

STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

PART V

WINDING UP OF COMPANIES REGISTERED
UNDER [^{F1}the Companies Act 2006]

CHAPTER VI

WINDING UP BY THE HIGH COURT

Grounds and effect of winding#up petition

Circumstances in which company may be wound up by the High Court

102 ^{F1}. A company may be wound up by the High Court if—

- (a) the company has by special resolution resolved that the company be wound up by the Court,
- (b) being a public company which was registered as such on its original incorporation, the company has not been issued with [^{F2}a trading certificate under section 761 of the Companies Act 2006 (requirement as to minimum share capital)] and more than a year has expired since it was so registered,
- (c) it is an old public company, within the meaning of [^{F3}Schedule 3 to the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009],
- (d) the company does not commence its business within one year from its incorporation or suspends its business for a year,
- (e) ^{F4}
- (f) the company is unable to pay its debts,
- ^{F5}(fa)
- (g) the Court is of the opinion that it is just and equitable that the company should be wound up.

F1 mod. by SR 2004/307

F2 Words in art. 102(b) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 168** (with arts. 6, 11, 12)

F3 Words in art. 102(c) 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. 111(13)** (with art. 10)

F4 Art. 102(e) omitted (12.5.2011) by virtue of Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), arts. 1(2), **7(3)**

F5 Art. 102(fa) omitted (26.6.2020) by virtue of Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 7 para. 14** (with ss. 2(2), 5(2))

Status: Point in time view as at 31/12/2020.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989, CHAPTER VI is up to date with all changes known to be in force on or before 15 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)

Modifications etc. (not altering text)

- C1** Art. 102(b) excluded by European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), Sch. 4 para. 9(c) (as inserted (1.10.2009) by virtue of European Public Limited-Liability Company (Amendment) Regulations 2009 (S.I. 2009/2400), reg. 40(9)(c))

Definition of inability to pay debts; the statutory demand

103.—(1) A company is deemed unable to pay its debts—

- ^{F6}(a) if a creditor (by assignment or otherwise) to whom the company is indebted in a sum exceeding £750 then due has served on the company, by leaving it at the company's registered office, [^{F7}a written demand] (known as “the statutory demand”) in the prescribed form requiring the company to pay the sum due and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor, or
- (b) if, in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the company under Article 19 of the Judgments Enforcement (Northern Ireland) Order 1981^{F8}, or
- (c) if, in England and Wales, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part, or
- (d) if, in Scotland, the *induciae* of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made, or
- (e) if it is otherwise proved to the satisfaction of the High Court that the company is unable to pay its debts as they fall due.

(2) A company is also deemed unable to pay its debts if it is proved to the satisfaction of the High Court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

(3) The money sum for the time being specified in paragraph (1)(a) is subject to increase or reduction by order under Article 362(1)(a).

F6 mod. by SR 2005/68

F7 Words in art. 103(1)(a) substituted (1.4.2016) by *Insolvency (Amendment) Act (Northern Ireland) 2016* (c. 2), s. 28(2), **Sch. 3 para. 8**; S.R. 2016/203, art. 2

F8 1981 NI 6

Modifications etc. (not altering text)

C2 Art. 103 applied (17.2.2009 for certain purposes, otherwise 21.2.2009) by *Banking Act 2009* (c. 1), ss. **166(3)**, 167, 263(1) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch.

C3 Art. 103(1)(a)-(d) restricted (retrospective to 27.4.2020) by *Corporate Insolvency and Governance Act 2020* (c. 12), **Sch. 11 para. 5(1)-(3)**, (4) (with ss. 2(2), 5(2))

Application for winding up

104.—(1) Subject to the provisions of this Article, an application to the High Court for the winding up of a company shall be by petition presented either by the company, or the directors, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories ^{F9} ..., [^{F10} or by the chief clerk in exercise of the power conferred by section 35(4A)

of the Criminal Justice Act (Northern Ireland) 1945 (enforcement of fines imposed on companies) or a clerk of petty sessions in exercise of the power conferred by Article 92A of the Magistrates' Courts (Northern Ireland) Order 1981 (enforcement of fines imposed on companies)] or by all of any of those parties, together or separately.

(2)^{F11} Except as mentioned in paragraph (3), a contributory is not entitled to present a winding-up petition unless either—

- (a) the number of members is reduced below 2, or
- (b) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for at least 6 months during the 18 months before the commencement of the winding up, or have devolved on him through the death of a former holder.

(3)^{F11} A person who is liable under Article 63 to contribute to a company's assets in the event of its being wound up may petition on either of the grounds set out in Article 102(f) and (g), and paragraph (2) does not then apply; but unless the person is a contributory otherwise than under Article 63, he may not in his character as contributory petition on any other ground.

(4)^{F12}

[^{F13}(4AA) A winding up petition may be presented by the [^{F14}Financial Conduct Authority] in a case falling within Article 104C(1) or (2).]

^{F15}(4A)

(5) A winding-up petition may be presented by the Department—

- (a)^{F11} if the ground of the petition is that in Article 102(b) or (c), or

[^{F16}(b) in a case falling within Article 104A^{F17} or 104B].]

[^{F18}(5A) A winding-up petition may be presented by the Regulator of Community Interest Companies in a case falling within section 50 of the Companies (Audit, Investigations and Community Enterprise) Act 2004.]

(6) Where a company is being wound up voluntarily, a winding-up petition may be presented by the official receiver as well as by any other person authorised in that behalf under the other provisions of this Article; but the High Court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

F9	Words in art. 104(1) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), Sch. para. 169 (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
F10	1994 NI 15
F11	mod. by SR 2004/307
F12	Art. 104(4) omitted (1.10.2009) by virtue of Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, Sch. 1 para. 111(14) (with art. 10)
F13	Art. 104(4AA) inserted (18.8.2006) by The European Cooperative Society Regulations 2006 (S.I. 2006/2078), reg. 33(4)
F14	Words in art. 104(4AA) substituted (6.4.2018 immediately after 2016 c. 16 (N.I.), s. 8(2) comes into force) by The Financial Services Act 2012 (Mutual Societies) Order 2018 (S.I. 2018/323), art. 1, Sch. 4 para. 4(2) (with art. 3)
F15	Art. 104(4A) omitted (26.6.2020) by virtue of Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), Sch. 7 para. 15 (with ss. 2(2), 5(2))
F16	1990 NI 10

Status: Point in time view as at 31/12/2020.

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F17 SR 2004/417

F18 Art. 104(5A) inserted (6.4.2007) by Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/1093), arts. 1(3), 6(2), **Sch. 4 para. 56** (with art. 11(1))

Modifications etc. (not altering text)

C4 Art. 104 restricted (retrospective to 27.4.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), **Sch. 11 para. 2(2)-(4), (5)** (with ss. 2(2), 5(2))

C5 Art. 104 restricted (retrospective to 27.4.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), **Sch. 11 para. 1(1)-(3), (4)** (with ss. 2(2), 5(2))

C6 Art. 104 restricted (retrospective to 27.4.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), **Sch. 11 para. 3(2)-(4), (5)** (with ss. 2(2), 5(2))

[^{F19}Petition for winding up on grounds of public interest

104A.—(1) Where it appears to the Department from—

(a) any report made or information obtained under^{F20} Part 14 of the Companies Act 1985] (company investigations, &c.),

Sub-para.(b) rep. by 1993 c.36

[any report made by inspectors under—
^{F21}(c) ^{F22}

(i) section 167, 168, 169 or 284 of the Financial Services and Markets Act 2000, or

(ii) where the company is an open-ended investment company (within the meaning of that Act), regulations made as a result of section 262(2)(k) of that Act;

(cc) ^{F22} any information or documents obtained under section 165, 171, 172, 173 or 175 of that Act;]

(d) any information obtained under section 2 of the Criminal Justice Act 1987 or section 52 of the Criminal Justice (Scotland) Act 1987 (fraud investigations), or

(e) any information obtained under section 83 of the Companies Act 1989 (powers exercisable for purpose of assisting overseas regulatory authorities),

that it is expedient in the public interest that a company should be wound up, it may present a petition for it to be wound up if the court thinks it just and equitable for it to be so.

(2) This Article does not apply if the company is already being wound up by the court.]

F19 1990 NI 10

F20 Words in art. 104A(1)(a) 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. 111(15)** (with art. 10)

F21 SI 2001/3649

F22 mod. by SR 2004/307

[^{F23}Petition for winding up of SE

104B.—(1) Where—

(a) an SE whose registered office is in Northern Ireland is not in compliance with Article 7 of Council Regulation (EC) No 2157/2001 on the Statute for a European Company (the “EC Regulation”) (location of head office and registered office), and

(b) it appears to the Department that the SE should be wound up,

the Department may present a petition for it to be wound up if the court thinks it is just and equitable for it to be so.

(2) This Article does not apply if the SE is already being wound up by the court.

(3) In this Article “SE” has the same meaning as in the EC Regulation.]

F23 SR 2004/417

[^{F24}Petition for winding up of SCE

104C.—(1) Where, in the case of an SCE whose registered office is in Northern Ireland—

(a) there has been such a breach as is mentioned in Article 73(1) of Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative (SCE) (the “European Cooperative Society Regulation”) (winding up by the court or other competent authority), and

(b) it appears to the [^{F25}Financial Conduct Authority] that the SCE should be wound up, the [^{F26}Authority may] present a petition for the SCE to be wound up if the court thinks it is just and equitable for it to be so.

(2) Where, in the case of an SCE whose registered office is in Northern Ireland—

(a) the SCE is not in compliance with Article 6 of the European Cooperative Society Regulation (location of head office and registered office), and

(b) it appears to the [^{F27}Financial Conduct Authority] that the SCE should be wound up, the [^{F28}Authority may] present a petition for the SCE to be wound up if the court thinks it is just and equitable for it to be so.

(3) This Article does not apply if the SCE is already being wound up by the court.

(4) In this Article “SCE” has the same meaning as in the European Cooperative Society Regulation.]

F24 Art. 104C inserted (18.8.2006) by The European Cooperative Society Regulations 2006 (S.I. 2006/2078), reg. 33(3)

F25 Words in art. 104C(1)(b) substituted (6.4.2018 immediately after 2016 c. 16 (N.I.), s. 8(2) comes into force) by The Financial Services Act 2012 (Mutual Societies) Order 2018 (S.I. 2018/323), art. 1, Sch. 4 para. 4(3)(a)(i) (with art. 3)

F26 Words in art. 104C(1) substituted (6.4.2018 immediately after 2016 c. 16 (N.I.), s. 8(2) comes into force) by The Financial Services Act 2012 (Mutual Societies) Order 2018 (S.I. 2018/323), art. 1, Sch. 4 para. 4(3)(a)(ii) (with art. 3)

F27 Words in art. 104C(2)(b) substituted (6.4.2018 immediately after 2016 c. 16 (N.I.), s. 8(2) comes into force) by The Financial Services Act 2012 (Mutual Societies) Order 2018 (S.I. 2018/323), art. 1, Sch. 4 para. 4(3)(b)(i) (with art. 3)

F28 Words in art. 104C(2) substituted (6.4.2018 immediately after 2016 c. 16 (N.I.), s. 8(2) comes into force) by The Financial Services Act 2012 (Mutual Societies) Order 2018 (S.I. 2018/323), art. 1, Sch. 4 para. 4(3)(b)(ii) (with art. 3)

Powers of High Court on hearing of petition

105.—(1) On hearing a winding#up petition the High Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order, or any other order that it thinks fit; but the

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Court shall not refuse to make a winding#up order on the ground only that the company's assets have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) If the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the High Court, if it is of the opinion—

- (a) that the petitioners are entitled to relief either by winding up the company or by some other means, and
- (b) that in the absence of any other remedy it would be just and equitable that the company should be wound up,

shall make a winding#up order; but this does not apply if the Court is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

Power to stay or restrain proceedings against company

106.—(1) At any time after the presentation of a winding#up petition, and before a winding#up order has been made, the company, or any creditor or contributory, may—

- (a) where any action or proceeding against the company is pending in the High Court or Court of Appeal, apply to the Court in which the action or proceeding is pending for a stay of proceedings therein, and
- (b) where any other action or proceeding is pending against the company, apply to the High Court to restrain further proceedings in the action or proceeding;

and the Court to which application is so made may (as the case may be) stay or restrain the proceedings accordingly on such terms as it thinks fit.

(2 ^{F29} In the case of [^{F30} a company registered but not formed under the Companies Act 2006], where the application to stay or restrain is by a creditor, this Article extends to actions and proceedings against any contributory of the company.

[^{F31}(3) Paragraph (1) applies in relation to any action being taken in respect of the company under Part 1 of Schedule 8 to the Finance (No. 2) Act 2015 (enforcement by deduction from accounts) as it applies in relation to any action or proceeding mentioned in sub-paragraph (b) of that paragraph.]

F29 mod. by SR 2004/307

F30 Words in art. 106(2) 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. 111\(16\)](#) (with art. 10)

F31 [Art. 106\(3\)](#) inserted (18.11.2015) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 8 para. 35](#)

Avoidance of property dispositions, etc.

107 ^{F32}.—[^{F33}(1)] In a winding up by the High Court, any disposition of the company's property, and any transfer of shares, or alteration in the status of the company's members, made after the commencement of the winding up is, unless the Court otherwise orders, void.

[^{F34}(2) This Article has no effect in respect of anything done by an administrator of a company while a winding-up petition is suspended under paragraph 41 of Schedule B1.]

[^{F35}(3) This Article has no effect in respect of anything done during a moratorium under Part 1A, or during a period mentioned in Article 18(4)(a) following the end of a moratorium, where the winding-up order was made on a petition presented before the moratorium begins, unless the petition was presented under section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in section 367(3)(b) of that Act.]

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F32 mod. by SR 2004/307

F33 Art. 107 renumbered (27.3.2006) as para. (1) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 26 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

F34 Art. 107(2) added (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 26 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

F35 Art. 107(3) inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 7 para. 16** (with ss. 2(2), 5(2))

Modifications etc. (not altering text)

C7 Art. 107 excluded by Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), reg. 16(3) (as amended (1.10.2009) by Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), **reg. 6(b)**)

Avoidance of sequestration or distress

108.—^{F36}(1) Where a company is being wound up by the High Court, any sequestration or distress put in force against the estate or effects of the company after the commencement of the winding up is void.

^{F37}(2) In paragraph (1) the reference to “sequestration or distress” includes a hold notice or a deduction notice under Part 1 of Schedule 8 to the Finance (No. 2) Act 2015 (enforcement by deduction from accounts) and, if paragraph (1) has effect in relation to a deduction notice, it also has effect in relation to the hold notice to which it relates (whenever the hold notice was given.)]

F36 Art. 108 renumbered as art. 108(1) (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), **Sch. 8 para. 36(a)**

F37 Art. 108(2) inserted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), **Sch. 8 para. 36(b)**

Commencement of winding up

Commencement of winding up by the High Court

109.—(1) ^{F38} If, before the presentation of a petition for the winding up of a company by the High Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company is deemed to have commenced at the time of the passing of the resolution; and unless the Court, on proof of fraud or mistake, directs otherwise, all proceedings taken in the voluntary winding up are deemed to have been validly taken.

^{F39}(1A) Where the Court makes a winding-up order by virtue of paragraph 14(1)(e) of Schedule B1, the winding up is deemed to commence on the making of the order.]

(2) In any other case, the winding up of a company by the High Court is deemed to commence at the time of the presentation of the petition for winding up.

F38 mod. by SR 2004/307

F39 Art. 109(1A) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 27 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

Modifications etc. (not altering text)

C8 Art. 109(1A) modified (1.10.2011) by Postal Services Act 2011 (c. 5), ss. 73(1), 87(1)(2), 93(3), **Sch. 10 para. 45**; S.I. 2011/2329, **art. 3(1)**

Status: Point in time view as at 31/12/2020.

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C9 Art. 109(2) modified (temp.) (retrospective to 27.4.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\), Sch. 11 para. 8\(1\)\(2\), 9](#) (with ss. 2(2), 5(2))

Consequences of winding#up order

110.—(1) On the making of a winding#up order, [^{F40}a copy] of the order must forthwith be forwarded by the company (or otherwise as may be prescribed) to the registrar for registration.

(2) When a winding#up order has been made or a provisionalliquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company or its property, except by leave of the High Court and subject to such terms as the Court may impose.

(3) ^{F41} When an order has been made for winding up a company [^{F42}registered but not formed under the Companies Act 2006], no action or proceeding shall be commenced or proceeded with against the company or its property or any contributory of the company, in respect of any debt of the company, except by leave of the High Court, and subject to such terms as the Court may impose.

[^{F43}(3A) In paragraphs (2) and (3), the reference to an action or proceeding includes action in respect of the company under Part 1 of Schedule 8 to the Finance (No. 2) Act 2015 (enforcement by deduction from accounts).]

(4) An order for winding up a company operates in favour of all the creditors and of all contributories of the company as if made on the joint petition of a creditor and of a contributory.

- F40** Words in art. 110(1) 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. 111\(17\) \(a\)](#) (with art. 10)
- F41** mod. by SR 2004/307
- F42** Words in art. 110(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. 111\(17\) \(b\)](#) (with art. 10)
- F43** Art. 110(3A) inserted (18.11.2015) by [Finance \(No. 2\) Act 2015 \(c. 33\), Sch. 8 para. 37](#)

Investigation procedures

Company's statement of affairs

111.—(1) Where the High Court has made a winding#up order or appointed a provisional liquidator, the official receiver may require some or all of the persons mentioned in paragraph (3) to make out and submit to him a statement in the prescribed form as to the affairs of the company.

(2) The statement shall be verified by affidavit by the persons required to submit it and shall show—

- (a) particulars of the company's assets, debts and liabilities;
- (b) the names and addresses of the company's creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed or as the official receiver may require.

(3) The persons referred to in paragraph (1) are—

- (a) those who are or have been officers of the company;

- (b) those who have taken part in the formation of the company at any time within one year before the relevant date;
- (c) those who are in the company's employment, or have been in its employment within that year, and are in the official receiver's opinion capable of giving the information required;
- (d) those who are or have been within that year officers of, or in the employment of, a company which is, or within that year was, an officer of the company.

(4) Where any persons are required under this Article to submit a statement of affairs to the official receiver, they shall do so (subject to paragraph (5)) before the expiration of 21 days from the day on which the prescribed notice of the requirement is given to them by the official receiver.

(5) The official receiver, if he thinks fit, may—

- (a) at any time release a person from an obligation imposed on him under paragraph (1) or (2); or
- (b) either when giving the notice mentioned in paragraph (4) or subsequently, extend the period so mentioned;

and where the official receiver has refused to exercise a power conferred by this paragraph, the High Court, if it thinks fit, may exercise it.

(6) In this Article—

“employment” includes employment under a contract for services; and

“the relevant date” means—

- (a) in a case where a provisional liquidator is appointed, the date of his appointment; and
- (b) in a case where no such appointment is made, the date of the winding#up order.

(7) If a person without reasonable excuse contravenes any obligation imposed under this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Investigation by official receiver

112.—(1) Where a winding#up order is made by the High Court, it is the duty of the official receiver to investigate—

- (a) if the company has failed, the causes of the failure; and
- (b) generally, the promotion, formation, business, dealings and affairs of the company,

and to make such report (if any) to the Court as he thinks fit.

(2) The report is, in any proceedings, prima facie evidence of the facts stated in it.

Public examination of officers

113.—(1) Where a company is being wound up by the High Court, the official receiver may at any time before the dissolution of the company apply to the Court for the public examination of any person who—

- (a) is or has been an officer of the company; or
- (b) has acted as liquidator or administrator of the company or as receiver or manager; or
- (c) not being a person falling within sub#paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company.

(2) Unless the High Court otherwise orders, the official receiver shall make an application under paragraph (1) if he is requested in accordance with the rules to do so by—

- (a) one#half, in value, of the company's creditors; or

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(b) three-quarters, in value, of the company's contributories.

(3) On an application under paragraph (1), the High Court shall direct that a public examination of the person to whom the application relates shall be held on a day appointed by the Court; and that person shall attend on that day and be publicly examined as to the promotion, formation or management of the company or as to the conduct of its business and affairs, or his conduct or dealings in relation to the company.

(4) The following may take part in the public examination of a person under this Article and may question that person concerning the matters mentioned in paragraph (3), namely—

- (a) the official receiver;
- (b) the liquidator of the company;
- (c) any person who has been appointed as special manager of the company's property or business;
- (d) any creditor of the company who has tendered a proof;
- (e) any contributory of the company.

Enforcement of Article 113

114.—(1) If a person without reasonable excuse fails at any time to attend his public examination under Article 113, he is guilty of a contempt of court and liable to be punished accordingly.

(2) In a case where a person without reasonable excuse fails at any time to attend his examination under Article 113 or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his examination under that Article, the High Court may cause a warrant to be issued to a constable—

- (a) for the arrest of that person; and
- (b) for the seizure of any books, papers, records, money or goods in that person's possession.

(3) In such a case the High Court may authorise the person arrested under the warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the Court may order.

Appointment of liquidator

Appointment and powers of provisional liquidator

115.—(1) Subject to the provisions of this Article, the High Court may, at any time after the presentation of a winding-up petition, appoint a liquidator provisionally.

(2) The appointment of a provisional liquidator may be made at any time before the making of a winding-up order; and either the official receiver or any other fit person may be appointed.

(3) The provisional liquidator shall carry out such functions as the High Court may confer on him.

(4) When a liquidator is provisionally appointed by the High Court, his powers may be limited by the order appointing him.

Functions of official receiver in relation to office of liquidator

116.—(1) The following provisions of this Article have effect, subject to Article 119, on a winding-up order being made by the High Court.

(2) The official receiver, by virtue of his office, becomes the liquidator of the company and continues in office until another person becomes liquidator under the provisions of this Part.

(3) The official receiver is, by virtue of his office, the liquidator during any vacancy.

(4) At any time when he is the liquidator of the company, the official receiver may summon separate meetings of the company's creditors and contributories for the purpose of choosing a person to be liquidator of the company in place of the official receiver.

(5) It is the duty of the official receiver—

- (a) as soon as practicable within the period of 12 weeks from the day on which the winding#up order was made, to decide whether to exercise his power under paragraph (4) to summon meetings, and
- (b) if in pursuance of sub#paragraph (a) he decides not to exercise that power, to give notice of his decision, before the end of that period, to the High Court and to the company's creditors and contributories, and
- (c) (whether or not he has decided to exercise that power) to exercise his power to summon meetings under paragraph (4) if he is at any time requested, in accordance with the rules, to do so by one#quarter, in value, of the company's creditors;

and accordingly, where the duty imposed by sub#paragraph (c) arises before the official receiver has performed a duty imposed by sub#paragraph (a) or (b), he is not required to perform the latter duty.

(6) A notice given under paragraph (5)(b) to the company's creditors shall contain an explanation of the creditors' power under paragraph (5)(c) to require the official receiver to summon meetings of the company's creditors and contributories.

Appointment by Department

117.—(1) In a winding up by the High Court the official receiver may, at any time when he is liquidator of the company, apply to the Department for the appointment of a person as liquidator in his place.

(2) If meetings are held in pursuance of a decision under Article 116(5)(a), but no person is chosen to be liquidator as a result of those meetings, it is the duty of the official receiver to decide whether to refer the need for an appointment to the Department.

(3) On an application under paragraph (1), or a reference made in pursuance of a decision under paragraph (2), the Department shall either make an appointment or decline to make one.

(4) Where a liquidator has been appointed by the Department under paragraph (3), the liquidator shall give notice of his appointment to the company's creditors or, if the High Court so allows, shall advertise his appointment in accordance with the directions of the Court.

(5) In that notice or advertisement the liquidator shall—

- (a) state whether he proposes to summon a general meeting of the company's creditors under Article 120 for the purpose of determining (together with any meeting of contributories) whether a liquidation committee should be established under that Article, and
- (b) if he does not propose to summon such a meeting, set out the power of the company's creditors under that Article to require him to summon one.

Choice of liquidator at meetings of creditors and contributories

118.—(1) This Article applies where a company is being wound up by the High Court and separate meetings of the company's creditors and contributories are summoned for the purpose of choosing a person to be liquidator of the company.

(2) The creditors and the contributories at their respective meetings may nominate a person to be liquidator.

Status: Point in time view as at 31/12/2020.

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(3) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the contributories.

(4) In the case of different persons being nominated, any contributory or creditor may, within 7 days from the date on which the nomination was made by the creditors, apply to the High Court for an order either—

- (a) appointing the person nominated as liquidator by the contributories to be a liquidator instead of, or jointly with, the person nominated by the creditors; or
- (b) appointing some other person to be liquidator instead of the person nominated by the creditors.

Appointment by the High Court following administration or voluntary arrangement

119.—^{F44}(1) Where a winding-up order is made immediately upon the appointment of an administrator ceasing to have effect, the High Court may appoint as liquidator of the company the person whose appointment as administrator has ceased to have effect.]

(2) Where a winding-up order is made at a time when there is a supervisor of a voluntary arrangement approved in relation to the company under Part II, the High Court may appoint as liquidator of the company the person who is the supervisor at the time when the winding-up order is made.

(3) Where the High Court makes an appointment under this Article, the official receiver does not become the liquidator as otherwise provided by Article 116(2), and he has no duty under Article 116(5)(a) or (b) in respect of the summoning of creditors' or contributories' meetings.

F44 Art. 119(1) 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. 28 (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

Liquidation committees

Liquidation committee

120.—(1) Where a winding-up order has been made and separate meetings of creditors and contributories have been summoned for the purpose of choosing a person to be liquidator, those meetings may establish a committee (“the liquidation committee”) to exercise the functions conferred on it by or under this Order.

(2) The liquidator (not being the official receiver) may at any time, if he thinks fit, summon separate general meetings of the company's creditors and contributories for the purpose of determining whether such a committee should be established and, if it is so determined, of establishing it.

The liquidator (not being the official receiver) shall summon such a meeting if he is requested, in accordance with the rules, to do so by one-tenth, in value, of the company's creditors.

(3) Where meetings are summoned under this Article, or for the purpose of choosing a person to be liquidator, and either the meeting of creditors or the meeting of contributories decides that a liquidation committee should be established, but the other meeting does not so decide or decides that a committee should not be established, the committee shall be established in accordance with the rules, unless the High Court otherwise orders.

(4) The liquidation committee is not to be able or required to carry out its functions at any time when the official receiver is liquidator; but at any such time its functions are vested in the Department except to the extent that the rules otherwise provide.

(5) Where there is for the time being no liquidation committee, and the liquidator is a person other than the official receiver, the functions of such a committee are vested in the Department except to the extent that the rules otherwise provide.

The liquidator's functions

General functions in winding up by the High Court

121.—(1) The functions of the liquidator of a company which is being wound up by the High Court are to secure that the assets of the company are got in, realised and distributed to the company's creditors and, if there is a surplus, to the persons entitled to it.

(2) It is the duty of the liquidator of a company which is being wound up by the High Court, if he is not the official receiver—

- (a) to furnish the official receiver with such information,
- (b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records, and
- (c) to give the official receiver such other assistance,

as the official receiver may reasonably require for the purposes of carrying out his functions in relation to the winding up.

Custody of company's property

122. When a winding-up order has been made, or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator (as the case may be) shall take into his custody or under his control all the property to which the company is or appears to be entitled.

Vesting of company property in liquidator

123.—(1) When a company is being wound up by the High Court, the Court may on the application of the liquidator by order direct that all or any part of the property belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name; and thereupon the property to which the order relates vests accordingly.

(2) The liquidator may, after giving such indemnity (if any) as the High Court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

Duty to summon final meeting

124.—(1) Subject to paragraph (2), if it appears to the liquidator of a company which is being wound up by the High Court that the winding up of the company is for practical purposes complete and the liquidator is not the official receiver, the liquidator shall summon a final general meeting of the company's creditors which—

- (a) shall receive the liquidator's report of the winding up, and
- (b) shall determine whether the liquidator should have his release under Article 148.

(2) The liquidator may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice of any final distribution of the company's property but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the liquidator is able to report to the meeting that the winding up of the company is for practical purposes complete.

Status: Point in time view as at 31/12/2020.

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(3) In the carrying out of his functions in the winding up it is the duty of the liquidator to retain sufficient sums from the company's property to cover the expenses of summoning and holding the meeting required by this Article.

- [^{F45}(4) The liquidator shall during the relevant period send to the High court and the registrar—
- (a) a copy of the report, and
 - (b) a statement of whether any of the company’s creditors objected to the liquidator’s release.

(5) The relevant period is the period of 7 days beginning with the day after the last day of the period prescribed by the rules as the period within which the creditors may object to the liquidator’s release.

- ^{F46}(6)
^{F46}(7)]

<p>F45 Art. 124(4)-(7) inserted (26.6.2017) by The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, Sch. para. 102 (with reg. 3)</p> <p>F46 Art. 124(6)(7) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), Sch. para. 170 (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)</p>

Official receiver’s duty to send statement to registrar about other proceedings—

^{F47}124A.

<p>F47 Art. 124A omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), Sch. para. 171 (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)</p>

General powers of High Court

Power to stay winding up

125.—(1) The High Court may at any time after an order for winding up, on the application either of the liquidator or the official receiver or any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

(2) The High Court may, before making an order, require the official receiver to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) [^{F48}A copy] of every order made under this Article shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar for registration.

<p>F48 Words in art. 125(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. 111(18) (with art. 10)</p>

Settlement of list of contributories and application of assets

126.—(1 ^{F49} As soon as may be after making a winding#up order, the High Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification

is required ^{F50} . . . , and shall cause the company's assets to be collected, and applied in discharge of its liabilities.

(2) If it appears to the High Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

(3) In settling the list, the High Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

F49 mod. by SR 2004/307

F50 Words in art. 126(1) omitted (1.10.2009) by virtue of Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 111(19)** (with art. 10)

Debts due from contributory to company

127.—(1 ^{F51} The High Court may, at any time after making a winding#up order, make an order on any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due from him (or from the estate of the person whom he represents) to the company, exclusive of any money payable by him or the estate by virtue of any call ^{F52}

(2 ^{F51} The High Court in making such an order may—

- (a) in the case of an unlimited company, allow to the contributory by way of set#off any money due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit, and
- (b) in the case of a limited company, make to any director whose liability is unlimited or to his estate the like allowance.

(3 ^{F51} In the case of any company, whether limited or unlimited, when all the creditors are paid in full (together with interest at the official rate), any money due on any account whatever to a contributory from the company may be allowed to him by way of set#off against any subsequent call.

F51 mod. by SR 2004/307

F52 Words in art. 127(1) omitted (1.10.2009) by virtue of Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 111(19)** (with art. 10)

Power to make calls

128.—(1) The High Court may, at any time after making a winding#up order, and either before or after it has ascertained the sufficiency of the company's assets, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the company's debts and liabilities, and the expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the High Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay it.

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Payment into bank of money due to company

129.—(1) The High Court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into such bank as the Court may appoint for the purpose to the account of the liquidator instead of to the liquidator, and such an order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All money and securities paid or delivered into any such bank as is mentioned in paragraph (1) in the event of a winding up by the High Court are subject in all respects to the orders of the Court.

Order on contributory to be conclusive evidence

130.—(1) An order made by the High Court on a contributory is conclusive evidence that the money (if any) thereby appearing to be due or ordered to be paid is due, but subject to any right of appeal.

(2) All other pertinent matters stated in the order are to be taken as truly stated as against all persons and in all proceedings.

Power to exclude creditors not proving in time

131. The High Court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

Adjustment of rights of contributories

132. The High Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it.

Inspection of books by creditors, etc.

133.—(1) The High Court may, at any time after making a winding#up order, make such order for inspection of the company's books and papers by creditors and contributories as the Court thinks just; and any books and papers in the company's possession may be inspected by creditors and contributories accordingly, but not further or otherwise.

(2) Nothing in this Article excludes or restricts any statutory rights of—

- (a) a Northern Ireland department; or
- (b) a department of the Government of the United Kingdom; or
- (c) a person acting under the authority of either such department.

Payment of expenses of winding up

134. The High Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the winding up in such order of priority as the Court thinks just.

Power to arrest absconding contributory

135. The High Court, at any time either before or after making a winding#up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls, may cause the contributory to be arrested and his books and papers and movable personal property to be seized and him and them to be kept safely until such time as the Court may order.

Powers of High Court to be cumulative

136. Powers conferred [^{F53}on the High Court by this Order] are in addition to, and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sum.

F53 Words in art. 136 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. 111(20)** (with art. 10)

Delegation of powers to liquidator

137.—(1) Provision may be made by rules for enabling or requiring all or any of the powers and duties conferred and imposed on the High Court ^{F54}. . . in respect of the following matters—

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories,
- (b) ^{F55} the settling of lists of contributories and the rectifying of the register of members where required, and the collection and application of the assets,
- (c) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator,
- (d) the making of calls,
- (e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the Court, and subject to the Court's control.

(2) ^{F55} But the liquidator shall not, without the special leave of the High Court, rectify the register of members, and shall not make any call without either that special leave or the sanction of the liquidation committee.

F54 Words in art. 137(1) omitted (1.10.2009) by virtue of Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 111(21)** (with art. 10)
F55 mod. by SR 2004/307

Status:

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