
STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

^{F1}PART I

INTRODUCTORY

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^{F1}.
- (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.

F1 partly exercised, SRs 1990/177; 1991/294, 300, 411; 2002/126

General interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954^{F2} shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) ^{F3} In this Order—

[^{F4}“the Bankruptcy Acts” means the Bankruptcy Acts (Northern Ireland) 1857 to 1980;]

[^{F5}“body corporate” includes a body incorporated outside Northern Ireland, but does not include—

- (a) a corporation sole, or
- (b) a partnership that, whether or not a legal person, is not regarded as a body corporate under the law by which it is governed;]

“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;]

^{F7}

“conditional sale agreement” and “hire#purchase agreement” have the same meanings as in the Consumer Credit Act 1974^{F8};

[^{F4}“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;]

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[^{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;]

[^{F11}“employees' share scheme” means a scheme for encouraging or facilitating the holding of shares in or debentures of a company by or for the benefit of—

- (a) the bona fide employees or former employees of—
 - (i) the company,
 - (ii) any subsidiary of the company, or
 - (iii) the company's holding company or any subsidiary of the company's holding company, or
- (b) the spouses, civil partners, surviving spouses, surviving civil partners, or minor children or step-children of such employees or former employees;]

[^{F4}“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;

^{F12}

“the official receiver” means, in relation to any bankruptcy[^{F13}, winding up [^{F14}, individual voluntary arrangement, debt relief order or application for such an order]], 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[^{F13}, winding up [^{F14}, individual voluntary arrangement, debt relief order or application for such an order]];

“prescribed”

- (a) in Articles 48(3), 95(1)^{F15}... and in Part XII, means prescribed by regulations; and
- (b) except as provided in sub#paragraph (a)[^{F16} 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) [F17 and paragraph 16 of Schedule A1]) to negative resolution;

[F4 “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[F18];

“transaction” includes a gift, agreement or arrangement, and references to entering into a transaction shall be construed accordingly.

[F19(2A) The following expressions have the same meaning in this Order as in the Companies Acts—

“articles”, in relation to a company (see section 18 of the Companies Act 2006);

“debenture” (see section 738 of that Act);

“holding company” (see sections 1159 and 1160 of, and Schedule 6 to, that Act);

“the Joint Stock Companies Acts” (see section 1171 of that Act);

“overseas company” (see section 1044 of that Act);

“paid up” (see section 583 of that Act);

“private company” and “public company” (see section 4 of that Act);

“share” (see section 540 of that Act);

“subsidiary” (see sections 1159 and 1160 of, and Schedule 6 to, that Act).]

[F20(3) In determining for the purposes of any provision of this Order whether any liability in tort is a bankruptcy debt, 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.

(3A) 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 or where a company is in administration, that liability is provable if either—

(a) the cause of action has accrued—

(i) in the case of a winding up which was not immediately preceded by an administration, at the date on which the company went into liquidation;

(ii) in the case of a winding up which was immediately preceded by an administration, at the date on which the company entered administration;

(iii) in the case of an administration which was not immediately preceded by a winding up, at the date on which the company entered administration;

(iv) in the case of an administration which was immediately preceded by a winding up, at the date on which the company went into liquidation; or

(b) all the elements necessary to establish the cause of action exist at that date except for actionable damage.]

(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.

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(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.

- F2** 1954 c. 33 (NI)
- F3** mod. by SR 2004/307
- F4** SR 1991/366
- F5** Art. 2(2): definition of "body corporate" inserted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 106(2)(a)** (with art. 10)
- 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** Art. 2(2): definition of "the Companies Order" omitted (1.10.2009) by virtue of Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 106(2)(b)** (with art. 10)
- 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** Art. 2(2): definition of "employees' share scheme" inserted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 106(2)(c)** (with art. 10)
- F12** Art. 2(2): definition of "office copy" omitted (1.10.2009) by virtue of Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 106(2)(d)** (with art. 10)
- F13** 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**)
- F14** Art. 2(2): words in definition of "official receiver" substituted (30.6.2011) by Debt Relief Act (Northern Ireland) 2010 (c. 16), ss. 6, 7(1), **Sch. para. 4(2)**; S.R. 2011/13, **art. 2**
- F15** Words in art. 2(2) repealed (1.4.2016) by Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), s. 28(2), **Sch. 4**; S.R. 2016/203, art. 2
- F16** 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**)
- F17** 2002 NI 6
- F18** 1954 c. 33 (NI)
- F19** Art. 2(2A) inserted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 106(3)** (with art. 10)
- F20** Art. 2(3)(3A) substituted for art. 2(3) (1.4.2016) by Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), ss. **9(2)**, 28(2) (with Sch. 2 paras. 6-10); S.R. 2016/203, art. 2

Modifications etc. (not altering text)

- C1** Art. 2 applied (with modifications) (06.06.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), reg. 1, Sch. 2 Pt. 4 (with reg. 24)

[^{F21}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.]

F21 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
[^{F22}(b) where a voluntary arrangement in relation to the company is proposed or approved under Part II, as nominee or supervisor.]

(2) ^{F23} 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
^{F24}(b)
[^{F22}(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.

[^{F25}(3) ^{F23} 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
[where a voluntary arrangement in relation to the insolvent partnership is proposed or
^{F26}(c) approved under Part II, as nominee or supervisor.]]

[^{F22}(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) ^{F23} In this Article—

“administrative receiver” has the meaning given by Article 5(1);

[^{F27}“company” means—

(a) a company registered under the Companies Act 2006 in Northern Ireland, or
(b) a company that may be wound up under Part 6 of this Order (unregistered companies).]
(5) Nothing in this Article applies to anything done by the official receiver.

[^{F28}(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.]

F22 2002 NI 6

F23 mod. by SR 2004/307

F24 Art. 3(2)(b) repealed (1.4.2016) by [Insolvency \(Amendment\) Act \(Northern Ireland\) 2016 \(c. 2\)](#), s. 28(2), [Sch. 4](#); S.R. 2016/203, art. 2

F25 SR 1995/225

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F26 SR 2003/550

F27 Art. 3(4): definition of "company" substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 106(4)** (with art. 10)

F28 SR 2002/334

Modifications etc. (not altering text)

C2 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).

[^{F29}(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 [^{F29} 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.

^{F30}(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 ^{F31}... of this Order, Parts VIII to IX of the Insolvency Act 1986^{F32} or the Bankruptcy (Scotland) Act 1985^{F33}, or
- (b) a pension scheme or an employees' share scheme ^{F34} . . . ,

is an associate of another person if the beneficiaries of the trust include, or the terms of the trust confer a power that may be exercised 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 each company, and the groups either consist of the same persons or 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^{F29} and references to a civil partner include a former civil partner^{F35} 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) ^{F30} 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.

F29 2004 c. 33

F30 mod. by SR 2004/307

F31 Words in art. 4(5)(a) repealed (1.4.2016) by *Insolvency (Amendment) Act (Northern Ireland) 2016* (c. 2), s. 28(2), **Sch. 4**; S.R. 2016/203, art. 2

F32 1986 c. 45

F33 1985 c. 66

F34 Words in art. 4(5)(b) omitted (1.10.2009) by virtue of *Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009* (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 106(5)** (with art. 10)

F35 SR 2005/479

Modifications etc. (not altering text)

C3 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)**

C4 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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