

*Status: Point in time view as at 01/12/2020.*

*Changes to legislation: The Insolvency (Northern Ireland) Order 1989, CHAPTER 5 is up to date with all changes known to be in force on or before 07 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)*

## STATUTORY INSTRUMENTS

# 1989 No. 2405

## The Insolvency (Northern Ireland) Order 1989

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

#### Moratorium

### [<sup>F1</sup>CHAPTER 5

#### The monitor

**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)**)

#### Status of monitor

**13E.** The monitor in relation to a moratorium is an officer of the High Court.

#### Monitoring

**13EA.**—(1) During a moratorium, the monitor must monitor the company's affairs for the purpose of forming a view as to whether it remains likely that the moratorium will result in the rescue of the company as a going concern.

(2) In forming the view mentioned in paragraph (1), the monitor is entitled to rely on information provided by the company, unless the monitor has reason to doubt its accuracy.

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

**C1** Art. 13EA(1) modified (temp.) (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), **Sch. 8 para. 9** (with **ss. 2(2), 5(2), Sch. 8 para. 1**)

#### Provision of information to monitor

**13EB.**—(1) The monitor may require the directors of the company to provide any information required by the monitor for the purpose of carrying out the monitor's functions.

(2) The directors must comply with a requirement to provide information as soon as practicable.

(3) For the potential consequences of failing to comply with a requirement to provide information, see Article 13ED.

#### Application by monitor for directions

**13EC.** The monitor in relation to a moratorium may apply to the High Court for directions about the carrying out of the monitor's functions.

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### Termination of moratorium by monitor

**13ED.**—(1) The monitor must bring a moratorium to an end by filing a notice with the High Court if—

- (a) the monitor thinks that the moratorium is no longer likely to result in the rescue of the company as a going concern,
- (b) the monitor thinks that the objective of rescuing the company as a going concern has been achieved,
- (c) the monitor thinks that, by reason of a failure by the directors to comply with a requirement under Article 13EB, the monitor is unable properly to carry out the monitor’s functions, or
- (d) the monitor thinks that the company is unable to pay any of the following that have fallen due—
  - (i) moratorium debts;
  - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see Article 13D).

(2) The rules may provide for debts that are to be disregarded for the purposes of paragraph (1)(d).

(3) On the filing with the Court of a notice under paragraph (1), the moratorium comes to an end.

(4) The rules may make provision about the timing of a notice required to be given under paragraph (1).

(5) Regulations may amend this Article for the purposes of changing the circumstances in which the monitor must bring a moratorium to an end under paragraph (1).

(6) Regulations may not be made under paragraph (5) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(7) See also Article 13CH (obligations to notify change in end of moratorium).

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

**C2** Art. 13ED(1) modified (temp.) (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 8 para. 10](#) (with ss. 2(2), 5(2), [Sch. 8 para. 1](#))

### Replacement of monitor or appointment of additional monitor

**13EE.**—(1) The High Court may make an order authorising the appointment of a qualified person to act as the monitor in relation to a moratorium instead of, or in addition to, a person who already acts as the monitor.

(2) The High Court may make an order providing that a person ceases to act as the monitor in relation to a moratorium.

(3) An order under paragraph (1) or (2) may be made on only an application by the directors or the monitor.

(4) The Court may make an order authorising the appointment of a monitor under paragraph (1) only if the person has provided the Court with a statement that the person—

- (a) is a qualified person, and
- (b) consents to act as the monitor in relation to the moratorium.

(5) Where it is proposed that more than one person should act as the monitor in relation to the moratorium, the statement under paragraph (4) must specify—

- (a) which functions (if any) are to be exercised by the persons acting jointly, and

(b) which functions (if any) are to be exercised by any or all of the persons.

(6) The rules may make provision about the date on which the statement under paragraph (4) must be made.

(7) Where the Court makes an order under paragraph (1) or (2) the person begins to act as the monitor, or ceases to act as the monitor, in relation to the moratorium at the time specified in, or determined in accordance with, the order (“the relevant time”).

(8) As soon as reasonably practicable after the relevant time, the monitor must notify the following of the effect of the order—

- (a) the registrar,
- (b) every creditor of the company of whose claim the monitor is aware,
- (c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and
- (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005, the Board of the Pension Protection Fund.

(9) If the monitor without reasonable excuse fails to comply with paragraph (8), the monitor commits an offence.

#### **Application of Part where two or more persons act as monitor**

**13EF.**—(1) Where two or more persons act jointly as the monitor—

- (a) a reference in this Order to the monitor is a reference to those persons acting jointly;
- (b) where an offence of omission is committed by the monitor, each of the persons appointed to act jointly—
  - (i) commits the offence, and
  - (ii) may be proceeded against and punished individually.

(2) Where persons act jointly in respect of only some of the functions of the monitor, paragraph (1) applies only in relation to those functions.

(3) Where two or more persons act concurrently as the monitor a reference in this Order to the monitor is a reference to any of the persons appointed (or any combination of them).

#### **Presumption of validity**

**13EG.** An act of the monitor is valid in spite of a defect in the monitor’s appointment or qualification.]

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