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## STATUTORY INSTRUMENTS

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# 1989 No. 2405

## The Insolvency (Northern Ireland) Order 1989

### PART VII

#### MISCELLANEOUS PROVISIONS APPLYING TO COMPANIES WHICH ARE INSOLVENT OR IN LIQUIDATION

*Management by administrators, liquidators, etc.*

#### [<sup>F1</sup>Further protection of essential supplies

**197A.**—(1) An insolvency-related term of a contract for the supply of essential goods or services to a company ceases to have effect if—

- (a) the company enters administration, or
- (b) a voluntary arrangement approved under Part 2 takes effect in relation to the company.

(2) An insolvency-related term of a contract does not cease to have effect by virtue of paragraph (1) to the extent that—

- (a) it provides for the contract or the supply to terminate, or any other thing to take place, because the company becomes subject to an insolvency procedure other than administration or a voluntary arrangement;
- (b) it entitles a supplier to terminate the contract or the supply, or do any other thing, because the company becomes subject to an insolvency procedure other than administration or a voluntary arrangement; or
- (c) it entitles a supplier to terminate the contract or the supply because of an event that occurs, or may occur, after the company enters administration or the voluntary arrangement takes effect.

(3) Where an insolvency-related term of a contract ceases to have effect under this Article the supplier may—

- (a) terminate the contract, if the condition in paragraph (4) is met;
- (b) terminate the supply, if the condition in paragraph (5) is met.

(4) The condition in this paragraph is that—

- (a) the insolvency office-holder consents to the termination of the contract,
- (b) the High Court grants permission for the termination of the contract, or
- (c) any charges in respect of the supply that are incurred after the company entered administration or the voluntary arrangement took effect are not paid within the period of 28 days beginning with the day on which payment is due.

The High Court may grant permission under sub-paragraph (b) only if satisfied that the continuation of the contract would cause the supplier hardship.

(5) The condition in this paragraph is that—

**Changes to legislation:** The Insolvency (Northern Ireland) Order 1989, Section 197A is up to date with all changes known to be in force on or before 08 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (a) the supplier gives written notice to the insolvency office-holder that the supply will be terminated unless the office-holder personally guarantees the payment of any charges in respect of the continuation of the supply after the company entered administration or the voluntary arrangement took effect, and
  - (b) the insolvency office-holder does not give that guarantee within the period of 14 days beginning with the day the notice is received.
- (6) For the purposes of securing that the interests of suppliers are protected, where—
- (a) an insolvency-related term of a contract (the “original term”) ceases to have effect by virtue of paragraph (1), and
  - (b) the company subsequently enters administration, or a voluntary arrangement subsequently has effect in relation to it,

the contract is treated for the purposes of paragraphs (1) to (5) as if, immediately before the subsequent administration is entered into or the subsequent voluntary arrangement takes effect, it included an insolvency-related term identical to the original term.

(7) A contract for the supply of essential goods or services is a contract for a supply mentioned in Article 197(3).

(8) An insolvency-related term of a contract for the supply of essential goods or services to a company is a provision of the contract under which—

- (a) the contract or the supply would terminate, or any other thing would take place, because the company enters administration or the voluntary arrangement takes effect,
  - (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the company enters administration or the voluntary arrangement takes effect, or
  - (c) the supplier would be entitled to terminate the contract or the supply because of an event that occurred before the company enters administration or the voluntary arrangement takes effect.
- (9) In this Article “insolvency office-holder” means—
- (a) in a case where a company enters administration, the administrator;
  - (b) in a case where a voluntary arrangement under Part 2 takes effect in relation to a company, the supervisor of the voluntary arrangement.]

**F1** Art. 197A inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), ss. 17(1), 49(1) (with ss. 2(2), 5(2), 17(3))

**Modifications etc. (not altering text)**

- C1** Pt. 7 applied (with modifications) (4.1.2024) by S.I. 2021/716, **Sch. 1A para. 3** (as inserted by The Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023 (S.I. 2023/1399), reg. 1(2), **Sch. 1**)
- C2** Arts. 197-197B applied by S.R. 1995/225, **art. 4(3)(b)** (as amended (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 13 para. 5** (with ss. 2(2), 5(2), 18(4)))
- C3** Art. 197A applied (with modifications) (4.1.2024) by S.I. 2021/716, **reg. 37A** (as inserted by The Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023 (S.I. 2023/1399), regs. 1(2), **12**)

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- Instrument amended by [1998 c. 11 s. 23 Sch. 5 Pt.1 Ch. 3 para. 40](#)
- Instrument amended (prosp) by [S.I. 1994/279 \(N.I.\) art. 26\(1\)Sch. 2 para. 15](#)

**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Sch. 9 Pt. 2 para. 66 revoked by [1996 c. 23 s. 107\(2\)Sch. 4](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov.uk](#))
- art. 2B inserted by [2016 c. 2 \(N.I.\) s. 2\(1\)](#)
- art. 208ZA applied (with modifications) by S.I. 2021/716, reg. 37A (as inserted) by [S.I. 2023/1399 reg. 12](#) (This amendment not applied to [Legislation.gov.uk](#). S. 208ZA is inserted by the Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), s. 1(1) which is currently prospective.)
- art. 208ZA-208ZB inserted by [2016 c. 2 \(N.I.\) s. 1\(1\)](#)
- art. 208ZB applied (with modifications) by S.I. 2021/716, reg. 37A (as inserted) by [S.I. 2023/1399 reg. 12](#) (This amendment not applied to [Legislation.gov.uk](#). S. 208ZB is inserted by the Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), s. 1(1) which is currently prospective.)
- art. 345A-345B inserted by [2016 c. 2 \(N.I.\) s. 1\(2\)](#)