
Status: Point in time view as at 26/06/2020.

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STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

[^{F1}PART 1A

Moratorium

[^{F1}CHAPTER 8

Miscellaneous and general

F1 Pt. 1A inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), **ss. 4(1), 49(1)** (with **ss. 2(2), 5(2)**)

Special rules for certain kinds of company etc

Regulated companies: modifications to this Part

13H.—(1) For the purposes of Articles 13B and 13BA as they apply in relation to a regulated company, Article 13BC(1) has effect as if the documents listed there included a reference to the written consent of the appropriate regulator to the appointment of the proposed monitor.

(2) The remaining provisions of this Article apply in relation to a moratorium for a regulated company.

(3) Any notice under Article 13BE(2), 13CH(2) to (4) or 13EE(8) must also be sent by the monitor to the appropriate regulator.

(4) The directors must give the appropriate regulator notice of any meeting of the company's creditors that is to be held for the purposes of Article 13CC(2) or 13FB(4)(c).

(5) If the directors fail to comply with paragraph (4), any director who did not have a reasonable excuse for the failure commits an offence.

(6) The appropriate regulator, or a person appointed by the appropriate regulator, may in the way provided for by the rules, participate (but not vote) in any meeting of the company's creditors that is held for the purposes of this Part.

(7) The appropriate regulator is entitled to be heard on any application to the High Court for permission under Article 13DM(1) or 13DN(1) (disposal of charged property, etc.).

(8) The High Court may make an order under Article 13EE(1) only if the appropriate regulator has given its written consent to the appointment of the proposed monitor.

(9) The persons who may apply to the High Court under Article 13EE(3), 13F(1) or 13FB(1) include the appropriate regulator.

(10) If a person other than a regulator applies to the High Court under Article 13EE(3), 13F(1) or 13FB(1) the appropriate regulator is entitled to be heard on the application.

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(11) If either regulator makes an application to the High Court under Article 13EE(3), 13F(1) or 13FB(1) in relation to a PRA-regulated company, the other regulator is entitled to be heard on the application.

(12) This Article does not affect any right that the appropriate regulator has (apart from this Article) as a creditor of a regulated company.

(13) In this Article—

“the appropriate regulator” means—

- (a) where the regulated company is a PRA-regulated company, each of the Financial Conduct Authority and the Prudential Regulation Authority, and
- (b) where the regulated company is not a PRA-regulated company, the Financial Conduct Authority;

“PRA-authorised person” has the meaning given by section 2B(5) of the Financial Services and Markets Act 2000;

“PRA-regulated company” means a regulated company which—

- (a) is, or has been, a PRA-authorised person,
- (b) is, or has been, an appointed representative within the meaning given by section 39 of the Financial Services and Markets Act 2000, whose principal (or one of whose principals) is, or was, a PRA-authorised person, or
- (c) is carrying on, or has carried on, a PRA-regulated activity (within the meaning of section 22A of that Act) in contravention of the general prohibition;

“regulated activity” has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section;

“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 in contravention of the general prohibition within the meaning given by section 19 of that Act;

“regulator” means the Financial Conduct Authority or the Prudential Regulation Authority.

(14) Regulations may amend this Article for the purposes of changing the definition of “regulated company” in paragraph (13).

(15) Regulations may not be made under paragraph (14) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

Power to modify this Part etc in relation to certain companies

13HA.—(1) Regulations may—

- (a) modify this Part as it applies in relation to a company for which there is a special administration regime, or
- (b) make provision in connection with the interaction between this Part and any other insolvency procedure in relation to such a company.

(2) The power in paragraph (1) may, in particular, be used to amend, repeal, revoke or otherwise modify any statutory provision.

(3) In this Article—

“ordinary administration” means the insolvency procedure provided for by Schedule B1;
“special administration regime” means provision made by any statutory provision for an insolvency procedure that—

- (a) is similar or corresponds to ordinary administration, and
- (b) provides for the administrator to have one or more special objectives instead of or in addition to the objectives of ordinary administration.

(4) Regulations may not be made under paragraph (1) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

Power to make provision in connection with pension schemes

13HB.—(1) A Northern Ireland department may by regulations provide that, in a case where—

- (a) a moratorium—
 - (i) is in force in relation to a company that is an employer in respect of an eligible scheme, or
 - (ii) is or has been in force in relation to a company that has been an employer in respect of an eligible scheme at any time during the moratorium, and
- (b) the trustees or managers of the scheme are a creditor of the company,

the Board of the Pension Protection Fund may exercise any of the following rights.

(2) The rights are those which are exercisable by the trustees or managers as a creditor of the company under or by virtue of—

- (a) Article 13CC, or
- (b) a court order under Article 13FB(4)(c).

(3) Regulations under paragraph (1) may provide that the Board may exercise any such rights—

- (a) to the exclusion of the trustees or managers of the scheme, or
- (b) in addition to the exercise of those rights by the trustees or managers of the scheme.

(4) Regulations under paragraph (1)—

- (a) may specify conditions that must be met before the Board may exercise any such rights;
- (b) may provide for any such rights to be exercisable by the Board for a specified period;
- (c) may make provision in connection with any such rights ceasing to be so exercisable at the end of such a period.

(5) Regulations may not be made under paragraph (1) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(6) In this Article “eligible scheme” has the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005.

Floating charges

Void provisions in floating charge documents

13HC.—(1) A provision in an instrument creating a floating charge is void if it provides for the obtaining of a moratorium, or anything done with a view to obtaining a moratorium, to be—

- (a) an event causing the floating charge to crystallise,
- (b) an event causing restrictions which would not otherwise apply to be imposed on the disposal of property by the company, or

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- (c) a ground for the appointment of a receiver.
- (2) The reference in paragraph (1) to anything done with a view to obtaining a moratorium includes any preliminary decision or investigation.
- (3) In paragraph (1) “receiver” includes a manager and a person who is appointed both receiver and manager.
- (4) Paragraph (1) does not apply to a provision in an instrument creating a floating charge that is—
 - (a) a collateral security (as defined by Article 13DI);
 - (b) a market charge (as defined by Article 13DI);
 - (c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));
 - (d) a system-charge (as defined by Article 13DI).

Interpretation of this Part

Meaning of “pre-moratorium debt” and “moratorium debt”

13HD.—(1) In this Part “pre-moratorium debt”, in relation to a company for which a moratorium is or has been in force, means—

- (a) any debt or other liability to which the company becomes subject before the moratorium comes into force, or
- (b) any debt or other liability to which the company has become or may become subject during the moratorium by reason of any obligation incurred before the moratorium comes into force,

but this is subject to paragraph (3).

(2) In this Part “moratorium debt”, in relation to a company for which a moratorium is or has been in force, means—

- (a) any debt or other liability to which the company becomes subject during the moratorium, other than by reason of an obligation incurred before the moratorium came into force, or
- (b) any debt or other liability to which the company has become or may become subject after the end of the moratorium by reason of an obligation incurred during the moratorium,

but this is subject to paragraph (3).

(3) For the purposes of this Part—

- (a) a liability in tort is a “pre-moratorium debt” if either—
 - (i) the cause of action has accrued before the moratorium comes into force, or
 - (ii) all the elements necessary to establish the cause of action exist before the moratorium comes into force except for actionable damage;
- (b) a liability in tort is a “moratorium debt” if it does not fall within sub-paragraph (a) and either—
 - (i) the cause of action has accrued during the moratorium, or
 - (ii) all the elements necessary to establish the cause of action exist before the moratorium comes to an end except for actionable damage.

(4) Regulations may amend this Article for the purposes of changing the definition of “pre-moratorium debt” and “moratorium debt” in this Part.

(5) Regulations may not be made under paragraph (4) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

Interpretation of this Part: general

13HE.—(1) In this Part—

“company” means—

- (a) a company registered under the Companies Act 2006 in Northern Ireland, or
- (b) an unregistered company that may be wound up under Part 6 of this Order;

“eligible”, in relation to a company, has the meaning given by Schedule ZA1;

“employer”, in relation to a pension scheme—

- (a) in Articles 13BE(2)(c), 13CH(8)(c) and 13EE(8)(c), means an employer within the meaning of Article 2(2) of the Pensions (Northern Ireland) Order 2005;
- (b) elsewhere in this Part, has the same meaning that it has for the purposes of Part 3 of the Pensions (Northern Ireland) Order 2005 (see Article 2(2) and (5) of that Order);

“hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement;

“money purchase scheme” has the meaning given by section 176(1) of the Pension Schemes (Northern Ireland) Act 1993;

“the monitor”, in relation to a moratorium, means the person who has the functions of the monitor in relation to the moratorium (see also Article 13EF for cases where two or more persons act as the monitor);

“moratorium” means a moratorium under this Part;

“moratorium debt” has the meaning given by Article 13HD;

“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes (Northern Ireland) Act 1993;

“pension scheme” has the meaning given by section 1 of the Pension Schemes (Northern Ireland) Act 1993;

“pre-moratorium debt” has the meaning given by Article 13HD;

“qualified person” means a person qualified to act as an insolvency practitioner;

“unable to pay its debts”—

- (a) in relation to a registered company, has the same meaning as in Part 5 (see Article 103);
- (b) in relation to an unregistered company, has the same meaning as in Part 6 (see Articles 186 to 188).

(2) Regulations may amend this Article for the purposes of changing the definition of “qualified person” in paragraph (1).

(3) Regulations may not be made under paragraph (2) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

Regulations

Regulations

13HF. Regulations made in the exercise of any power conferred by this Part may make consequential, supplementary, incidental or transitional provision or savings.]

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