective specified in paragraph 4, and

"unable to pay its debts" has the meaning given by Article 103.

[[F479](1A) In this Schedule, "company" means—

(a) a company within the meaning of Article 3(1) of the Companies (Northern Ireland) Order 1986,

(b) a company incorporated in an EEA State other than the United Kingdom, or

(c) a company not incorporated in an EEA State but having its centre of main interests in a member State other than Denmark.

(1B) In sub-paragraph (1A), in relation to a company, "centre of main interests" has the same meaning as in the EC Regulation and, in the absence of proof to the contrary, is presumed to be the place of its registered office (within the meaning of that Regulation).**]**

(2) A reference in this Schedule to a thing in writing includes a reference to a thing in electronic form.

(3) In this Schedule a reference to action includes a reference to inaction.

Annotations:

F478 Sch. B1 para. 1(1): definition of "company" omitted (18.10. 2006) by virtue of Insolvency (Northern Ireland) Order 1989 (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/370), **reg. 3(4)(a)** (with reg. 4)

F479 Sch. B1 para. 1(1A)(1B) inserted (18.10.2006) by Insolvency (Northern Ireland) Order 1989 (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/370), **reg. 3(4)(b)** (with reg. 4)

[[F480]*Non-UK companies*

Annotations:

F480 Sch. B1 para. 1A inserted (18.10.2006) by Insolvency (Northern Ireland) Order 1989 (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/370), **reg. 3(5)** (with reg. 4)

1A. A company incorporated outside Northern Ireland that has a principal place of business in England and Wales or Scotland (or both in England and Wales and in Scotland) may not enter administration under this Schedule unless it also has a principal place of business in Northern Ireland.**]**

NATURE OF ADMINISTRATION

Administration

2.—(1) For the purposes of this Order "administrator" of a company means a person appointed under this Schedule to manage the company's affairs, business and property.

(2) For the purposes of this Order—

(a) a company is "in administration" while the appointment of an administrator of the company has effect,

(b) a company "enters administration" when the appointment of an administrator takes effect,

(c) a company ceases to be in administration when the appointment of an administrator of the company ceases to have effect in accordance with this Schedule, and

(d) a company does not cease to be in administration merely because an administrator vacates office (by reason of resignation, death or otherwise) or is removed from office.

3. A person may be appointed as administrator of a company—

(a) by administration order of the High Court under paragraph 11,

(b) by the holder of a floating charge under paragraph 15, or

(c) by the company or its directors under paragraph 23.

Purpose of administration

4.—(1) The administrator of a company must perform his functions with the objective of—

(a) rescuing the company as a going concern, or

(b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or

(c) realising property in order to make a distribution to one or more secured or preferential creditors.

(2) Subject to sub-paragraph (4), the administrator of a company must perform his functions in the interests of the company's creditors as a whole.

(3) The administrator must perform his functions with the objective specified in sub-paragraph (1)(a) unless he thinks either—

(a) that it is not reasonably practicable to achieve that objective, or

(b) that the objective specified in sub-paragraph (1)(b) would achieve a better result for the company's creditors as a whole.

(4) The administrator may perform his functions with the objective specified in sub-paragraph (1)(c) only if—

(a) he thinks that it is not reasonably practicable to achieve either of the objectives specified in sub-paragraph (1)(a) and (b), and

(b) he does not unnecessarily harm the interests of the creditors of the company as a whole.

5. The administrator of a company must perform his functions as quickly and efficiently as is reasonably practicable.

Status of administrator

6. An administrator is an officer of the High Court (whether or not he is appointed by the Court).

General restrictions

7. A person may be appointed as administrator of a company only if he is qualified to act as an insolvency practitioner in relation to the company.

8. A person may not be appointed as administrator of a company which is in administration (subject to the provisions of paragraphs 91 to 98 and 101 to 104 about replacement and additional administrators).

9.—(1) A person may not be appointed as administrator of a company which is in liquidation by virtue of—

(a) a resolution for voluntary winding up, or

(b) a winding-up order.

(2) Sub-paragraph (1)(a) is subject to paragraph 39.

(3) Sub-paragraph (1)(b) is subject to paragraphs 38 and 39.

10.—(1) A person may not be appointed as administrator of a company which—

(a) has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 (c. 37) or 1987 (c. 22), but

(b) is not an authorised deposit taker.

(2) A person may not be appointed as administrator of a company which effects or carries out contracts of insurance.

(3) But sub-paragraph (2) does not apply to a company which—

(a) is exempt from the general prohibition in relation to effecting or carrying out contracts of insurance, or

(b) is an authorised deposit taker effecting or carrying out contracts of insurance in the course of a banking business.

(4) In this paragraph—

"authorised deposit taker" means a person with permission under Part IV of the Financial Services and Markets Act 2000 (c. 8) to accept deposits, and

"the general prohibition" has the meaning given by section 19 of that Act.

(5) This paragraph shall be construed in accordance with—

(a) section 22 of the Financial Services and Markets Act 2000 (classes of regulated activity and categories of investment),

(b) any relevant order under that section, and

(c) Schedule 2 to that Act (regulated activities).

APPOINTMENT OF ADMINISTRATOR BY HIGH COURT

Administration order

11. An administration order is an order appointing a person as the administrator of a company.

Conditions for making order

12. The High Court may make an administration order in relation to a company only if satisfied—

(a) that the company is or is likely to become unable to pay its debts, and

(b) that the administration order is reasonably likely to achieve the purpose of administration.

Administration application

13.—(1) An application to the High Court for an administration order in respect of a company (an "administration application") may be made only by—

(a) the company,

(b) the directors of the company,

(c) one or more creditors of the company,

(d) the chief clerk in the exercise of the power conferred by section 35(4A) of the Criminal Justice Act (Northern Ireland) 1945 (c. 15) (fine imposed on company),

(e) a clerk of petty sessions in exercise of the power conferred by Article 92A of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26), (fines imposed on company), or

(f) a combination of persons listed in paragraphs (a) to (e).

(2) As soon as is reasonably practicable after the making of an administration application the applicant shall notify—

(a) any person who has appointed an administrative receiver of the company,

(b) any person who is or may be entitled to appoint an administrative receiver of the company,

(c) any person who is or may be entitled to appoint an administrator of the company under paragraph 15, and

(d) such other persons as may be prescribed.

(3) An administration application may not be withdrawn without the permission of the Court.

(4) In sub-paragraph (1) "creditor" includes a contingent creditor and a prospective creditor.

(5) Sub-paragraph (1) is without prejudice to Article 20(4)(b).

Powers of High Court

14.—(1) On hearing an administration application the High Court may—

(a) make the administration order sought;

(b) dismiss the application;

(c) adjourn the hearing conditionally or unconditionally;

(d) make an interim order;

(e) treat the application as a winding-up petition and make any order which the Court could make under Article 105;

(f) make any other order which the Court thinks appropriate.

(2) An appointment of an administrator by administration order takes effect—

(a) at a time appointed by the order, or

(b) where no time is appointed by the order, when the order is made.

(3) An interim order under sub-paragraph (1)(d) may, in particular—

(a) restrict the exercise of a power of the directors or the company;

(b) make provision conferring a discretion on the Court or on a person qualified to act as an insolvency practitioner in relation to the company.

(4) This paragraph is subject to paragraph 40.

APPOINTMENT OF ADMINISTRATOR BY HOLDER OF FLOATING CHARGE

Power to appoint

15.—(1) The holder of a qualifying floating charge in respect of a company's property may appoint an administrator of the company.

(2) For the purposes of sub-paragraph (1) a floating charge qualifies if created by an instrument which—

(a) states that this paragraph applies to the floating charge,

(b) purports to empower the holder of the floating charge to appoint an administrator of the company, or

(c) purports to empower the holder of the floating charge to make an appointment which would be the appointment of an administrative receiver within the meaning given by Article 5(1).

(3) For the purposes of sub-paragraph (1) a person is the holder of a qualifying floating charge in respect of a company's property if he holds one or more debentures of the company secured—

(a) by a qualifying floating charge which relates to the whole or substantially the whole of the company's property,

(b) by a number of qualifying floating charges which together relate to the whole or substantially the whole of the company's property, or

(c) by charges and other forms of security which together relate to the whole or substantially the whole of the company's property and at least one of which is a qualifying floating charge.

Restrictions on power to appoint

16.—(1) A person may not appoint an administrator under paragraph 15 unless—

(a) he has given at least 2 business days' written notice to the holder of any prior floating charge which satisfies paragraph 15(2), or

(b) the holder of any prior floating charge which satisfies paragraph 15(2) has consented in writing to the making of the appointment.

(2) One floating charge is prior to another for the purposes of this paragraph if—

(a) it was created first, or

(b) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.

17. An administrator may not be appointed under paragraph 15 while a floating charge on which the appointment relies is not enforceable.

18. An administrator of a company may not be appointed under paragraph 15 if—

(a) a provisional liquidator of the company has been appointed under Article 115, or

(b) an administrative receiver of the company is in office.

Notice of appointment

19.—(1) A person who appoints an administrator of a company under paragraph 15 shall file with the High Court—

(a) a notice of appointment, and

(b) such other documents as may be prescribed.

(2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—

(a) that the person is the holder of a qualifying floating charge in respect of the company's property,

(b) that each floating charge relied on in making the appointment is (or was) enforceable on the date of the appointment, and

(c) that the appointment is in accordance with this Schedule.

(3) The notice of appointment must identify the administrator and must be accompanied by a statement by the administrator—

(a) that he consents to the appointment,

(b) that in his opinion the purpose of administration is reasonably likely to be achieved, and

(c) giving such other information and opinions as may be prescribed.

(4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy).

(5) The notice of appointment and any document accompanying it must be in the prescribed form.

(6) A statutory declaration under sub-paragraph (2) must be made during the prescribed period.

(7) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—

(a) which is false, and

(b) which he does not reasonably believe to be true.

Commencement of appointment

20. The appointment of an administrator under paragraph 15 takes effect when the requirements of paragraph 19 are satisfied.

21. A person who appoints an administrator under paragraph 15—

(a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 19 are satisfied, and

(b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).

Invalid appointment: indemnity

22.—(1) This paragraph applies where—

(a) a person purports to appoint an administrator under paragraph 15, and

(b) the appointment is discovered to be invalid.

(2) The High Court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS

Power to appoint

23.—(1) A company may appoint an administrator.

(2) The directors of a company may appoint an administrator.

Restrictions on power to appoint

24.—(1) This paragraph applies where an administrator of a company is appointed—

(a) under paragraph 23, or

(b) on an administration application made by the company or its directors.

(2) An administrator of the company may not be appointed under paragraph 23 during the period of 12 months beginning with the date on which the appointment referred to in sub-paragraph (1) ceases to have effect.

25.—(1) If a moratorium for a company under Schedule A1 ends on a date when no voluntary arrangement is in force in respect of the company, this paragraph applies for the period of 12 months beginning with that date.

(2) This paragraph also applies for the period of 12 months beginning with the date on which a voluntary arrangement in respect of a company ends if—

(a) the arrangement was made during a moratorium for the company under Schedule A1, and

(b) the arrangement ends prematurely (within the meaning of Article 20B).

(3) While this paragraph applies, an administrator of the company may not be appointed under paragraph 23.

26. An administrator of a company may not be appointed under paragraph 23 if—

(a) a petition for the winding up of the company has been presented and is not yet disposed of,

(b) an administration application has been made and is not yet disposed of, or

(c) an administrative receiver of the company is in office.

Notice of intention to appoint

27.—(1) A person who proposes to make an appointment under paragraph 23 shall give at least 5 business days' written notice to—

(a) any person who is or may be entitled to appoint an administrative receiver of the company, and

(b) any person who is or may be entitled to appoint an administrator of the company under paragraph 15.

(2) A person who proposes to make an appointment under paragraph 23 shall also give such notice as may be prescribed to such other persons as may be prescribed.

(3) A notice under this paragraph must—

(a) identify the proposed administrator, and

(b) be in the prescribed form.

28.—(1) A person who gives notice of intention to appoint under paragraph 27 shall file with the High Court as soon as is reasonably practicable a copy of—

(a) the notice, and

(b) any document accompanying it.

(2) The copy filed under sub-paragraph (1) must be accompanied by a statutory declaration made by or on behalf of the person who proposes to make the appointment—

(a) that the company is or is likely to become unable to pay its debts,

(b) that the company is not in liquidation, and

(c) that, so far as the person making the statement is able to ascertain, the appointment is not prevented by paragraphs 24 to 26, and

(d) to such additional effect, and giving such information, as may be prescribed.

(3) A statutory declaration under sub-paragraph (2) must—

(a) be in the prescribed form, and

(b) be made during the prescribed period.

(4) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—

(a) which is false, and

(b) which he does not reasonably believe to be true.

29.—(1) An appointment may not be made under paragraph 23 unless the person who makes the appointment has complied with any requirement of paragraphs 27 and 28 and—

(a) the period of notice specified in paragraph 27(1) has expired, or

(b) each person to whom notice has been given under paragraph 27(1) has consented in writing to the making of the appointment.

(2) An appointment may not be made under paragraph 23 after the period of 10 business days beginning with the date on which the notice of intention to appoint is filed under paragraph 28(1).

Notice of appointment

30.—(1) A person who appoints an administrator of a company under paragraph 23 shall file with the High Court—

(a) a notice of appointment, and

(b) such other documents as may be prescribed.

(2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—

(a) that the person is entitled to make an appointment under paragraph 23,

(b) that the appointment is in accordance with this Schedule, and

(c) that, so far as the person making the statement is able to ascertain, the statements made and information given in the statutory declaration filed with the notice of intention to appoint remain accurate.

(3) The notice of appointment must identify the administrator and must be accompanied by a statement by the administrator—

(a) that he consents to the appointment,

(b) that in his opinion the purpose of administration is reasonably likely to be achieved, and

(c) giving such other information and opinions as may be prescribed.

(4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy).

(5) The notice of appointment and any document accompanying it must be in the prescribed form.

(6) A statutory declaration under sub-paragraph (2) must be made during the prescribed period.

(7) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—

(a) which is false, and

(b) which he does not reasonably believe to be true.

31. In a case in which no person is entitled to notice of intention to appoint under paragraph 27(1) (and paragraph 29 therefore does not apply)—

(a) the statutory declaration accompanying the notice of appointment must include the statements and information required under paragraph 28(2), and

(b) paragraph 30(2)(c) shall not apply.

Commencement of appointment

32. The appointment of an administrator under paragraph 23 takes effect when the requirements of paragraph 30 are satisfied.

33. A person who appoints an administrator under paragraph 23—

(a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 30 are satisfied, and

(b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).

34. If before the requirements of paragraph 30 are satisfied the company enters administration by virtue of an administration order or an appointment under paragraph 15—

(a) the appointment under paragraph 23 shall not take effect, and

(b) paragraph 33 shall not apply.

Invalid appointment: indemnity

35.—(1) This paragraph applies where—

(a) a person purports to appoint an administrator under paragraph 23, and

(b) the appointment is discovered to be invalid.

(2) The High Court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

ADMINISTRATION APPLICATION — SPECIAL CASES

Application by holder of floating charge

36.—(1) This paragraph applies where an administration application in respect of a company—

(a) is made by the holder of a qualifying floating charge in respect of the company's property, and

(b) includes a statement that the application is made in reliance on this paragraph.

(2) The High Court may make an administration order—

(a) whether or not satisfied that the company is or is likely to become unable to pay its debts, but

(b) only if satisfied that the applicant could appoint an administrator under paragraph 15.

Intervention by holder of floating charge

37.—(1) This paragraph applies where—

(a) an administration application in respect of a company is made by a person who is not the holder of a qualifying floating charge in respect of the company's property, and

(b) the holder of a qualifying floating charge in respect of the company's property applies to the High Court to have a specified person appointed as administrator (and not the person specified by the administration applicant).

(2) The Court shall grant an application under sub-paragraph (1)(b) unless the Court thinks it right to refuse the application because of the particular circumstances of the case.

Application where company in liquidation

38.—(1) This paragraph applies where the holder of a qualifying floating charge in respect of a company's property could appoint an administrator under paragraph 15 but for paragraph 9(1)(b).

(2) The holder of the qualifying floating charge may make an administration application.

(3) If the High Court makes an administration order on hearing an application made by virtue of sub-paragraph (2)—

(a) the Court shall discharge the winding-up order,

(b) the Court shall make provision for such matters as may be prescribed,

(c) the Court may make other consequential provision,

(d) the Court shall specify which of the powers under this Schedule are to be exercisable by the administrator, and

(e) this Schedule shall have effect with such modifications as the Court may specify.

39.—(1) The liquidator of a company may make an administration application.

(2) If the High Court makes an administration order on hearing an application made by virtue of sub-paragraph (1)—

(a) the Court shall discharge any winding-up order in respect of the company,

(b) the Court shall make provision for such matters as may be prescribed,

(c) the Court may make other consequential provision,

(d) the Court shall specify which of the powers under this Schedule are to be exercisable by the administrator, and

(e) this Schedule shall have effect with such modifications as the Court may specify.

Effect of administrative receivership

40.—(1) Where there is an administrative receiver of a company the High Court must dismiss an administration application in respect of the company unless—

(a) the person by or on behalf of whom the receiver was appointed consents to the making of the administration order,

(b) the Court thinks that the security by virtue of which the receiver was appointed would be liable to be released or discharged under Articles 202 to 204 (transaction at undervalue and preference) if an administration order were made, or

(c) the Court thinks that the security by virtue of which the receiver was appointed would be avoided under Article 207 (avoidance of floating charge) if an administration order were made.

(2) Sub-paragraph (1) applies whether the administrative receiver is appointed before or after the making of the administration application.

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EFFECT OF ADMINISTRATION

Dismissal of pending winding-up petition

41.—(1) A petition for the winding up of a company—

(a) shall be dismissed on the making of an administration order in respect of the company, and

(b) shall be suspended while the company is in administration following an appointment under paragraph 15.

(2) Sub-paragraph (1)(b) does not apply to a petition presented under—

(a) Article 104A (public interest),

(b) Article 104B (SEs), or

(c) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Services Authority).

(3) Where an administrator becomes aware that a petition was presented under a provision referred to in sub-paragraph (2) before his appointment, he shall apply to the High Court for directions under paragraph 64.

Dismissal of administrative or other receiver

42.—(1) When an administration order takes effect in respect of a company any administrative receiver of the company shall vacate office.

(2) Where a company is in administration, any receiver of part of the company's property shall vacate office if the administrator requires him to.

(3) Where an administrative receiver or receiver vacates office under sub-paragraph (1) or (2)—

(a) his remuneration shall be charged on and paid out of any property of the company which was in his custody or under his control immediately before he vacated office, and

(b) he need not take any further steps under Article 50.

(4) In the application of sub-paragraph (3)(a)—

(a) "remuneration" includes expenses properly incurred and any indemnity to which the administrative receiver or receiver is entitled out of the assets of the company,

(b) the charge imposed takes priority over security held by the person by whom or on whose behalf the administrative receiver or receiver was appointed, and

(c) the provision for payment is subject to paragraph 44.

Annotations:

Modifications etc. (not altering text)

C22 Sch. B1 para. 42(2) excluded by Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)), art.97(1) (as subst. (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 52(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7))

Moratorium on insolvency proceedings

43.—(1) This paragraph applies to a company in administration.

(2) No resolution may be passed for the winding up of the company.

(3) No order may be made for the winding up of the company.

(4) Sub-paragraph (3) does not apply to an order made on a petition presented under—

(a) Article 104A (public interest),

(b) Article 104B (SEs), or

(c) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Services Authority).

(5) If a petition presented under a provision referred to in sub-paragraph (4) comes to the attention of the administrator, he shall apply to the High Court for directions under paragraph 64.

Moratorium on other legal process

44.—(1) This paragraph applies to a company in administration.

(2) No step may be taken to enforce security over the company's property except—

(a) with the consent of the administrator, or

(b) with the permission of the High Court.

(3) No step may be taken to repossess goods in the company's possession under a hire-purchase agreement except—

(a) with the consent of the administrator, or

(b) with the permission of the Court.

(4) A landlord may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company except—

(a) with the consent of the administrator, or

(b) with the permission of the Court.

(5) No legal process (including legal proceedings, execution and distress) may be instituted or continued against the company or property of the company except—

(a) with the consent of the administrator, or

(b) with the permission of the Court.

(6) An administrative receiver of the company may not be appointed.

(7) Where the Court gives permission for a transaction under this paragraph it may impose a condition on or a requirement in connection with the transaction.

(8) In this paragraph "landlord" includes a person to whom rent is payable.

Annotations:

Modifications etc. (not altering text)

C23 Sch. B1 para. 44(2)(3) excluded by Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)), art.97(1) (as subst. (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 52(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7))

Interim moratorium

45.—(1) This paragraph applies where an administration application in respect of a company has been made and—

(a) the application has not yet been granted or dismissed, or

(b) the application has been granted but the administration order has not yet taken effect.

(2) This paragraph also applies from the time when a copy of notice of intention to appoint an administrator under paragraph 15 is filed with the High Court until—

(a) the appointment of the administrator takes effect, or

(b) the period of 5 business days beginning with the date of filing expires without an administrator having been appointed.

(3) Sub-paragraph (2) has effect in relation to a notice of intention to appoint only if it is in the prescribed form.

(4) This paragraph also applies from the time when a copy of notice of intention to appoint an administrator is filed with the Court under paragraph 28(1) until—

(a) the appointment of the administrator takes effect, or

(b) the period specified in paragraph 29(2) expires without an administrator having been appointed.

(5) The provisions of paragraphs 43 and 44 shall apply (ignoring any reference to the consent of the administrator).

(6) If there is an administrative receiver of the company when the administration application is made, the provisions of paragraphs 43 and 44 shall not begin to apply by virtue of this paragraph until the person by or on behalf of whom the receiver was appointed consents to the making of the administration order.

(7) This paragraph does not prevent or require the permission of the High Court for—

(a) the presentation of a petition for the winding up of the company under a provision mentioned in paragraph 43(4),

(b) the appointment of an administrator under paragraph 15,

(c) the appointment of an administrative receiver of the company, or

(d) the carrying out by an administrative receiver (whenever appointed) of his functions.

Publicity

46.—(1) While a company is in administration every business document issued by or on behalf of the company or the administrator must state—

(a) the name of the administrator, and

(b) that the affairs, business and property of the company are being managed by him.

(2) Any of the following commits an offence if without reasonable excuse he authorises or permits a contravention of sub-paragraph (1)—

(a) the administrator,

(b) an officer of the company, and

(c) the company.

(3) In sub-paragraph (1) "business document" means—

(a) an invoice,

(b) an order for goods or services, and

(c) a business letter.

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PROCESS OF ADMINISTRATION

Announcement of administrator's appointment

47.—(1) This paragraph applies where a person becomes the administrator of a company.

(2) As soon as is reasonably practicable the administrator shall—

(a) send a notice of his appointment to the company, and

(b) publish a notice of his appointment in the prescribed manner.

(3) As soon as is reasonably practicable the administrator shall—

(a) obtain a list of the company's creditors, and

(b) send a notice of his appointment to each creditor of whose claim and address he is aware.

(4) The administrator shall send a notice of his appointment to the registrar before the end of the period of 7 days beginning with the date specified in sub-paragraph (6).

(5) The administrator shall send a notice of his appointment to such persons as may be prescribed before the end of the prescribed period beginning with the date specified in sub-paragraph (6).

(6) The date for the purpose of sub-paragraphs (4) and (5) is—

(a) in the case of an administrator appointed by administration order, the date of the order,

(b) in the case of an administrator appointed under paragraph 15, the date on which he receives notice under paragraph 21, and

(c) in the case of an administrator appointed under paragraph 23, the date on which he receives notice under paragraph 33.

(7) The High Court may direct that sub-paragraph (3)(b) or (5)—

(a) shall not apply, or

(b) shall apply with the substitution of a different period.

(8) A notice under this paragraph must—

(a) contain the prescribed information, and

(b) be in the prescribed form.

(9) An administrator commits an offence if he fails without reasonable excuse to comply with a requirement of this paragraph.

Statement of company's affairs

48.—(1) As soon as is reasonably practicable after appointment the administrator of a company shall by notice in the prescribed form require one or more relevant persons to provide the administrator with a statement of the affairs of the company.

(2) The statement must—

(a) be verified by affidavit,

(b) be in the prescribed form,

(c) give particulars of the company's property, debts and liabilities,

(d) give the names and addresses of the company's creditors,

(e) specify the security held by each creditor,

(f) give the date on which each security was granted, and

(g) contain such other information as may be prescribed.

(3) In sub-paragraph (1) "relevant person" means—

(a) a person who is or has been an officer of the company,

(b) a person who took part in the formation of the company during the period of one year ending with the date on which the company enters administration,

(c) a person employed by the company during that period, and

(d) a person who is or has been during that period an officer or employee of a company which is or has been during that year an officer of the company.

(4) For the purpose of sub-paragraph (3) a reference to employment is a reference to employment through a contract of employment or a contract for services.

49.—(1) A person required to submit a statement of affairs must do so before the end of the period of 11 days beginning with the day on which he receives notice of the requirement.

(2) The administrator may—

(a) revoke a requirement under paragraph 48(1), or

(b) extend the period specified in sub-paragraph (1) (whether before or after expiry).

(3) If the administrator refuses a request to act under sub-paragraph (2)—

(a) the person whose request is refused may apply to the High Court, and

(b) the Court may take action of a kind specified in sub-paragraph (2).

(4) A person commits an offence if he fails without reasonable excuse to comply with a requirement under paragraph 48(1).

Administrator's proposals

50.—(1) The administrator of a company shall make a statement setting out proposals for achieving the purpose of administration.

(2) A statement under sub-paragraph (1) must, in particular—

(a) deal with such matters as may be prescribed, and

(b) where applicable, explain why the administrator thinks that the objective mentioned in paragraph 4(1)(a) or (b) cannot be achieved.

(3) Proposals under this paragraph may include—

(a) a proposal for a voluntary arrangement under Part II of this Order (although this paragraph is without prejudice to Article 17(3));

(b) a proposal for a compromise or arrangement to be sanctioned under Article 418 of the Companies Order (compromise with creditors or members).

(4) The administrator shall send a copy of the statement of his proposals—

(a) to the registrar,

(b) to every creditor of the company of whose claim and address he is aware, and

(c) to every member of the company of whose address he is aware.

(5) The administrator shall comply with sub-paragraph (4)—

(a) as soon as is reasonably practicable after the company enters administration, and

(b) in any event, before the end of the period of 8 weeks beginning with the day on which the company enters administration.

(6) The administrator shall be taken to comply with sub-paragraph (4)(c) if he publishes in the prescribed manner a notice undertaking to provide a copy of the statement of proposals free of charge to any member of the company who applies in writing to a specified address.

(7) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (5).

(8) A period specified in this paragraph may be varied in accordance with paragraph 108.

Creditors' meeting

51.—(1) In this Schedule "creditors' meeting" means a meeting of creditors of a company summoned by the administrator—

(a) in the prescribed manner, and

(b) giving the prescribed period of notice to every creditor of the company of whose claim and address he is aware.

(2) A period prescribed under sub-paragraph (1)(b) may be varied in accordance with paragraph 108.

(3) A creditors' meeting shall be conducted in accordance with the rules.

Requirement for initial creditors' meeting

52.—(1) Each copy of an administrator's statement of proposals sent to a creditor under paragraph 50(4)(b) must be accompanied by an invitation to a creditors' meeting (an "initial creditors' meeting").

(2) The date set for an initial creditors' meeting must be—

(a) as soon as is reasonably practicable after the company enters administration, and

(b) in any event, within the period of 10 weeks beginning with the date on which the company enters administration.

(3) An administrator shall present a copy of his statement of proposals to an initial creditors' meeting.

(4) A period specified in this paragraph may be varied in accordance with paragraph 108.

(5) An administrator commits an offence if he fails without reasonable excuse to comply with a requirement of this paragraph.

53.—(1) Paragraph 52(1) shall not apply where the statement of proposals states that the administrator thinks—

(a) that the company has sufficient property to enable each creditor of the company to be paid in full,

(b) that the company has insufficient property to enable a distribution to be made to unsecured creditors other than by virtue of Article 150A(2)(a), or

(c) that neither of the objectives specified in paragraph 4(1)(a) and (b) can be achieved.

(2) But the administrator shall summon an initial creditors' meeting if it is requested—

(a) by creditors of the company whose debts amount to at least 10 per cent. of the total debts of the company,

(b) in the prescribed manner, and

(c) in the prescribed period.

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(3) A meeting requested under sub-paragraph (2) must be summoned for a date in the prescribed period.

(4) The period prescribed under sub-paragraph (3) may be varied in accordance with paragraph 108.

Business and result of initial creditors' meeting

54.—(1) An initial creditors' meeting to which an administrator's proposals are presented shall consider them and may—

(a) approve them without modification, or

(b) approve them with modification to which the administrator consents.

(2) After the conclusion of an initial creditors' meeting the administrator shall as soon as is reasonably practicable report any decision taken to—

(a) the High Court,

(b) the registrar, and

(c) such other persons as may be prescribed.

(3) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (2).

Revision of administrator's proposals

55.—(1) This paragraph applies where—

(a) an administrator's proposals have been approved (with or without modification) at an initial creditors' meeting,

(b) the administrator proposes a revision to the proposals, and

(c) the administrator thinks that the proposed revision is substantial.

(2) The administrator shall—

(a) summon a creditors' meeting,

(b) send a statement in the prescribed form of the proposed revision with the notice of the meeting sent to each creditor,

(c) send a copy of the statement, within the prescribed period, to each member of the company of whose address he is aware, and

(d) present a copy of the statement to the meeting.

(3) The administrator shall be taken to have complied with sub-paragraph (2)(c) if he publishes a notice undertaking to provide a copy of the statement free of charge to any member of the company who applies in writing to a specified address.

(4) A notice under sub-paragraph (3) must be published—

(a) in the prescribed manner, and

(b) within the prescribed period.

(5) A creditors' meeting to which a proposed revision is presented shall consider it and may—

(a) approve it without modification, or

(b) approve it with modification to which the administrator consents.

(6) After the conclusion of a creditors' meeting the administrator shall as soon as is reasonably practicable report any decision taken to—

(a) the High Court,

(b) the registrar, and

(c) such other persons as may be prescribed.

(7) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (6).

Failure to obtain approval of administrator's proposals

56.—(1) This paragraph applies where an administrator reports to the High Court that—

(a) an initial creditors' meeting has failed to approve the administrator's proposals presented to it, or

(b) a creditors' meeting has failed to approve a revision of the administrator's proposals presented to it.

(2) The Court may—

(a) provide that the appointment of an administrator shall cease to have effect from a specified time;

(b) adjourn the hearing conditionally or unconditionally;

(c) make an interim order;

(d) make an order on a petition for winding up suspended by virtue of paragraph 41(1)(b);

(e) make any other order (including an order making consequential provision) that the Court thinks appropriate.

Further creditors' meetings

57.—(1) The administrator of a company shall summon a creditors' meeting if—

(a) it is requested in the prescribed manner by creditors of the company whose debts amount to at least 10 per cent. of the total debts of the company, or

(b) he is directed by the High Court to summon a creditors' meeting.

(2) An administrator commits an offence if he fails without reasonable excuse to summon a creditors' meeting as required by this paragraph.

Creditors' committee

58.—(1) A creditors' meeting may establish a creditors' committee.

(2) A creditors' committee shall carry out functions conferred on it by or under this Order.

(3) A creditors' committee may require the administrator—

(a) to attend on the committee at any reasonable time of which he is given at least 7 days' notice, and

(b) to provide the committee with information about the exercise of his functions.

Correspondence instead of creditors' meeting

59.—(1) Anything which is required or permitted by or under this Schedule to be done at a creditors' meeting may be done by correspondence between the administrator and creditors—

(a) in accordance with the rules, and

(b) subject to any prescribed condition.

(2) A reference in this Schedule to anything done at a creditors' meeting includes a reference to anything done in the course of correspondence in reliance on sub-paragraph (1).

(3) A requirement to hold a creditors' meeting is satisfied by conducting correspondence in accordance with this paragraph.

FUNCTIONS OF ADMINISTRATOR

General powers

60.—(1) The administrator of a company may do anything necessary or expedient for the management of the affairs, business and property of the company.

(2) A provision of this Schedule which expressly permits the administrator to do a specified thing is without prejudice to the generality of sub-paragraph (1).

(3) A person who deals with the administrator of a company in good faith and for value need not inquire whether the administrator is acting within his powers.

61. The administrator of a company has the powers specified in Schedule 1.

62. The administrator of a company—

(a) may remove a director of the company, and

(b) may appoint a director of the company (whether or not to fill a vacancy).

63. The administrator of a company may call a meeting of members or creditors of the company.

64. The administrator of a company may apply to the High Court for directions in connection with his functions.

65.—(1) A company in administration or an officer of a company in administration may not exercise a management power without the consent of the administrator.

(2) For the purpose of sub-paragraph (1)—

(a) "management power" means a power which could be exercised so as to interfere with the exercise of the administrator's powers,

(b) it is immaterial whether the power is conferred by an enactment or an instrument, and

(c) consent may be general or specific.

Distribution

66.—(1) The administrator of a company may make a distribution to a creditor of the company.

(2) Article 149 shall apply in relation to a distribution under this paragraph as it applies in relation to a winding up.

(3) A payment may not be made by way of distribution under this paragraph to a creditor of the company who is neither secured nor preferential unless the High Court gives permission.

67. The administrator of a company may make a payment otherwise than in accordance with paragraph 66 or paragraph 14 of Schedule 1 if he thinks it likely to assist achievement of the purpose of administration.

General duties

68. The administrator of a company shall on his appointment take custody or control of all the property to which he thinks the company is entitled.

69.—(1) Subject to sub-paragraph (2), the administrator of a company shall manage its affairs, business and property in accordance with—

(a) any proposals approved under paragraph 54,

(b) any revision of those proposals which is made by him and which he does not consider substantial, and

(c) any revision of those proposals approved under paragraph 55.

(2) If the High Court gives directions to the administrator of a company in connection with any aspect of his management of the company's affairs, business or property, the administrator shall comply with the directions.

(3) The Court may give directions under sub-paragraph (2) only if—

(a) no proposals have been approved under paragraph 54,

(b) the directions are consistent with any proposals or revision approved under paragraph 54 or 55,

(c) the Court thinks the directions are required in order to reflect a change in circumstances since the approval of proposals or a revision under paragraph 54 or 55, or

(d) the Court thinks the directions are desirable because of a misunderstanding about proposals or a revision approved under paragraph 54 or 55.

Administrator as agent of company

70. In exercising his functions under this Schedule the administrator of a company acts as its agent.

Charged property: floating charge

71.—(1) The administrator of a company may dispose of or take action relating to property which is subject to a floating charge as if it were not subject to the charge.

(2) Where property is disposed of in reliance on sub-paragraph (1) the holder of the floating charge shall have the same priority in respect of acquired property as he had in respect of the property disposed of.

(3) In sub-paragraph (2) "acquired property" means property of the company which directly or indirectly represents the property disposed of.

Annotations:

Modifications etc. (not altering text)

C24 Sch. B1 para. 71 excluded by Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)), art.97(1) (as subst. (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 52(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7))

Charged property: non-floating charge

72.—(1) The High Court may by order enable the administrator of a company to dispose of property which is subject to a security (other than a floating charge) as if it were not subject to the security.

(2) An order under sub-paragraph (1) may be made only—

(a) on the application of the administrator, and

(b) where the Court thinks that disposal of the property would be likely to promote the purpose of administration in respect of the company.

(3) An order under this paragraph is subject to the condition that there be applied towards discharging the sums secured by the security—

(a) the net proceeds of disposal of the property, and

(b) any additional money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realised on a sale of the property at market value.

(4) If an order under this paragraph relates to more than one security, application of money under sub-paragraph (3) shall be in the order of the priorities of the securities.

(5) An administrator who makes a successful application for an order under this paragraph shall send a copy of the order to the registrar before the end of the period of 14 days starting with the date of the order.

(6) An administrator commits an offence if he fails to comply with sub-paragraph (5) without reasonable excuse.

Annotations:

Modifications etc. (not altering text)

C25 Sch. B1 para. 72 excluded by Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)), art.97(1) (as subst. (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 52(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7))

Hire-purchase property

73.—(1) The High Court may by order enable the administrator of a company to dispose of goods which are in the possession of the company under a hire-purchase agreement as if all the rights of the owner under the agreement were vested in the company.

(2) An order under sub-paragraph (1) may be made only—

(a) on the application of the administrator, and

(b) where the Court thinks that disposal of the goods would be likely to promote the purpose of administration in respect of the company.

(3) An order under this paragraph is subject to the condition that there be applied towards discharging the sums payable under the hire-purchase agreement—

(a) the net proceeds of disposal of the goods, and

(b) any additional money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realised on a sale of the goods at market value.

(4) An administrator who makes a successful application for an order under this paragraph shall send a copy of the order to the registrar before the end of the period of 14 days starting with the date of the order.

(5) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (4).

Annotations:

Modifications etc. (not altering text)

C26 Sch. B1 para. 73 excluded by Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)), art.97(1) (as subst. (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 52(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7))

Protection for secured or preferential creditor

74.—(1) An administrator's statement of proposals under paragraph 50 may not include any action which—

(a) affects the right of a secured creditor of the company to enforce his security,

(b) would result in a preferential debt of the company being paid otherwise than in priority to its non-preferential debts, or

(c) would result in one preferential creditor of the company being paid a smaller proportion of his debt than another.

(2) Sub-paragraph (1) does not apply to—

(a) action to which the relevant creditor consents,

(b) a proposal for a voluntary arrangement under Part II of this Order (although this sub-paragraph is without prejudice to Article 17(3)), [F481]...

(c) a proposal for a compromise or arrangement to be sanctioned under Article 418 of the Companies Order (compromise with creditors or members).

[[F482]or

(d) a proposal for a cross-border merger within the meaning of regulation 2 of the Companies (Cross-Border Mergers) Regulations 2007.**]**

(3) The reference to a statement of proposals in sub-paragraph (1) includes a reference to a statement as revised or modified.

Annotations:

F481 Word in Sch. B1 para. 74(2)(b) omitted (15.12.2007) by virtue of Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), **reg. 66(2)**

F482 Sch. B1 para. 74(2)(d) and preceding word inserted (15.12.2007) by Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), **reg. 66(3)**

Challenge to administrator's conduct of company

75.—(1) A creditor or member of a company in administration may apply to the High Court claiming that—

(a) the administrator is acting or has acted so as unfairly to harm the interests of the applicant (whether alone or in common with some or all other members or creditors), or

(b) the administrator proposes to act in a way which would unfairly harm the interests of the applicant (whether alone or in common with some or all other members or creditors).

(2) A creditor or member of a company in administration may apply to the Court claiming that the administrator is not performing his functions as quickly or as efficiently as is reasonably practicable.

(3) The Court may—

(a) grant relief;

(b) dismiss the application;

(c) adjourn the hearing conditionally or unconditionally;

(d) make an interim order;

(e) make any other order it thinks appropriate.

(4) In particular, an order under this paragraph may—

(a) regulate the administrator's exercise of his functions;

(b) require the administrator to do or not do a specified thing;

(c) require a creditors' meeting to be held for a specified purpose;

(d) provide for the appointment of an administrator to cease to have effect;

(e) make consequential provision.

(5) An order may be made on a claim under sub-paragraph (1) whether or not the action complained of—

(a) is within the administrator's powers under this Schedule;

(b) was taken in reliance on an order under paragraph 72 or 73.

(6) An order may not be made under this paragraph if it would impede or prevent the implementation of—

(a) a voluntary arrangement approved under Part II,

(b) a compromise or arrangement sanctioned under Article 418 of the Companies Order (compromise with creditors and members), [F483]...

[[F484](ba) a cross-border merger within the meaning of regulation 2 of the Companies (Cross-Border Mergers) Regulations 2007, or**]**

(c) proposals or a revision approved under paragraph 54 or 55 more than 28 days before the day on which the application for the order under this paragraph is made.

Annotations:

F483 Word in Sch. B1 para. 75(6)(b) omitted (15.12.2007) by virtue of Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), **reg. 66(4)**

F484 Sch. B1 para. 75(6)(ba) inserted (15.12.2007) by Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), **reg. 66(5)**

Modifications etc. (not altering text)

C27 Sch. B1 para. 75(1)(a)(b) modified by Financial Services and Markets Act 2000 (c. 8), s. 362(4A)(b) (as subst. (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 60(6) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2**-7))

C28 Sch. B1 para. 75(1)(a)(b) modified by Financial Services and Markets Act 2000 (c. 8), s. 362(4A)(b) (as subst. (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 60(6) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2**-7))

Misfeasance

76.—(1) The High Court may examine the conduct of a person who—

(a) is or purports to be the administrator of a company, or

(b) has been or has purported to be the administrator of a company.

(2) An examination under this paragraph may be held only on the application of—

(a) the official receiver,

(b) the administrator of the company,

(c) the liquidator of the company,

(d) a creditor of the company, or

(e) a contributory of the company.

(3) An application under sub-paragraph (2) must allege that the administrator—

(a) has misapplied or retained money or other property of the company,

(b) has become accountable for money or other property of the company,

(c) has breached a fiduciary or other duty in relation to the company, or

(d) has been guilty of misfeasance.

(4) On an examination under this paragraph into a person's conduct the Court may order him—

(a) to repay, restore or account for money or property;

(b) to pay interest;

(c) to contribute a sum to the company's property by way of compensation for breach of duty or misfeasance.

(5) In sub-paragraph (3) "administrator" includes a person who purports or has purported to be a company's administrator.

(6) An application under sub-paragraph (2) may be made in respect of an administrator who has been discharged under paragraph 99 only with the permission of the Court.

ENDING ADMINISTRATION

Automatic end of administration

77.—(1) The appointment of an administrator shall cease to have effect at the end of the period of one year beginning with the date on which it takes effect.

(2) But—

(a) on the application of an administrator the High Court may by order extend his term of office for a specified period, and

(b) an administrator's term of office may be extended for a specified period not exceeding 6 months by consent.

78.—(1) An order of the High Court under paragraph 77—

(a) may be made in respect of an administrator whose term of office has already been extended by order or by consent, but

(b) may not be made after the expiry of the administrator's term of office.

(2) Where an order is made under paragraph 77 the administrator shall as soon as is reasonably practicable notify the registrar.

(3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

79.—(1) In paragraph 77(2)(b) "consent" means consent of—

(a) each secured creditor of the company, and

(b) if the company has unsecured debts, creditors whose debts amount to more than 50 per cent. of the company's unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(2) But where the administrator has made a statement under paragraph 53(1)(b) "consent" means —

(a) consent of each secured creditor of the company, or

(b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—

(i) each secured creditor of the company, and

(ii) preferential creditors whose debts amount to more than 50 per cent. of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(3) Consent for the purposes of paragraph 77(2)(b) may be—

(a) written, or

(b) signified at a creditors' meeting.

(4) An administrator's term of office—

(a) may be extended by consent only once,

(b) may not be extended by consent after extension by order of the High Court, and

(c) may not be extended by consent after expiry.

(5) Where an administrator's term of office is extended by consent he shall as soon as is reasonably practicable—

(a) file notice of the extension with the Court, and

(b) notify the registrar.

(6) An administrator who fails without reasonable excuse to comply with sub-paragraph (5) commits an offence.

Court ending administration on application of administrator

80.—(1) On the application of the administrator of a company the High Court may provide for the appointment of an administrator of the company to cease to have effect from a specified time.

(2) The administrator of a company shall make an application under this paragraph if—

(a) he thinks the purpose of administration cannot be achieved in relation to the company,

(b) he thinks the company should not have entered administration, or

(c) a creditors' meeting requires him to make an application under this paragraph.

(3) The administrator of a company shall make an application under this paragraph if—

(a) the administration is pursuant to an administration order, and

(b) the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company.

(4) On an application under this paragraph the Court may—

(a) adjourn the hearing conditionally or unconditionally;

(b) dismiss the application;

(c) make an interim order;

(d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

Termination of administration where objective achieved

81.—(1) This paragraph applies where an administrator of a company is appointed under paragraph 15 or 23.

(2) If the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company he may file a notice in the prescribed form—

(a) with the High Court, and

(b) with the registrar.

(3) The administrator's appointment shall cease to have effect when the requirements of sub-paragraph (2) are satisfied.

(4) Where the administrator files a notice he shall within the prescribed period send a copy to every creditor of the company of whose claim and address he is aware.

(5) The rules may provide that the administrator is taken to have complied with sub-paragraph (4) if before the end of the prescribed period he publishes in the prescribed manner a notice undertaking to provide a copy of the notice under sub-paragraph (2) to any creditor of the company who applies in writing to a specified address.

(6) An administrator who fails without reasonable excuse to comply with sub-paragraph (4) commits an offence.

Court ending administration on application of creditor

82.—(1) On the application of a creditor of a company the High Court may provide for the appointment of an administrator of the company to cease to have effect at a specified time.

(2) An application under this paragraph must allege an improper motive—

(a) in the case of an administrator appointed by administration order, on the part of the applicant for the order, or

(b) in any other case, on the part of the person who appointed the administrator.

(3) On an application under this paragraph the Court may—

(a) adjourn the hearing conditionally or unconditionally;

(b) dismiss the application;

(c) make an interim order;

(d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

Public interest winding-up

83.—(1) This paragraph applies where a winding-up order is made for the winding up of a company in administration on a petition presented under—

(a) Article 104A (public interest),

(b) Article 104B (SEs), or

(c) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Services Authority).

(2) This paragraph also applies where a provisional liquidator of a company in administration is appointed following the presentation of a petition under any of the provisions listed in sub-paragraph (1).

(3) The High Court shall order—

(a) that the appointment of the administrator shall cease to have effect, or

(b) that the appointment of the administrator shall continue to have effect.

(4) If the Court makes an order under sub-paragraph (3)(b) it may also—

(a) specify which of the powers under this Schedule are to be exercisable by the administrator, and

(b) order that this Schedule shall have effect in relation to the administrator with specified modifications.

Moving from administration to creditors' voluntary liquidation

84.—(1) This paragraph applies where the administrator of a company thinks—

(a) that the total amount which each secured creditor of the company is likely to receive has been paid to him or set aside for him, and

(b) that a distribution will be made to unsecured creditors of the company (if there are any).

(2) The administrator may send to the registrar a notice that this paragraph applies.

(3) On receipt of a notice under sub-paragraph (2) the registrar shall register it.

(4) If an administrator sends a notice under sub-paragraph (2) he shall as soon as is reasonably practicable—

(a) file a copy of the notice with the High Court, and

(b) send a copy of the notice to each creditor of whose claim and address he is aware.

(5) On the registration of a notice under sub-paragraph (2)—

(a) the appointment of an administrator in respect of the company shall cease to have effect, and

(b) the company shall be wound up as if a resolution for voluntary winding up under Article 70 were passed on the day on which the notice is registered.

(6) The liquidator for the purposes of the winding up shall be—

(a) a person nominated by the creditors of the company in the prescribed manner and within the prescribed period, or

(b) if no person is nominated under paragraph (a), the administrator.

(7) In the application of Part V to a winding up by virtue of this paragraph—

(a) Article 71 shall not apply,

(b) Article 72 shall apply as if the reference to the time of the passing of the resolution for voluntary winding up were a reference to the beginning of the date of registration of the notice under sub-paragraph (2),

(c) Article 75 does not apply,

(d) Articles 84, 85 and 86 shall not apply,

(e) Article 109 shall apply as if the reference to the time of the passing of the resolution for voluntary winding up were a reference to the beginning of the date of registration of the notice under sub-paragraph (2), and

(f) any creditors' committee which is in existence immediately before the company ceases to be in administration shall continue in existence after that time as if appointed as a liquidation committee under Article 87.

Moving from administration to dissolution

85.—(1) If the administrator of a company thinks that the company has no property which might permit a distribution to its creditors, he shall send a notice to that effect to the registrar.

(2) The High Court may on the application of the administrator of a company disapply sub-paragraph (1) in respect of the company.

(3) On receipt of a notice under sub-paragraph (1) the registrar shall register it.

(4) On the registration of a notice in respect of a company under sub-paragraph (1) the appointment of an administrator of the company shall cease to have effect.

(5) If an administrator sends a notice under sub-paragraph (1) he shall as soon as is reasonably practicable—

(a) file a copy of the notice with the Court, and

(b) send a copy of the notice to each creditor of whose claim and address he is aware.

(6) At the end of the period of 3 months beginning with the date of registration of a notice in respect of a company under sub-paragraph (1) the company is deemed to be dissolved.

(7) On an application in respect of a company by the administrator or another interested person the Court may—

(a) extend the period specified in sub-paragraph (6),

(b) suspend that period, or

(c) disapply sub-paragraph (6).

(8) Where an order is made under sub-paragraph (7) in respect of a company the administrator shall as soon as is reasonably practicable notify the registrar.

(9) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (5).

Discharge of administration order where administration ends

86.—(1) This paragraph applies where—

(a) the High Court makes an order under this Schedule providing for the appointment of an administrator of a company to cease to have effect, and

(b) the administrator was appointed by administration order.

(2) The Court shall discharge the administration order.

Notice to registrar where administration ends

87.—(1) This paragraph applies where the High Court makes an order under this Schedule providing for the appointment of an administrator to cease to have effect.

(2) The administrator shall send a copy of the order to the registrar within the period of 14 days beginning with the date of the order.

(3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

REPLACING ADMINISTRATOR

Resignation of administrator

88.—(1) An administrator may resign only in prescribed circumstances.

(2) Where an administrator may resign he may do so only—

(a) in the case of an administrator appointed by administration order, by notice in writing to the High Court,

(b) in the case of an administrator appointed under paragraph 15, by notice in writing to the holder of the floating charge by virtue of which the appointment was made,

(c) in the case of an administrator appointed under paragraph 23(1), by notice in writing to the company, or

(d) in the case of an administrator appointed under paragraph 23(2), by notice in writing to the directors of the company.

Removal of administrator from office

89. The High Court may by order remove an administrator from office.

Administrator ceasing to be qualified

90.—(1) The administrator of a company shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.

(2) Where an administrator vacates office by virtue of sub-paragraph (1) he shall give notice in writing—

(a) in the case of an administrator appointed by administration order, to the High Court,

(b) in the case of an administrator appointed under paragraph 15, to the holder of the floating charge by virtue of which the appointment was made,

(c) in the case of an administrator appointed under paragraph 23(1), to the company, or

(d) in the case of an administrator appointed under paragraph 23(2), to the directors of the company.

(3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

Supplying vacancy in office of administrator

91. Paragraphs 92 to 96 apply where an administrator—

(a) dies,

(b) resigns,

(c) is removed from office under paragraph 89, or

(d) vacates office under paragraph 90.

92.—(1) Where the administrator was appointed by administration order, the High Court may replace the administrator on an application under this sub-paragraph made by—

(a) a creditors' committee of the company,

(b) the company,

(c) the directors of the company,

(d) one or more creditors of the company, or

(e) where more than one person was appointed to act jointly or concurrently as the administrator, any of those persons who remains in office.

(2) But an application may be made in reliance on sub-paragraph (1)(b) to (d) only where—

(a) there is no creditors' committee of the company,

(b) the Court is satisfied that the creditors' committee or a remaining administrator is not taking reasonable steps to make a replacement, or

(c) the Court is satisfied that for another reason it is right for the application to be made.

93. Where the administrator was appointed under paragraph 15 the holder of the floating charge by virtue of which the appointment was made may replace the administrator.

94.—(1) Where the administrator was appointed under paragraph 23(1) by the company it may replace the administrator.

(2) A replacement under this paragraph may be made only—

(a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or

(b) where consent is withheld, with the permission of the High Court.

95.—(1) Where the administrator was appointed under paragraph 23(2) the directors of the company may replace the administrator.

(2) A replacement under this paragraph may be made only—

(a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or

(b) where consent is withheld, with the permission of the High Court.

96. The High Court may replace an administrator on the application of a person listed in paragraph 92(1) if the Court—

(a) is satisfied that a person who is entitled to replace the administrator under any of paragraphs 93 to 95 is not taking reasonable steps to make a replacement, or

(b) that for another reason it is right for the Court to make the replacement.

Substitution of administrator: competing floating charge-holder

97.—(1) This paragraph applies where an administrator of a company is appointed under paragraph 15 by the holder of a qualifying floating charge in respect of the company's property.

(2) The holder of a prior qualifying floating charge in respect of the company's property may apply to the High Court for the administrator to be replaced by an administrator nominated by the holder of the prior floating charge.

(3) One floating charge is prior to another for the purposes of this paragraph if—

(a) it was created first, or

(b) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.

Substitution of administrator appointed by company or directors: creditors' meeting

98.—(1) This paragraph applies where—

(a) an administrator of a company is appointed by a company or directors under paragraph 23, and

(b) there is no holder of a qualifying floating charge in respect of the company's property.

(2) A creditors' meeting may replace the administrator.

(3) A creditor's meeting may act under sub-paragraph (2) only if the new administrator's written consent to act is presented to the meeting before the replacement is made.

Vacation of office: discharge from liability

99.—(1) Where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect) he is discharged from liability in respect of any action of his as administrator.

(2) The discharge provided by sub-paragraph (1) takes effect—

(a) in the case of an administrator who dies, on the filing with the High Court of notice of his death,

(b) in the case of an administrator appointed under paragraph 15 or 23, at a time appointed by resolution of the creditors' committee or, if there is no committee, by resolution of the creditors, or

(c) in any case, at a time specified by the Court.

(3) For the purpose of the application of sub-paragraph (2)(b) in a case where the administrator has made a statement under paragraph 53(1)(b), a resolution shall be taken as passed if (and only if) passed with the approval of—

(a) each secured creditor of the company, or

(b) if the administrator has made a distribution to preferential creditors or thinks that a distribution may be made to preferential creditors—

(i) each secured creditor of the company, and

(ii) preferential creditors whose debts amount to more than 50 per cent. of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

(4) Discharge—

(a) applies to liability accrued before the discharge takes effect, and

(b) does not prevent the exercise of the High Court's powers under paragraph 76.

Vacation of office: charges and liabilities

100.—(1) This paragraph applies where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect).

(2) In this paragraph—

"the former administrator" means the person referred to in sub-paragraph (1), and

"cessation" means the time when he ceases to be the company's administrator.

(3) The former administrator's remuneration and expenses shall be—

(a) charged on and payable out of property of which he had custody or control immediately before cessation, and

(b) payable in priority to any security to which paragraph 71 applies.

(4) A sum payable in respect of a debt or liability arising out of a contract entered into by the former administrator or a predecessor before cessation shall be—

(a) charged on and payable out of property of which the former administrator had custody or control immediately before cessation, and

(b) payable in priority to any charge arising under sub-paragraph (3).

(5) Sub-paragraph (4) shall apply to a liability arising under a contract of employment which was adopted by the former administrator or a predecessor before cessation; and for that purpose—

(a) action taken within the period of 14 days after an administrator's appointment shall not be taken to amount or contribute to the adoption of a contract,

(b) no account shall be taken of a liability which arises, or in so far as it arises, by reference to anything which is done or which occurs before the adoption of the contract of employment, and

(c) no account shall be taken of a liability to make a payment other than wages or salary.

(6) In sub-paragraph (5)(c) "wages or salary" includes—

(a) a sum payable in respect of a period of holiday (for which purpose the sum shall be treated as relating to the period by reference to which the entitlement to holiday accrued),

(b) a sum payable in respect of a period of absence through illness or other good cause,

(c) a sum payable in lieu of holiday,

(d) in respect of a period, a sum which would be treated as earnings for that period for the purposes of an enactment about social security, and

(e) a contribution to an occupational pension scheme.

GENERAL

Joint and concurrent administrators

101.—(1) In this Schedule—

(a) a reference to the appointment of an administrator of a company includes a reference to the appointment of a number of persons to act jointly or concurrently as the administrator of a company, and

(b) a reference to the appointment of a person as administrator of a company includes a reference to the appointment of a person as one of a number of persons to act jointly or concurrently as the administrator of a company.

(2) The appointment of a number of persons to act as administrator of a company must specify—

(a) which functions (if any) are to be exercised by the persons appointed acting jointly, and

(b) which functions (if any) are to be exercised by any or all of the persons appointed.

102.—(1) This paragraph applies where two or more persons are appointed to act jointly as the administrator of a company.

Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Insolvency (Northern Ireland) Order 1989. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(2) A reference to the administrator of the company is a reference to those persons acting jointly.

(3) But a reference to the administrator of a company in paragraphs 88 to 100 of this Schedule is a reference to any or all of the persons appointed to act jointly.

(4) Where an offence of omission is committed by the administrator, each of the persons appointed to act jointly—

(a) commits the offence, and

(b) may be proceeded against and punished individually.

(5) The reference in paragraph 46(1)(a) to the name of the administrator is a reference to the name of each of the persons appointed to act jointly.

(6) Where persons are appointed to act jointly in respect of only some of the functions of the administrator of a company, this paragraph applies only in relation to those functions.

103.—(1) This paragraph applies where two or more persons are appointed to act concurrently as the administrator of a company.

(2) A reference to the administrator of a company in this Schedule is a reference to any of the persons appointed (or any combination of them).

104.—(1) Where a company is in administration, a person may be appointed to act as administrator jointly or concurrently with the person or persons acting as the administrator of the company.

(2) Where a company entered administration by administration order, an appointment under sub-paragraph (1) must be made by the High Court on the application of—

(a) a person or group listed in paragraph 13(1)(a) to (f), or

(b) the person or persons acting as the administrator of the company.

(3) Where a company entered administration by virtue of an appointment under paragraph 15, an appointment under sub-paragraph (1) must be made by—

(a) the holder of the floating charge by virtue of which the appointment was made, or

(b) the High Court on the application of the person or persons acting as the administrator of the company.

(4) Where a company entered administration by virtue of an appointment under paragraph 23(1), an appointment under sub-paragraph (1) must be made either by the High Court on the application of the person or persons acting as the administrator of the company or—

(a) by the company, and

(b) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, where consent is withheld, with the permission of the Court.

(5) Where a company entered administration by virtue of an appointment under paragraph 23(2), an appointment under sub-paragraph (1) must be made either by the Court on the application of the person or persons acting as the administrator of the company or—

(a) by the directors of the company, and

(b) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, where consent is withheld, with the permission of the Court.

(6) An appointment under sub-paragraph (1) may be made only with the consent of the person or persons acting as the administrator of the company.

Presumption of validity

105. An act of the administrator of a company is valid in spite of a defect in his appointment or qualification.

Majority decision of directors

106. A reference in this Schedule to something done by the directors of a company includes a reference to the same thing done by a majority of the directors of a company.

Penalties

107.—(1) A person who is guilty of an offence under this Schedule is liable to a fine (in accordance with Article 373 and Schedule 7).

(2) A person who is guilty of an offence under any of the following paragraphs of this Schedule is liable to a daily default fine (in accordance with Article 373 and Schedule 7)—

(a) paragraph 21,

(b) paragraph 33,

(c) paragraph 47,

(d) paragraph 49,

(e) paragraph 50,

(f) paragraph 52,

(g) paragraph 54,

(h) paragraph 55,

(i) paragraph 57,

(j) paragraph 72,

(k) paragraph 73,

(l) paragraph 78,

(m) paragraph 79,

(n) paragraph 81,

(o) paragraph 85,

(p) paragraph 87, and

(q) paragraph 90.

Extension of time limit

108.—(1) Where a provision of this Schedule provides that a period may be varied in accordance with this paragraph, the period may be varied in respect of a company—

(a) by the High Court, and

(b) on the application of the administrator.

(2) A time period may be extended in respect of a company under this paragraph—

(a) more than once, and

(b) after expiry.

109.—(1) A period specified in paragraph 50(5), 51(1)(b) or 52(2) may be varied in respect of a company by the administrator with consent.

(2) In sub-paragraph (1) "consent" means consent of—

(a) each secured creditor of the company, and

(b) if the company has unsecured debts, creditors whose debts amount to more than 50 per cent. of the company's unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(3) But where the administrator has made a statement under paragraph 53(1)(b) "consent" means —

(a) consent of each secured creditor of the company, or

(b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—

(i) each secured creditor of the company, and

(ii) preferential creditors whose debts amount to more than 50 per cent. of the total preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(4) Consent for the purposes of sub-paragraph (1) may be—

(a) written, or

(b) signified at a creditors' meeting.

(5) The power to extend under sub-paragraph (1)—

(a) may be exercised in respect of a period only once,

(b) may not be used to extend a period by more than 28 days,

(c) may not be used to extend a period which has been extended by the High Court, and

(d) may not be used to extend a period after expiry.

110. Where a period is extended under paragraph 108 or 109, a reference to the period shall be taken as a reference to the period as extended.

Amendment of provision about time

111.—(1) The Department may by order amend a provision of this Schedule which—

(a) requires anything to be done within a specified period of time,

(b) prevents anything from being done after a specified time, or

(c) requires a specified minimum period of notice to be given.

(2) An order under this paragraph shall be subject to negative resolution.**]**

SCHEDULE 1

Articles 27, 52.

POWERS OF ADMINISTRATOR OR ADMINISTRATIVE RECEIVER

1. Power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him expedient.

2. Power to sell or otherwise dispose of the company's property, including the goodwill and book debts of any business.

3. Power to make, on such terms and conditions as he may think proper, a sub#fee farm grant of land or any part thereof, or a sub#lease of land or any part thereof with a nominal reversion (and to sell the rent or reversion), where such sub#fee farm grant or sub#lease amounts in substance to a sale and he has satisfied himself that it is the most appropriate method of disposing of the land.

4. Power to raise or borrow money and grant security therefor over the property of the company.

5. Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.

6. Power to bring or defend any action or other legal proceedings in the name and on behalf of the company.

7. Power to refer to arbitration any question affecting the company.

8. Power to effect and maintain insurances in respect of the business and property of the company.

9. Power to use the company's seal.

10. Power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document.

11. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.

12. Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.

13. Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the company.

14. Power to make any payment which is necessary or incidental to the performance of his functions.

15. Power to carry on the business of the company.

16. Power to establish subsidiaries of the company.

17. Power to transfer to subsidiaries of the company the whole or any part of the business and property of the company.

18. Power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.

19. Power to make any arrangement or compromise on behalf of the company.

20 [F485]**.** Power to call up any uncalled capital of the company.

Annotations:
F485 mod. by SR 2004/307

21. Power to rank and claim in the bankruptcy, insolvency or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person.

22. Power to present or defend a petition for the winding up of the company.

23. Power to change the situation of the company's registered office.

24. Power to do all other things incidental to the exercise of the foregoing powers.

Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Insolvency (Northern Ireland) Order 1989. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

[F486SCHEDULE 1A

EXCEPTIONS TO PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE RECEIVER: SUPPLEMENTARY PROVISIONS

Annotations:

F486 Sch. 1A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 5(2), Sch. 3 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Capital market arrangement

1.—(1) For the purposes of Article 59B an arrangement is a capital market arrangement if—

(a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement, or

(b) it involves a grant of security to—

(i) a party to the arrangement who issues a capital market investment, or

(ii) a person who holds the security as trustee for a party to the arrangement in connection with the issue of a capital market investment, or

(c) it involves a grant of security to a person who holds the security as trustee for a party to the arrangement who agrees to provide finance to another party, or

(d) at least one party guarantees the performance of obligations of another party, or

(e) at least one party provides security in respect of the performance of obligations of another party, or

(f) the arrangement involves an investment of a kind described in articles 83 to 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (options, futures and contracts for differences).

(2) For the purposes of sub-paragraph (1)—

(a) a reference to holding as trustee includes a reference to holding as nominee or agent,

(b) a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment, and

(c) a person holds a capital market investment if he has a legal or beneficial interest in it; and

(d) the reference to the provision of finance includes the provision of an indemnity.

(3) In Article 59B(1) and this paragraph "party" to an arrangement includes a party to an agreement which—

(a) forms part of the arrangement,

(b) provides for the raising of finance as part of the arrangement, or

(c) is necessary for the purposes of implementing the arrangement.

Capital market investment

2.—(1) For the purposes of Article 59B an investment is a capital market investment if it—

(a) is within article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (debt instruments), and

(b) is rated, listed or traded or designed to be rated, listed or traded.

(2) In sub-paragraph (1)—

"rated" means rated for the purposes of investment by an internationally recognised rating agency,

"listed" means admitted to the official list within the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (c. 8) (interpretation), and

"traded" means admitted to trading on a market established under the rules of a recognised investment exchange or on a foreign market.

(3) In sub-paragraph (2)—

"recognised investment exchange" has the meaning given by section 285 of the Financial Services and Markets Act 2000 (recognised investment exchange), and

"foreign market" has the same meaning as "relevant market" in article 67(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (S.I. 2001/1335) (foreign markets).

3.—(1) An investment is also a capital market investment for the purposes of Article 59B if it consists of a bond or commercial paper issued to one or more of the following—

(a) an investment professional within the meaning of article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001,

(b) a person who is, when the agreement mentioned in Article 59B(1) is entered into, a certified high net worth individual in relation to a communication within the meaning of article 48(2) of that order,

(c) a person to whom article 49(2) of that order applies (high net worth company, &c.),

(d) a person who is, when the agreement mentioned in Article 59B(1) is entered into, a certified sophisticated investor in relation to a communication within the meaning of article 50(1) of that order, and

(e) a person in a State other than the United Kingdom who under the law of that State is not prohibited from investing in bonds or commercial paper.

(2) In sub-paragraph (1)—

"bond" shall be construed in accordance with article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), and

"commercial paper" has the meaning given by article 9(3) of that order.

(3) For the purposes of sub-paragraph (1)—

(a) in applying article 19(5) of the Financial Promotion Order for the purposes of sub-paragraph (1)(a)—

(i) in article 19(5)(b), ignore the words after "exempt person",

(ii) in article 19(5)(c)(i), for the words from "the controlled activity" to the end substitute a controlled activity, and

(iii) in article 19(5)(e) ignore the words from "where the communication" to the end, and

(b) in applying article 49(2) of that order for the purposes of sub-paragraph (1)(c), ignore Article 49(2)(e).

"Agreement"

4. or the purposes of Articles 59B and 59F and this Schedule "agreement" includes an agreement or undertaking effected by—

(a) contract,

(b) deed, or

(c) any other instrument intended to have effect in accordance with the law of Northern Ireland or another jurisdiction.

Debt

5. he debt of at least £50 million referred to in Article 59B(1)(a) or 59F(2)(a)—

(a) may be incurred at any time during the life of the capital market arrangement or financed project, and

(b) may be expressed wholly or partly in foreign currency (in which case the sterling equivalent shall be calculated as at the time when the arrangement is entered into or the project begins).

Step-in rights

6.—(1) For the purposes of Articles 59C to 59F a project has "step-in rights" if a person who provides finance in connection with the project has a conditional entitlement under an agreement to—

(a) assume sole or principal responsibility under an agreement for carrying out all or part of the project, or

(b) make arrangements for carrying out all or part of the project.

(2) In sub-paragraph (1) a reference to the provision of finance includes a reference to the provision of an indemnity.

Project company

7.—(1) For the purposes of Articles 59C to 59F a company is a "project company" of a project if—

(a) it holds property for the purpose of the project,

(b) it has sole or principal responsibility under an agreement for carrying out all or part of the project,

(c) it is one of a number of companies which together carry out the project,

(d) it has the purpose of supplying finance to enable the project to be carried out, or

(e) it is the holding company of a company within any of paragraphs (a) to (d).

(2) But a company is not a "project company" of a project if—

(a) it performs a function within sub-paragraph (1)(a) to (d) or is within sub-paragraph (1)(e), but

(b) it also performs a function which is not—

(i) within sub-paragraph (1)(a) to (d),

(ii) related to a function within sub-paragraph (1)(a) to (d), or

(iii) related to the project.

(3) For the purposes of this paragraph a company carries out all or part of a project whether or not it acts wholly or partly through agents.

"Resources"

8. In Article 59C "resources" includes—

(a) funds (including payment for the provision of services or facilities),

(b) assets,

(c) professional skill,

(d) the grant of a concession or franchise, and

(e) any other commercial resource.

"Public body"

9.—(1) In Article 59C "public body" means—

(a) a body which exercises public functions,

(b) a body specified for the purposes of this paragraph by the Department, and

(c) a body within a class specified for the purposes of this paragraph by the Department.

(2) A specification under sub-paragraph (1) may be—

(a) general, or

(b) for the purpose of the application of Article 59C to a specified case.

Regulated business

10.—(1) For the purposes of Article 59D a business is regulated if it is carried on—

(a) in reliance on a licence under Article 8 of the Gas (Northern Ireland) Order 1996 (NI 2) (licences authorising the supply of gas, etc.),

(b) in reliance on a licence granted by virtue of Article 40 of the Energy (Northern Ireland) Order 2003 (NI 6) (power to prescribe additional licensable activity),

(c) in reliance on a licence under Article 10 of the Electricity (Northern Ireland) Order 1992 (NI 1) (supply of electricity),

(d) by a universal service provider within the meaning given by section 4(3) and (4) of the Postal Services Act 2000 (c. 26),

(e) by the Post Office company within the meaning given by section 62 of that Act (transfer of property), [F487]...

(f) by a relevant subsidiary of the Post Office Company within the meaning given by section 63 of that Act (government holding);**[**[F488] or

(g) in reliance of a European licence granted pursuant to a provision contained in any instrument made for the purpose of implementing Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings, as amended by Directive 2001/13/EC dated 26th February 2001 and Directive 2004/49/EC dated 29th April 2004, both of the European Parliament and of the Council, or pursuant to any action taken by an EEA State for that purpose .**]**

(2) For the purposes of Article 59D a business is also regulated to the extent that it consists in the provision of a public electronic communications network or a public electronic communications service.

[[F489](3) In sub-paragraph (1)(g), an "EEA State" means a member State, Norway, Iceland or Liechtenstein.**]**

Annotations:

F487 Word in Sch. 1A para. 10(1)(e) omitted (3.1.2006) by virtue of Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 (S.R. 2005/537), regs. 1(1), 45, **Sch. 5 para. 3(a)**

F488 Sch. 1A para. 10(1)(g) and preceding word added (3.1.2006) by virtue of Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 (S.R. 2005/537), regs. 1(1), 45, **Sch. 5 para. 3(b)**

F489 Sch. 1A para. 10(3) added (3.1.2006) by virtue of Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 (S.R. 2005/537), regs. 1(1), 45, **Sch. 5 para. 3(c)**

"Person"

11. A reference to a person in this Schedule includes a reference to a partnership or another unincorporated group of persons.**]**

SCHEDULE 2 Articles 140, 142.

POWERS OF LIQUIDATOR IN A WINDING UP

PART I

POWERS EXERCISABLE WITH SANCTION

1. Power to pay any class of creditors in full.

2. Power to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company, or whereby the company may be rendered liable.

3. Power to compromise, on such terms as may be agreed—

(a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and

(b) all questions in any way relating to or affecting the assets or the winding up of the company,

and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

[[F490]**3A.** Power to bring legal proceedings under Article 177, 178, 202, 203 or 367.**]**

Annotations:

F490 Sch. 2 para. 3A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 8, (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

PART II

POWERS EXERCISABLE WITHOUT SANCTION IN VOLUNTARY WINDING UP, WITH SANCTION IN WINDING UP BY THE HIGH COURT

4. Power to bring or defend any action or other legal proceeding in the name and on behalf of the company.

5. Power to carry on the business of the company so far as may be necessary for its beneficial winding up.

PART III

POWERS EXERCISABLE WITHOUT SANCTION IN ANY WINDING UP

6. Power to sell any part of the company's property, including the goodwill and book debts of any business.

7. **[**[F491]Without prejudice to Article 28 or 30 of the Property (Northern Ireland) Order 1997,**]** power to make, on such terms and conditions as the liquidator may think proper, a sub#fee farm grant of land or any part thereof, or a sub#lease of land or any part thereof with a nominal reversion (and to sell the rent or reversion), where such sub#fee farm grant or sub#lease amounts in substance to a sale and the liquidator has satisfied himself that it is the most appropriate method of disposing of the land.

Annotations:
F491 1997 NI 8

8. Power to do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents[F492]....

Annotations:
F492 2005 NI 7

[[F493]**8A.** Power to use the company's seal.**]**

Annotations:
F493 2005 NI 7

9. Power to prove, rank and claim in the bankruptcy or insolvency of any contributory for any balance against his estate, and to receive dividends in the bankruptcy or insolvency in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.

10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the company's liability as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business.

11. Power to raise on the security of the assets of the company any money requisite.

12.—(1) Power to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot conveniently be done in the name of the company.

(2) For the purposes of sub#paragraph (1) the money due is deemed, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, to be due to the liquidator himself.

13. Power to appoint an agent to do any business which the liquidator is unable to do himself.

14. Power to do all such other things as may be necessary for winding up the company's affairs and distributing its assets.

[F494SCHEDULE 2A

BANKRUPTCY RESTRICTIONS ORDER AND UNDERTAKING

Annotations:

F494 Sch. 2A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 13(2), Sch. 5 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Bankruptcy restrictions order

1.—(1) A bankruptcy restrictions order may be made by the High Court.

(2) An order may be made only on the application of—

(a) the Department, or

(b) the official receiver acting on a direction of the Department.

Grounds for making order

2.—(1) The High Court shall grant an application for a bankruptcy restrictions order if it thinks it appropriate having regard to the conduct of the bankrupt (whether before or after the making of the bankruptcy order).

(2) The Court shall, in particular, take into account any of the following kinds of behaviour on the part of the bankrupt—

(a) failing to keep records which account for a loss of property by the bankrupt, or by a business carried on by him, where the loss occurred in the period beginning 2 years immediately preceding petition and ending with the date of the application;

(b) failing to produce records of that kind on demand by the official receiver or the trustee;

(c) entering into a transaction at an undervalue;

(d) giving a preference;

(e) making an excessive pension contribution;

(f) a failure to supply goods or services which were wholly or partly paid for which gave rise to a claim provable in the bankruptcy;

(g) trading at a time before commencement of the bankruptcy when the bankrupt knew or ought to have known that he was unable to pay his debts;

(h) incurring, before commencement of the bankruptcy, a debt which the bankrupt had no reasonable expectation of being able to pay;

(i) failing to account satisfactorily to the Court, the official receiver or the trustee for a loss of property or for an insufficiency of property to meet bankruptcy debts;

(j) carrying on any gambling, rash and hazardous speculation or unreasonable extravagance which may have materially contributed to or increased the extent of the bankruptcy or which took place between presentation of the petition and commencement of the bankruptcy;

(k) neglect of business affairs of a kind which may have materially contributed to or increased the extent of the bankruptcy;

(l) fraud or fraudulent breach of trust;

(m) failing to cooperate with the official receiver or the trustee.

(3) The Court shall also, in particular, consider whether the bankrupt was an undischarged bankrupt at some time during the period of 6 years ending with the date of the bankruptcy to which the application relates.

(4) For the purpose of sub-paragraph (2)—

"immediately preceding petition" shall be construed in accordance with Article 322(c),

"excessive pension contribution" shall be construed in accordance with Article 315A,

"preference" shall be construed in accordance with Article 313, and

"undervalue" shall be construed in accordance with Article 312.

Timing of application for order

3.—(1) An application for a bankruptcy restrictions order in respect of a bankrupt must be made —

(a) before the end of the period of one year beginning with the date on which the bankruptcy commences, or

(b) with the permission of the High Court.1

(2) The period specified in sub-paragraph (1)(a) shall cease to run in respect of a bankrupt while the period set for his discharge is suspended under Article 253(3).

Duration of order

4.—(1) A bankruptcy restrictions order—

(a) shall come into force when it is made, and

(b) shall cease to have effect at the end of a date specified in the order.

(2) The date specified in a bankruptcy restrictions order under sub-paragraph (1)(b) must not be—

(a) before the end of the period of 2 years beginning with the date on which the order is made, or

(b) after the end of the period of 15 years beginning with that date.

Interim bankruptcy restrictions order

5.—(1) This paragraph applies at any time between—

(a) the institution of an application for a bankruptcy restrictions order, and

(b) the determination of the application.

(2) The High Court may make an interim bankruptcy restrictions order if the Court thinks that—

(a) there are prima facie grounds to suggest that the application for the bankruptcy restrictions order will be successful, and

(b) it is in the public interest to make an interim order.

(3) An interim order may be made only on the application of—

(a) the Department, or

(b) the official receiver acting on a direction of the Department.

(4) An interim order—

(a) shall have the same effect as a bankruptcy restrictions order, and

(b) shall come into force when it is made.

(5) An interim order shall cease to have effect—

(a) on the determination of the application for the bankruptcy restrictions order,

(b) on the acceptance of a bankruptcy restrictions undertaking made by the bankrupt, or

(c) if the Court discharges the interim order on the application of the person who applied for it or of the bankrupt.

6.—(1) This paragraph applies to a case in which both an interim bankruptcy restrictions order and a bankruptcy restrictions order are made.

(2) Paragraph 4(2) shall have effect in relation to the bankruptcy restrictions order as if a reference to the date of that order were a reference to the date of the interim order.

Bankruptcy restrictions undertaking

7.—(1) A bankrupt may offer a bankruptcy restrictions undertaking to the Department.

(2) In determining whether to accept a bankruptcy restrictions undertaking the Department shall have regard to the matters specified in paragraph 2(2) and (3).

8. A reference in a statutory provision to a person in respect of whom a bankruptcy restrictions order has effect (or who is "the subject of" a bankruptcy restrictions order) includes a reference to a person in respect of whom—

(a) an interim bankruptcy restrictions order, or

(b) a bankruptcy restrictions undertaking,

has effect.

9.—(1) A bankruptcy restrictions undertaking—

(a) shall come into force on being accepted by the Department, and

(b) shall cease to have effect at the end of a date specified in the undertaking.

(2) The date specified under sub-paragraph (1)(b) must not be—

(a) before the end of the period of 2 years beginning with the date on which the undertaking is accepted, or

(b) after the end of the period of 15 years beginning with that date.

(3) On an application by the bankrupt the High Court may—

(a) annul a bankruptcy restrictions undertaking;

(b) provide for a bankruptcy restrictions undertaking to cease to have effect before the date specified under sub-paragraph (1)(b).

Annotations:

Modifications etc. (not altering text)

C29 Sch. 2A para. 9 modified by S.R. 1991/364 (as inserted (27.3.2006) by Insolvency (Amendment) Rules (Northern Ireland) 2006 (S.R. 2006/47), {Sch. 1 para. 92, rule 6.242})

Effect of annulment of bankruptcy order

10. Where a bankruptcy order is annulled under Article 256(1)(a)—

(a) any bankruptcy restrictions order, interim order or undertaking which is in force in respect of the bankrupt shall be annulled,

(b) no new bankruptcy restrictions order or interim order may be made in respect of the bankrupt, and

(c) no new bankruptcy restrictions undertaking by the bankrupt may be accepted.

11. Where a bankruptcy order is annulled under Article 235, 237D or 256(1)(b)—

(a) the annulment shall not affect any bankruptcy restrictions order, interim order or undertaking in respect of the bankrupt,

(b) the High Court may make a bankruptcy restrictions order in relation to the bankrupt on an application instituted before the annulment,

(c) the Department may accept a bankruptcy restrictions undertaking offered before the annulment, and

(d) an application for a bankruptcy restrictions order or interim order in respect of the bankrupt may not be instituted after the annulment.

Registration

12. The Department shall maintain a register of—

(a) bankruptcy restrictions orders,

(b) interim bankruptcy restrictions orders, and

(c) bankruptcy restrictions undertakings.**]**

SCHEDULE 3

Article 287.

POWERS OF TRUSTEE IN BANKRUPTCY

PART I

POWERS EXERCISABLE WITH SANCTION

1. Power to carry on any business of the bankrupt so far as may be necessary for winding it up beneficially and so far as the trustee is able to do so without contravening any requirement imposed by or under any statutory provision.

2. Power to bring, institute or defend any action or legal proceedings relating to the property comprised in the bankrupt's estate.

[[F495]**2A.** Power to bring legal proceedings under Article 312, 313 or 367.**]**

Annotations:

F495 Sch. 3 para. 2A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 19, (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

3. Power to accept as the consideration for the sale of any property comprised in the bankrupt's estate a sum of money payable at a future time subject to such stipulations as to security or otherwise as the creditors' committee or the High Court thinks fit.

4. Power to mortgage or pledge any part of the property comprised in the bankrupt's estate for the purpose of raising money for the payment of his debts.

5. Power, where any right, option or other power forms part of the bankrupt's estate, to make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of the right, option or power.

6. Power to refer to arbitration, or compromise on such terms as may be agreed on, any debts, claims or liabilities subsisting or supposed to subsistbetween the bankrupt and any person who may have incurred any liability to the bankrupt.

7. Power to make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of bankruptcy debts.

8. Power to make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the bankrupt's estate made or capable of being made on the trustee by any person or by the trustee on any person.

PART II

POWERS EXERCISABLE WITHOUT SANCTION

9. Power to sell any part of the property for the time being comprised in the bankrupt's estate, including the goodwill and book debts of any business.

10. **[**[F496]Without prejudice to Article 28 or 30 of the Property (Northern Ireland) Order 1997,**]** power to make, on such terms and conditions as the trustee may think proper, a sub#fee farm grant of land or any part thereof, or a sub#lease of land or any part thereof with a nominal reversion (and to sell the rent or reversion), where such sub#fee farm grant or sub#lease amounts in substance to a sale and the trustee has satisfied himself that it is the most appropriate method of disposing of the land.

Annotations:
F496 1997 NI 8

11. Power to give receipts for any money received by him, being receipts which effectually discharge the person paying the money from all responsibility in respect of its application.

12. Power to prove, rank, claim and draw a dividend in respect of such debts due to the bankrupt as are comprised in his estate.

13. Power to exercise in relation to any property comprised in the bankrupt's estate any powers the capacity to exercise which is vested in him under Parts VIII to X.

14. Power to deal with any property comprised in the estate to which the bankrupt is beneficially entitled as tenant in tail to the same extent as a commissioner under sections 49 to 61 of the Fines and Recoveries (Ireland) Act 1834[F497].

Annotations:
F497 1834 c. 92

PART III

ANCILLARY POWERS

15. For the purposes of, or in connection with, the exercise of any of his powers under Parts VIII to X, the trustee may, by his official name—

(a) hold property of every description,

(b) make contracts,

(c) sue and be sued,

(d) enter into engagements binding on himself and, in respect of the bankrupt's estate, on his successors in office,

(e) employ an agent,

(f) execute any power of attorney, deed or other instrument;

and he may do any other act which is necessary or expedient for the purposes of or in connection with the exercise of those powers.

SCHEDULE 4

Article 346.

THE CATEGORIES OF PREFERENTIAL DEBTS

Category 1: Debts due to Inland Revenue

1. [F498] . . . . . .

Annotations:

F498 Sch. 4 paras. 1 - 2 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(a), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

2. [F499] . . . . . .

Annotations:

F499 Sch. 4 paras. 1 - 2 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(a), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Category 2: Debts due to Customs and Excise

3. [F500] . . . . . .

Annotations:

F500 Sch. 4 paras. 3 - 5C repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(b), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

3A. [F501] . . . . . .

Annotations:

F501 Sch. 4 paras. 3 - 5C repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(b), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

3B. [F502] . . . . . .

Annotations:

F502 Sch. 4 paras. 3 - 5C repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(b), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

3C. [F503] . . . . . .

Annotations:

F503 Sch. 4 paras. 3 - 5C repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(b), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

4. [F504] . . . . . .

Annotations:

F504 Sch. 4 paras. 3 - 5C repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(b), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

5. [F505] . . . . . .

Annotations:

F505 Sch. 4 paras. 3 - 5C repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(b), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

5A. [F506] . . . . . .

Annotations:

F506 Sch. 4 paras. 3 - 5C repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(b), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

5B. [F507] . . . . . .

Annotations:

F507 Sch. 4 paras. 3 - 5C repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(b), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

5C. [F508] . . . . . .

Annotations:

F508 Sch. 4 paras. 3 - 5C repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(b), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Category 3: Social security contributions

6. [F509] . . . . . .

Annotations:

F509 Sch. 4 paras. 6 - 7 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(c), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

7. [F510] . . . . . .

Annotations:
F510 Sch. 4 paras. 6 - 7 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(c), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Category 4: Contributions to occupational pension schemes, etc.

8. Any sum which is owed by the debtor and is a sum to which**[**[F511] Schedule 3 to the Pension Schemes (Northern Ireland) Act 1993**]** applies (contributions to occupational pension schemes and state scheme premiums).

Annotations:
F511 1993 c. 49

Category 5: Remuneration, etc., of employees

9. So much of any amount which—

(a) is owed by the debtor to a person who is or has been an employee of the debtor, and

(b) is payable by way of remuneration in respect of the whole or any part of the period of 4 months next before the relevant date,

as does not exceed so much as may be specified in an order made by the Department.

10. An amount owed by way of accrued holiday remuneration, in respect of any period of employment before the relevant date, to a person whose employment by the debtor has been terminated, whether before, on or after that date.

11. So much of any sum owed in respect of money advanced for the purpose as has been applied for the payment of a debt which, if it had not been paid, would have been a debt falling within paragraph 9 or 10.

12. So much of any amount which—

(a) is ordered (whether before or after the relevant date) to be paid by the debtor under the Reserve Forces (Safeguard of Employment) Act 1985[F512], and

(b) is so ordered in respect of a default made by the debtor before that date in the discharge of his obligations under that Act,

as does not exceed such amount as may be specified in an order made by the Department.

Annotations:
F512 1985 c. 17

Interpretation for Category 5

13.—(1) For the purposes of paragraphs 9 to 12, a sum is payable by the debtor to a person by way of remuneration in respect of any period if—

(a) it is paid as wages or salary (whether payable for time or for piece work or earned wholly or partly by way of commission) in respect of services rendered to the debtor in that period, or

(b) it is an amount falling within sub#paragraph (2) and is payable by the debtor in respect of that period.

[[F513](2) An amount falls within this sub#paragraph if it is—

(a) a guarantee payment under Part V of the Employment Rights (Northern Ireland) Order 1996 (employee without work to do);

(b) any payment for time off under Article 81 (time off to look for work or arrange training), Article 84 (time off for ante#natal care) or Article 93 (time off for carrying out trade union duties etc.) of that Order;

(c) remuneration on suspension on medical grounds, or on maternity grounds, under Part VIII of that Order; or

(d) remuneration under a protective award made under Article 217 of that Order (redundancy dismissal with compensation).**]**

Annotations:
F513 1996 NI 16

14.—(1) This paragraph relates to a case in which a person's employment has been terminated by or in consequence of his employer going into liquidation or being adjudged bankrupt (his employer being a company not in liquidation) by or in consequence of—

(a) a receiver being appointed as mentioned in Article 50 (debenture#holders secured by floating charge), or

(b) the taking of possession by debenture#holder (so secured), as mentioned in Article 205 of the Companies Order.

(2) For the purposes of paragraphs 9 to 12, holiday remuneration is deemed to have accrued to that person in respect of any period of employment if, by virtue of his contract of employment or of any statutory provision, that remuneration would have accrued in respect of that period if his employment had continued until he became entitled to be allowed the holiday.

(3) The reference in sub#paragraph (2) to any statutory provision includes an order or direction made under a statutory provision.

15. Without prejudice to paragraphs 13 and 14—

(a) any remuneration payable by the debtor to a person in respect of a period of holiday or of absence from work through sickness or other good cause is deemed to be wages or (as the case may be) salary in respect of services rendered to the debtor in that period, and

(b) references here and in those paragraphs to remuneration in respect of a period of holiday include any sums which, if they had been paid, would have been treated for the purposes of the statutory provisions relating to social security as earnings in respect of that period.

Orders under Category 5

16. An order under paragraph 9 or 12—

(a) may contain such transitional provisions as may appear to the Department necessary or expedient;

(b) shall be subject to negative resolution.

Category 6: Levies on coal and steel production

17. Any sums due at the relevant date from the debtor in respect of—

(a) the levies on the production of coal and steel referred to in Articles 49 and 50 of the E.C.S.C. Treaty, or

(b) any surcharge for delay provided for in Article 50(3) of that Treaty and Article 6 of Decision 3/52 of the High Authority of the Coal and Steel Community.

SCHEDULE 5

Article 359.

PROVISIONS CAPABLE OF INCLUSION IN COMPANY INSOLVENCY RULES

High Court

1.—[[F514](1)**]** Provision for regulating the practice and procedure of the High Court so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies, being any provision that could be made by rules of court.

[[F515](2) Rules made by virtue of this paragraph about the consequence of failure to comply with practice or procedure may, in particular, include provision about the termination of administration.**]**

Annotations:

F514 Sch. 5 para. 1 renumbered (27.3.2006) as sub - para. (1) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 46(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F515 Sch. 5 para. 1(2) added (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 46(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

2. Provision conferring rights of audience, in the High Court so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies, on the official receiver.

Notices, etc.

3. Provision requiring notice of any proceedings in connection with or arising out of the insolvency or winding up of a company to be given or published in the prescribed manner.

4. Provision with respect to the form, manner of serving, contents and proof of any petition, application, order, notice, statement or other document required to be presented, made, given, published or prepared under any statutory provision relating to, or to matters connected with or arising out of, the insolvency or winding up of companies.

5. Provision specifying the persons to whom any notice is to be given.

Registration of voluntary arrangements

6. Provision for the registration of voluntary arrangements approved under Part II, including provision for the keeping and inspection of a register.

Provisional liquidator

7. Provision as to the manner in which a provisional liquidator appointed under Article 115 is to carry out his functions.

Conduct of insolvency

8. Provision with respect to the certification of any person as, and as to the proof that a person is, the liquidator, administrator or administrative receiver of a company.

9. The following provision with respect to meetings of a company's creditors, contributories or members—

(a) provision as to the manner of summoning a meeting (including provision as to how any power to require a meeting is to be exercised, provision as to the manner of determining the value of any debt or contribution for the purposes of any such power and provision making the exercise of any such power subject to the deposit of a sum sufficient to cover the expenses likely to be incurred in summoning and holding a meeting);

(b) provision specifying the time and place at which a meeting may be held and the period of notice required for a meeting;

(c) provision as to the procedure to be followed at a meeting (including the manner in which decisions may be reached by a meeting and the manner in which the value of any vote at a meeting is to be determined);

(d) provision for requiring a person who is or has been an officer of the company to attend a meeting;

(e) provision creating, in the prescribed circumstances, a presumption that a meeting has been duly summoned and held;

(f) provision as to the manner of proving the decisions of a meeting.

10.—(1) Provision as to the functions, membership and proceedings of a committee established under**[**[F516]Article 59, 87 or 120, or paragraph 58 of Schedule B1**]**.

(2) The following provision with respect to the establishment of a committee under Article 87 or 120, that is to say—

(a) provision for resolving differences between a meeting of the company's creditors and a meeting of its contributories or members;

(b) provision authorising the establishment of the committee without a meeting of contributories in a case where a company is being wound up on grounds including its inability to pay its debts; and

(c) provision modifying the requirements of this Order with respect to the establishment of the committee in a case where a winding#up order has been made immediately upon the discharge of an administration order.

Annotations:

F516 Words in Sch. 5 para. 10(1) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 46(3) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

11. Provision as to the manner in which any requirement that may be imposed on a person under any of Parts II to VII by the official receiver, the liquidator, administrator or administrative receiver of a company or a special manager appointed under Article 151 is to be so imposed.

12. Provision as to the debts that may be proved in a winding up, as to the manner and conditions of proving a debt and as to the manner and expenses of establishing the value of any debt or security.

13. Provision with respect to the manner of the distribution of the property of a company that is being wound up, including provision with respect to unclaimed funds and dividends.

14. Provision which, with or without modifications, applies in relation to the winding up of companies any provision contained in Parts VIII to X.

[[F517]**14A.** Provision about the application of Article 150A which may include, in particular—

(a) provision enabling a receiver to institute winding up proceedings;

(b) provision requiring a receiver to institute winding up proceedings.**]**

Annotations:

F517 Sch. 5 para. 14A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 46(4) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

[F518 Administration]

Annotations:

F518 Sch. 5 para. 14B and preceding cross - heading inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 46(5) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

[F519 14B. Provision which—

(a) applies in relation to administration, with or without modifications, a provision of Parts V to VII and any of Articles 5 to 8 in so far as that Article relates to that provision, or

(b) serves a purpose in relation to administration similar to a purpose that may be served by the rules in relation to winding up by virtue of a provision of this Schedule.**]**

Annotations:

F519 Sch. 5 para. 14B and preceding cross - heading inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 46(5) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Financial provisions

15. Provision as to the amount, or manner of determining the amount, payable to the liquidator, administrator or administrative receiver of a company or a special manager appointed under Article 151, by way of remuneration for the carrying out of functions in connection with or arising out of the insolvency or winding up of a company.

16. Provision with respect to the manner in which money received by the liquidator of a company in the course of carrying out his functions as such is to be paid into and out of the Insolvency Account, invested or otherwise handled and with respect to the payment of interest on sums which, in pursuance of rules made by virtue of this paragraph, have been paid into the Insolvency Account.

[F520 16A. Provision enabling the Department to set the rate of interest paid on sums which have been paid into the Insolvency Account.**]**

Annotations:

F520 Sch. 5 para. 16A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 27(1), (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

17. Provision as to the costs that may be treated as the expenses of a winding up.

18. Provision as to the costs that may be treated as properly incurred by the administrator or administrative receiver of a company.

19. Provision as to the costs that may be incurred for any of the purposes of Part II or in the administration of any voluntary arrangement approved under that Part.

Information and records

20. Provision requiring officers of the High Court—

(a) to keep books and other records with respect to the exercise of the jurisdiction of the Court in relation to, or to matters connected with or arising out of, the insolvency or winding up of companies, and

(b) to make returns to the Department of the business of the Court.

21. Provision requiring a creditor, member or contributory, or such a committee as is mentioned in paragraph 10, to be supplied (on payment in prescribed cases of the prescribed fee) with such information and with copies of such documents as may be prescribed.

22. Provision as to the manner in which public examinations under Articles 113 and 114 and proceedings under Articles 200 and 201 are to be conducted, as to the circumstances in which records of such examinations or proceedings are to be made available to prescribed persons and as to the costs of such examinations and proceedings.

23. Provision imposing requirements with respect to—

(a) the preparation and keeping by the liquidator, administrator or administrative receiver of a company, or by the supervisor of a voluntary arrangement approved under Part II, of prescribed books, accounts and other records;

(b) the production in the manner and at the location prescribed of those books, accounts and records for inspection by prescribed persons;

(c) the auditing of accounts kept by the liquidator, administrator or administrative receiver of a company, or the supervisor of such a voluntary arrangement; and

(d) the issue by the administrator or administrative receiver of a company of such a certificate as is mentioned in section 22(3)(b) of the Value Added Tax Act 1983[F521] (refund of tax in cases of bad debts) and the supply of copies of the certificate to creditors of the company.

Annotations:
F521 1983 c. 55

24. Provision requiring the person who is the supervisor of a voluntary arrangement approved under Part II, when it appears to him that the voluntary arrangement has been fully implemented and that nothing remains to be done by him under the arrangement—

(a) to give notice of that fact to persons bound by the voluntary arrangement, and

(b) to report to those persons on the carrying out of the functions conferred on the supervisor of the arrangement.

25. Provision as to the manner in which the liquidator of a company is to act in relation to the books, papers and other records of the company, including provision authorising their disposal.

26. Provision imposing requirements in connection with the carrying out of functions under**[**[F522] Article 10(4) of the Company Directors Disqualification (Northern Ireland) Order 2002**]** (including, in particular, requirements with respect to the making of periodic returns).

Annotations:
F522 2002 NI 4

General

27. Provision conferring power on the Department to make regulations with respect to so much of any matter that may be provided for in the rules as relates to the Insolvency Account or to the carrying out of the functions of the liquidator, administrator or adminstrative receiver of a company.

28. Provision conferring a discretion on the High Court.29

29. Provision conferring power on the High Court to make orders for the purpose of securing compliance with obligations imposed by or under**[**[F523]Article 57, 111, 121(2) or 199 of, or paragraph 48 of Schedule B1 to, this Order**]** or**[**[F524] Article 10(5) of the Company Directors Disqualification (Northern Ireland) Order 2002**]**.

Annotations:
F523 Words in Sch. 5 para. 29 substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 46(6) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)
F524 2002 NI 4

30. Provision making non#compliance with any of the rules a criminal offence.

SCHEDULE 6
F525

Article 359.

PROVISIONS CAPABLE OF INCLUSION IN INDIVIDUAL INSOLVENCY RULES

Annotations:
F525 mod. by SR 2004/307

High Court

1. Provision for regulating the practice and procedure of the High Court for the purposes of Parts VIII to X, being any provision that could be made by rules of court.

2. Provision conferring rights of audience, in the High Court for the purposes of Parts VIII to X, on the official receiver.

Notices, etc.

3. Provision requiring notice of any proceedings under Parts VIII to X or of any matter relating to or arising out of a proposal under Part VIII or a bankruptcy to be given or published in the prescribed manner.

4. Provision with respect to the form, manner of serving, contents and proof of any petition, application, order, notice, statement or other document required to be presented, made, given, published or prepared under any provision contained in Parts VIII to X, or Articles 359 to 366 (including provision requiring prescribed matters to be verified by affidavit).

5. Provision specifying the persons to whom any notice under Parts VIII to X is to be given.

Deeds of arrangement and voluntary arrangements

6. Provision for endorsement, execution and certification of deeds of arrangement registered under Article 211 and for the registration of other voluntary arrangements approved under Part VIII, including provision for the keeping and inspection of a register.

[F526Official receiver acting on voluntary arrangement]

Annotations:
F526 Sch. 6 para. 6A and preceding cross - heading inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, Sch. 8 para. 16(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

[F527 6A. Provision about the official receiver acting as nominee or supervisor in relation to a voluntary arrangement under Part VIII, including—

(a) provision requiring the official receiver to act in specified circumstances;

(b) provision about remuneration;

(c) provision prescribing terms or conditions to be treated as forming part of a voluntary arrangement in relation to which the official receiver acts as nominee or supervisor;

(d) provision enabling those terms or conditions to be varied or excluded, in specified circumstances or subject to specified conditions, by express provision in an arrangement.**]**

Annotations:

F527 Sch. 6 para. 6A and preceding cross - heading inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, Sch. 8 para. 16(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

Interim receiver

7. Provision as to the manner in which an interim receiver appointed under Article 259 is to carry out his functions, including any such provision as is specified in relation to the trustee of a bankrupt's estate in paragraph 19 or 25.

Receiver or manager

8. Provision as to the manner in which the official receiver is to carry out his functions as receiver or manager of a bankrupt's estate under Article 260, including any such provision as is specified in relation to the trustee of a bankrupt's estate in paragraph 19 or 25.

Administration of individual insolvency

9. Provision with respect to the certification of the appointment of any person as trustee of a bankrupt's estate and as to the proof of that appointment.

10. The following provision with respect to meetings of creditors—

(a) provision as to the manner of summoning a meeting (including provision as to how any power to require a meeting is to be exercised, provision as to the manner of determining the value of any debt for the purposes of any such power and provision making the exercise of any such power subject to the deposit of a sum sufficient to cover the expenses likely to be incurred in summoning and holding a meeting);

(b) provision specifying the time and place at which a meeting may be held and the period of notice required for a meeting;

(c) provision as to the procedure to be followed at such a meeting (including the manner in which decisions may be reached by a meeting and the manner in which the value of any vote at a meeting is to be determined);

(d) provision for requiring a bankrupt or debtor to attend a meeting;

(e) provision creating, in the prescribed circumstances, a presumption that a meeting has been duly summoned and held; and

(f) provision as to the manner of proving the decisions of a meeting.

11. Provision as to the functions, membership and proceedings of a creditors' committee established under Article 274.

12. Provision as to the manner in which any requirement that may be imposed on a person under Parts VIII to X by the official receiver, the trustee of a bankrupt's estate or a special manager appointed under Article 341 is to be so imposed and, in the case of any requirement imposed underArticle 278(3) (information, etc., to be given by the trustee to the official receiver), provision conferring power on the High Court to make orders for the purpose of securing compliance with that requirement.

13. Provision as to the manner in which any requirement imposed by virtue of Article 283(3) (compliance with income payments order) is to take effect.

14. Provision as to the terms and conditions that may be included in a charge under Article 286 (dwelling house forming part of bankrupt's estate).

15. Provision as to the debts that may be proved in any bankruptcy, as to the manner and conditions of proving a debt and as to the manner and expenses of establishing the value of any debt or security.

16. Provision with respect to the manner of the distribution of a bankrupt's estate, including provision with respect to unclaimed funds and dividends.

17. Provision modifying the application of Parts VIII to X in relation to a debtor or bankrupt who has died.

Financial provisions

18. Provision as to the amount, or manner of determining the amount, payable to an interim receiver, the trustee of a bankrupt's estate or a special manager appointed under Article 341 by way of remuneration for the performance of functions in connection with or arising out of the bankruptcy of any person.

19. Provision with respect to the manner in which money received by the trustee of a bankrupt's estate in the course of carrying out his functions as such is to be paid into and out of the Insolvency Account, invested or otherwise handled and with respect to the payment of interest on sums which, in pursuance of rules made by virtue of this paragraph, have been paid into the Insolvency Account.

[[F528]19A. Provision enabling the Department to set the rate of interest paid on sums which have been paid into the Insolvency Account.**]**

Annotations:

F528 Sch. 6 para. 19A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 27(2), (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

20. Provision as to the costs that may be treated as the expenses of a bankruptcy.

21. Provision as to the costs that may be incurred for any of the purposes of Part VIII or in the administration of any voluntary arrangement approved under that Part.

Information and records

22. Provision requiring officers of the High Court—

(a) to keep books and other records with respect to the exercise of the jurisdiction of the Court under Parts VIII to X, and

(b) to make returns to the Department of the business of the Court.

23. Provision requiring a creditor or a committee established under Article 274 to be supplied (on payment in prescribed cases of the prescribed fee) with such information and with copies of such documents as may be prescribed.

24. Provision as to the manner in which public examinations under Article 263 and proceedings under Articles 337 to 339 are to be conducted, as to the circumstances in which records of such examinations and proceedings are to be made available to prescribed persons and as to the costs of such examinations and proceedings.

25. Provision imposing requirements with respect to—

(a) the preparation and keeping by the trustee of a bankrupt's estate, the trustee of a deed of arrangement or the supervisor of a voluntary arrangement approved under Part VIII, of prescribed books, accounts and other records;

(b) the production in the manner and at the location prescribed of those books, accounts and records for inspection by prescribed persons; and

(c) the auditing of accounts kept by the trustee of a bankrupt's estate, the trustee of a deed of arrangement or the supervisor of such a voluntary arrangement.

26. Provision requiring the person who is the supervisor of a voluntary arrangement approved under Part VIII, when it appears to him that the voluntary arrangement has been fully implemented and that nothing remains to be done by him under it—

(a) to give notice of that fact to persons bound by the voluntary arrangement, and

(b) to report to those persons on the carrying out of the functions conferred on the supervisor of it.

27. Provision as to the manner in which the trustee of a bankrupt's estate is to act in relation to the books, papers and other records of the bankrupt, including provision authorising their disposal.

[F529 Bankruptcy restrictions orders and undertakings]

Annotations:

F529 Sch. 6 para. 27A and preceding cross - heading inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, Sch. 8 para. 16(3) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

[F530 27A. Provision about bankruptcy restrictions orders, interim orders and undertakings, including—

(a) provision about evidence;

(b) provision enabling the amalgamation of the register mentioned in paragraph 12 of Schedule 2A with another register;

(c) provision enabling inspection of that register by the public.**]**

Annotations:

F530 Sch. 6 para. 27A and preceding cross - heading inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, Sch. 8 para. 16(3) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

General

28. Provision conferring power on the Department to make regulations with respect to so much of any matter that may be provided for in the rules as relates to deeds of arrangement, the Insolvency Account or to the carrying out of the functions of an interim receiver appointed under Article 259, of the official receiver while acting as a receiver or manager under Article 260 or of a trustee of a bankrupt's estate.

29. Provision conferring a discretion on the High Court.

30. Provision making non#compliance with any of the rules a criminal offence.

Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Insolvency (Northern Ireland) Order 1989. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

SCHEDULE 7

Article 373.

PUNISHMENT OF OFFENCES UNDER THIS ORDER

Article of Order creating offence	**General nature of offence**	**Mode of prosecution**	**Punishment**	**Daily default fine (where applicable)**
[[F531]19A(1).**]**	**[**[F531]False representation or fraud for purpose of obtaining members' or creditor's approval of proposed voluntary arrangement.**]**	**[**[F531]**1.** On indictment.**]** **[**[F531]**2.** Summary.**]**	**[**[F531]7 years or a fine, or both.**]** **[**[F531]6 months or the statutory maximum, or both.**]**	
[F532] ...	...	...	...	
...	...	...	...	...
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...	...	...	...	...
...	...	...	...	...
...	...	...	...	...
40	Body corporate acting as receiver.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
41(1)	[F533] ... bankrupt acting as receiver or manager.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
48(4)	Receiver failing to deliver accounts to registrar.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
49(2)	Company and others failing to state in correspondence that receiver appointed.	Summary.	One#fifth of the statutory maximum.	

53(6)	Administrative receiver failing to file office copy of order permitting disposal or charged property.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
55(5)	Administrative receiver failing to file notice of vacation of office.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
56(4)	Administrative receiver failing to give notice of his appointment.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
57(6)	Failure to comply with provisions relating to statement of affairs, where administrative receiver appointed.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One#tenth of the statutory maximum.
58(8)	Administrative receiver failing to comply with requirements as to his report.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
71(2) **F534**	Company failing to give notice in Belfast Gazette of resolution for voluntary winding up.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
75(4)	Director making statutory declaration of company's solvency without reasonable grounds for his opinion.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
75(6)	Declaration under Article 75 not delivered to registrar within prescribed time.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
79(3)	Liquidator failing to summon general meeting	Summary.	One#fifth of the statutory maximum.	

	of company at each year's end.			
80(4)	Liquidator failing to send to registrar a copy of account of winding up and return of final meeting.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
80(6)	Liquidator failing to call final meeting.	Summary.	One#fifth of the statutory maximum.	
81(6)	Liquidator failing to comply with Article 81 where company insolvent.	Summary.	The statutory maximum.	
84(4)	Company failing to comply with Article 84 in respect of summoning and giving notice of creditors' meeting.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
85(3)	Directors failing to attend and lay statement in prescribed form before creditors' meeting.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
91(3)	Liquidator failing to summon company general meeting and creditors' meeting at each year's end.	Summary.	One#fifth of the statutory maximum.	
92(4)	Liquidator failing to send to registrar account of winding up and return of final meetings.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
92(6)	Liquidator failing to call final meeting of company or creditors.	Summary.	One#fifth of the statutory maximum.	

95(2)	Liquidator failing to publish, or deliver to the registrar, notice of his appointment.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
99(4)	Directors exercising powers in breach of Article 99, where no liquidator.	Summary.	The statutory maximum.	
111(7)	Failing to comply with requirements as to statement of affairs, where liquidator appointed.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One#tenth of the statutory maximum.
139	Giving, offering, etc., corrupt inducement affecting appointment of liquidator.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
141(7)	Liquidator failing to comply with requirements of Article 141 in creditors' voluntary winding up.	Summary.	The statutory maximum.	
159(2)	Default in compliance with Article 159 as to notification that company being wound up.	Summary.	One#fifth of the statutory maximum.	
162(2)	Liquidator failing to notify registrar as to progress of winding up.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
166(4)	Failing to deliver to registrar office copy of High Court order deferring dissolution.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
168(6)	Failing to deliver to registrar copy of directions or	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.

	result of appeal under Article 168.			
169(5)	Failing to deliver to registrar copy of Department's directions or High Court order deferring dissolution.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
170(1)	Fraud, etc., in anticipation of winding up.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
170(2)	Privity to fraud in anticipation of winding up; fraud, or privity to fraud, after commencement of winding up.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
171(1)	Officer of company entering into transaction in fraud of company's creditors.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
172(1)	Officer of company misconducting himself in course of winding up.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
173	Officer or contributory destroying, falsifying, etc., company's books.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
174(1)	Officer of company making material omission from statement relating to company's affairs.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
175(1)	False representation or fraud for purpose	1. On indictment. 2. Summary.	7 years or a fine, or both.	

	of obtaining creditors' consent to an agreement in connection with winding up.		6 months or the statutory maximum, or both.	
180(4)	Contravening restrictions on re#use of name of company in insolvent liquidation.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
199(5)	Failing to co# operate with office#holder.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One#tenth of the statutory maximum.
217(2)	Default in compliance with Article 374 as to notification that deed is void.	Summary.	One#fifth of the statutory maximum.	
218(1)	Trustee acting when deed of arrangement void.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
222(3)	Failing to transmit accounts.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
223	Preferential payment to creditor.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
[[F531]236A(1).**]**	**[**[F531]False representation or fraud for purpose of obtaining creditor's approval of proposed voluntary arrangement.**]**	**[**[F531]**1.** On indictment.**]** **[**[F531]**2.** Summary.**]**	**[**[F531]7 years or a fine, or both.**]** **[**[F531]6 months or the statutory maximum, or both.**]**	
324(1)	Bankrupt failing to disclose property or disposals to official receiver or trustee.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
325(1)	Bankrupt failing to deliver property to, or concealing	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory	

	property from, official receiver or trustee.		maximum, or both.
325(3)	Bankrupt removing property which he is required to deliver to official receiver or trustee.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
325(5)	Bankrupt failing to account for loss of substantial part of property.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
326(1)	Bankrupt failing to deliver books, papers and records to official receiver or trustee.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
326(2)	Bankrupt concealing, destroying etc., books, papers or records, or making false entries in them.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
326(3)	Bankrupt disposing of, or altering, books, papers or records relating to his estate or affairs.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
327(1)	Bankrupt making material omission in statement relating to his affairs.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
327(3)	Bankrupt making false statement, or failing to inform trustee, where false debt proved.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
328(1)	Bankrupt fraudulently	1. On indictment. 2. Summary.	2 years or a fine, or both.

	disposing of property.		6 months or the statutory maximum, or both.
328(3)	Bankrupt conceals or removes property.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
329(1)	Bankrupt absconding with property he is required to deliver to official receiver or trustee.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
330(1)	Bankrupt disposing of property obtained on credit and not paid for.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
330(3)	Obtaining property in respect of which money is owed by a bankrupt.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
331(1)	Bankrupt obtaining credit or engaging in business without disclosing his status or name in which he was made bankrupt.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
331(3)	Person made bankrupt in England, Wales or Scotland obtaining credit, etc., in Northern Ireland.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
F535	...	...	...
...			
...	...	...	...

348(1)	Acting as insolvency practitioner when not qualified.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
[[F531]Sch. A1, para. 20(2).**]**	**[**[F531]Directors failing to notify nominee of beginning of moratorium.**]**	**[**[F531]**1.** On indictment.**]** **[**[F531]**2.** Summary.**]**	**[**[F531]2 years or a fine, or both.**]** **[**[F531]6 months or the statutory maximum, or both.**]**
[[F531]Sch. A1, para. 21(3).**]**	**[**[F531]Nominee failing to advertise or notify beginning of moratorium.**]**	**[**[F531]Summary.**]**	**[**[F531]One-fifth of the statutory maximum.**]**
[[F531]Sch. A1, para. 22(2).**]**	**[**[F531]Nominee failing to advertise or notify end of moratorium.**]**	**[**[F531]Summary.**]**	**[**[F531]One-fifth of the statutory maximum.**]**
[[F531]Sch. A1, para. 27(2).**]**	**[**[F531]Company and officers failing to state in correspondence etc. that moratorium in force.**]**	**[**[F531]Summary.**]**	**[**[F531]One-fifth of the statutory maximum.**]**
[[F531]Sch. A1, para. 28(3)(a).**]**	**[**[F531]Company obtaining credit without disclosing existence of moratorium.**]**	**[**[F531]**1.** On indictment.**]** **[**[F531]**2.** Summary.**]**	**[**[F531]A fine.**]** **[**[F531]The statutory maximum.**]**
[[F531]Sch. A1, para. 28(3)(b).**]**	**[**[F531]Obtaining credit for company without disclosing existence of moratorium.**]**	**[**[F531]**1.** On indictment.**]** **[**[F531]**2.** Summary.**]**	**[**[F531]2 years or a fine, or both.**]** **[**[F531]6 months or the statutory maximum, or both.**]**
[[F531]Sch. A1, para. 29(3)(a).**]**	**[**[F531]Company disposing of property otherwise than in ordinary way of business.**]**	**[**[F531]**1.** On indictment.**]** **[**[F531]**2.** Summary.**]**	**[**[F531]A fine.**]** **[**[F531]The statutory maximum.**]**

[F531Sch. A1, para. 29(3)(b).]	[F531Authorising or permitting disposal of company property.]	[F531**1.** On indictment.] [F531**2.** Summary.]	[F531 2 years or a fine, or both.] [F531 6 months or the statutory maximum, or both.]
[F531Sch. A1, para. 30(3)(a).]	[F531Company making payments in respect of liabilities existing before beginning of moratorium.]	[F531**1.** On indictment.] [F531**2.** Summary.]	[F531 A fine.] [F531 The statutory maximum.]
[F531Sch. A1, para. 30(3)(b).]	[F531Authorising or permitting such a payment.]	[F531**1.** On indictment.] [F531**2.** Summary.]	[F531 2 years or a fine, or both.] [F531 6 months or the statutory maximum, or both.]
[F531Sch. A1, para. 31(9).]	[F531Directors failing to send to registrar office copy of court order permitting disposal of charged property.]	[F531Summary.]	[F531One-fifth of the statutory maximum.]
[F531Sch. A1, para. 32(1).]	[F531Company disposing of charged property.]	[F531**1.** On indictment.] [F531**2.** Summary.]	[F531 A fine.] [F531 The statutory maximum.]
[F531Sch. A1, para. 32(2).]	[F531Authorising or permitting such a disposal.]	[F531**1.** On indictment.] [F531**2.** Summary.]	[F531 2 years or a fine, or both.] [F531 6 months or the statutory maximum, or both.]
[F531Sch. A1, para. 33(1)(a).]	[F531Company entering into market contract, etc.]	[F531**1.** On indictment.] [F531**2.** Summary.]	[F531 A fine.] [F531 The statutory maximum.]
[F531Sch. A1, para. 33(1)(b).]	[F531Authorising or permitting company to do so.]	[F531**1.** On indictment.] [F531**2.** Summary.]	[F531 2 years or a fine, or both.] [F531 6 months or the statutory maximum, or both.]

[F531Sch. A1, para. 35(6).]	[F531Nominee failing to give notice of withdrawal of consent to act.]	[F531Summary.]	[F531One-fifth of the statutory maximum.]	
[F531Sch. A1, para. 44(3).]	[F531Nominee failing to give notice of extension of moratorium.]	[F531Summary.]	[F531One-fifth of the statutory maximum.]	
[F531Sch. A1, para. 51(2).]	[F531Fraud or privity to fraud in anticipation of moratorium.]	[F531**1.** On indictment.] [F531**2.** Summary.]	[F531**7** years or a fine, or both.] [F531**6** months or the statutory maximum, or both.]	
[F531Sch. A1, para. 51(3).]	[F531Fraud or privity to fraud during moratorium.]	[F531**1.** On indictment.] [F531**2.** Summary.]	[F531**7** years or a fine, or both.] [F531**6** months or the statutory maximum, or both.]	
[F531Sch. A1, para. 51(7).]	[F531Knowingly taking in pawn or pledge, or otherwise receiving, company property.]	[F531**1.** On indictment.] [F531**2.** Summary.]	[F531**7** years or a fine, or both.] [F531**6** months or the statutory maximum, or both.]	
[F531Sch. A1, para. 52(1).]	[F531False representation or fraud for purpose of obtaining or extending moratorium.]	[F531**1.** On indictment.] [F531**2.** Summary.]	[F531**7** years or a fine, or both.] [F531**6** months or the statutory maximum, or both.]	
[F536Sch. B1, para. 19(7).	Making false statement in statutory declaration where administrator appointed by holder of floating charge.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.]	
[F536 Sch. B1, para. 21.	Holder of floating charge failing to notify administrator or others of	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory	One-tenth of the statutory maximum.]

	commencement of appointment.		maximum or both.	
[F536Sch. B1, para. 28(4).	Making false statement in statutory declaration where appointment of administrator proposed by company or directors.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.]	
[F536Sch. B1, para. 30(7).	Making false statement in statutory declaration where administrator appointed by company or directors.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.]	
[F536Sch. B1, para. 33.	Company or directors failing to notify administrator or others of commencement of appointment.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.	One-tenth of the statutory maximum.]
[F536Sch. B1, para. 46(2).	Administrator, company or officer failing to state in business document that administrator appointed.	Summary.	One-fifth of the statutory maximum.]	
[F536 Sch. B1, para. 47(9).	Administrator failing to give notice of his appointment.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F536Sch. B1, para. 49(4).	Failing to comply with provisions about statement of affairs where administrator appointed.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.]
[F536 Sch. B1, para. 50(7).	Administrator failing to send out statement of his proposals.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]

[F536Sch. B1, para. 52(5).	Administrator failing to arrange initial creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F536Sch. B1, para. 54(3).	Administrator failing to report decision taken at initial creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F536 Sch. B1, para. 55(7).	Administrator failing to report decision taken at creditors' meeting summoned to consider revised proposal.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F536 Sch. B1, para. 57(2).	Administrator failing to summon creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F536 Sch. B1, para. 72(6).	Administrator failing to file Court order enabling disposal of charged property.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F536Sch. B1, para. 73(5).	Administrator failing to file Court order enabling disposal of hire-purchase property.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F536 Sch. B1, para. 78(3).	Administrator failing to notify registrar of automatic end of administration.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F536Sch. B1, para. 79(6).	Administrator failing to give notice of extension by consent of term of office.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F536Sch. B1, para. 81(6).	Administrator failing to give notice of termination of administration	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]

	where objective achieved.			
[F536Sch. B1, para. 85(9).	Administrator failing to comply with provisions where company moves to dissolution.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F536Sch. B1, para. 87(3).	Administrator failing to notify registrar where court terminates administration.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F536 Sch. B1, para. 90(3).	Administrator failing to give notice on ceasing to be qualified.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]

Annotations:

F532 Entries in Sch. 7 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 47(3) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F533 Word in entry in Sch. 7 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 17(a), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

F534 mod. by SR 2004/307

F535 Entries in Sch. 7 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 17(b), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22 {arts. 2} - 7)

SCHEDULE 8

Article 379.

TRANSITIONAL PROVISIONS AND SAVINGS

PART I

COMPANY INSOLVENCY AND WINDING UP

Administration orders

1.—(1) Where any right to appoint an administrative receiver of a company is conferred by any debentures or floating charge created before the commencement date, the conditions precedent to the exercise of that right are deemed to include the presentation of a petition applying for an administration order to be made in relation to the company.

(2) In sub#paragraph (1) “administrative receiver” has the meaning assigned by Article 5(1).

Receivers and managers

2.—(1) Parts IV and VII do not apply in relation to any receiver or manager of a company's property who was appointed before the commencement date.

(2) In relation to any such receiver or manager as is mentioned in sub#paragraph (1) the Companies Order has effect without the amendments and repeals specified in Article 12 and in Schedules 9 and 10.

(3) This paragraph is without prejudice to the power conferred by this Order under which rules under Article 359 may make transitional provision in connection with the coming into operation of those rules; and such provision may apply those rules in relation to the receiver or manager of a company's property notwithstanding that he was appointed before the coming into operation of the rules or Article 359.

Winding up already in progress

3.—(1) Subject to the following provisions of this Part, Parts V to VII do not apply in relation to any winding up which has commenced, or is treated as having commenced, before the commencement date.

(2) In relation to any such winding up as is mentioned in sub#paragraph (1) the statutory provisions specified in Schedules 9 and 10 have effect without the amendments and repeals specified in Article 13 and in those Schedules.

(3) Where any instrument made under a statutory provision referred to in sub#paragraph (2) is in operation immediately before the commencement date, that instrument continues to have effect on and after that date in relation to any such winding up as is mentioned in sub#paragraph (1).

Statement of affairs

4.—(1) Where a winding up by the High Court has commenced, or is treated as having commenced, before the commencement date, the official receiver or (on appeal from a refusal by him) the Court may, at any time on or after that date—

(a) release a person from an obligation imposed on him by or under Article 489 of the Companies Order (statement of affairs), or

(b) extend the period specified in paragraph (6) of that Article.

(2) Accordingly, on and after the commencement date, Article 489(6) of the Companies Order has effect in relation to a winding up to which this paragraph applies with the omission of the words from “or within” onwards.

Provisions relating to liquidator

5.—(1) This paragraph applies as regards the liquidator in the case of a winding up by the High Court commenced, or treated as having commenced, before the commencement date.

(2) The official receiver may, at any time when he is liquidator of the company, apply to the Department for the appointment of a liquidator in his (the official receiver's) place; and on any such application the Department shall either make an appointment or decline to make one.

(3) Where immediately before the appointed day the liquidator of the company has not made an application under Article 506 of the Companies Order (release of liquidators), then—

(a) except where the Department otherwise directs, Articles 124(1) and (2) and 146(7) of this Order apply, and Article 508 of the Companies Order does not apply, in relation to any

liquidator of that company who holds office on or at any time after the commencement date and is not the official receiver;

(b) Article 124(3) of this Order applies in relation to the carrying out at any time after that date by any liquidator of the company of any of his functions; and

(c) a liquidator in relation to whom Article 146(7) of this Order has effect by virtue of this paragraph has his release with effect from the time specified in Article 148(4)(d) of this Order.

(4) Paragraph (6) of Article 148 of this Order has effect for the purposes of sub#paragraph (3)(c) as it has for the purposes of that Article, but as if the reference to Article 176 were to Article 584 of the Companies Order.

Saving for power to make rules

6. Paragraphs 3 to 5 are without prejudice to the power conferred by this Order under which rules made under Article 359 may make transitional provision in connection with the coming into operation of those rules; and such provision may apply those rules in relation to a winding up notwithstanding that the winding up commenced, or is treated as having commenced, before the coming into operation of the rules or Article 359.

Setting aside of preferences and other transactions

7.—(1) Where a provision in Part V of this Order applies in relation to a winding up or in relation to a case in which an administration order has been made, a preference given, floating charge created or other transaction entered into before the commencement date shall not be set aside under that provision except to the extent that it could have been set aside under the law in operation immediately before that date, assuming for this purpose that any relevant administration order had been a winding#up order.

(2) The references in sub#paragraph (1) to setting aside a preference, floating charge or other transaction include the making of an order which varies or reverses any effect of a preference, floating charge or other transaction.

PART II

INDIVIDUAL INSOLVENCY

Bankruptcy general

8.—(1) Subject to the following provisions of this Part, Parts VIII to X do not apply in relation to any case in which a bankruptcy petition was presented, or an adjudication in bankruptcy was made, before the commencement date.

(2) In relation to any such case as is mentioned in sub#paragraph (1), the statutory provisions specified in Schedules 9 and 10, so far as they relate to bankruptcy, have effect without the amendments and repeals specified in those Schedules.

(3) Where any instrument made under a statutory provision referred to in sub#paragraph (2) is in operation immediately before the commencement date, that instrument continues to have effect on and after that date in relation to any such case as is mentioned in sub#paragraph (1).

9.—(1) In relation to any such case as is mentioned in paragraph 8(1) the references in any statutory provision to a petition, order or other matter which is provided for under the Bankruptcy

Acts and corresponds to a petition, order or other matter provided for under provisions of Parts VIII to X of this Order continue on and after the commencement date to have effect as references to the petition, order or matter provided for by those Acts.

(2) Without prejudice to sub#paragraph (1), in determining for the purposes of Article 253 (period of bankruptcy) or paragraph 11 whether any person was an undischarged bankrupt at a time before the commencement date, an adjudication in bankruptcy and an annulment of a bankruptcy under the Bankruptcy Acts are to be taken into account in the same way, respectively, as a bankruptcy order under the provisions of Parts VIII to X of this Order and the annulment under Article 256 of this Order of such an order.

10. Transactions entered into before the commencement date have effect on and after that date as if references to acts of bankruptcy in the provisions for giving effect to those transactions continued to be references to acts of bankruptcy within the meaning of section 21 of the Bankruptcy (Ireland) Amendment Act 1872[F537] but as if such acts included failure to comply with a statutory demand served under Article 242 of this Order.

Annotations:
F537 1872 c. 58

Discharge from old bankruptcy

11.—(1) Where a person—

(a) was adjudged bankrupt before the commencement date or is adjudged bankrupt on or after that date on a petition presented before that date, and

(b) that person was not an undischarged bankrupt at any time in the period of 15 years ending with the adjudication,

that person is deemed (if not previously discharged) to be discharged from his bankruptcy for the purposes of the Bankruptcy Acts, at the end of the discharge period.

(2) Subject to sub#paragraph (3), the discharge period for the purposes of this paragraph is—

(a) in the case of a person adjudged bankrupt before the commencement date, the period of 3 years beginning with that date, and

(b) in the case of a person who is adjudged bankrupt on or after that date on a petition presented before that date, the period of 3 years beginning with the date of the adjudication.

(3) Where the High Court exercising jurisdiction in relation to a bankruptcy to which this paragraph applies is satisfied, on the application of the official receiver, that the bankrupt has failed, or is failing, to comply with any of his obligations under the Bankruptcy Acts, any rules made under those Acts or any such rules as are mentioned in paragraph 16(1), the Court may order that the discharge period shall cease to run for such period, or until the fulfilment of such conditions (including a condition requiring the Court to be satisfied as to any matter) as may be specified in the order.

Provisions relating to trustee

12.—(1) This paragraph applies as regards the trustee in the case of a person adjudged bankrupt before the commencement date, or adjudged bankrupt on or after that date on a petition presented before that date.

(2) Where on the commencement date the trustee of a bankrupt's estate has not made an application under Article 27 of the Bankruptcy Amendment (Northern Ireland) Order 1980[F538] as applied by Article 39 of that Order (release of trustee), then—

(a) except where the Department otherwise directs, Articles 271(7), 277 and 304(1) to (3) of this Order apply, and Article 27 of that Order of 1980 as applied by Article 39 of that Order does not apply, in relation to any trustee of the bankrupt's estate who holds office on or at any time after the commencement date;

(b) Article 304(4) of this Order applies in relation to the carrying out at any time on or after the commencement date by the trustee of the bankrupt's estate of any of his functions; and

(c) a trustee in relation to whom Article 271(7) of this Order has effect by virtue of this paragraph has his release with effect from the time specified in Article 272(3)(d).

(3) Paragraph (5) of Article 272 has effect for the purposes of sub#paragraph (2)(c) as it has for the purposes of that Article.

(4) In the application of paragraph (3) of Article 304 in relation to a case by virtue of this paragraph, the reference in that paragraph to Article 303(1) has effect as a reference to Article 22(7) and (8) of the Bankruptcy Amendment (Northern Ireland) Order 1980 as applied by Article 39 of that Order of 1980.

(5) The trustee of the bankrupt's estate may employ a solicitor to assist him in the carrying out of his functions without the permission of the committee of inspection; but if he does so employ a solicitor, he shall inform the committee of inspection that he has done so.

Annotations:
F538 1980 NI 4

Second bankruptcy

13.—(1) Articles 307 and 308 of this Order apply with the following modifications where the earlier bankruptcy (within the meaning of Article 307) is a bankruptcy in relation to which the Bankruptcy Acts apply instead of Parts VIII to X of this Order, that is to say—

(a) references to the existing trustee include references to the assignees of the bankrupt's estate for the purposes of the earlier bankruptcy; and

(b) references to property vested in the existing trustee under Article 280(3) of this Order have effect as references to such property vested in that trustee as was acquired by or devolved on the bankrupt after the commencement (within the meaning of the Bankruptcy Acts) of the earlier bankruptcy; and

(c) references to an order under Article 283 of this Order have effect as references to an order under section 319 of the Irish Bankrupt and Insolvent Act 1857[F539] or section 51 of the Bankruptcy (Ireland) Amendment Act 1872[F540].

(2) Section 11 of the Bankruptcy Amendment Act (Northern Ireland) 1929[F541] (second bankruptcy) does not apply where a person who is an undischarged bankrupt under the Bankruptcy Acts is adjudged bankrupt under this order.

Annotations:
F539 1857 c. 60
F540 1872 c. 58
F541 1929 c. 1 (NI)

Setting aside of preferences and other transactions

14.—(1) A preference given, assignment made or other transaction entered into before the commencement date shall not be set aside under any of Articles 312 to 317 of this Order except to the extent that it could have been set aside under the law in operation immediately before that date.

(2) References in sub#paragraph (1) to setting aside a preference, assignment or other transaction include the making of any order which varies or reverses any effect of a preference, assignment or other transaction.

Bankruptcy offences

15.—(1) Where a bankruptcy order is made under this Order on or after the commencement date, a person is not guilty of an offence under Chapter VI of Part IX in respect of anything done before that date; but, notwithstanding the repeal by Article 382 and Schedule 10 of sections 11, 12 and 13(4) of the Debtors (Ireland) Act 1872[F542] and sections 25 and 26 of the Bankruptcy Amendment Act (Northern Ireland) 1929 is guilty of an offence under the Act of 1872 or 1929 in respect of anything done before the commencement date which would have been an offence under that Act if the making of the bankruptcy order had been the making of an adjudication order under the Bankruptcy Acts.

(2) Paragraph (5) of Article 321 of this Order applies (instead of section 25(2) or 26(2) of the Bankruptcy Amendment Act (Northern Ireland) 1929) in relation to proceedings for an offence under that Act which are instituted (whether by virtue of sub#paragraph (1) or otherwise) after the commencement date.

Annotations:
F542 1872 c. 57

Power to make rules

16.—(1) The preceding provisions of this Part of this Schedule are without prejudice to the power conferred by this Order under which rules under Article 359 may make transitional provision in connection with the coming into operation of those rules; and such provision may apply those rules in relation to a bankruptcy notwithstanding that it arose from a petition presented before either the coming into operation of the rules or the commencement date.

(2) Rules under Article 359 may provide for such debtor's summons served before the commencement date as may be prescribed to be treated for the purposes of this Order as statutory demands served under Article 242.

PART III

OTHER TRANSITIONAL PROVISIONS AND SAVINGS

Deeds of arrangement

17. Chapter I of Part VIII does not apply in relation to any deed of arrangement registered before the commencement date.

Insolvency practitioners

18. Where an individual began to act as an insolvency practitioner in relation to any person before the commencement date, nothing in Article 349(2) or (3) prevents that individual from being qualified to act as an insolvency practitioner in relation to that person.

Official receiver

19. Any property vested in the Official Assignee for bankruptcy for Northern Ireland, either alone or together with a creditor's assignee, before the commencement date, shall, on that date, vest in the official receiver without any conveyance, assignment or transfer.

Transitional effect of Articles 367 to 369

20.—(1) A transaction entered into before the commencement date shall not be set aside under Articles 367 to 369 except to the extent that it could have been set aside under the law in operation immediately before that date.

(2) References in sub#paragraph (1) to setting aside a transaction include the making of any order which varies or reverses any effect of a transaction.

Periods of time

21. Where any period of time specified in any provision repealed by Article 382 and Schedule 10 is current immediately before the commencement date, this Order has effect as if the corresponding provision had been in operation when the period began to run; and (without prejudice to the foregoing) any period of time so specified and current is deemed for the purposes of this Order—

(a) to run from the date or event from which it was running immediately before the commencement date, and

(b) to expire (subject to any provision of this Order for its extension) whenever it would have expired if this Order had not come into operation;

and any rights, priorities, liabilities, reliefs, obligations, requirements, powers, duties or exemptions dependent on the beginning, duration or end of such a period shall be under this Order as they were or would have been under that repealed provision.

Saving

22. The provisions of this Schedule shall have effect without prejudice to sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954[F543].

Annotations:
F543 1954 c. 33 (NI)

Interpretation

23. In this Schedule—

"the Bankruptcy Acts" means the Bankruptcy Acts (Northern Ireland) 1857 to 1980[F544F545F546F547F548];

"the commencement date" for the purpose of any provision of this Schedule, means the day appointed under Article 1(2) for the coming into operation of that provision.

Annotations:

F544 1857 c. 60
F545 1872 c. 58
F546 1929 c. 1 (NI)
F547 1963 c. 23 (NI)
F548 1980 NI 4

Schedule 9—Amendments

Schedule 10—Repeals

Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Insolvency (Northern Ireland) Order 1989. Any changes that have already been made by the team appear in the content and are referenced with annotations.

Changes and effects yet to be applied to :

- Pt. 5 heading words substituted by S.I. 2009/1941 Sch. 1 para. 111(2)
- Pt. 3 amended by S.I. 2008/948 Sch. 1 para. 167
- Pt. 8-10 heading omitted by 2010 c. 16 (N.I.) s. 1(a)
- Pt. 4 applied by SI 1989/638 reg. 19(1A) (as inserted) by S.I. 2009/2399 reg. 20(3)
- Pt. 6 applied (with modifications) by SI 1989/638 reg. 8(1A) (as inserted) by S.I. 2009/2399 reg. 11
- Pt. 2 3 applied (with modifications) by S.R. 2008/445 art. 2
- Pt. 2 applied (with modifications) by 2009 c. 1 s. 113(6)-(9) 134
- Pt. 7A-10 heading inserted by 2010 c. 16 (N.I.) s. 1(b)
- Sch. A1 para. 23(1)(g) excluded by SI 1999/2979 reg. 19(4) (as inserted) by S.I. 2009/1972 reg. 7(c)
- Sch. A1 para. 31 excluded by SI 1999/2979 reg. 19(4) (as inserted) by S.I. 2009/1972 reg. 7(c)
- Sch. A1 para. 3(6) inserted by S.I. 2009/1941 Sch. 1 para. 107(4)(a)(ii)
- Sch. A1 para. 27(1) substituted by S.I. 2008/1897 reg. 3(2)
- Sch. A1 para. 3(5) substituted by S.I. 2008/948 Sch. 1 para. 165(5)
- Sch. A1 para. 3(2)(a) text amended by S.I. 2008/948 Sch. 1 para. 165(2)(a)
- Sch. A1 para. 3(2)(b) text amended by S.I. 2008/948 Sch. 1 para. 165(2)(b)
- Sch. A1 para. 3(3) text amended by S.I. 2008/948 Sch. 1 para. 165(3)
- Sch. A1 para. 3(4) text amended by S.I. 2008/948 Sch. 1 para. 165(4)
- Sch. A1 para. 9(1)(a) text amended by S.I. 2010/86 Sch. para. 3(a)
- Sch. A1 para. 10(3) text amended by S.I. 2010/86 Sch. para. 3(b)
- Sch. A1 para. 3(2)(b) words substituted by S.I. 2009/1941 Sch. 1 para. 107(4)(a)(i)
- Sch. A1 para. 31(8) words substituted by S.I. 2009/1941 Sch. 1 para. 107(4)(b)
- Sch. A1 para. 44(2) words substituted by S.I. 2009/1941 Sch. 1 para. 107(4)(b)
- Sch. B1 para. 41 applied (with modifications) by 2009 c. 1 s. 119 134
- Sch. B1 para. 43 applied (with modifications) by 2009 c. 1 s. 119 134
- Sch. B1 para. 66(2) applied by SI 1999/2979 reg. 14(5)(a)(i) (as substituted) by S.I. 2009/1972 reg. 4(d)(ii)
- Sch. B1 para. 100(3) applied by SI 1999/2979 reg. 14(5)(a)(iv) (as substituted) by S.I. 2009/1972 reg. 4(d)(iii)
- Sch. B1 applied in part (with modifications) by 2011 c. 5 s. 87(1)(2) Sch. 10 Pt. 1 2
- Sch. B1 para. 45 modified by 2011 c. 6 (N.I.) s. 25(4)
- Sch. B1 para. 45 modified by 2011 c. 6 (N.I.) s. 26(4)
- Sch. B1 para. 45 restricted by 2011 c. 5 s. 76(4) 85(8) 87(1)(2)
- Sch. B1 para. 45 restricted by 2011 c. 5 s. 77(5) 85(8) 87(1)(2)
- Sch. B1 para. 46 substituted by S.I. 2008/1897 reg. 4(2)
- Sch. B1 para. 1(1A)(a) substituted by S.I. 2009/1941 Sch. 1 para. 108
- Sch. B1 para. 50(3)(b) text amended by S.I. 2008/948 Sch. 1 para. 166(a)
- Sch. B1 para. 74(2)(c) text amended by S.I. 2008/948 Sch. 1 para. 166(a)
- Sch. B1 para. 75(6)(b) text amended by S.I. 2008/948 Sch. 1 para. 166(b)
- Sch. 1A para. 10(1)(f) omitted by S.I. 2011/2085 Sch. 1 para. 23(3)(c) Sch. 2
- Sch. 1A para. 2(1)(a) text amended by S.I. 2010/86 Sch. para. 4(a)
- Sch. 1A para. 3(2) text amended by S.I. 2010/86 Sch. para. 4(b)
- Sch. 1A para. 10(1)(d) words substituted by S.I. 2011/2085 Sch. 1 para. 23(3)(a)
- Sch. 1A para. 10(1)(e) words substituted by S.I. 2011/2085 Sch. 1 para. 23(3)(b)
- Sch. 4 para. 14(1)(b) text amended by S.I. 2008/948 Sch. 1 para. 170
- Sch. 5 amended by S.I. 2009/805 art. 13 17
- Sch. 6 para. 5A-5E inserted by 2010 c. 16 (N.I.) Sch. para. 4(14)(f)
- Sch. 6 para. 1 text amended by 2010 c. 16 (N.I.) Sch. para. 4(14)(a)
- Sch. 6 para. 2 text amended by 2010 c. 16 (N.I.) Sch. para. 4(14)(b)

- Sch. 6 para. 3 text amended by 2010 c. 16 (N.I.) Sch. para. 4(14)(c)
- Sch. 6 para. 4 text amended by 2010 c. 16 (N.I.) Sch. para. 4(14)(d)
- Sch. 6 para. 5 text amended by 2010 c. 16 (N.I.) Sch. para. 4(14)(e)
- Sch. 6 para. 12 text amended by 2010 c. 16 (N.I.) Sch. para. 4(14)(g)
- Sch. 6 para. 22(a) text amended by 2010 c. 16 (N.I.) Sch. para. 4(14)(h)
- Sch. 7 Table text amended by 2010 c. 16 (N.I.) Sch. para. 4(15)
- Sch. 7 word substituted by S.I. 2009/1941 Sch. 1 para. 114(2)
- Sch. 8 words substituted by S.I. 2009/1941 Sch. 1 para. 114(3)
- Sch. 9 Pt. 2 para. 67 repealed by 2009 c. 3 (N.I.) Sch. 3
- Sch. 9 para. 63 cross-heading repealed by 2010 c. 10 Sch. 4
- Sch. 9 para. 63-65 repealed by 2010 c. 10 Sch. 4
- art. 2(2) text amended by 2010 c. 16 (N.I.) Sch. para. 4(2)
- art. 2(2) words inserted by S.I. 2009/1941 Sch. 1 para. 106(2)(a)
- art. 2(2) words inserted by S.I. 2009/1941 Sch. 1 para. 106(2)(c)
- art. 2(2) words omitted by S.I. 2009/1941 Sch. 1 para. 106(2)(b)
- art. 2(2) words omitted by S.I. 2009/1941 Sch. 1 para. 106(2)(d)
- art. 2(2A) inserted by S.I. 2009/1941 Sch. 1 para. 106(3)
- art. 3(4) words substituted by S.I. 2009/1941 Sch. 1 para. 106(4)
- art. 4(5)(b) words omitted by S.I. 2009/1941 Sch. 1 para. 106(5)
- art. 5(1) words inserted by S.I. 2009/1941 Sch. 1 para. 106(6)(a)
- art. 5(1) words inserted by S.I. 2009/1941 Sch. 1 para. 106(6)(b)
- art. 5(2) omitted by S.I. 2009/1941 Sch. 1 para. 106(6)(c)
- art. 9 cross-heading text amended by 2010 c. 16 (N.I.) Sch. para. 4(3)
- art. 9(1) text amended by 2010 c. 16 (N.I.) Sch. para. 4(4)(a)
- art. 9(2) text amended by 2010 c. 16 (N.I.) Sch. para. 4(4)(b)
- art. 10(1) text amended by 2010 c. 16 (N.I.) Sch. para. 4(5)
- art. 12 words omitted by S.I. 2009/1941 Sch. 1 para. 106(8)
- art. 12 heading words omitted by S.I. 2009/1941 Sch. 1 para. 106(7)
- art. 13(1) words omitted by S.I. 2009/1941 Sch. 1 para. 106(9)(a)
- art. 13(4) omitted by S.I. 2009/1941 Sch. 1 para. 106(9)(b)
- art. 14(4)(a) substituted by S.I. 2009/1941 Sch. 1 para. 107(2)
- art. 18 modified by 2011 c. 5 s. 87(1)(2) Sch. 10 para. 43
- art. 19 modified by 2011 c. 5 s. 87(1)(2) Sch. 10 para. 44
- art. 20A(3) words substituted by S.I. 2009/1941 Sch. 1 para. 107(3)(a)
- art. 20A(4) words substituted by S.I. 2009/1941 Sch. 1 para. 107(3)(b)
- art. 23(1)(b) excluded by SI 1999/2979 by reg. 19(1B) (as inserted) by S.I. 2009/1972 reg. 7(b)
- art. 24(2) excluded by SI 1999/2979 reg. 19(1B) (as inserted) by S.I. 2009/1972 reg. 7(b)
- art. 24(3)(c) excluded by SI 1999/2979 by reg. 19(1B) (as inserted) by S.I. 2009/1972 reg. 7(b)
- art. 27(4) words substituted by S.I. 2009/1941 Sch. 1 para. 109(2)
- art. 28(1)(2) excluded by SI 1999/2979 reg. 19(1B) (as inserted) by S.I. 2009/1972 reg. 7(b)
- art. 28(7) words substituted by S.I. 2009/1941 Sch. 1 para. 109(3)
- art. 30(4) words substituted by S.I. 2009/1941 Sch. 1 para. 109(3)
- art. 31(4) applied by SI 1999/2979 reg. 14(5)(a)(iv) (as substituted) by S.I. 2009/1972 reg. 4(d)(iii)
- art. 33(2) words substituted by S.I. 2009/1941 Sch. 1 para. 109(3)
- art. 36(6) words substituted by S.I. 2009/1941 Sch. 1 para. 109(3)
- art. 39(6) words substituted by S.I. 2009/1941 Sch. 1 para. 109(3)
- art. 41 heading text amended by 2010 c. 16 (N.I.) Sch. para. 4(6)(a)
- art. 41(1)(b) text amended by 2010 c. 16 (N.I.) Sch. para. 4(6)(b)
- art. 41(1)(aa) inserted by 2010 c. 16 (N.I.) Sch. para. 4(6)(b)
- art. 49(1) substituted by S.I. 2008/1897 reg. 2(3)
- art. 53(5) words substituted by S.I. 2009/1941 Sch. 1 para. 110(3)
- art. 61(2)(c) words omitted by S.I. 2009/1941 Sch. 1 para. 111(4)(a)
- art. 61(2)(e) words substituted by S.I. 2009/1941 Sch. 1 para. 111(4)(b)

- art. 62 omitted by S.I. 2009/1941 Sch. 1 para. 111(5)
- art. 63(1)(a) words substituted by S.I. 2009/1941 Sch. 1 para. 111(6)(a)
- art. 63(2)(b) words substituted by S.I. 2009/1941 Sch. 1 para. 111(6)(b)
- art. 63(2)(b) words substituted by S.I. 2011/1265 art. 7(2)
- art. 63(5) words substituted by S.I. 2009/1941 Sch. 1 para. 111(6)(c)
- art. 63(6) omitted by S.I. 2009/1941 Sch. 1 para. 111(6)(d)
- art. 64(1) words substituted by S.I. 2009/1941 Sch. 1 para. 111(7)(a)
- art. 64(3) words omitted by S.I. 2009/1941 Sch. 1 para. 111(7)(b)
- art. 65(1) words omitted by S.I. 2009/1941 Sch. 1 para. 111(8)
- art. 69 heading substituted by S.I. 2009/1941 Sch. 1 para. 111(9)(a)
- art. 69(1) words substituted by S.I. 2009/1941 Sch. 1 para. 111(9)(b)
- art. 70(2) art. 70(3) renumbered as art. 70(2) by S.I. 2009/1941 Sch. 1 para. 111(10)
- art. 74 excluded by SI 1999/2979 reg. 16(3) (as amended) by S.I. 2009/1972 reg. 6(b)
- art. 96(1)(a) words substituted by S.I. 2009/1941 Sch. 1 para. 111(11)
- art. 98(3) words substituted by S.I. 2009/1941 Sch. 1 para. 111(12)
- art. 102(b) text amended by S.I. 2008/948 Sch. 1 para. 168
- art. 102(c) words substituted by S.I. 2009/1941 Sch. 1 para. 111(13)
- art. 102(e) omitted by S.I. 2011/1265 art. 7(3)
- art. 102(1)(b) excluded by SI 2004/2326 Sch. 4 para. 9(c) (as inserted) by S.I. 2009/2400 reg. 40(9)(c)
- art. 103 applied by 2009 c. 1 s. 166(3) 167
- art. 104(4) omitted by S.I. 2009/1941 Sch. 1 para. 111(14)
- art. 104A(1)(a) words substituted by S.I. 2009/1941 Sch. 1 para. 111(15)
- art. 106(2) words substituted by S.I. 2009/1941 Sch. 1 para. 111(16)
- art. 107 excluded by SI 1999/2979 reg. 16(3) (as amended) by S.I. 2009/1972 reg. 6(b)
- art. 109(1A) modified by 2011 c. 5 s. 87(1)(2) Sch. 10 para. 45
- art. 110(1) words substituted by S.I. 2009/1941 Sch. 1 para. 111(17)(a)
- art. 110(3) words substituted by S.I. 2009/1941 Sch. 1 para. 111(17)(b)
- art. 125(3) words substituted by S.I. 2009/1941 Sch. 1 para. 111(18)
- art. 126(1) words omitted by S.I. 2009/1941 Sch. 1 para. 111(19)
- art. 127(1) words omitted by S.I. 2009/1941 Sch. 1 para. 111(19)
- art. 136 words substituted by S.I. 2009/1941 Sch. 1 para. 111(20)
- art. 137(1) words omitted by S.I. 2009/1941 Sch. 1 para. 111(21)
- art. 149 applied by SI 1999/2979 reg. 14(5)(a)(i) (as substituted) by S.I. 2009/1972 reg. 4(d)(ii)
- art. 150A applied by SI 1999/2979 reg. 14(5)(a)(i) (as substituted) by S.I. 2009/1972 reg. 4(d)(ii)
- art. 150A(4)(b) text amended by S.I. 2008/948 Sch. 1 para. 169
- art. 150ZA applied by SI 1999/2979 reg. 14(5)(a)(i) (as substituted) by S.I. 2009/1972 reg. 4(d)(ii)
- art. 158(2)(c) word substituted by S.I. 2009/1941 Sch. 1 para. 111(22)
- art. 159(1)(a) text amended by S.I. 2008/1897 reg. 5(2)
- art. 164(3) words omitted by S.I. 2009/1941 Sch. 1 para. 111(23)
- art. 166(4) words substituted by S.I. 2009/1941 Sch. 1 para. 111(24)
- art. 176(6) omitted by S.I. 2009/1941 Sch. 1 para. 111(25)
- art. 178(7) substituted by S.I. 2009/1941 Sch. 1 para. 111(26)
- art. 179(6) omitted by S.I. 2009/1941 Sch. 1 para. 111(27)
- art. 180(8) substituted by S.I. 2009/1941 Sch. 1 para. 111(28)
- art. 181(6) substituted by S.I. 2009/1941 Sch. 1 para. 111(29)
- art. 182(4) words substituted by S.I. 2009/1941 Sch. 1 para. 111(30)
- art. 183(1) words substituted by S.I. 2009/1941 Sch. 1 para. 111(31)
- art. 184 substituted by S.I. 2009/1941 Sch. 1 para. 112(2)
- art. 185(1) words omitted by S.I. 2009/1941 Sch. 1 para. 112(3)
- art. 190(3) omitted by S.I. 2009/1941 Sch. 1 para. 112(4)
- art. 193(1) words substituted by S.I. 2009/1941 Sch. 1 para. 112(5)(a)
- art. 193(2) omitted by S.I. 2009/1941 Sch. 1 para. 112(5)(b)

- art. 207 excluded by SI 1999/2979 reg. 16(3) (as amended) by S.I. 2009/1972 reg. 6(b)
- art. 257 excluded by SI 1999/2979 reg. 16(3) (as amended) by S.I. 2009/1972 reg. 6(b)
- art. 279A(1)(b) text amended by 2009 c. 26 Sch. 7 para. 60(2)(a)
- art. 279A(1)(b) text amended by 2009 c. 26 Sch. 8 Pt. 4
- art. 279A(1)(d) and word inserted by 2009 c. 26 Sch. 7 para. 60(2)(b)
- art. 279A(2) substituted by 2009 c. 26 Sch. 7 para. 60(3)
- art. 279B(1)(a) text amended by 2009 c. 26 Sch. 7 para. 62
- art. 279C(1)(a) text amended by 2009 c. 26 Sch. 7 para. 64(2)
- art. 279C(2) substituted by 2009 c. 26 Sch. 7 para. 64(3)
- art. 315C(5)(b) substituted by 2008 c. 1 (N.I.) Sch. 5 para. 1
- art. 315F(7)(b) substituted by 2008 c. 1 (N.I.) Sch. 5 para. 2
- art. 342(1) words substituted by S.I. 2011/2085 Sch. 1 para. 23(2)(a)
- art. 342(1) words substituted by S.I. 2011/2085 Sch. 1 para. 23(2)(b)
- art. 344 text amended by 2010 c. 16 (N.I.) Sch. para. 4(8)
- art. 348A(2)(a) text amended by S.R. 2009/401 reg. 2(2)
- art. 349(2)(c) and word inserted by S.R. 2009/401 reg. 2(3)
- art. 349(4)(aa) inserted by 2010 c. 16 (N.I.) Sch. para. 4(9)(a)
- art. 349(5) text amended by 2010 c. 16 (N.I.) Sch. para. 4(9)(b)
- art. 350(2) substituted by S.R. 2009/401 reg. 2(4)
- art. 352(3)(3A) substituted for art. 352(3) by S.R. 2009/401 reg. 2(5)(a)
- art. 352(4) text amended by S.R. 2009/401 reg. 2(5)(b)
- art. 352(6) inserted by S.R. 2009/401 reg. 2(5)(c)
- art. 359 Sch. 5 amended by 2009 c. 1 s. 125 134
- art. 359 Sch. 5 amended by 2009 c. 1 s. 160 167
- art. 359 amended by S.I. 2009/805 art. 13 17
- art. 359 applied (with modifications) by 2011 c. 5 s. 73(3)s. 73(4) 87(1)(2)
- art. 359 modified by 2011 c. 6 (N.I.) s. 22(3)
- art. 359 transfer of functions by S.I. 2010/976 Sch. 18 para. 146
- art. 359(1) text amended by S.I. 2010/976 Sch. 18 para. 142(2)
- art. 359(2)(a) words substituted by S.I. 2009/1941 Sch. 1 para. 113
- art. 359(2)(d) text amended by S.I. 2010/976 Sch. 18 para. 142(2)
- art. 359(4) text amended by S.I. 2010/976 Sch. 18 para. 142(3)
- art. 360(1) text amended by S.I. 2010/976 Sch. 18 para. 143
- art. 361 amended by 2009 c. 1 s. 126 134
- art. 361 amended by 2009 c. 1 s. 161 167
- art. 361 amended by S.I. 2009/805 art. 14 17
- art. 361(1)(za) inserted by 2010 c. 16 (N.I.) Sch. para. 4(10)
- art. 361A(A1) inserted by 2010 c. 16 (N.I.) Sch. para. 4(11)
- art. 362(1)(b) text amended by 2010 c. 16 (N.I.) Sch. para. 4(12)
- art. 364(1) text amended by S.I. 2010/976 Sch. 18 para. 144(a)
- art. 364(2) text amended by S.I. 2010/976 Sch. 18 para. 144(b)
- art. 365(1) text amended by S.I. 2010/976 Sch. 18 para. 145(a)
- art. 365(2) text amended by S.I. 2010/976 Sch. 18 para. 145(b)
- art. 370(1)(1A) substituted for art. 370(1) by 2010 c. 16 (N.I.) Sch. para. 4(13)(a)
- art. 370(2) text amended by 2010 c. 16 (N.I.) Sch. para. 4(13)(b)
- art. 375 amended by 2009 c. 1 s. 128 134
- art. 375 amended by 2009 c. 1 s. 162 167
- art. 381(1) repealed by S.I. 2009/1941 Sch. 2

Changes and effects yet to be applied to the whole Order, associated Parts and Chapters:

- Order applied (with modifications) by S.I. 2009/3056 Sch. 1 para. 2
- Order applied (with modifications) by 1969 c. 24 (N.I.) s. 64(1)(2) (as substituted) by S.I. 2009/1941 Sch. 1 para. 21(8)(2)

- Order applied (with modifications) by SI 1985/1205 (N.I. 12) art. 68(1)(2) (as substituted) by S.I. 2009/1941 Sch. 1 para. 66(2)
- Order applied in part (with modifications) by 2009 c. 1 s. 103 134
- Order applied in part (with modifications) by 2009 c. 1 s. 145 167
- Order applied in part (with modifications) by S.I. 2011/245 reg. 8(7) 9 15 16-21 24-26 Sch. 1-5
- Order excluded by 2008 c. 32 s. 56(5)
- Order excluded by 1998 c. 17 s. 38A (as inserted) by 2008 c. 32 s. 74
- Order modified by 2011 c. 5 s. 87(1)(2) Sch. 10 para. 40 41
- Order power to amend conferred by 2009 c. 1 s. 158(2)(b) 159(2)(b)
- Order power to modify conferred by 2011 c. 5 s. 87(1)(2) Sch. 10 para. 46
- Blanket Amendment text amended by 2009 c. 1 (N.I.) Sch. 6 para. 1(1)(a)
- Blanket Amendment text amended by 2009 c. 1 (N.I.) Sch. 6 para. 1(1)(b)

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Pt. 7A inserted by 2010 c. 16 (N.I.) s. 1(b)
- Pt. 15 inserted by S.I. 2008/948 Sch. 1 para. 171
- s. 39A inserted by S.I. 2009/1941 Sch. 1 para. 110(2)
- s. 60 and heading substituted by S.I. 2009/1941 Sch. 1 para. 111(3)
- Sch. 2ZA inserted by 2010 c. 16 (N.I.) s. 2
- Sch. 2ZA para. 7 8 modified by SR 1991/364, rule 5A.18 by S.R. 2011/151 Sch. 1
- Sch. 2ZB inserted by 2010 c. 16 (N.I.) s. 3
- art. 248A inserted by 2010 c. 16 (N.I.) Sch. para. 4(7)
- art. 279AA inserted by 2009 c. 26 Sch. 7 para. 61
- art. 279BA inserted by 2009 c. 26 Sch. 7 para. 63
- art. 386 387 inserted by S.I. 2009/1941 Sch. 1 para. 115

Commencement Orders yet to be applied to the The Insolvency (Northern Ireland) Order 1989:

Commencement Orders bringing legislation that affects this Order into force:

- S.I. 2008/755 art. 2 15-18 commences (2007 c. 27)
- S.I. 2008/831 art. 3 commences (2006 c. 14)
- S.I. 2008/2860 art. 3 4 Sch. 1 commences (2006 c. 46)
- S.I. 2009/45 art. 2-4 Commencement Order
- S.I. 2009/296 art. 2 3 Sch. commences (2009 c. 1)
- S.I. 2009/1632 reg. 22 amendment to earlier commencing SI 2007/2194 Sch. 3 para. 23A (as inserted by SI 2007/3495 Sch. 5 para. 2(5))
- S.I. 2011/2329 art. 2 3 commences (2011 c. 5)
- S.R. 2008/65 art. 2 commences (2008 c. 1 (N.I.))
- S.R. 2008/232 art. 2 commences (S.I. 2007/915 (N.I.))
- S.R. 2009/172 art. 2 commences (2009 c. 3 (N.I.))
- S.R. 2011/13 art. 2 commences (2010 c. 16)
- S.R. 2011/95 art. 2 commences (2011 c. 6 (N.I.))