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STATUTORY INSTRUMENTS

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**1989 No. 2405**

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

[<sup>F1</sup>PART 1A

Moratorium

CHAPTER 4

Effects of moratorium

[<sup>F1</sup>Effect on creditors etc

**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\(2\)](#))

**Restrictions on insolvency proceedings etc**

**13DB.**—(1) During a moratorium—

- (a) no petition may be presented for the winding up of the company, except by the directors,
- (b) no resolution may be passed for the voluntary winding up of the company under Article 70(1)(a),
- (c) a resolution for the voluntary winding up of the company under Article 70(1)(b) may be passed only if the resolution is recommended by the directors,
- (d) no order may be made for the winding up of the company, except on a petition by the directors,
- (e) no administration application may be made in respect of the company, except by the directors,
- (f) no notice of intention to appoint an administrator of the company under paragraph 15 or 23(1) of Schedule B1 may be filed with the High Court,
- (g) no administrator of the company may be appointed under paragraph 15 or 23(1) of Schedule B1, and
- (h) no administrative receiver of the company may be appointed.

(2) Paragraph (1)(a) does not apply to an excepted petition; and paragraph (1)(d) does not apply to an order on an excepted petition.

(3) For these purposes, “excepted petition” means a petition under—

- (a) Article 104A, 104B or 104C, or
- (b) section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in subsection (3)(b) of that section.

**Status:** Point in time view as at 26/06/2020.

**Changes to legislation:** The Insolvency (Northern Ireland) Order 1989, Cross Heading: Effect on creditors etc is up to date with all changes known to be in force on or before 11 June 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)

## Restrictions on enforcement and legal proceedings

### 13DC.—(1) During a moratorium—

- (a) a landlord or other person to whom rent is payable may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company, except with the permission of the High Court,
- (b) no steps may be taken to enforce any security over the company's property except—
  - (i) steps to enforce a collateral security charge (within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979)),
  - (ii) steps to enforce security created or otherwise arising under a financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226)), or
  - (iii) steps taken with the permission of the High Court,
- (c) no steps may be taken to repossess goods in the company's possession under any hire-purchase agreement, except with the permission of the High Court, and
- (d) no legal process (including legal proceedings, enforcement and distress) may be instituted, carried out or continued against the company or its property except—
  - (i) employment tribunal proceedings or any legal process arising out of such proceedings,
  - (ii) proceedings, not within paragraph (i), involving a claim between an employer and a worker, or
  - (iii) a legal process instituted, carried out or continued with the permission of the High Court.

(2) An application may not be made for permission under paragraph (1) for the purposes of enforcing a pre-moratorium debt for which the company has a payment holiday during the moratorium.

(3) An application may not be made for permission under paragraph (1)(b), (c) or (d) with a view to obtaining—

- (a) the crystallisation of a floating charge, or
- (b) the imposition, by virtue of provision in an instrument creating a floating charge, of any restriction on the disposal of any property of the company.

(4) Permission of the High Court under paragraph (1) may be given subject to conditions.

(5) Paragraph (1)(b)(iii) is subject to Article 13DE(1).

(6) In this Article—

“agency worker” has the meaning given by Article 15(2) of the Employment Relations (Northern Ireland) Order 1999;

“employer”—

- (a) in relation to an agency worker, has the meaning given by Article 15(2) of the Employment Relations (Northern Ireland) Order 1999;
- (b) otherwise, has the meaning given by Article 3(4) of the Employment Rights (Northern Ireland) Order 1996;

“worker” means an individual who is—

- (a) a worker within the meaning of Article 3(3) of the Employment Rights (Northern Ireland) Order 1996, or
- (b) an agency worker.

## **Floating charges**

**13DD.**—(1) This Article applies where there is an uncrystallised floating charge on the property of a company for which a moratorium is in force.

(2) During the moratorium, the holder of the floating charge may not give any notice which would have the effect of—

- (a) causing the floating charge to crystallise, or
- (b) causing the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of property of the company.

(3) No other event occurring during the moratorium is to have the effect mentioned in paragraph (2)(a) or (b).

(4) Paragraph (5) applies where—

- (a) the holder of a floating charge (“the chargee”) is prevented by paragraph (2) from giving a notice mentioned there during the moratorium, and
- (b) under the terms of the floating charge, the time for giving such a notice ends during the moratorium or before the chargee is given notice of the end of the moratorium under Article 13CH.

(5) The chargee may give notice later than is required under the terms of the floating charge, but only if the chargee does so as soon as is practicable after—

- (a) the end of the moratorium, or
- (b) if later, the day on which the chargee is notified of the end of the moratorium.

(6) Where—

- (a) paragraph (3) prevents an event which occurs during the moratorium from having the effect mentioned there, and
- (b) the holder of the floating charge gives notice of the event to the company as soon as is practicable after—
  - (i) the end of the moratorium, or
  - (ii) if later, the day on which the chargee is notified of the end of the moratorium,

the event is to be treated as if it had occurred when the notice was given.

(7) This Article does not apply in relation to 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).

## **Enforcement of security granted during moratorium**

**13DE.**—(1) Security granted by a company during a moratorium in relation to the company may be enforced only if the monitor consented to the grant of security under Article 13DH.

(2) See also Article 13DC(1)(b), which restricts enforcement during a moratorium.]

**Status:**

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

**Changes to legislation:**

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