

## STATUTORY INSTRUMENTS

# 1989 No. 2405

## The Insolvency (Northern Ireland) Order 1989

### PART VI

#### WINDING UP OF UNREGISTERED COMPANIES

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

- C1** Pt. VI (arts. 184-193) applied (with modifications) by [European Economic Interest Grouping Regulations 1989 \(S.I. 1989/638\)](#), [reg. 8\(1A\)](#) (as inserted (1.10.2009) by [European Economic Interest Grouping \(Amendment\) Regulations 2009 \(S.I. 2009/2399\)](#)), [reg. 11](#) (with [reg. 2](#))

##### [<sup>F1</sup>Meaning of “unregistered company”]

**184.** For the purposes of this Part “unregistered company” includes any association and any company, with the following exceptions—

- (a) a railway company incorporated by a statutory provision;
- (b) a company registered under the Companies Act 2006 in any part of the United Kingdom.]

- F1** [Art. 184](#) 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. 112\(2\)](#) (with art. 10)

##### Winding up of unregistered companies

**185.**—(1) Subject to the provisions of this Part, any unregistered company may be wound up under this Order; and all the provisions of this Order <sup>F2</sup>. . . about winding up apply to an unregistered company with the exceptions and additions mentioned in paragraphs (2) to (4).

(2) If an unregistered company has a principal place of business situated in England and Wales or Scotland, it shall not be wound up under this Part unless it has a principal place of business situated in Northern Ireland<sup>F3</sup>....

[<sup>F4</sup>(2A) For all purposes of winding up, the principal place of business in Northern Ireland of the unregistered company is deemed to be the registered office of the company.]

(3) No unregistered company shall be wound up under this Order voluntarily [<sup>F5</sup>, except in accordance with the [<sup>F6</sup>EU Regulation]].

(4) The circumstances in which an unregistered company may be wound up are as follows—

- (a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
- (b) if the company is unable to pay its debts;

**Status:** Point in time view as at 27/04/2020.

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- (c) if the High Court is of opinion that it is just and equitable that the company should be wound up.

- F2** Words in art. 185(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. 112(3)** (with art. 10)
- F3** Words in art. 185(2) repealed (1.4.2016) by Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), s. 28(2), **Sch. 4**; S.R. 2016/203, art. 2
- F4** Art. 185(2A) inserted (1.4.2016) by Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), s. 28(2), **Sch. 3 para. 9**; S.R. 2016/203, art. 2
- F5** SR 2002/334
- F6** Words in art. 185(3) substituted (26.6.2017) by The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, **Sch. para. 108** (with reg. 3)

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

- C2** Art. 185(4)(b) restricted (retrospective to 27.4.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), **Sch. 11 para. 6(1)-(3), (4)** (with ss. 2(2), 5(2))

**Inability to pay debts: unpaid creditor for £750 or more**

**186.**—(1) An unregistered company is deemed (for the purposes of Article 185) unable to pay its debts if there is a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding £750 then due and—

- (a) the creditor has served on the company, by leaving at its principal place of business in Northern Ireland, or by delivering to the secretary or some director or principal officer of the company, or by otherwise serving in such manner as the High Court may approve or direct, a written demand [<sup>F7</sup>(known as “the statutory demand”)] in the prescribed form requiring the company to pay the sum due, and
- (b) the company has for 3 weeks from the service of the demand neglected to pay the sum or to secure or compound for it to the creditor's satisfaction.

(2) The money sum for the time being specified in paragraph (1) is subject to increase or reduction by order under Article 362(1)(a); but no increase in the sum so specified affects any case in which the winding#up petition was presented before the coming into operation of the increase.

- F7** Words in art. 186(1)(a) inserted (1.4.2016) by Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), s. 28(2), **Sch. 3 para. 10**; S.R. 2016/203, art. 2

**Inability to pay debts: debt remaining unsatisfied after action brought**

**187.** An unregistered company is deemed (for the purposes of Article 185) unable to pay its debts if an action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and—

- (a) notice in writing of the institution of the action or proceeding has been served on the company by leaving it at the company's principal place of business in Northern Ireland (or by delivering it to the secretary, or some director or principal officer of the company, or by otherwise serving it in such manner as the High Court may approve or direct), and
- (b) the company has not within 3 weeks from service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs and damages to be incurred by him because of it.

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### Inability to pay debts: other cases

**188.**—(1) An unregistered company is deemed (for the purposes of Article 185) unable to pay its debts—

- (a) 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>;
- (b) if, in England and Wales, execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company, or any member of it as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;
- (c) 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;
- (d) 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) An unregistered 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.

**F8** 1981 NI 6

### Company incorporated outside Northern Ireland may be wound up though dissolved

**189.**—<sup>[F9(1)]</sup> Where a company incorporated outside Northern Ireland which has been carrying on business in Northern Ireland ceases to carry on business in Northern Ireland, it may be wound up as an unregistered company under this Order, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

<sup>[F9(2)]</sup> This Article is subject to the <sup>[F10]</sup>EU Regulation[.]

**F9** SR 2002/334  
**F10** Words in art. 189(2) substituted (26.6.2017) by [The Insolvency Amendment \(EU 2015/848\) Regulations 2017 \(S.I. 2017/702\)](#), reg. 1, [Sch. para. 109](#) (with reg. 3)

### Contributors in winding up of unregistered company

**190.**—(1) In the event of an unregistered company being wound up, every person is deemed a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of members among themselves, or to pay or contribute to the payment of the costs of winding up the company.

(2) Every contributory is liable to contribute to the company's assets all sums due from him in respect of any such liability as is mentioned in paragraph (1).

(3) <sup>F11</sup> .....

**F11** [Art. 190\(3\)](#) 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. 112\(4\)](#) (with art. 10)

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**Power of High Court to stay or restrain proceedings**

**191.** The provisions of this Part with respect to staying or restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order extend, in the case of an unregistered company, where the application to stay or restrain is presented by a creditor, to actions and proceedings against any contributory of the company.

**Actions stayed on winding up order**

**192.** Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against 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.

**Provisions of this Part to be cumulative**

**193.—(1)** The provisions of this Part with respect to unregistered companies are in addition to and not in restriction of any provisions in Part V with respect to winding up companies by the High Court; and the Court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up [<sup>F12</sup>companies registered under the Companies Act 2006 in Northern Ireland].

(2) <sup>F13</sup> .....

**F12** Words in art. 193(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. 112(5)(a)** (with art. 10)  
**F13** Art. 193(2) 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. 112(5)(b)** (with art. 10)

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