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STATUTORY INSTRUMENTS

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**2001 No. 3649**

The Financial Services and Markets Act 2000  
(Consequential Amendments and Repeals) Order 2001

PART 9

AMENDMENTS TO SECONDARY LEGISLATION

*The Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19))*

**Further meaning of inability to pay debts where the company is a deposit taker**

**400.** After Article 21(1) of the Insolvency (Northern Ireland) Order 1989 (restrictions on making of administration order) insert—

“(1A) For the purposes of a petition presented by the Financial Services Authority alone or together with any other party, an authorised deposit taker who defaults in an obligation to pay any sum due and payable in respect of a relevant deposit is deemed to be unable to pay its debts as mentioned in paragraph (1).

(1B) In paragraph (1A)—

- (a) “authorised deposit taker” means a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits, but excludes a person who has such permission only for the purpose of carrying on another regulated activity in accordance with that permission; and
- (b) “relevant deposit” must be read with—
  - (i) section 22 of the Financial Services and Markets Act 2000,
  - (ii) any relevant order under that section, and
  - (iii) Schedule 2 to that Act,

but any restriction on the meaning of deposit which arises from the identity of the person making it is to be disregarded.”.

**Limitation on power to make administration order**

**401.** For Article 21(4) of the Insolvency (Northern Ireland) Order 1989 (restrictions on making of administration order) substitute—

“(4) An administration order shall not be made in relation to a company after it has gone into liquidation.

(5) An administration order shall not be made against a company if—

- (a) it has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance in the United Kingdom;
- (b) it continues to have a liability in respect of a deposit which was held by it in accordance with the Banking Act 1979 or the Banking Act 1987.

- (6) Paragraph (5)(a) 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.”.

#### **Petition for winding-up by the Department**

**402.** In paragraph (1) of Article 104A of the Insolvency (Northern Ireland) Order 1989 (petition for winding-up on the grounds of public interest)(**1**), for sub-paragraph (c) substitute—

- “(c) 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;”.

#### **Powers to apply Parts 2 to 7 to former authorised institutions**

**403.** In Article 366 of the Insolvency (Northern Ireland) Order 1989 (power to apply Parts 2 to 7 to banks etc.)(**2**), for “authorised and former authorised institutions within the meaning of the Banking Act 1987” substitute “any company which continues to have a liability in respect of a deposit which was held by it in accordance with the Banking Act 1979 or the Banking Act 1987.”.

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(1) Article 104A was inserted by the Companies (No.2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (NI 10)) and amended by the Criminal Justice Act 1993 (c. 36), section 79(13), Schedule 5, Part II, paragraph 22.

(2) Article 366 was amended by the Bank of England Act 1998 (c. 11), Schedule 5, paragraph 40.