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## STATUTORY INSTRUMENTS

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# 1989 No. 2405

## The Insolvency (Northern Ireland) Order 1989

### PART XIII

#### PUBLIC ADMINISTRATION

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

- C1** Pts. 11-14 modified by S.R. 2004/307 (as amended (1.10.2006) by [Limited Liability Partnerships \(Amendment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/377\)](#), reg. 3, **Sch. 2**; (temp.) (27.4.2020 retrospective) by virtue of [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), Sch. 11 para. 8(1)(2), **14** (with ss. 2(2), 5(2)); (26.6.2020) by [The Limited Liability Partnerships \(Amendment etc.\) Regulations 2020 \(S.I. 2020/643\)](#), reg. 1(1), **Sch. 2** (with reg. 3))

#### *Official receivers*

#### **Appointment, etc., of official receivers**

**355.**—(1) The Department may appoint one or more than one officer of the Department as official receiver for Northern Ireland.

(2) The Department may give directions with respect to the disposal of the business of official receivers.

#### **Functions and status of official receivers**

**356.**—(1) In addition to any functions conferred on him by this Order, an official receiver shall carry out such other functions as may be conferred on him by the Department.

(2) In the exercise of the functions of his office an official receiver shall act under the general authority and direction of the Department, but shall also be an officer of the High Court.

(3) Any property vested in an officer of the Department in his official capacity as official receiver shall, on his dying, ceasing to hold office or being otherwise succeeded in relation to the bankruptcy or winding up in question by another official receiver, vest in his successor without any conveyance, assignment or transfer.

#### **Deputy official receivers**

**357.**—(1) The Department may, if it thinks it expedient to do so in order to facilitate the disposal of the business of official receiver, appoint one or more than one officer of the Department as deputy official receiver.

(2) Subject to any directions given by the Department under Article 355 or 356, a deputy official receiver has, on such conditions and for such period as may be specified in the terms of his appointment, the same status and functions as an official receiver.

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## *Insolvency Account*

### **Insolvency Account**

**358.**—(1) An account, to be called the Insolvency Account, shall continue to be kept by the Department with such bank as may be agreed with the Department of Finance and Personnel.

(2) The Department may, with the agreement of the Department of Finance and Personnel, invest any money from time to time standing to the credit of the Insolvency Account.

(3) The Department shall in respect of each year ending on 31st March prepare an account, in such form and manner as the Department of Finance and Personnel may direct, of sums credited and debited to the Insolvency Account during that year.

(4) On or before 31st August in each year the Department shall transmit to the Comptroller and Auditor General for Northern Ireland the account prepared under paragraph (3) in respect of the year ending on the preceding 31st March and the Comptroller and Auditor General shall examine and certify such account and the Department shall lay copies thereof, together with the report of the Comptroller and Auditor General thereon, before the Assembly.

(5) On or before 31st March in each year the Department shall pay into the Consolidated Fund the amount of any lodgment made into the Insolvency Account of unclaimed dividends and unapplied or undistributed balances, which has remained unclaimed for a period of at least 2 years from the date of lodgment.

### **[<sup>F1</sup>Adjustment of balances**

**358A.**—(1) The Department of Finance and Personnel may direct the payment out of the Consolidated Fund of sums into the Insolvency Account.

(2) The Department of Finance and Personnel shall certify to the Assembly the reason for any payment under paragraph (1).

(3) The Department may pay sums out of the Insolvency Account into the Consolidated Fund.]

**F1** Art. 358A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 28 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

## *Insolvency rules*

### **Insolvency rules**

<sup>F2F3F4</sup>**359.**—(1) The [<sup>F5</sup>Department of Justice] may, with the concurrence of the Department and after consultation with the committee appointed under Article 360, make rules for the purpose of giving effect to this Order[<sup>F6</sup> or the [<sup>F7</sup>EU Regulation]].

[<sup>F8</sup>(1A) Rules that affect court procedure may be made under paragraph (1) only with the concurrence of the Lord Chief Justice.

(1B) The Lord Chief Justice may nominate any of the following to exercise his functions under paragraph (1A)—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

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(2) Without prejudice to the generality of paragraph (1), or to any provision of this Order by virtue of which rules under this Article may be made with respect to any matter, rules under this Article may contain—

- (a) any such provision as is specified in Schedule 5 or corresponds to provision contained immediately before the coming into operation of this Order in rules made, or having effect as if made under Article 613(1) and (2) of [<sup>F9</sup>the Companies (Northern Ireland) Order 1986] (old winding#up rules), and
- (b) <sup>F10</sup> any such provision as is specified in Schedule 6 or corresponds to provision contained immediately before the coming into operation of this Order in rules made under Article 33(1) and (2) of the Bankruptcy Amendment (Northern Ireland) Order 1980<sup>F11</sup> (old bankruptcy rules), and
- (c) provision for enabling the Master (Bankruptcy) to exercise such of the jurisdiction conferred for the purposes of this Order on the High Court as may be prescribed and for enabling the review of any such jurisdiction, and
- (d) such incidental, supplemental and transitional provision as may appear to the [<sup>F12</sup>Department of Justice] or, as the case may be, the Department necessary or expedient.

[<sup>F6</sup>(2A) ]<sup>F10</sup> For the purposes of paragraph (2), a reference in Schedule 5 or Schedule 6 to doing anything under or for the purposes of a provision of this Order includes a reference to doing anything under or for the purposes of the [<sup>F13</sup>EU Regulation] (in so far as the provision of this Order relates to a matter to which the [<sup>F13</sup>EU Regulation] applies).

(2B) Rules under this Article for the purpose of giving effect to the [<sup>F14</sup>EU Regulation] may not create an offence of a kind referred to in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972.]

(3) In Schedule 5 “liquidator” includes a provisional liquidator; and references in this Article to this Order are to be read as including [<sup>F15</sup>the Companies Acts] so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies.

(4) Rules under this Article shall be subject to[<sup>F16</sup> negative resolution].

(5) Regulations made by the Department under a power conferred by rules under this Article shall be subject to affirmative resolution.

(6) Nothing in this Article prejudices any power to make rules of court.]]]

**F2** By [Banking Act 2009 \(c. 1\), ss. 125, 134, 263\(1\)](#) (with s. 247); S.I. 2009/296, arts. 2, 3, [Sch.](#) it is provided that art. 359 is amended (17.2.2009 for certain purposes, otherwise 21.2.2009) (art. 359 being the equivalent enactment having effect in relation to Northern Ireland to s. 411 of the [Insolvency Act 1986 \(c. 45\)](#))

**F3** By [Banking Act 2009 \(c. 1\), ss. 160, 167, 263\(1\)](#) (with s. 247); S.I. 2009/296, arts. 2, 3, [Sch.](#) it is provided that art. 359 is amended (17.2.2009 for certain purposes, otherwise 21.2.2009) (art. 359 being the equivalent enactment having effect in relation to Northern Ireland to s. 411 of the [Insolvency Act 1986 \(c. 45\)](#))

**F4** By [Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), arts. 13, 17 it is provided that art. 359 is amended (29.3.2009) (art. 359 being the equivalent enactment having effect in relation to Northern Ireland to s. 411 of the [Insolvency Act 1986 \(c. 45\)](#))

**F5** Words in art. 359(1) substituted (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 15(5), [Sch. 18 para. 142\(2\)](#) (with arts. 28-31); S.I. 2010/977, [art. 1\(2\)](#)

**F6** SR 2002/223

**F7** Words in art. 359(1) substituted (26.6.2017) by [The Insolvency Amendment \(EU 2015/848\) Regulations 2017 \(S.I. 2017/702\)](#), reg. 1, [Sch. para. 115](#) (with reg. 3)

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- F8** Art. 359(1A)(1B) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 81; S.I. 2006/1014, **art. 2(a)**, Sch. 1
- F9** Words in art. 359(2)(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. 113** (with art. 10)
- F10** mod. by SR 2004/307
- F11** 1980 NI 4
- F12** Words in art. 359(2)(d) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 142(2)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**
- F13** Words in art. 359(2A) substituted (26.6.2017) by The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, **Sch. para. 115** (with reg. 3)
- F14** Words in art. 359(2B) substituted (26.6.2017) by The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, **Sch. para. 115** (with reg. 3)
- F15** Words in art. 359(3) 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. 62** (with art. 12)
- F16** Words in art. 359(4) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 142(3)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

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

- C2** Art. 359 applied in part (1.10.2007) by Companies Act 2006 (c. 46), **ss. 997**, 1300(2); S.I. 2007/2194, **art. 2(1)(j)** (with art. 12)
- C3** Art. 359 any relevant function transferred from Lord Chancellor to Department of Justice and any relevant function transferred from the Treasury to Department of Finance and Personnel (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 146** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**
- C4** Art. 359 applied (with modifications) (21.3.2011) by Energy Act (Northern Ireland) 2011 (c. 6), **ss. 22(3)**, 36(1); S.R. 2011/95, **art. 2(1)**
- C5** Art. 359 applied (with modifications) (1.10.2011) by Postal Services Act 2011 (c. 5), **ss. 73(3)(4)**, 87(1)(2); S.I. 2011/2329, **art. 3(1)**
- C6** Art. 359 extended (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), Sch. 8 paras. 3, 4 (with ss. 2(2), 5(2), Sch. 8 para. 1)

#### Committee to review rules under Article 359

**360.**—(1) There shall<sup>[F17]</sup> be a committee appointed by the Lord Chief Justice] to keep under review rules for the time being in force under Article 359 and to make recommendations to the <sup>[F18]</sup>Department of Justice] as to any changes in the rules that may appear to the committee to be desirable.

(2) The committee shall consist of—

- (a) the Chancery Judge;
- (b) the Master (Bankruptcy);
- (c) a practising barrister<sup>#at#</sup>law;
- (d) a practising solicitor of the Supreme Court;
- (e) a practising accountant; and
- (f) such additional persons, if any, as appear to the<sup>[F19]</sup> Lord Chief Justice] to have qualifications or experience that would be of value to the committee in considering any matter with which it is concerned.

[<sup>F20</sup>(3) The Lord Chief Justice may nominate any of the following to exercise his functions under this Article—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

- F17** Words in art. 360(1) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 82(2); S.I. 2006/1014, art. 2(a), Sch. 1
- F18** Words in art. 360(1) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), Sch. 18 para. 143 (with arts. 28-31); S.I. 2010/977, art. 1(2)
- F19** Words in art. 360(2)(f) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 82(3); S.I. 2006/1014, art. 2(a), Sch. 1
- F20** Art. 360(3) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 82(4); S.I. 2006/1014, art. 2(a), Sch. 1

## Fees

### Fees orders

<sup>F21F22F23</sup>**361.**—(1) The Department may, with the concurrence of the Department of Finance and Personnel, by order subject to affirmative resolution specify the fees which shall be paid in respect of—

[<sup>F24</sup>(za) the costs of persons acting as approved intermediaries under Part 7A;]

- (a) proceedings under this Order other than fees to which section 116 of the Judicature (Northern Ireland) Act 1978<sup>F25</sup> (court fees, etc.) applies; and
  - (b) the performance by the official receiver or the Department of functions under this Order;
- and the Department of Finance and Personnel may direct by whom and in what manner the fees are to be collected and accounted for.

(2) The Department may, with the concurrence of the Department of Finance and Personnel, by order subject to negative resolution provide for sums to be deposited, by such persons, in such manner and in such circumstances as may be specified in the order, by way of security for—

- (a) fees payable by virtue of this Article, and
- (b) <sup>F26</sup> fees payable to any person who has prepared an insolvency practitioner's report under Article 248.

(3) An order under this Article may contain such incidental, supplemental, and transitional provisions as may appear to the Department or (as the case may be) the Department of Finance and Personnel necessary or expedient.

(4) References in paragraph (1) to this Order are to be read as including [<sup>F27</sup>the Companies Acts] so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies.

(5) Nothing in this Article prejudices any power to make rules of court.]]]

- F21** "By Banking Act 2009 (c. 1), ss. 126, 134, 263(1) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch. it is provided that art. 361 is amended (17.2.2009 for certain purposes, otherwise 21.2.2009) (art. 361 being the equivalent enactment having effect in relation to Northern Ireland to s. 414 of the Insolvency Act 1986 (c. 45))"

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- F22** "By Banking Act 2009 (c. 1), **ss. 161, 167, 263(1)** (with s. 247); S.I. 2009/296, **arts. 2, 3, Sch.** it is provided that **art. 361** is amended (17.2.2009 for certain purposes, otherwise 21.2.2009) (art. 361 being the equivalent enactment having effect in relation to Northern Ireland to s. 414 of the **Insolvency Act 1986 (c. 45)**)"
- F23** "By Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805), **arts. 14, 17** it is provided that **art. 361** is amended (29.3.2009) (art. 361 being the equivalent enactment having effect in relation to Northern Ireland to s. 414 of the **Insolvency Act 1986 (c. 45)**)"
- F24** **Art. 361(1)(za)** inserted (30.6.2011) by Debt Relief Act (Northern Ireland) 2010 (c. 16), **ss. 6, 7(1), Sch. para. 4(10); S.R. 2011/13, art. 2**
- F25** 1978 c. 23
- F26** mod. by SR 2004/307
- F27** Words in **art. 361(4)** 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. 62** (with art. 12)

### [<sup>F28</sup>Fees orders (supplementary)

#### **361A.—**[

##### <sup>F29</sup>(A1) The Department—

- (a) may, with the concurrence of the Department of Finance and Personnel, by order subject to negative resolution require a person or body to pay a fee in connection with the grant or maintenance of a designation of that person or body as a competent authority under Article 208U, and
- (b) may refuse to grant, or may withdraw, any such designation where a fee is not paid.]

##### (1) The Department—

- (a) may, with the concurrence of the Department of Finance and Personnel, by order subject to negative resolution require a body to pay a fee in connection with the grant or maintenance of recognition of the body under Article 350, and
- (b) may refuse recognition, or revoke an order of recognition under Article 350(1) [<sup>F30</sup>or (2)] by a further order, where a fee is not paid.

[  
<sup>F31</sup>(1A) Fees under paragraph (1) may vary according to whether the body is recognised under Article 350(1) (body providing full and partial authorisation) or under Article 350(2) (body providing partial authorisation).]

[  
<sup>F32</sup>(1B) In setting under paragraph (1) the amount of a fee in connection with maintenance of recognition, the matters to which the Department may have regard include, in particular, the costs of the Department in connection with any functions under Articles 350D, 350E, 350J, 350K and 350N.]

##### (2) The Department—

- (a) may, with the concurrence of the Department of Finance and Personnel, by order subject to negative resolution require a person to pay a fee in connection with the grant or maintenance of authorisation of the person under Article 352, and
- (b) may disregard an application or withdraw an authorisation where a fee is not paid.

(3) The Department may by order subject to negative resolution require the payment of fees in respect of—

- (a) the operation of the Insolvency Account;
- (b) payments into and out of that Account.

(4) The Department of Finance and Personnel may direct by whom and in what manner the fees are to be collected and accounted for.

(5) Paragraphs (3) and (5) of Article 361 apply to fees under this Article as they apply to fees under that Article.

[<sup>F33</sup>(5A) Article 350M applies for the purposes of an order under paragraph (1)(b) as it applies for the purposes of a revocation order made under Article 350L.]

(6) Nothing in this Article prejudices the provision contained in Article 361.]

- F28** Art. 361A inserted (27.3.2006) by *Insolvency (Northern Ireland) Order 2005* (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 26(1) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)
- F29** Art. 361A(A1) inserted (30.6.2011) by *Debt Relief Act (Northern Ireland) 2010* (c. 16), ss. 6, 7(1), **Sch. para. 4(11); S.R. 2011/13, art. 2**
- F30** Words in art. 361A(1)(b) inserted (1.4.2016) by *Insolvency (Amendment) Act (Northern Ireland) 2016* (c. 2), **ss. 14(6)(a), 28(2); S.R. 2016/203, art. 2**
- F31** Art. 361A(1A) inserted (1.4.2016) by *Insolvency (Amendment) Act (Northern Ireland) 2016* (c. 2), **ss. 14(6)(b), 28(2); S.R. 2016/203, art. 2**
- F32** Art. 361A(1B) inserted (1.4.2016) by *Insolvency (Amendment) Act (Northern Ireland) 2016* (c. 2), **ss. 16(2), 28(2); S.R. 2016/203, art. 2**
- F33** Art. 361A(5A) inserted (1.4.2016) by *Insolvency (Amendment) Act (Northern Ireland) 2016* (c. 2), **ss. 17(2), 28(2); S.R. 2016/203, art. 2**

*Specification, increase and reduction of money sums relevant in the operation of this Order*

### Monetary limits

**362.**—(1) The Department may by order—

[<sup>F34</sup>(za) increase or reduce any of the money sums for the time being specified in the following provisions of Part 1A—

Article 13DG(1) (maximum amount of credit which company may obtain without disclosing moratorium);

Article 13DJ(2) (maximum amount for certain payments without obtaining monitor consent etc);

Article 13G(2) (minimum value of company property concealed or fraudulently removed, affecting criminal liability of company's officer); or]

(a) <sup>F35</sup> increase or reduce any of the money sums for the time being specified in—

Article 103(1)(a) (minimum debt for service of demand on company by unpaid creditor);

Article 170(1)(a) and (b) (minimum value of company property concealed or fraudulently removed, affecting criminal liability of company's officer);

Article 186(1) (minimum debt for service of demand on unregistered company by unpaid creditor);

<sup>F36</sup> ...

<sup>F36</sup> ...

(b) <sup>F35</sup> specify amounts for the purposes of the following provisions—

[<sup>F37</sup>Article 208S(4) (maximum amount of credit which a person in respect of whom a debt relief order is made may obtain without disclosure of his status);]

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Article 247 (minimum value of debtor's estate determining whether immediate bankruptcy order should be made; small bankruptcies level);

[<sup>F38</sup>Article 286A (value of property below which application for sale, possession or charge to be dismissed);]

Article 325(1)(b) and (3) (minimum amount of concealed debt, or value of property concealed or removed, determining criminal liability under the Article);

Article 329(1)(a) (minimum value of property taken by a bankrupt out of Northern Ireland, determining his criminal liability);

Article 331(1)(a) (maximum amount of credit which bankrupt may obtain without disclosure of his status);

Article 332(2)(a) (exemption of bankrupt from criminal liability for failure to keep proper accounts, if unsecured debts not more than the prescribed minimum);

Article 335(2)(d) (minimum value of goods removed by the bankrupt, determining his liability to arrest)

[<sup>F39</sup>paragraphs 6 to 8 of Schedule 2ZA (maximum amount of a person's debts, monthly surplus income and property for purposes of obtaining a debt relief order);]<sup>F40</sup> ...

<sup>F40</sup>(c) .....

(2) An order under this Article may contain such transitional provisions as may appear to the Department necessary or expedient.

(3) No order shall be made under this Article unless a draft of it has been laid before, and approved by a resolution of the Assembly.

- |            |  |
|------------|--|
| <b>F34</b> | Art. 362(1)(za) inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), <b>Sch. 7 para. 23(2)</b> (with ss. 2(2), 5(2))  |
| <b>F35</b> | mod. by SR 2004/307  |
| <b>F36</b> | Words in art. 362(1)(a) repealed (1.4.2016) by Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), s. 28(2), <b>Sch. 4</b> ; S.R. 2016/203, art. 2  |
| <b>F37</b> | Words in art. 362(1)(b) inserted (30.6.2011) by Debt Relief Act (Northern Ireland) 2010 (c. 16), ss. 6, 7(1), <b>Sch. para. 4(12)(a)</b> ; S.R. 2011/13, <b>art. 2</b>   |
| <b>F38</b> | Words in art. 362(1)(b) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 17(5) (with art. 4); S.R. 2006/21, <b>art. 2</b> (with S.R. 2006/22, <b>arts. 2 - 7</b> ) |
| <b>F39</b> | Words in art. 362(1)(b) inserted (30.6.2011) by Debt Relief Act (Northern Ireland) 2010 (c. 16), ss. 6, 7(1), <b>Sch. para. 4(12)(b)</b> ; S.R. 2011/13, <b>art. 2</b>   |
| <b>F40</b> | Art. 362(1)(c) and word omitted (26.6.2020) by virtue of Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), <b>Sch. 7 para. 23(3)</b> (with ss. 2(2), 5(2))   |

### *Insolvency practice*

#### **Regulations for purposes of Part XII**

**363.**—[<sup>F41</sup>(1) The Department may make regulations for the purpose of giving effect to Part 12 of this Order.]

[<sup>F42</sup>(2)] Without prejudice to the generality of [<sup>F43</sup>paragraph (1) or] any provision of Part XII by virtue of which regulations may be made with respect to any matter, [<sup>F44</sup>regulations under this Article may contain] —



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- (a) provision as to the matters to be taken into account in determining whether a person is a fit and proper person to act as an insolvency practitioner;
- (b) provision prohibiting a person from so acting in prescribed cases, being cases in which a conflict of interest will or may arise;
- (c) provision imposing requirements with respect to—
  - (i) the preparation and keeping by a person who acts as an insolvency practitioner of prescribed books, accounts and other records, and
  - (ii) the production of those books, accounts and records to prescribed persons;
- (d) provision conferring power on prescribed persons—
  - (i) to require any person who acts or has acted as an insolvency practitioner to answer any inquiry in relation to a case in which he is so acting or has so acted, and
  - (ii) to apply to a court to examine such a person or any other person on oath concerning such a case;
- (e) provision making non-compliance with any of the regulations a criminal offence; and
- (f) such incidental, supplemental and transitional provisions as may appear to the Department necessary or expedient.

[<sup>F45</sup>(3) In making regulations under this Article, the Department must have regard to the regulatory objectives (as defined by Article 350C(3)).]

**F41** Art. 363(1) inserted (1.4.2016) by *Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), ss. 23(4), 28(2)*; S.R. 2016/203, art. 2

**F42** Art. 363 renumbered as art. 363(2) (1.4.2016) by *Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), ss. 23(2), 28(2)*; S.R. 2016/203, art. 2

**F43** Words in art. 363(2) inserted (1.4.2016) by *Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), ss. 23(3)(a), 28(2)*; S.R. 2016/203, art. 2

**F44** Words in art. 363(2) substituted (1.4.2016) by *Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), ss. 23(3)(b), 28(2)*; S.R. 2016/203, art. 2

**F45** Art. 363(3) inserted (1.4.2016) by *Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), ss. 23(5), 28(2)*; S.R. 2016/203, art. 2

#### *Other order-making powers*

### **Insolvent partnerships**

**364** <sup>F46</sup>.—(1) The [<sup>F47</sup>Department of Justice] may, by order made with the concurrence of [<sup>F48</sup>the Lord Chief Justice and] the Department, provide that such provisions of this Order, Part VI of the Judgments Enforcement (Northern Ireland) Order 1981<sup>F49</sup>, the Land Registration Act (Northern Ireland) 1970<sup>F50</sup> or the Registration of Deeds Acts as may be specified in the order shall apply in relation to insolvent partnerships with such modifications as may be so specified.

[<sup>F51</sup>(1ZA) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under paragraph (1)—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

[<sup>F52</sup>(1A) An order under this Article may make provision in relation to the [<sup>F53</sup>EU Regulation].

**Status:** Point in time view as at 01/12/2020.

**Changes to legislation:** The Insolvency (Northern Ireland) Order 1989, PART XIII is up to date with all changes known to be in force on or before 08 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)

(1B) Provision made by virtue of this Article in relation to the [F54 EU Regulation] may not create an offence of a kind referred to in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972.]

(2) An order under this Article shall be subject to [F55 negative resolution].

- F46** mod. by SR 2004/307
- F47** Words in art. 364(1) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 144(a)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**
- F48** Words in art. 364(1) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 83(2); S.I. 2006/1014, **art. 2(a)**, Sch. 1
- F49** 1981 NI 6
- F50** 1970 c. 18 (NI)
- F51** Art. 364(1ZA) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 83(3); S.I. 2006/1014, **art. 2(a)**, Sch. 1
- F52** SR 2002/223
- F53** Words in art. 364(1A) substituted (26.6.2017) by The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, **Sch. para. 116** (with reg. 3)
- F54** Words in art. 364(1B) substituted (26.6.2017) by The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, **Sch. para. 116** (with reg. 3)
- F55** Words in art. 364(2) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 144(b)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

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

- C7** Art. 364 applied (with modifications) (6.4.2008) by Serious Crime Act 2007 (c. 27), ss. 28(5), 94(1); S.I. 2008/755, **art. 15(1)(f)**

**Insolvent estates of deceased persons**

**365** <sup>F56</sup>.—(1) The [F57 Department of Justice] may, by order made with the concurrence of [F58 the Lord Chief Justice and] the Department, provide that such provisions of this Order, Part VI of the Judgments Enforcement (Northern Ireland) Order 1981, the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts as may be specified in the order shall apply [F59 in relation] to the administration of the insolvent estates of deceased persons with such modifications as may be so specified.

[F60(1ZA) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under paragraph (1)—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

[F61(1A) An order under this Article may make provision in relation to the [F62 EU Regulation].

(1B) Provision made by virtue of this Article in relation to the [F63 EU Regulation] may not create an offence of a kind referred to in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972.]

(2) An order under this Article shall be subject to [F64 negative resolution].

(3) For the purposes of this Article the estate of a deceased person is insolvent if, when realised, it will be insufficient to meet in full all the debts and other liabilities to which it is subject.

- F56** mod. by SR 2004/307
- F57** Words in art. 365(1) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 145(a)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**
- F58** Words in art. 365(1) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 84(2); S.I. 2006/1014, **art. 2(a)**, Sch. 1
- F59** 2002 NI 6
- F60** Art. 365(1ZA) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 84(3); S.I. 2006/1014, **art. 2(a)**, Sch. 1
- F61** SR 2002/223
- F62** Words in art. 365(1A) substituted (26.6.2017) by The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, **Sch. para. 117** (with reg. 3)
- F63** Words in art. 365(1B) substituted (26.6.2017) by The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, **Sch. para. 117** (with reg. 3)
- F64** Words in art. 365(2) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 145(b)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

#### [<sup>F65</sup>Insolvent estates: joint tenancies

**365A.**—(1) This Article applies where—

- (a) an insolvency administration order has been made in respect of the insolvent estate of a deceased person,
- (b) the petition for the order was presented after the commencement of this Article and within the period of 5 years beginning with the day on which he died, and
- (c) immediately before his death he was beneficially entitled to an interest in any property as joint tenant.

(2) For the purpose of securing that debts and other liabilities to which the estate is subject are met, the High Court may, on an application by the trustee appointed pursuant to the insolvency administration order, make an order under this Article requiring the survivor to pay to the trustee an amount not exceeding the value lost to the estate.

(3) In determining whether to make an order under this Article, and the terms of such an order, the High Court must have regard to all the circumstances of the case, including the interests of the deceased's creditors and of the survivor; but, unless the circumstances are exceptional, the Court must assume that the interests of the deceased's creditors outweigh all other considerations.

(4) The order may be made on such terms and conditions as the High Court thinks fit.

(5) Any sums required to be paid to the trustee in accordance with an order under this Article shall be comprised in the estate.

(6) The modifications of this Order which may be made by an order under Article 365 include any modifications which are necessary or expedient in consequence of this Article.

(7) In this Article “survivor” means the person who, immediately before the death, was beneficially entitled as joint tenant with the deceased or, if the person who was so entitled dies after the making of the insolvency administration order, his personal representatives.

(8) If there is more than one survivor—

- (a) an order under this Article may be made against all or any of them, but
- (b) no survivor shall be required to pay more than so much of the value lost to the estate as is properly attributable to him.

**Status:** Point in time view as at 01/12/2020.

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(9) In this Article—

“insolvency administration order” has the same meaning as in any order under Article 365 having effect for the time being,

“value lost to the estate” means the amount which, if paid to the trustee, would in the High Court's opinion restore the position to what it would have been if the deceased had been adjudged bankrupt immediately before his death.]

**F65** 2002 NI 6

**[<sup>F66</sup>Formerly authorised banks]**

**366.**—<sup>F67</sup>(1) The Department may, by order subject to negative resolution, after consultation with the [<sup>F68</sup>Financial Conduct Authority and the Prudential Regulation Authority] provide that specified provisions in [<sup>F69</sup>Parts 1A to 7] shall apply with specified modifications in relation to any person who—

- (a) has a liability in respect of a deposit which he accepted in accordance with the Banking Act 1979 or 1987, but
- (b) does not have permission under Part IV of the Financial Services and Markets Act 2000 (regulated activities) to accept deposits.

(1A) Paragraph (1)(b) shall be construed in accordance with—

- (a) section 22 of the Financial Services and Markets Act 2000 (classes of regulated activity and categories of investment),
- (b) any relevant order under that section, and
- (c) Schedule 2 to that Act (regulated activities).]

(2) <sup>F70</sup> .....

**F66** SI 2004/355

**F67** Art. 366(1)(1A) substituted (27.3.2006) for art. 366(1) by *Insolvency (Northern Ireland) Order 2005* (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 43(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

**F68** Words in art. 366 substituted (1.4.2013) by *The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013* (S.I. 2013/472), **Sch. 2 para. 7(b)**

**F69** Words in art. 366(1) substituted (26.6.2020) by *Corporate Insolvency and Governance Act 2020* (c. 12), s. 49(1), **Sch. 7 para. 2** (with ss. 2(2), 5(2))

**F70** Art. 366(2) repealed (27.3.2006) by *Insolvency (Northern Ireland) Order 2005* (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 43(3), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

**Status:**

Point in time view as at 01/12/2020.

**Changes to legislation:**

The Insolvency (Northern Ireland) Order 1989, PART XIII is up to date with all changes known to be in force on or before 08 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.