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## STATUTORY INSTRUMENTS

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# 1989 No. 2405

## The Insolvency (Northern Ireland) Order 1989

### PART II

#### COMPANY VOLUNTARY ARRANGEMENTS

##### *Consideration and implementation of proposal*

##### **Decisions of meetings**

17.—(1) <sup>F1</sup> The meetings summoned under Article 16 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).

(2) The modifications may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner <sup>F2</sup><sup>F3</sup>... in relation to the voluntary arrangement]; but shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in Article 14.

(3) A meeting so summoned shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security, except with the concurrence of the creditor concerned.

(4) A meeting so summoned shall not, except with the concurrence of the <sup>F4</sup>... creditor concerned, approve any proposal or modification under which—

- (a) any preferential debt of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts, <sup>F5</sup>...
- <sup>F6</sup>(aa) any ordinary preferential debt of the company is to be paid otherwise than in priority to any secondary preferential debts that it may have,]
- (b) a preferential creditor of the company is to be paid an amount in respect of <sup>F7</sup>an ordinary preferential debt] that bears to that debt a smaller proportion than is borne to <sup>F8</sup>another ordinary] preferential debt by the amount that is to be paid in respect of that other debt, <sup>F9</sup><sup>F10</sup>...
- (c) a preferential creditor of the company is to be paid an amount in respect of a secondary preferential debt that bears to that debt a smaller proportion than is borne to another secondary preferential debt by the amount that is to be paid in respect of that other debt,]<sup>F11</sup>or
- (d) in the case of a company which is a relevant financial institution (see Article 347A), any non-preferential debt is to be paid otherwise than in accordance with the rules in Article 150ZZA(2) or (3).]

<sup>F12</sup>(4A) Where the nominee's report under Article 15(2) is submitted to the Court before the end of the period of 12 weeks beginning with the day after the end of any moratorium for the company under Part 1A, a meeting so summoned may not approve any proposal or modification under which the following are to be paid otherwise than in full—

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- (a) moratorium debts (within the meaning given by Article 148A);
- (b) priority pre-moratorium debts (within the meaning given by Article 148A);

but this is subject to paragraph (4B).

(4B) Paragraph (4A) does not prevent the approval of such a proposal or modification with the concurrence of the creditor concerned.]

(5 <sup>F1</sup> Subject to paragraphs (3) [<sup>F13</sup>to (4B)], each of the meetings shall be conducted in accordance with the rules.

<sup>F1</sup>(6 <sup>F1</sup> After the conclusion of either meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the High Court, and, immediately after reporting to the Court, shall give notice of the result of the meeting to such persons as may be prescribed.

(7) In this Article “preferential debts” [<sup>F14</sup>, “ordinary preferential debt” and “secondary preferential debt” each has] the meaning given by Article 346; and “preferential creditor” is to be construed accordingly.

- F1** mod. by SR 2004/307
- F2** Words in art. 17(2) repealed (1.4.2016) by [Insolvency \(Amendment\) Act \(Northern Ireland\) 2016](#) (c. 2), s. 28(2), Sch. 3 para. 6, **Sch. 4**; S.R. 2016/203, art. 2
- F3** 2002 NI 6
- F4** Word in art. 17(4) omitted (19.12.2018) by virtue of [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018](#) (S.I. 2018/1244), arts. 1(2), **23(a)** (with art. 3)
- F5** Word in art. 17(4)(a) omitted (1.1.2015) by virtue of [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014](#) (S.I. 2014/3486), arts. 1(2), **16(2)(a)** (with art. 3)
- F6** Art. 17(4)(aa) inserted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014](#) (S.I. 2014/3486), arts. 1(2), **16(2)(b)** (with art. 3)
- F7** Words in art. 17(4)(b) substituted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014](#) (S.I. 2014/3486), arts. 1(2), **16(2)(c)(i)** (with art. 3)
- F8** Words in art. 17(4)(b) substituted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014](#) (S.I. 2014/3486), arts. 1(2), **16(2)(c)(ii)** (with art. 3)
- F9** Word in art. 17(4)(b) omitted (19.12.2018) by virtue of [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018](#) (S.I. 2018/1244), arts. 1(2), **23(b)** (with art. 3)
- F10** Art. 17(4)(c) and word inserted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014](#) (S.I. 2014/3486), arts. 1(2), **16(2)(d)** (with art. 3)
- F11** Art. 17(4)(d) and word inserted (19.12.2018) by [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018](#) (S.I. 2018/1244), arts. 1(2), **23(c)** (with art. 3)
- F12** Art. 17(4A)(4B) inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020](#) (c. 12), s. 49(1), **Sch. 7 para. 8(2)** (with ss. 2(2), 5(2))
- F13** Words in art. 17(5) substituted (26.6.2020) by [Corporate Insolvency and Governance Act 2020](#) (c. 12), s. 49(1), **Sch. 7 para. 8(3)** (with ss. 2(2), 5(2))
- F14** Words in art. 17(7) substituted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014](#) (S.I. 2014/3486), arts. 1(2), **16(3)** (with art. 3)

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

- C1** [Art. 17](#) applied (with modifications) by S.R. 1995/225, Sch. 1 (as amended (19.12.2018) by [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018](#) (S.I. 2018/1244), arts. 1(2), **35** (with art. 3))
- C2** [Art. 17](#) modified (28.12.2020 until IP completion day when the amending provision ceases to have effect in accordance with reg. 1(4) of the amending S.I.) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020](#) (S.I. 2020/1350), regs. 1(4), **116** (with reg. 108)

## [<sup>F15</sup>Approval of arrangement

**17A.**—(1) This Article applies to a decision, under Article 17, with respect to the approval of a proposed voluntary arrangement.

(2) <sup>F16</sup> The decision has effect if, in accordance with the rules—

- (a) it has been taken by both meetings summoned under Article 16, or
- (b) (subject to any order made under paragraph [<sup>F17</sup>(6)]) it has been taken by the creditors' meeting summoned under that Article.

(3) <sup>F16</sup> If the decision taken by the creditors' meeting differs from that taken by the company meeting, a member of the company may apply to the High Court.

(4) <sup>F16</sup> An application under paragraph (3) shall not be made after the end of the period of 28 days beginning with—

- (a) the day on which the decision was taken by the creditors' meeting, or
- (b) where the decision of the company meeting was taken on a later day, that day.

(5) <sup>F16</sup> Where a member of a regulated company, [<sup>F18</sup>as defined by Article 13H(13)], applies to the High Court under paragraph (3), the [<sup>F19</sup>Financial Conduct Authority and, where the regulated company is a [<sup>F20</sup>PRA-regulated company [<sup>F21</sup>as defined by Article 13H(13)]], the Prudential Regulation Authority] is entitled to be heard on the application.

(6) <sup>F16</sup> On an application under paragraph (3), the High Court may—

- (a) order the decision of the company meeting to have effect instead of the decision of the creditors' meeting, or
- (b) make such other order as it thinks fit.]

**F15** 2002 NI 6

**F16** mod. by SR 2004/307

**F17** Word in art. 17A(2)(b) substituted (26.6.2020) by [Corporate Insolvency and Governance Act 2020](#) (c. 12), s. 49(1), [Sch. 7 para. 9\(2\)](#) (with ss. 2(2), 5(2))

**F18** Words in art. 17A(5) substituted (26.6.2020) by [Corporate Insolvency and Governance Act 2020](#) (c. 12), s. 49(1), [Sch. 7 para. 9\(3\)\(a\)](#) (with ss. 2(2), 5(2))

**F19** Words in art. 17A(5) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013](#) (S.I. 2013/472), [Sch. 2 para. 7\(a\)](#)

**F20** Words in art. 17A(5) substituted (10.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) \(No. 2\) Order 2013](#) (S.I. 2013/642), arts. 1, 2

**F21** Words in art. 17A(5) substituted (26.6.2020) by [Corporate Insolvency and Governance Act 2020](#) (c. 12), s. 49(1), [Sch. 7 para. 9\(3\)\(b\)](#) (with ss. 2(2), 5(2))

## Effect of approval

**18.**—[<sup>F22</sup>(1) This Article applies where a decision approving a voluntary arrangement has effect under Article 17A.]

(2) The <sup>F23</sup> . . . voluntary arrangement—

- (a) takes effect as if made by the company at the creditors' meeting, and

[<sup>F22</sup>(b) binds every person who in accordance with the rules—

- (i) was entitled to vote at that meeting (whether or not he was present or represented at it), or
- (ii) would have been so entitled if he had had notice of it,]

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[<sup>F22</sup>as if he were a party to the voluntary arrangement.]

[<sup>F22</sup>(2A) If—

- (a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of paragraph (2)(b)(ii) has not been paid, and
- (b) the arrangement did not come to an end prematurely,

the company shall at that time become liable to pay to that person the amount payable under the arrangement.]

(3) Subject to [<sup>F24</sup>paragraphs (3A) and (4)], if the company is being wound up or [<sup>F25</sup>is in administration], the High Court may do one or both of the following, namely—

- (a) by order stay all proceedings in the winding up or [<sup>F26</sup>provide for the appointment of the administrator to cease to have effect];
- (b) give such directions with respect to the conduct of the winding up or the administration as it thinks appropriate for facilitating the implementation of the<sup>F23</sup> . . . voluntary arrangement.

[<sup>F27</sup>(3A) Where immediately before the voluntary arrangement took effect a moratorium for the company was in force under Part 1A and a petition for the winding up of the company, other than an excepted petition within the meaning of Article 13DB, was presented before the beginning of the moratorium, the High Court must dismiss the petition.]

(4) The High Court shall not make an order under paragraph (3)(a) [<sup>F28</sup>or dismiss a petition under paragraph (3A)]—

- (a) <sup>F29</sup> at any time before the expiration of 28 days from the day on which each of the reports required by Article 17(6) has been made to the Court, or
- (b) at any time when an application under Article 19 or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

**F22** 2002 NI 6

**F23** 2002 NI 6

**F24** Words in art. 18(3) substituted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 7 para. 10\(2\)](#) (with ss. 2(2), 5(2))

**F25** Words in art. 18(3) substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 22(a) (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

**F26** Words in art. 18(3)(a) substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 22(b) (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

**F27** [Art. 18\(3A\)](#) inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 7 para. 10\(3\)](#) (with ss. 2(2), 5(2))

**F28** Words in art. 18(4) inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 7 para. 10\(4\)](#) (with ss. 2(2), 5(2))

**F29** mod. by SR 2004/307

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

**C3** Art. 18 modified (1.10.2011) by [Postal Services Act 2011 \(c. 5\)](#), ss. 73(1), 87(1)(2), 93(3), [Sch. 10 para. 43](#); S.I. 2011/2329, [art. 3\(1\)](#)

## Challenge of decisions

19.—(1) Subject to this Article, an application to the High Court may be made, by any of the persons specified in paragraph (2), on one or both of the following grounds, namely—

- (a) that a voluntary arrangement<sup>F30</sup> which has effect under Article 17A] unfairly prejudices the interests of a creditor, member or contributory of the company;
  - (b)<sup>F31</sup> that there has been some material irregularity at or in relation to either of the meetings.
- (2) The persons who may apply under this Article are—
- (a)<sup>F31</sup> a person entitled, in accordance with the rules, to vote at either of the meetings;
  - <sup>F32</sup>(aa) a person who would have been entitled, in accordance with the rules, to vote at the creditors' meeting if he had had notice of it;]
  - <sup>F31</sup>(b) the nominee or any person who has replaced him under Article 15(4) or 17(2); and  
<sup>F31</sup>
  - (c)<sup>F31</sup> if the company is being wound up or<sup>F33</sup>is in administration], the liquidator or administrator.
- (3) An application under this Article shall not be made
- <sup>F32</sup>(a)]<sup>F31</sup>after the expiration of 28 days from the day on which each of the reports required by Article 17(6) has been made to the High Court<sup>F32</sup> or]
  - <sup>F32</sup>(b) in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,]

<sup>F32</sup>but (subject to that) an application made by a person within paragraph (2)(aa) on the ground that the voluntary arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.]

(4)<sup>F31</sup> Where on such an application the High Court is satisfied as to either of the grounds mentioned in paragraph (1), it may do one or both of the following, namely—

- (a) revoke or suspend<sup>F30</sup> any decision approving the voluntary arrangement which has effect under Article 17A] or, in a case falling within paragraph (1)(b), any<sup>F30</sup> decision taken by the meeting in question which has effect under that Article];
- (b) give a direction to any person for the summoning of further meetings to consider any revised proposal the person who made the original proposal may make or, in a case falling within paragraph (1)(b), a further company or (as the case may be) creditors' meeting to reconsider the original proposal.

(5)<sup>F31</sup> Where at any time after giving a direction under paragraph (4)(b) for the summoning of meetings to consider a revised proposal the High Court is satisfied that the person who made the original proposal does not intend to submit a revised proposal, the Court shall revoke the direction and revoke or suspend any<sup>F30</sup> decision approving the voluntary arrangement which has effect under Article 17A].

(6) In a case where the High Court, on an application under this Article with respect to any meeting—

- (a) gives a direction under paragraph (4)(b), or
- (b) revokes or suspends an approval under paragraph (4)(a) or (5),

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the Court may give such supplemental directions as it thinks fit and, in particular, directions with respect to things done<sup>[F30]</sup> under the voluntary arrangement since it took effect].

(7) Except in pursuance of the preceding provisions of this Article,<sup>[F30]</sup> a decision taken] at a meeting summoned under Article 16 is not invalidated by any irregularity at or in relation to the meeting.

**F30** 2002 NI 6

**F31** mod. by SR 2004/307

**F32** 2002 NI 6

**F33** Words in art. 19(2)(c) substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 23 (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

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

**C4** Art. 19 modified (1.10.2011) by [Postal Services Act 2011 \(c. 5\)](#), ss. 73(1), 87(1)(2), 93(3), [Sch. 10 para. 44](#); S.I. 2011/2329, [art. 3\(1\)](#)

**[F34] False representations, etc.**

**19A.**—(1 )<sup>F35</sup> If, for the purpose of obtaining the approval of the members or creditors of a company to a proposal for a voluntary arrangement, a person who is an officer of the company—

- (a) makes any false representation, or
- (b) fraudulently does, or omits to do, anything,

he shall be guilty of an offence.

(2) Paragraph (1) applies even if the proposal is not approved.

(3) For purposes of this Article "officer" includes a shadow director.]

**F34** 2002 NI 6

**F35** mod. by SR 2004/307

**Implementation of proposal**

**20.**—(1) This Article applies where a voluntary arrangement<sup>[F36]</sup> has effect under Article 17A].

(2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred—

<sup>[F36]</sup>(a )<sup>F37</sup> on the nominee by virtue of the approval given at one or both of the meetings summoned under Article 16]

(b) by virtue of Article 15(4) or 17(2) on a person other than the nominee, shall be known as the supervisor of the voluntary arrangement.

(3) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the High Court; and on the application the Court may—

- (a) confirm, reverse or modify any act or decision of the supervisor,
- (b) give him directions, or
- (c) make such other order as it thinks fit.

(4) The supervisor—

- (a) may apply to the High Court for directions in relation to any particular matter arising under the voluntary arrangement, and
  - (b) is included among the persons who may apply to the High Court for the winding up of the company or for an administration order to be made in relation to it.
- (5) The High Court may, whenever—
- (a) it is expedient to appoint a person to carry out the functions of the supervisor, and
  - (b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the Court,

make an order appointing a person who is qualified to act as an insolvency practitioner <sup>F38</sup>[<sup>F36</sup>... in relation to the voluntary arrangement], either in substitution for the existing supervisor or to fill a vacancy.

(6) The power conferred by paragraph (5) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

- F36** 2002 NI 6  
**F37** mod. by SR 2004/307  
**F38** Words in art. 20(5) repealed (1.4.2016) by [Insolvency \(Amendment\) Act \(Northern Ireland\) 2016](#) (c. 2), s. 28(2), Sch. 3 para. 7, **Sch. 4**; S.R. 2016/203, art. 2

### **[<sup>F39</sup>Prosecution of delinquent officers of company**

**20A.**—[<sup>F40</sup>(1) This Article applies where the approval of a voluntary arrangement in relation to a company has taken effect under Article 17A.]

(2) [<sup>F41</sup>If it appears to the supervisor that any past or present officer of the company has committed an offence in connection with the voluntary arrangement, the supervisor must forthwith]—

- (a) report the matter to the Department, and
- (b) provide the Department with such information and give the Department such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the <sup>F42</sup>... supervisor and relating to the matter in question) as the Department requires.

(3) Where a report is made to the Department under paragraph (2), the Department may, for the purpose of investigating the matter reported to it and such other matters relating to the affairs of the company as appear to it to require investigation, exercise any of the powers which are exercisable by inspectors appointed under [<sup>F43</sup>section 431 or 432 of the Companies Act 1985] to investigate a company's affairs.

(4) For the purpose of such an investigation any obligation imposed on a person by any provision of [<sup>F44</sup>the Companies Acts] to produce documents or give information to, or otherwise to assist, inspectors so appointed is to be regarded as an obligation similarly to assist the Department in its investigation.

(5) An answer given by a person to a question put to him in exercise of the powers conferred by paragraph (3) may be used in evidence against him.

(6) However, in criminal proceedings in which that person is charged with an offence to which this paragraph applies—

- (a) no evidence relating to the answer may be adduced, and
- (b) no question relating to it may be asked,

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by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(7) Paragraph (6) applies to any offence other than an offence under Article 7 or 10 of the Perjury (Northern Ireland) Order 1979 (NI 19) (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).

(8) Where the Director of Public Prosecutions for Northern Ireland institutes criminal proceedings following any report under paragraph (2), the <sup>F45</sup>... supervisor, and every officer and agent of the company past and present (other than the defendant), shall give the Director all assistance in connection with the prosecution which he is reasonably able to give.

For this purpose "agent" includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(9) The High Court may, on the application of the Director of Public Prosecutions for Northern Ireland, direct any person referred to in paragraph (8) to comply with that paragraph if he has failed to do so.]

- F39** 2002 NI 6
- F40** Art. 20A(1) substituted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 7 para. 11\(2\)](#) (with ss. 2(2), 5(2))
- F41** Words in art. 20A(2) substituted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 7 para. 11\(3\)\(a\)](#) (with ss. 2(2), 5(2))
- F42** Words in art. 20A(2)(b) omitted (26.6.2020) by virtue of [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 7 para. 11\(3\)\(b\)](#) (with ss. 2(2), 5(2))
- F43** Words in art. 20A(3) substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), arts. 2(1), 8, [Sch. 1 para. 107\(3\)\(a\)](#) (with art. 10)
- F44** Words in art. 20A(4) substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), arts. 2(1), 8, [Sch. 1 para. 107\(3\)\(b\)](#) (with art. 10)
- F45** Words in art. 20A(8) omitted (26.6.2020) by virtue of [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 7 para. 11\(4\)](#) (with ss. 2(2), 5(2))

### Arrangements coming to an end prematurely

**20B.** For the purposes of this Part, a voluntary arrangement the approval of which has taken effect under Article 17A <sup>F46</sup>... comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement by virtue of Article 18(2)(b)(i) <sup>F47</sup>....

- F46** Words in art. 20B omitted (26.6.2020) by virtue of [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 7 para. 12\(a\)](#) (with ss. 2(2), 5(2))
- F47** Words in art. 20B omitted (26.6.2020) by virtue of [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 7 para. 12\(b\)](#) (with ss. 2(2), 5(2))



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