

STATUTORY INSTRUMENTS

**1989 No. 2405**

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

**PART V**

**WINDING UP OF COMPANIES REGISTERED  
UNDER [F1the 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** <sup>F1</sup>. 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 [<sup>F2</sup>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 [<sup>F3</sup>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) <sup>F4</sup> .....
- (f) the company is unable to pay its debts,
- <sup>F5</sup>(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))

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#### 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—

- <sup>F6</sup>(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, [<sup>F7</sup>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<sup>F8</sup>, 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<sup>F9</sup>, or by [<sup>F10</sup>a member State liquidator appointed in proceedings by virtue of Article

3(1) of the EU Regulation or a temporary administrator (within the meaning of Article 52 of the EU Regulation)], [F11 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) F12 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) F12 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) F13 .....

[F14(4AA) A winding up petition may be presented by the [F15Financial Conduct Authority] in a case falling within Article 104C(1) or (2).]

F16(4A) .....

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

(a) F12 if the ground of the petition is that in Article 102(b) or (c), or

[F17(b) in a case falling within Article 104A[F18 or 104B].]

[F19(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** SR 2002/334  
**F10** Words in art. 104(1) substituted (26.6.2017) by [The Insolvency Amendment \(EU 2015/848\) Regulations 2017 \(S.I. 2017/702\)](#), reg. 1, **Sch. para. 101** (with reg. 3)  
**F11** 1994 NI 15  
**F12** mod. by SR 2004/307  
**F13** 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)  
**F14** Art. 104(4AA) inserted (18.8.2006) by [The European Cooperative Society Regulations 2006 \(S.I. 2006/2078\)](#), **reg. 33(4)**  
**F15** 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)

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- F16** 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))
- F17** 1990 NI 10
- F18** SR 2004/417
- F19** 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))

**[<sup>F20</sup>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<sup>F21</sup> Part 14 of the Companies Act 1985] (company investigations, &c.),

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

- [ any report made by inspectors under—
- <sup>F22(c)</sup><sup>F23</sup> (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)<sup>F23</sup> 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.]

- F20** 1990 NI 10
- F21** 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)
- F22** SI 2001/3649
- F23** mod. by SR 2004/307

**[<sup>F24</sup>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.]

**F24** SR 2004/417

### [<sup>F25</sup>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 [<sup>F26</sup>Financial Conduct Authority] that the SCE should be wound up,
- the [<sup>F27</sup>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 [<sup>F28</sup>Financial Conduct Authority] that the SCE should be wound up,
- the [<sup>F29</sup>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.]

- F25** Art. 104C inserted (18.8.2006) by The European Cooperative Society Regulations 2006 (S.I. 2006/2078), reg. 33(3)
- F26** 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)
- F27** 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)
- F28** 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)
- F29** 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)

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## 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 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 <sup>F30</sup> In the case of [<sup>F31</sup> 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.

[<sup>F32</sup>(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.]

**F30** mod. by SR 2004/307

**F31** 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)

**F32** 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** <sup>F33</sup>.—[<sup>F34</sup>(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.

[<sup>F35</sup>(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.]



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[<sup>F36</sup>(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.]

**F33** mod. by SR 2004/307

**F34** 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)

**F35** 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)

**F36** 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.**—[<sup>F37</sup>(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.

[<sup>F38</sup>(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).]

**F37** Art. 108 renumbered as art. 108(1) (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 8 para. 36(a)

**F38** Art. 108(2) inserted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 8 para. 36(b)

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