
STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

PART XIV

MISCELLANEOUS

Provisions against debt avoidance

Transactions defrauding creditors

367.—(1) This Article relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if—

- (a) he makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration;
- (b) he enters into a transaction with the other in consideration of marriage [^{F1}or the formation of a civil partnership]; or
- (c) he enters into a transaction with the other for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by himself.

(2) Where a person has entered into such a transaction, the High Court may, if satisfied as mentioned in paragraph (3), make such order as it thinks fit for—

- (a) restoring the position to what it would have been if the transaction had not been entered into, and
- (b) protecting the interests of persons who are victims of the transaction.

(3) In the case of a person entering into such a transaction, an order shall only be made if the High Court is satisfied that it was entered into by him for the purpose—

- (a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or
- (b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make.

(4) In relation to a transaction at an undervalue, references in this Article and Article 368 to a victim of the transaction are to a person who is, or is capable of being, prejudiced by it; and in Articles 368 and 369 the person entering into the transaction is referred to as “the debtor”.

F1 [2004 c. 33](#)

Modifications etc. (not altering text)

C1 [Art. 367](#) applied (with modifications) (4.1.2024) by [S.I. 2021/716](#), [reg. 37A](#) (as inserted by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023 \(S.I. 2023/1399\)](#), [regs. 1\(2\)](#), [12](#))

Status: Point in time view as at 04/01/2024.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989, Cross Heading: Provisions against debt avoidance is up to date with all changes known to be in force on or before 06 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)

Those who may apply for an order under Article 367

368.—(1) An application for an order under Article 367 shall not be made in relation to a transaction except—

- (a) in a case where the debtor has been adjudged bankrupt or is a body corporate which is being wound up or ^{F2}is in administration], by the official receiver, by the trustee of the bankrupt's estate or the liquidator or administrator of the body corporate or (with the leave of the High Court) by a victim of the transaction;
- (b) in a case where a victim of the transaction is bound by a voluntary arrangement approved under Part II or Part VIII, by the supervisor of the voluntary arrangement or by any person who (whether or not so bound) is such a victim; or
- (c) in any other case, by a victim of the transaction.

(2) An application made under any of the sub#paragraphs of paragraph (1) is to be treated as made on behalf of every victim of the transaction.

F2 Words in art. 368(1)(a) substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 44 (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

Modifications etc. (not altering text)

C2 [Art. 368](#) applied (with modifications) (4.1.2024) by [S.I. 2021/716](#), [reg. 37A](#) (as inserted by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023 \(S.I. 2023/1399\)](#), regs. 1(2), [12](#))

Provision which may be made by order under Article 367

369.—(1) Without prejudice to the generality of Article 367, an order made under that Article with respect to a transaction may (subject as follows)—

- (a) require any property transferred as part of the transaction to be vested in any person, either absolutely or for the benefit of all the persons on whose behalf the application for the order is treated as made;
- (b) require any property to be so vested if it represents, in any person's hands, the application either of the proceeds of sale of property so transferred or of money so transferred;
- (c) release or discharge (in whole or in part) any security given by the debtor;
- (d) require any person to pay to any other person in respect of benefits received from the debtor such sums as the High Court may direct;
- (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction to be under such new or revived obligations as the High Court thinks appropriate;
- (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction.

(2) An order under Article 367 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the debtor entered into the transaction; but such an order—

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- (a) shall not prejudice any interest in property which was acquired from a person other than the debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest, and
 - (b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.
- (3) For the purposes of this Article the relevant circumstances in relation to a transaction are the circumstances by virtue of which an order under Article 367 may be made in respect of the transaction.
- (4) In this Article “security” means any mortgage, charge, lien or other security.

Modifications etc. (not altering text)

- C3** [Art. 369](#) applied (with modifications) (4.1.2024) by [S.I. 2021/716](#), [reg. 37A](#) (as inserted by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023 \(S.I. 2023/1399\)](#), [regs. 1\(2\), 12](#))

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