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STATUTORY INSTRUMENTS

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**1989 No. 2405**

**The Insolvency (Northern Ireland) Order 1989**

PARTS XI TO XIV MISCELLANEOUS MATTERS BEARING ON BOTH COMPANY AND INDIVIDUAL INSOLVENCY

**PART XIII**

**PUBLIC ADMINISTRATION**

*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.

### *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.

(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) 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(1) (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.

(3) In Schedule 5 “liquidator” includes a provisional liquidator; and references in this Article to this Order are to be read as including the Companies Order 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(2) 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.

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(1) 1980 NI 4  
(2) 1946 c. 36

### **Committee to review rules under Article 359**

**360.**—(1) There shall continue to be a committee appointed by the Lord Chancellor 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 Lord Chancellor to have qualifications or experience that would be of value to the committee in considering any matter with which it is concerned.

### *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(3) (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) 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 the Companies Order 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.

*Specification, increase and reduction of money sums relevant in the operation of this Order*

### **Monetary limits**

**362.**—(1) The Department may by order—

(a) 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);

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).

(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.

### *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.**—(1) The Lord Chancellor may, by order made with the concurrence of the Department, provide that such provisions of this Order, Part VI of the Judgments Enforcement (Northern Ireland) Order 1981<sup>(4)</sup>, the Land Registration Act (Northern Ireland) 1970<sup>(5)</sup> 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.

(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<sup>(6)</sup> shall apply accordingly.

#### **Insolvent estates of deceased persons**

**365.**—(1) The Lord Chancellor may, by order made with the concurrence of 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 to the administration of the insolvent estates of deceased persons with such modifications as may be so specified.

(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.

#### **Recognised banks, etc.**

**366.** The Department may, by order subject to negative resolution, made after consultation with the Bank of England, provide that such provisions in Parts II to VII as may be specified in the order shall apply in relation to authorised institutions and former authorised institutions within the meaning of the Banking Act 1987<sup>(7)</sup> with such modifications as may be so specified.

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(4) 1981 NI 6  
(5) 1970 c. 18 (N.I.)  
(6) 1946 c. 36  
(7) 1987 c. 22

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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