

---

*Status: Point in time view as at 26/06/2020.*

*Changes to legislation: The Insolvency (Northern Ireland) Order 1989, CHAPTER VIII is up to date with all changes known to be in force on or before 21 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

---

---

## STATUTORY INSTRUMENTS

---

# 1989 No. 2405

## The Insolvency (Northern Ireland) Order 1989

### PART V

#### WINDING UP OF COMPANIES REGISTERED UNDER [<sup>F1</sup>the Companies Act 2006]

#### CHAPTER VIII

#### PROVISIONS OF GENERAL APPLICATION IN WINDING UP

*[<sup>F1</sup>Moratorium: order of priority of payment of debts*

**F1** Art. 148A and cross-heading inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020](#) (c. 12), s. 49(1), [Sch. 7 para. 17](#) (with ss. 2(2), 5(2))

#### **Moratorium debts etc: priority**

**148A.**—(1) This Article applies where proceedings for the winding up of a company are begun 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.

(2) In the winding up, the following are payable out of the company's assets (in the order of priority shown) in preference to all other claims—

- (a) any prescribed fees or expenses of the official receiver acting in any capacity in relation to the company;
- (b) moratorium debts and priority pre-moratorium debts.

(3) In paragraph (2)(b) “priority pre-moratorium debt” means—

- (a) any pre-moratorium debt that is payable in respect of—
  - (i) the monitor's remuneration or expenses,
  - (ii) goods or services supplied during the moratorium,
  - (iii) rent in respect of a period during the moratorium, or
  - (iv) wages or salary arising under a contract of employment, so far as relating to a period of employment before or during the moratorium,
- (b) any pre-moratorium debt that—
  - (i) consists of a liability to make a redundancy payment, and
  - (ii) fell due before or during the moratorium, and
- (c) any pre-moratorium debt that—
  - (i) arises under a contract or other instrument involving financial services,
  - (ii) fell due before or during the moratorium, and

**Status:** Point in time view as at 26/06/2020.

**Changes to legislation:** The Insolvency (Northern Ireland) Order 1989, CHAPTER VIII is up to date with all changes known to be in force on or before 21 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(iii) is not relevant accelerated debt (see paragraph (4)).

(4) For the purposes of paragraph (3)(c)—

“relevant accelerated debt” means any pre-moratorium debt that fell due during the relevant period by reason of the operation of, or the exercise of rights under, an acceleration or early termination clause in a contract or other instrument involving financial services;

“the relevant period” means the period—

- (a) beginning with the day on which the statement under Article 13BC(1)(e) is made, and
- (b) ending with the last day of the moratorium.

(5) The rules may make provision as to the order in which the debts mentioned in paragraph (2) rank among themselves in a case where the assets of the company are insufficient to meet them in full.

(6) Regulations may amend this Article for the purposes of changing the definition of “moratorium debt” or “priority pre-moratorium debt” in this Article.

(7) Regulations under paragraph (6) may make consequential, supplementary, incidental or transitional provision or savings.

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

(9) For the purposes of this Article proceedings for the winding up of a company are begun when—

- (a) a winding-up petition is presented, or
- (b) a resolution for voluntary winding up is passed.

(10) Any rules made under Article 13D(4) (meaning of supply of goods or services) apply also for the purposes of paragraph (3)(a)(ii) of this Article.

(11) In this Article—

“acceleration or early termination clause”, in relation to a contract or other instrument involving financial services, means a provision of the contract or other instrument—

- (a) under which, on the happening of an event—
  - (i) a debt or other liability falls due earlier than it otherwise would, or
  - (ii) a debt or other liability is terminated and replaced by another debt or liability, or
- (b) which confers on a party a right which, if exercised, will result in —
  - (i) a debt or other liability falling due earlier than it otherwise would, or
  - (ii) a debt or other liability being terminated and replaced by another debt or liability;

“contract or other instrument involving financial services” has the same meaning as it has for the purposes of Article 13D (see Schedule ZA2);

“monitor's remuneration or expenses” has the meaning given by Article 13D;

“moratorium debt” has the meaning given by Article 13HD;

“pre-moratorium debt” has the meaning given by Article 13HD;

“redundancy payment” has the meaning given by Article 13D;

“wages or salary” has the meaning given by Article 13D.]

## Preferential debts

### Preferential debts (general provision)

149.—(1) In a winding up the company's preferential debts <sup>F2</sup>... shall be paid in priority to all other debts [<sup>F3</sup>after the payment of—

- (a) any liabilities to which Article 148A applies, and
- (b) expenses of the winding up.]

[<sup>F4</sup>(1A) Ordinary preferential debts rank equally among themselves <sup>F5</sup>... and shall be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions.

(1B) Secondary preferential debts rank equally among themselves after the ordinary preferential debts and shall be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions.]

(2) Preferential debts—

<sup>F6</sup>(a) .....

- (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to that charge.

[<sup>F7</sup>(3) In this Article “preferential debts”, “ordinary preferential debts” and “secondary preferential debts” each has the meaning given in Article 346.]

- F2** Words in art. 149(1) 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), **17(2)** (with art. 3)
- F3** Art. 149(1)(a)(b) and words inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), **Sch. 7 para. 18(2)** (with ss. 2(2), 5(2))
- F4** Art. 149(1A)(1B) inserted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), **17(3)** (with art. 3)
- F5** Words in art. 149(1A) omitted (26.6.2020) by virtue of [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), **Sch. 7 para. 18(3)** (with ss. 2(2), 5(2))
- F6** Art. 149(2)(a) and word 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), **17(4)** (with art. 3)
- F7** Art. 149(3) inserted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), **17(5)** (with art. 3)

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

- C1** Art. 149 applied by [Financial Markets and Insolvency \(Settlement Finality\) Regulations 1999 \(S.I. 1999/2979\)](#), reg. 14(5)(a)(i) (as substituted (1.10.2009) by [Financial Markets and Insolvency \(Settlement Finality\) \(Amendment\) Regulations 2009 \(S.I. 2009/1972\)](#), **reg. 4(d)(ii)**)
- C2** Art. 149 applied (with modifications) by S.R. 1995/225, Sch. 4 para. 23 (as amended (19.12.2018) by [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), arts. 1(2), **37** (with art. 3))
- C3** Art. 149 excluded (06.03.2008) by [The Regulated Covered Bonds Regulations 2008 \(S.I. 2008/346\)](#), reg. 1(1), **Sch. para. 9(2)(c)**

### Preferential charge on goods distrained [<sup>F8</sup>, etc]

150.—(1) This Article applies where a company is being wound up by the High Court, and is without prejudice to Article 108 (avoidance of sequestration or distress).

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

**Changes to legislation:** The Insolvency (Northern Ireland) Order 1989, CHAPTER VIII is up to date with all changes known to be in force on or before 21 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

[<sup>F9</sup>(2) Paragraph (2A) applies where—

- (a) any person has distrained upon the goods or effects of the company, or
- (b) Her Majesty's Revenue and Customs has been paid any amount from an account of the company under Part 1 of Schedule 8 to the Finance (No. 2) Act 2015 (enforcement by deduction from accounts),

within the 3 months immediately preceding the date of the winding-up order.

(2A) Where this paragraph applies—

- (a) in a case within paragraph (2)(a), the goods or effects, or the proceeds of their sale, and
- (b) in a case within paragraph (2)(b), the amount in question,

is charged for the benefit of the company with the preferential debts of the company to the extent that the company's property is for the time being insufficient for meeting those debts.]

(3) Where by virtue of a charge under paragraph [<sup>F10</sup>(2A)] any person surrenders any goods or effects to a company or makes a payment to a company, that person ranks, in respect of the amount of the proceeds of sale of those goods or effects by the liquidator or (as the case may be) the amount of the payment, as a preferential creditor of the company, except as against so much of the company's property as is available for the payment of preferential creditors by virtue of the surrender or payment.

**F8** Word in art. 150 heading inserted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 8 para. 38(4)

**F9** Art. 150(2)(2A) substituted for art. 150(2) (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 8 para. 38(2)

**F10** Word in art. 150(3) substituted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 8 para. 38(3)

### *[<sup>F11</sup>Non-preferential debts*

**F11** Art. 150ZZA and cross-heading inserted (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), 24 (with art. 3)

#### **Non-preferential debts of financial institutions**

**150ZZA.**—(1) This Article applies in the winding up of a company that is a relevant financial institution.

(2) The company's ordinary non-preferential debts are to be paid in priority to its secondary non-preferential debts.

(3) The company's secondary non-preferential debts—

- (a) are to be paid in priority to its tertiary non-preferential debts, and
- (b) rank equally among themselves after the ordinary non-preferential debts and are to be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions.

(4) See Article 347A for definitions relevant to this Article.]

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

**C4** Art. 150ZZA applied (with modifications) by S.R. 1995/225, art. 4(3)(za) (as inserted (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), 33 (with art. 3))

- C5** Art. 150ZZA applied (with modifications) by S.R. 1995/225, art. 6(3)(za) (as inserted (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), 34 (with art. 3))

*[<sup>F12</sup>Property subject to floating charge]*

- F12** Art. 150A and preceding cross - heading inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 7(1) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2-7)

**[<sup>F13</sup>Payment of expenses of winding up**

**150ZA.**—(1) The expenses of winding up, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over any claims to property comprised in or subject to any floating charge created by the company and shall be paid out of any such property accordingly.

(2) In paragraph (1)—

- (a) the reference to assets of the company available for payment of general creditors does not include any amount made available under Article 150A(2)(a);
- (b) the reference to claims to property comprised in or subject to a floating charge is to the claims of—
  - (i) the holders of debentures secured by, or holders of, the floating charge, and
  - (ii) any preferential creditors entitled to be paid out of that property in priority to them.

(3) Provision may be made by rules restricting the application of paragraph (1), in such circumstances as may be prescribed, to expenses authorised or approved—

- (a) by the holders of debentures secured by, or holders of, the floating charge and by any preferential creditors entitled to be paid in priority to them, or
- (b) by the Court.

(4) References in this Article to the expenses of the winding up are to all expenses properly incurred in the winding up, including the remuneration of the liquidator.]

- F13** Art. 150ZA inserted (6.4.2008) by Companies Act 2006 (c. 46), ss. 1282(2), 1300(2); S.I. 2007/3495, art. 3(1)(v) (with Sch. 4 para. 43)

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

- C6** Art. 150ZA applied by Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), reg. 14(5)(a)(i) (as substituted (1.10.2009) by Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), reg. 4(d)(ii))

**[<sup>F14</sup>Share of assets for unsecured creditors**

**150A.**—(1) This Article applies where a floating charge relates to property of a company—

- (a) which has gone into liquidation,
- (b) which is in administration,
- (c) of which there is a provisional liquidator, or
- (d) of which there is a receiver.

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

**Changes to legislation:** The Insolvency (Northern Ireland) Order 1989, CHAPTER VIII is up to date with all changes known to be in force on or before 21 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) The liquidator, administrator or receiver—
- (a) shall make a prescribed part of the company's net property available for the satisfaction of unsecured debts, and
  - (b) shall not distribute that part to the proprietor of a floating charge except in so far as it exceeds the amount required for the satisfaction of unsecured debts.
- (3) Paragraph (2) shall not apply to a company if—
- (a) the company's net property is less than the prescribed minimum, and
  - (b) the liquidator, administrator or receiver thinks that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.
- (4) Paragraph (2) shall also not apply to a company if or in so far as it is disappplied by—
- (a) a voluntary arrangement in respect of the company, or
  - (b) a compromise or arrangement agreed under [F15Part 26 [F16or 26A] of the Companies Act 2006 (arrangements and reconstructions)].
- (5) Paragraph (2) shall also not apply to a company if—
- (a) the liquidator, administrator or receiver applies to the High Court for an order under this paragraph on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits, and
  - (b) the Court orders that paragraph (2) shall not apply.
- (6) In paragraphs (2) and (3) a company's net property is the amount of its property which would, but for this Article, be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company.
- (7) An order under paragraph (2) prescribing part of a company's net property may, in particular, provide for its calculation—
- (a) as a percentage of the company's net property, or
  - (b) as an aggregate of different percentages of different parts of the company's net property.
- (8) An order under this Article shall be subject to negative resolution.
- (9) In this Article—
- “floating charge” means a charge which is a floating charge on its creation and which is created after the first order under paragraph (2)(a) comes into operation, and
- “prescribed” means prescribed by order by the Department.
- (10) An order under this Article may include transitional or incidental provision.]

**F14** Art. 150A and preceding cross-heading inserted (27.3.2006) by *Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10))*, arts. 1(3), 7(1) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2-7**)

**F15** Words in art. 150A(4)(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. 169** (with arts. 6, 11, 12)

**F16** Words in art. 150A(4)(b) inserted (26.6.2020) by *Corporate Insolvency and Governance Act 2020 (c. 12)*, s. 49(1), **Sch. 9 para. 9** (with ss. 2(2), 5(2))

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

**C7** Art. 150A applied by *Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979)*, reg. 14(5)(a)(i) (as substituted (1.10.2009) by *Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972)*, **reg. 4(d)(ii)**)

**C8** Art. 150A excluded (06.03.2008) by [The Regulated Covered Bonds Regulations 2008 \(S.I. 2008/346\)](#), reg. 1(1), [Sch. para. 9\(2\)\(c\)](#)

### *Special managers*

#### **Power to appoint special manager**

**151.**—(1) Where a company has gone into liquidation or a provisional liquidator has been appointed, the High Court may, on an application under this Article, appoint any person to be the special manager of the business or property of the company.

(2) The application may be made by the liquidator or provisional liquidator in any case where it appears to him that the nature of the business or property of the company, or the interests of the company's creditors or contributories or members generally, require the appointment of another person to manage the company's business or property.

(3) The special manager has such powers as may be entrusted to him by the High Court.

(4) The High Court's power to entrust powers to the special manager includes power to direct that any provision of this Order that has effect in relation to the provisional liquidator or liquidator of a company shall have the like effect in relation to the special manager for the purposes of the carrying out by him of any of the functions of the provisional liquidator or liquidator.

(5) The special manager shall—

- (a) give such security as may be prescribed;
- (b) prepare and keep such accounts as may be prescribed; and
- (c) produce those accounts in accordance with the rules to the Department or to such other persons as may be prescribed.

### *Disclaimer*

#### **Power to disclaim onerous property**

**152.**—(1) Subject to the provisions of this Article and Article 153, where a company is being wound up, the liquidator may, by the giving of the prescribed notice, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it, or otherwise exercised rights of ownership in relation to it.

(2) The following is onerous property for the purposes of this Article—

- (a) any unprofitable contract, and
- (b) any other property of the company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this Article—

- (a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; but
- (b) does not, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.

(4) A notice of disclaimer shall not be given under this Article in respect of any property if—

- (a) a person interested in the property has applied in writing to the liquidator or one of this predecessors as liquidator requiring the liquidator or that predecessor to decide whether he will disclaim or not, and

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

**Changes to legislation:** The Insolvency (Northern Ireland) Order 1989, CHAPTER VIII is up to date with all changes known to be in force on or before 21 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(b) the period of 28 days from the day on which that application was made, or such longer period as the High Court may allow, has expired without a notice of disclaimer having been given under this Article in respect of that property.

(5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this Article is deemed a creditor of the company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

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

- C9** Art. 152(1) excluded (1.1.2015) by 2009 c. 1, s. 66(3A) (as inserted by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **74(5)**)
- C10** Art. 152(2) excluded (1.1.2015) by 2009 c. 1, s. **67(6)** (as substituted by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **75(3)**)
- C11** Art. 152(2) excluded (1.1.2015) by 2009 c. 1, s. **63(3A)** (as inserted by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **71(4)**)

#### **Disclaimer of leaseholds**

**153.**—(1) The disclaimer under Article 152 of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served (so far as the liquidator is aware of their addresses) on every person claiming under the company as underlessee or mortgagee and either—

- (a) no application under Article 155 is made with respect to that property before the expiration of 14 days from the day on which the last notice served under this paragraph was served; or
- (b) where such an application has been made, the High Court directs that the disclaimer shall take effect.

(2) Where the High Court gives a direction under paragraph (1)(b) it may also, instead of or in addition to any order it makes under Article 155, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

(3) For the purposes of this Article, property held under a fee farm grant creating the relation of landlord and tenant is property of a leasehold nature and a reference to an underlessee includes a person who holds a lease from the fee farm grantee.

#### **Land subject to rentcharge**

**154.**—(1) The following applies where, in consequence of the disclaimer under Article 152 of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person (referred to in paragraph (2) as “the proprietor”).

(2) The proprietor and the successors in title of the proprietor are not subject to any personal liability in respect of any sums becoming due under the rentcharge except sums becoming due after the proprietor, or some person claiming under or through the proprietor, has taken possession or control of the land or has entered into occupation of it.

#### **Powers of High Court (general)**

**155.**—(1) Where the liquidator has disclaimed property under Article 152 an application under this Article may be made to the High Court by—

- (a) any person who claims an interest in the disclaimed property, or
- (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.

(2) Subject to paragraph (3) and Article 156, the High Court may on the application make an order, on such terms as it thinks fit, for the vesting of the disclaimed property in, or for its delivery to—

- (a) a person entitled to it or a trustee for such a person, or
- (b) a person subject to such a liability as is mentioned in paragraph (1)(b) or a trustee for such a person.

(3) The High Court shall not make an order under paragraph (2)(b) except where it appears to the Court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(4) The effect of any order under this Article shall be taken into account in assessing for the purpose of Article 152(5) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

(5) An order under this Article vesting property in any person need not be completed by conveyance, assignment or transfer.

#### **Powers of High Court (leaseholds)**

**156.**—(1) The High Court shall not make an order under Article 155 vesting property of a leasehold nature in any person claiming under the company as underlessee or mortgagee except on terms making that person—

- (a) subject to the same liabilities and obligations as the company was subject to under the lease at the commencement of the winding up, or
- (b) if the Court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him at the commencement of the winding up.

(2) For the purposes of an order under Article 155 relating to only part of any property comprised in a lease, the requirements of paragraph (1) apply as if the lease comprised only the property to which the order relates.

(3) Where paragraph (1) applies and no person claiming under the company as underlessee or mortgagee is willing to accept an order under Article 155 on the terms required by virtue of that paragraph, the High Court may, by order under that Article, vest the company's estate or interest in the property in any person who is liable (whether personally or in a representative capacity, and whether alone or jointly with the company) to perform the lessee's covenants in the lease.

(4) An order of the High Court under paragraph (3) may vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the company.

(5) Where paragraph (1) applies and a person claiming under the company as underlessee or mortgagee declines to accept an order under Article 155, that person is excluded from all interest in the property.

(6) Paragraph (3) of Article 153 shall apply for the purposes of this Article as it applies for the purposes of that Article.

#### *Miscellaneous matters*

#### **Rescission of contracts by the High Court**

**157.**—(1) The High Court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just.

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

**Changes to legislation:** The Insolvency (Northern Ireland) Order 1989, CHAPTER VIII is up to date with all changes known to be in force on or before 21 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(2) Any damages payable under the order to such a person may be proved by him as a debt in the winding up.

### Power to make over assets to employees

**158** <sup>F17</sup>.—(1) On the winding up of a company (whether by the High Court or voluntarily), the liquidator may, subject to the provisions of this Article, make any payment which the company has, before the commencement of the winding up, decided to make under [<sup>F18</sup>section 247 of the Companies Act 2006] (power to provide for employees or former employees on cessation or transfer of business).

[<sup>F19</sup>(2) The liquidator may, after the winding up has commenced, make any such provision as is mentioned in section 247(1) if—

- (a) the company's liabilities have been fully satisfied and provision has been made for the expenses of the winding up,
- (b) the exercise of the power has been sanctioned by a resolution of the company, and
- (c) any requirements of the company's [<sup>F20</sup>articles] as to the exercise of the power conferred by section 247(1) are complied with.]

(3) Any payment which may be made by a company under this Article (that is, a payment after the commencement of its winding up) may be made out of the company's assets which are available to the members on the winding up.

(4) On a winding up by the High Court, the exercise by the liquidator of his powers under this Article is subject to the Court's control, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of the power.

(5) Paragraphs (1) and (2) have effect notwithstanding anything in any rule of law or in Article 93 of this Order (property of company after satisfaction of liabilities to be distributed among members).

**F17** mod. by SR 2004/307

**F18** Words in art. 158(1) substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), **Sch. 4 para. 61(2)** (with art. 12)

**F19** Art. 158(2) substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), **Sch. 4 para. 61(3)** (with art. 12)

**F20** Word in art. 158(2)(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(22)** (with art. 10)

### Notification that company is in liquidation

**159.**—[<sup>F21</sup>(1) When a company is being wound up, whether by the High Court or voluntarily—

- (a) every invoice, order for goods [<sup>F22</sup>or services], business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company, or a liquidator of the company or a receiver or manager of the company's property, <sup>F23</sup>. . . and
- (b) all the company's websites,

must contain a statement that the company is being wound up.]

(2) If default is made in complying with this Article, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be guilty of an offence.

- F21** Art. 159(1) substituted (1.1.2007) by Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), **reg. 7(2)**
- F22** Words in art. 159(1)(a) inserted (1.10.2008) by Companies (Trading Disclosures) (Insolvency) Regulations 2008 (S.I. 2008/1897), **reg. 5(2)(a)**
- F23** Words in art. 159(1)(a) omitted (1.10.2008) by virtue of Companies (Trading Disclosures) (Insolvency) Regulations 2008 (S.I. 2008/1897), **reg. 5(2)(b)**

### Interest on debts

**160.**—(1) In a winding up interest is payable in accordance with this Article on any debt proved in the winding up, including so much of any such debt as represents interest on the remainder.

(2) Any surplus remaining after the payment of the debts proved in a winding up shall, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the company went into liquidation.

(3) All interest under this Article ranks equally, whether or not the debts on which it is payable rank equally.

(4) The rate of interest payable under this Article in respect of any debt ( “the official rate”) is whichever is the greater of—

- (a) the rate applicable to a money judgment of the High Court on the day on which the company went into liquidation, and
- (b) the rate applicable to that debt apart from the winding up.

### Company's books to be evidence

**161.** Where a company is being wound up, all books and papers of the company and of the liquidators are, as between the contributories of the company, prima facie evidence of the truth of all matters purporting to be recorded in them.

### Information as to pending liquidations

**162.**—(1) If the winding up of a company is not concluded within one year from its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in, and position of, the liquidation.

(2) If a liquidator contravenes this Article, he shall be guilty of an offence and for continued contravention, he shall be guilty of a continuing offence.

### Resolutions passed at adjourned meetings

**163** <sup>F24</sup>. Where a resolution is passed at an adjourned meeting of a company's creditors or contributories, the resolution is treated for all purposes as having been passed on the date on which it was in fact passed, and not as having been passed on any earlier date.

**F24** mod. by SR 2004/307

### Meeting to ascertain wishes of creditors or contributories

**164.**—(1) The High Court may—

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

**Changes to legislation:** The Insolvency (Northern Ireland) Order 1989, CHAPTER VIII is up to date with all changes known to be in force on or before 21 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories (as proved to it by any sufficient evidence), and
  - (b) if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and appoint a person to act as chairman of any such meeting and report the result of it to the Court.
- (2) In the case of creditors, regard shall be had to the value of each creditor's debt.
- (3) <sup>F25</sup> In the case of contributories, regard shall be had to the number of votes conferred on each contributory <sup>F26</sup> . . . .

**F25** mod. by SR 2004/307

**F26** Words in art. 164(3) 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(23)** (with art. 10)

#### **Affidavits, etc., in United Kingdom and elsewhere**

**165.**—(1) An affidavit required to be sworn under or for the purposes of this Part may be sworn in Northern Ireland before any court, judge or person lawfully authorised to take and receive affidavits, and shall, if sworn in Great Britain or elsewhere in Her Majesty's dominions before any court, judge or person lawfully authorised to take and receive affidavits, or before any of Her Majesty's consuls or vice#consuls in any place outside Her Majesty's dominions, be treated as an affidavit sworn under or for the purposes of this Part.

(2) All courts, judges, [<sup>F27</sup> lay magistrates], commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul or vice#consul attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

**F27** 2002 c. 26

**Status:**

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

**Changes to legislation:**

The Insolvency (Northern Ireland) Order 1989, CHAPTER VIII is up to date with all changes known to be in force on or before 21 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.