

SCHEDULES

[^{F1}SCHEDULE A1

MORATORIUM WHERE DIRECTORS PROPOSE VOLUNTARY ARRANGEMENT^{F2}

F1 2002 NI 6

F2 mod. by SR 2004/307

PART I

INTRODUCTORY

Interpretation

1. In this Schedule—

the beginning of the moratorium has the meaning given by paragraph 19(1),

the date of filing means the date on which the documents for the time being referred to in paragraph 18(1) are filed or lodged with the High Court,

hire-purchase agreement includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,

market contract and market charge have the meanings given by Part V of the Companies (No. 2) (Northern Ireland) Order 1990,

moratorium means a moratorium under Article 14A,

the nominee includes any person for the time being carrying out the functions of a nominee under this Schedule,

the settlement finality regulations means the Financial Markets and Insolvency (Settlement Finality) Regulations 1999,

system-charge has the meaning given by the Financial Markets and Insolvency Regulations (Northern Ireland) 1996.

Eligible companies

2.—(1) A company is eligible for a moratorium if it meets the requirements of paragraph 3, unless—

- (a) it is excluded from being eligible by virtue of^{F3} paragraph 4, or
- (b) it falls within sub-paragraph (2).

(2) A company falls within this sub-paragraph if—

Status: Point in time view as at 01/01/2006.

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- (a) it effects or carries out contracts of insurance, but is not exempt from the general prohibition, within the meaning of section 19 of the Financial Services and Markets Act 2000, in relation to that activity,
 - (b) it has permission under Part IV of that Act to accept deposits,
 - (c) it has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 or the Banking Act 1987,
 - (d) it is a party to a market contract or any of its property is subject to a market charge or a system-charge,
 - (e) it is a participant (within the meaning of the settlement finality regulations) or any of its property is subject to a collateral security charge (within the meaning of those regulations).
- (3) Paragraphs (a), (b) and (c) of sub-paragraph (2) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
 - (b) any relevant order under that section; and
 - (c) Schedule 2 to that Act.

F3 prosp. subst. by [2005 NI 10](#)

3.—(1) A company meets the requirements of this paragraph if the qualifying conditions are met—

- (a) in the year ending with the date of filing, or
- (b) in the financial year of the company which ended last before that date.

(2) For the purposes of sub-paragraph (1)—

- (a) the qualifying conditions are met by a company in a period if, in that period, it satisfies 2 or more of the requirements for being a small company specified for the time being in Article 255(3) of the Companies (Northern Ireland) Order 1986, and
- (b) a company's financial year is to be determined in accordance with that Order.

(3) Paragraphs (4), (5) and (6) of Article 255 of that Order apply for the purposes of this paragraph as they apply for the purposes of that Article.

(4) A company does not meet the requirements of this paragraph if it is a holding company of a group of companies which does not qualify as a small group or a medium-sized group in respect of the financial year of the company which ended last before the date of filing.

(5) For the purposes of sub-paragraph (4) group has the meaning given by Article 270 of the Companies (Northern Ireland) Order 1986 (definitions for Part VIII) and a group qualifies as small or medium-sized if it qualifies as such under Article 257 of the Companies (Northern Ireland) Order 1986 (qualification of group as small or medium-sized).

4.—(1) A company is excluded from being eligible for a moratorium if, on the date of filing—

- ^{F4}(a) an administration order is in force in relation to the company,
- (b) the company is being wound up,
- (c) there is an administrative receiver of the company,
- (d) a voluntary arrangement has effect in relation to the company,
- (e) there is a provisional liquidator of the company,

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- (f) a moratorium has been in force for the company at any time during the period of 12 months ending with the date of filing and—
 - (i) no voluntary arrangement had effect at the time at which the moratorium came to an end, or
 - (ii) a voluntary arrangement which had effect at any time in that period has come to an end prematurely,^{F5} or
 - (g) a voluntary arrangement in relation to the company which had effect in pursuance of a proposal under Article 14(3) has come to an end prematurely and, during the period of 12 months ending with the date of filing, an order under Article 18(3)(a) has been made.
- (2) Sub-paragraph (1)(b) does not apply to a company which, by reason of a winding-up order made after the date of filing, is treated as being wound up on that date.

F4 prosp. subst. by 2005 NI 10

F5 prosp. insertion by 2005 NI 10

Capital market arrangement

5. A company is also excluded from being eligible for a moratorium if, on the date of filing, it is a party to an agreement which is or forms part of a capital market arrangement under which—
- (a) a party has incurred, or when the agreement was entered into was expected to incur, a debt of at least £10 million under the arrangement, and
 - (b) the arrangement involves the issue of a capital market investment.

Public private partnership

6. A company is also excluded from being eligible for a moratorium if, on the date of filing, it is a project company of a project which—
- (a) is a public-private partnership project, and
 - (b) includes step-in rights.

Liability under an arrangement

- 7.—(1) A company is also excluded from being eligible for a moratorium if, on the date of filing, it has incurred a liability under an agreement of £10 million or more.
- (2) Where the liability in sub-paragraph (1) is a contingent liability under or by virtue of a guarantee or an indemnity or security provided on behalf of another person, the amount of that liability is the full amount of the liability in relation to which the guarantee, indemnity or security is provided.
- (3) In this paragraph—
- (a) the reference to liability includes a present or future liability whether, in either case, it is certain or contingent,
 - (b) the reference to liability includes a reference to a liability to be paid wholly or partly in foreign currency (in which case the sterling equivalent shall be calculated as at the time when the liability is incurred).

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Interpretation of capital market arrangement

- 8.—(1) For the purposes of paragraph 5 an arrangement is a capital market arrangement if—
- (a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement, or
 - (b) at least one party guarantees the performance of obligations of another party, or
 - (c) at least one party provides security in respect of the performance of obligations of another party, or
 - (d) the arrangement involves an investment of a kind described in Articles 83 to 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (options, futures and contracts for differences).
- (2) For the purposes of sub-paragraph (1)—
- (a) a reference to a holding as trustee includes a reference to holding as nominee or agent,
 - (b) a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment, and
 - (c) a person holds a capital market investment if he has a legal or beneficial interest in it.
- (3) In paragraph 5, 7, 14 and this paragraph—
- agreement includes an agreement or undertaking effected by—
- (a) contract,
 - (b) deed, or
 - (c) any other instrument intended to have effect in accordance with the law of Northern Ireland or another jurisdiction, and
- party to an arrangement includes a party to an agreement which—
- (a) forms part of the arrangement,
 - (b) provides for the raising of finance as part of the arrangement, or
 - (c) is necessary for the purposes of implementing the arrangement.

Capital market investment

- 9.—(1) For the purposes of paragraphs 5 and 8, an investment is a capital market investment if—
- (a) it is within Article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (debt instruments), and
 - (b) it is rated, listed or traded or designed to be rated, listed or traded.
- (2) In sub-paragraph (1)—
- listed means admitted to the official list within the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (interpretation),
- rated means rated for the purposes of investment by an internationally recognised rating agency,
- traded means admitted to trading on a market established under the rules of a recognised investment exchange or on a foreign market.
- (3) In sub-paragraph (2)—

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foreign market has the same meaning as relevant market in Article 67(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (foreign markets),
recognised investment exchange has the meaning given by section 285 of the Financial Services and Markets Act 2000 (recognised investment exchange).

10.—(1) For the purposes of paragraphs 5 and 8 an investment is also a capital market investment if it consists of a bond or commercial paper issued to one or more of the following—

- (a) an investment professional within the meaning of Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001,
- (b) a person who is, when the agreement mentioned in paragraph 5 is entered into, a certified high net worth individual in relation to a communication within the meaning of Article 48(2) of that Order,
- (c) a person to whom Article 49(2) of that Order applies (high net worth company, &c.),
- (d) a person who is, when the agreement mentioned in paragraph 5 is entered into, a certified sophisticated investor in relation to a communication within the meaning of Article 50(1) of that Order, and
- (e) a person in a State other than the United Kingdom who under the law of that State is not prohibited from investing in bonds or commercial paper.

(2) For the purposes of sub-paragraph (1)—

- (a) in applying Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 for the purposes of sub-paragraph (1)(a)—
 - (i) in Article 19(5)(b), ignore the words after exempt person,
 - (ii) in Article 19(5)(c)(i), for the words from the controlled activity to the end substitute a controlled activity, and
 - (iii) in Article 19(5)(e) ignore the words from where the communication to the end, and
- (b) in applying Article 49(2) of that Order for the purposes of sub-paragraph (1)(c), ignore Article 49(2)(e).

(3) In sub-paragraph (1)—

bond shall be construed in accordance with Article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, and
commercial paper has the meaning given by Article 9(3) of that Order.

Debt

11. The debt of at least £10 million referred to in paragraph 5—

- (a) may be incurred at any time during the life of the capital market arrangement, and
- (b) may be expressed wholly or partly in a foreign currency (in which case the sterling equivalent shall be calculated as at the time when the arrangement is entered into).

Interpretation of project company

12.—(1) For the purposes of paragraph 6 a company is a project company of a project if—

- (a) it holds property for the purpose of the project,
- (b) it has sole or principal responsibility under an agreement for carrying out all or part of the project,

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- (c) it is one of a number of companies which together carry out the project,
 - (d) it has the purpose of supplying finance to enable the project to be carried out, or
 - (e) it is the holding company of a company within any of paragraphs (a) to (d).
- (2) But a company is not a project company of a project if—
- (a) it performs a function within sub-paragraph (1)(a) to (d) or is within sub-paragraph (1) (e), but
 - (b) it also performs a function which is not—
 - (i) within sub-paragraph (1)(a) to (d),
 - (ii) related to a function within sub-paragraph (1)(a) to (d), or
 - (iii) related to the project.
- (3) For the purposes of this paragraph a company carries out all or part of a project whether or not it acts wholly or partly through agents.

Public-private partnership project

- 13.**—(1) In paragraph 6 public-private partnership project means a project—
- (a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or
 - (b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.
- (2) In sub-paragraph (1) resources includes—
- (a) funds (including payment for the provision of services or facilities),
 - (b) assets,
 - (c) professional skill,
 - (d) the grant of a concession or franchise, and
 - (e) any other commercial resource.
- (3) In sub-paragraph (1) public body means—
- (a) a body which exercises public functions,
 - (b) a body specified for the purposes of this paragraph by the Department, and
 - (c) a body within a class specified for the purposes of this paragraph by the Department.
- (4) A specification under sub-paragraph (3) may be—
- (a) general, or
 - (b) for the purpose of the application of paragraph 6 to a specified case.

Step-in rights

- 14.**—(1) For the purposes of paragraph 6 a project has step-in rights if a person who provides finance in connection with the project has a conditional entitlement under an agreement to—
- (a) assume sole or principal responsibility under an agreement for carrying out all or part of the project, or
 - (b) make arrangements for carrying out all or part of the project.
- (2) In sub-paragraph (1) a reference to the provision of finance includes a reference to the provision of an indemnity.

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“Person”

15. For the purposes of paragraphs 5 to 14, a reference to a person includes a reference to a partnership or another unincorporated group of persons.

16.—(1) The Department may by regulations modify the qualifications for eligibility of a company for a moratorium.

(2) Regulations under this paragraph shall only be made if a draft containing the regulations has been laid before, and approved by a resolution of, the Assembly.

PART II

OBTAINING A MORATORIUM

Nominee's statement

17.—(1 ^{F6} Where the directors of a company wish to obtain a moratorium, they shall submit to the nominee—

- (a) a document setting out the terms of the proposed voluntary arrangement,
- (b) a statement of the company's affairs containing—
 - (i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and
 - (ii) such other information as may be prescribed, and
- (c) any other information necessary to enable the nominee to comply with sub-paragraph (2) which he requests from them.

(2) The nominee shall submit to the directors a statement in the prescribed form indicating whether or not, in his opinion—

- (a) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,
- (b) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business, and
- (c ^{F6} meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement.

(3) In forming his opinion on the matters mentioned in sub-paragraph (2), the nominee is entitled to rely on the information submitted to him under sub-paragraph (1) unless he has reason to doubt its accuracy.

(4) The reference in sub-paragraph (2)(b) to the company's business is to that business as the company proposes to carry it on during the moratorium.

F6 mod. by SR 2004/307

Documents to be submitted to High Court

18.—(1 ^{F7} To obtain a moratorium the directors of a company must file with the High Court—

- (a) a document setting out the terms of the proposed voluntary arrangement,

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- (b) a statement of the company's affairs containing—
 - (i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and
 - (ii) such other information as may be prescribed,
 - (c) a statement that the company is eligible for a moratorium,
 - (d) a statement from the nominee that he has given his consent to act, and
 - (e) a statement from the nominee that, in his opinion—
 - (i) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,
 - (ii) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business, and
 - (iii)^{F7} meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement.
- (2) Each of the statements mentioned in sub-paragraph (1)(b) to (e), except so far as it contains the particulars referred to in paragraph (b)(i), must be in the prescribed form.
- (3) The reference in sub-paragraph (1)(e)(ii) to the company's business is to that business as the company proposes to carry it on during the moratorium.
- (4) The Department may by regulations modify the requirements of this paragraph as to the documents required to be filed with the High Court in order to obtain a moratorium.

F7 mod. by SR 2004/307

Duration of moratorium

19.—(1) A moratorium comes into force when the documents for the time being referred to in paragraph 18(1) are filed or lodged with the High Court and references in this Schedule to the beginning of the moratorium shall be construed accordingly.

(2)^{F8} A moratorium ends at the end of the day on which the meetings summoned under paragraph 39(1) are first held (or, if the meetings are held on different days, the later of those days), unless it is extended under paragraph 42.

(3)^{F8} If either of those meetings has not first met before the end of the period of 28 days beginning with the day on which the moratorium comes into force, the moratorium ends at the end of the day on which those meetings were to be held (or, if those meetings were summoned to be held on different days, the later of those days), unless it is extended under paragraph 42.

(4)^{F8} If the nominee fails to summon either meeting within the period required by paragraph 39(1), the moratorium ends at the end of the last day of that period.

(5) If the moratorium is extended (or further extended) under paragraph 42, it ends at the end of the day to which it is extended (or further extended).

(6) Sub-paragraphs (2) to (5) do not apply if the moratorium comes to an end before the time concerned by virtue of—

- (a) paragraph 35(4) (effect of withdrawal by nominee of consent to act),
- (b) an order under paragraph 36(3), 37(3) or 50 (challenge of actions of nominee or directors), or
- (c)^{F8} a decision of one or both of the meetings summoned under paragraph 39.

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(7) If the moratorium has not previously come to an end in accordance with sub-paragraphs (2) to (6), it ends at the end of the day on which a decision under paragraph 41 to approve a voluntary arrangement takes effect under paragraph 46.

(8) The Department may by order increase or reduce the period for the time being specified in sub-paragraph (3).

F8 mod. by SR 2004/307

Notification of beginning of moratorium

20.—(1) ^{F9} When a moratorium comes into force, the directors shall notify the nominee of that fact forthwith.

(2) ^{F9} If the directors without reasonable excuse fail to comply with sub-paragraph (1), each of them shall be guilty of an offence.

F9 mod. by SR 2004/307

21.—(1) When a moratorium comes into force, the nominee shall, in accordance with the rules—

- (a) advertise that fact forthwith, and
- (b) notify the registrar, the company and any petitioning creditor of the company of whose claim he is aware of that fact.

(2) In sub-paragraph (1)(b), petitioning creditor means a creditor by whom a winding-up petition has been presented before the beginning of the moratorium, as long as the petition has not been dismissed or withdrawn.

(3) If the nominee without reasonable excuse fails to comply with sub-paragraph (1)(a) or (b), he shall be guilty of an offence.

Notification of end of moratorium

22.—(1) When a moratorium comes to an end, the nominee shall, in accordance with the rules—

- (a) advertise that fact forthwith, and
- (b) notify the High Court, the registrar, the company and any creditor of the company of whose claim he is aware of that fact.

(2) If the nominee without reasonable excuse fails to comply with sub-paragraph (1)(a) or (b), he shall be guilty of an offence.

PART III

EFFECTS OF MORATORIUM

Effect on creditors, etc.

23.—(1) During the period for which a moratorium is in force for a company—

- (a) no petition may be presented for the winding up of the company,

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- (b) ^{F10} no meeting of the company may be called or requisitioned except with the consent of the nominee or the leave of the High Court and subject (where the Court gives leave) to such terms as the Court may impose,
- (c) ^{F10} no resolution may be passed or order made for the winding up of the company,
- ^{F11}(d) no petition for an administration order in relation to the company may be presented,
- (e) no administrative receiver of the company may be appointed,
- (f) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the leave of the High Court and subject to such terms as the Court may impose,
- (g) no other steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, except with the leave of the High Court and subject to such terms as the Court may impose, and
- (h) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the leave of the High Court and subject to such terms as the Court may impose.

(2) ^{F10} Where a petition, other than an excepted petition, for the winding up of the company has been presented before the beginning of the moratorium, Article 107 shall not apply in relation to any disposition of property, transfer of shares or alteration in status made during the moratorium or at a time mentioned in paragraph 47(5)(a).

(3) Paragraph (a) of sub-paragraph (1) does not apply to an excepted petition and, where such a petition has been presented before the beginning of the moratorium or is presented during the moratorium, paragraphs (b) and (c) of that sub-paragraph do not apply in relation to proceedings on the petition.

(4) For the purposes of this paragraph, excepted petition means a petition under—

- (a) Article 104A^{F12} or 104B],
- ^{F13}(b) section 72 of the Financial Services Act 1986 on the ground mentioned in subsection (1) (b) of that section,
- ^{F13}(c) section 92 of the Banking Act 1987 on the ground mentioned in subsection (1)(b) of that section, or
- (d) section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in subsection (3)(b) of that section.

F10 mod. by SR 2004/307

F11 prosp. subst. by 2005 NI 10

F12 SR 2004/417

F13 prosp. rep. by 2005 NI 10

24.—(1) This paragraph applies where there is an uncrystallised floating charge on the property of a company for which a moratorium is in force.

(2) If the conditions for the holder of the charge to give a notice having the effect mentioned in sub-paragraph (4) are met at any time, the notice may not be given at that time but may instead be given as soon as practicable after the moratorium has come to an end.

(3) If any other event occurs at any time which (apart from this sub-paragraph) would have the effect mentioned in sub-paragraph (4), then—

- (a) the event shall not have the effect in question at that time, but

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- (b) if notice of the event is given to the company by the holder of the charge as soon as is practicable after the moratorium has come to an end, the event is to be treated as if it had occurred when the notice was given.
- (4) The effect referred to in sub-paragraphs (2) and (3) is—
 - (a) causing the crystallisation of the floating charge, or
 - (b) causing the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the company.
- (5) Application may not be made for leave under paragraph 23(1)(g) or (h) with a view to obtaining—
 - (a) the crystallisation of the floating charge, or
 - (b) the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the company.

25. Security granted by a company at a time when a moratorium is in force in relation to the company may only be enforced if, at that time, there were reasonable grounds for believing that it would benefit the company.

Effect on company

- 26.—**(1) Paragraphs 27 to 33 apply in relation to a company for which a moratorium is in force.
- (2) The fact that a company enters into a transaction in contravention of any of paragraphs 27 to 32 does not—
 - (a) make the transaction void, or
 - (b) make it to any extent unenforceable against the company.

Company invoices, etc.

- 27.—**(1) Every invoice, order for goods or business letter which—
 - (a) is issued by or on behalf of the company, and
 - (b) on or in which the company's name appears,shall also contain the nominee's name and a statement that the moratorium is in force for the company.
- (2) If default is made in complying with sub-paragraph (1), the company and (subject to sub-paragraph (3)) any officer of the company shall be guilty of an offence.
- (3) An officer of the company is only liable under sub-paragraph (2) if, without reasonable excuse, he authorises or permits the default.

Obtaining credit during moratorium

- 28.—**(1) The company may not obtain credit to the extent of £250 or more from a person who has not been informed that a moratorium is in force in relation to the company.
- (2) The reference to the company obtaining credit includes the following cases—
 - (a) where goods are bailed to the company under a hire-purchase agreement, or agreed to be sold to the company under a conditional sale agreement, and
 - (b) where the company is paid in advance (whether in money or otherwise) for the supply of goods or services.

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- (3) Where the company obtains credit in contravention of sub-paragraph (1)—
- (a) the company shall be guilty of an offence, and
 - (b) if any officer of the company knowingly and wilfully authorised or permitted the contravention, he shall be guilty of an offence.
- (4) The money sum specified in sub-paragraph (1) is subject to increase or reduction by order under Article 362.

Disposals and payments

- 29.**—(1) Subject to sub-paragraph (2), the company may only dispose of any of its property if—
- (a) there are reasonable grounds for believing that the disposal will benefit the company, and
 - (b) the disposal is approved by the committee established under paragraph 45(1) or, where there is no such committee, by the nominee.
- (2) Sub-paragraph (1) does not apply to a disposal made in the ordinary way of the company's business.
- (3) If the company makes a disposal in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the High Court—
- (a) the company shall be guilty of an offence, and
 - (b) if any officer of the company authorised or permitted the contravention, without reasonable excuse, he shall be guilty of an offence.
- 30.**—(1) Subject to sub-paragraph (2), the company may only make any payment in respect of any debt or other liability of the company in existence before the beginning of the moratorium if—
- (a) there are reasonable grounds for believing that the payment will benefit the company, and
 - (b) the payment is approved by the committee established under paragraph 45(1) or, where there is no such committee, by the nominee.
- (2) Sub-paragraph (1) does not apply to a payment required by paragraph 31(6).
- (3) If the company makes a payment in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the High Court—
- (a) the company shall be guilty of an offence, and
 - (b) if any officer of the company authorised or permitted the contravention, without reasonable excuse, he shall be guilty of an offence.

Disposal of charged property, etc.

- 31.**—(1) This paragraph applies where—
- (a) any property of the company is subject to a security, or
 - (b) any goods are in the possession of the company under a hire-purchase agreement.
- (2) If the holder of the security consents, or the High Court gives leave, the company may dispose of the property as if it were not subject to the security.
- (3) If the owner of the goods consents, or the High Court gives leave, the company may dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.
- (4) Where property subject to a security which, as created, was a floating charge is disposed of under sub-paragraph (2), the holder of the security has the same priority in respect of any property

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of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.

(5) Sub-paragraph (6) applies to the disposal under sub-paragraph (2) or (as the case may be) sub-paragraph (3) of—

- (a) any property subject to a security other than a security which, as created, was a floating charge, or
- (b) any goods in the possession of the company under a hire-purchase agreement.

(6) It shall be a condition of any consent or leave under sub-paragraph (2) or (as the case may be) sub-paragraph (3) that—

- (a) the net proceeds of the disposal, and
- (b) where those proceeds are less than such amount as may be agreed, or determined by the High Court, to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.

(7) Where a condition imposed in pursuance of sub-paragraph (6) relates to 2 or more securities, that condition requires—

- (a) the net proceeds of the disposal, and
- (b) where paragraph (b) of sub-paragraph (6) applies, the sums mentioned in that paragraph, to be applied towards discharging the sums secured by those securities in the order of their priorities.

(8)^{F14} Where the High Court gives leave for a disposal under sub-paragraph (2) or (3), the directors shall, within 14 days after leave is given, send an office copy of the order giving leave to the registrar.

(9)^{F14} If the directors without reasonable excuse fail to comply with sub-paragraph (8), they shall be guilty of an offence.

F14 mod. by SR 2004/307

32.—(1) If the company—

- (a) without any consent or leave under paragraph 31, disposes of any of its property which is subject to a security otherwise than in accordance with the terms of the security,
- (b) without any consent or leave under paragraph 31, disposes of any goods in the possession of the company under a hire-purchase agreement otherwise than in accordance with the terms of the agreement, or
- (c) fails to comply with any requirement imposed by paragraph 31,

it shall be guilty of an offence.

(2) If any officer of the company, without reasonable excuse, authorises or permits any such disposal or failure to comply, he shall be guilty of an offence.

Market contracts, etc.

33.—(1) If the company enters into any transaction to which this paragraph applies—

- (a) the company shall be guilty of an offence, and
- (b) if any officer of the company, without reasonable excuse, authorised or permitted the company to enter into the transaction, he shall be guilty of an offence.

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- (2) A company enters into a transaction to which this paragraph applies if it—
- (a) enters into a market contract,
 - (b) gives a transfer order,
 - (c) grants a market charge or a system-charge, or
 - (d) provides any collateral security.
- (3) The fact that a company enters into a transaction in contravention of this paragraph does not—
- (a) make the transaction void, or
 - (b) make it to any extent unenforceable by or against the company.
- (4) Where during the moratorium a company enters into a transaction to which this paragraph applies, nothing done by or in pursuance of the transaction is to be treated as done in contravention of paragraphs 23(1)(g), 25 or 27 to 32.
- (5) Paragraph 31 does not apply in relation to any property which is subject to a market charge, a system-charge or a collateral security charge.
- (6) In this paragraph, transfer order, collateral security and collateral security charge have the same meanings as in the settlement finality regulations.

PART IV NOMINEES

Monitoring of company's activities

- 34.**—(1) During a moratorium, the nominee shall monitor the company's affairs for the purpose of forming an opinion as to whether—
- (a) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 41(7), the proposed arrangement with those modifications has a reasonable prospect of being approved and implemented, and
 - (b) the company is likely to have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business.
- (2) ^{F15} The directors shall submit to the nominee any information necessary to enable him to comply with sub-paragraph (1) which he requests from them.
- (3) In forming his opinion on the matters mentioned in sub-paragraph (1), the nominee is entitled to rely on the information submitted to him under sub-paragraph (2) unless he has reason to doubt its accuracy.
- (4) The reference in sub-paragraph (1)(b) to the company's business is to that business as the company proposes to carry it on during the remainder of the moratorium.

F15 mod. by SR 2004/307

Withdrawal of consent to act

- 35.**—(1) The nominee may only withdraw his consent to act in the circumstances mentioned in this paragraph.
- (2) The nominee must withdraw his consent to act if, at any time during a moratorium—

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- (a) he forms the opinion that—
 - (i) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 41(7), the proposed arrangement with those modifications no longer has a reasonable prospect of being approved or implemented, or
 - (ii) the company will not have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business,
 - (b) he becomes aware that, on the date of filing, the company was not eligible for a moratorium, or
 - (c) ^{F16} the directors fail to comply with their duty under paragraph 34(2).
- (3) The reference in sub-paragraph (2)(a)(ii) to the company's business is to that business as the company proposes to carry it on during the remainder of the moratorium.
- (4) If the nominee withdraws his consent to act, the moratorium comes to an end.
- (5) If the nominee withdraws his consent to act he must, in accordance with the rules, notify the High Court, the registrar, the company and any creditor of the company of whose claim he is aware of his withdrawal and the reason for it.
- (6) If the nominee without reasonable excuse fails to comply with sub-paragraph (5), he shall be guilty of an offence.

F16 mod. by SR 2004/307

Challenge of nominee's actions, etc.

- 36.**—(1) ^{F17} If any creditor, director or member of the company, or any other person affected by a moratorium, is dissatisfied by any act, omission or decision of the nominee during the moratorium, he may apply to the High Court.
- (2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.
- (3) On an application under sub-paragraph (1) the High Court may—
- (a) confirm, reverse or modify any act or decision of the nominee,
 - (b) give him directions, or
 - (c) make such other order as it thinks fit.
- (4) An order under sub-paragraph (3) may (among other things) bring the moratorium to an end and make such consequential provision as the High Court thinks fit.

F17 mod. by SR 2004/307

- 37.**—(1) Where there are reasonable grounds for believing that—
- (a) as a result of any act, omission or decision of the nominee during the moratorium, the company has suffered loss, but
 - (b) the company does not intend to pursue any claim it may have against the nominee,
- any creditor of the company may apply to the High Court.
- (2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.

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- (3) On an application under sub-paragraph (1) the High Court may—
- (a) order the company to pursue any claim against the nominee,
 - (b) (authorise any creditor to pursue such a claim in the name of the company, or
 - (c) make such other order with respect to such a claim as it thinks fit,
- unless the Court is satisfied that the act, omission or decision of the nominee was in all the circumstances reasonable.
- (4) An order under sub-paragraph (3) may (among other things)—
- (a) impose conditions on any authority given to pursue a claim,
 - (b) direct the company to assist in the pursuit of a claim,
 - (c) make directions with respect to the distribution of anything received as a result of the pursuit of a claim,
 - (d) bring the moratorium to an end and make such consequential provision as the High Court thinks fit.
- (5) On an application under sub-paragraph (1) the High Court shall have regard to the interests of the members and creditors of the company generally.

Replacement of nominee by High Court

- 38.**—(1) The High Court may—
- (a) on an application made by the directors in a case where the nominee has failed to comply with any duty imposed on him under this Schedule or has died, or
 - (b) on an application made by the directors or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,
- direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.
- (2) A person may only be appointed as a replacement nominee under this paragraph if he submits to the High Court a statement indicating his consent to act.

PART V

CONSIDERATION AND IMPLEMENTATION OF VOLUNTARY ARRANGEMENT

Summoning of meetings

- 39.**—(1 ^{F18} Where a moratorium is in force, the nominee shall summon meetings of the company and its creditors for such a time, date (within the period for the time being specified in paragraph 19(3)) and place as he thinks fit.
- (2) The persons to be summoned to a creditors' meeting under this paragraph are every creditor of the company of whose claim the nominee is aware.

F18 mod. by SR 2004/307

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Conduct of meetings

40.—(1 ^{F19} Subject to the provisions of paragraphs 41 to 45, the meetings summoned under paragraph 39 shall be conducted in accordance with the rules.

(2) A meeting so summoned may resolve that it be adjourned (or further adjourned).

^{F19}(3 ^{F19} After the conclusion of either meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the High Court, and, immediately after reporting to the Court, shall give notice of the result of the meeting to such persons as may be prescribed.

F19 mod. by SR 2004/307

Approval of voluntary arrangement

41.—(1 ^{F20} The meetings summoned under paragraph 39 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).

(2) The modifications may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(3) The modifications shall not include one by virtue of which the proposal ceases to be a proposal such as is mentioned in Article 14.

(4) A meeting summoned under paragraph 39 shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security, except with the concurrence of the creditor concerned.

(5) Subject to sub-paragraph (6), a meeting so summoned shall not approve any proposal or modification under which—

(a) any preferential debt of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts, or

(b) a preferential creditor of the company is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

(6) The meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(7 ^{F20} The directors of the company may, before the beginning of the period of 7 days which ends with the meetings (or either of them) summoned under paragraph 39 being held, give notice to the nominee of any modifications of the proposal for which the directors intend to seek the approval of those meetings.

(8) References in this paragraph to preferential debts and preferential creditors are to be read in accordance with Article 346.

F20 mod. by SR 2004/307

Extension of moratorium

42.—(1) Subject to sub-paragraph (2), a meeting summoned under paragraph 39 which resolves that it be adjourned (or further adjourned) may resolve that the moratorium be extended (or further extended), with or without conditions.

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- (2) The moratorium may not be extended (or further extended) to a day later than the end of the period of 2 months which begins—
- (a) ^{F21} where both meetings summoned under paragraph 39 are first held on the same day, with that day,
 - (b) ^{F21} in any other case, with the day on which the later of those meetings is first held.
- (3) At any meeting where it is proposed to extend (or further extend) the moratorium, before a decision is taken with respect to that proposal, the nominee shall inform the meeting—
- (a) of what he has done in order to comply with his duty under paragraph 34 and the cost of his actions for the company, and
 - (b) of what he intends to do to continue to comply with that duty if the moratorium is extended (or further extended) and the expected cost of his actions for the company.
- (4) Where, in accordance with sub-paragraph (3)(b), the nominee informs a meeting of the expected cost of his intended actions, the meeting shall resolve whether or not to approve that expected cost.
- (5) If a decision not to approve the expected cost of the nominee's intended actions has effect under paragraph 46, the moratorium comes to an end.
- (6) A meeting may resolve that a moratorium which has been extended (or further extended) be brought to an end before the end of the period of the extension (or further extension).
- (7) The Department may by order increase or reduce the period for the time being specified in sub-paragraph (2).

F21 mod. by SR 2004/307

- 43.—**(1) The conditions which may be imposed when a moratorium is extended (or further extended) include a requirement that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.
- (2) A person may only be appointed as a replacement nominee by virtue of sub-paragraph (1) if he submits to the High Court a statement indicating his consent to act.
- (3) At any meeting where it is proposed to appoint a replacement nominee as a condition of extending (or further extending) the moratorium—
- (a) the duty imposed by paragraph 42(3)(b) on the nominee shall instead be imposed on the person proposed as the replacement nominee, and
 - (b) paragraphs 42(4) and (5) and 46(1)(e) apply as if the references to the nominee were to that person.

- 44.—**(1) If a decision to extend, or further extend, the moratorium takes effect under paragraph 46, the nominee shall, in accordance with the rules, notify the registrar and the High Court.
- (2) If the moratorium is extended, or further extended, by virtue of an order under paragraph 46(5), the nominee shall, in accordance with the rules, send an office copy of the order to the registrar.
- (3) If the nominee without reasonable excuse fails to comply with this paragraph, he shall be guilty of an offence.

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Moratorium committee

45.—(1) A meeting summoned under paragraph 39 which resolves that the moratorium be extended (or further extended) may, with the consent of the nominee, resolve that a committee be established to exercise the functions conferred on it by the meeting.

(2) The meeting may not so resolve unless it has approved an estimate of the expenses to be incurred by the committee in the exercise of the proposed functions.

(3) Any expenses, not exceeding the amount of the estimate, incurred by the committee in the exercise of its functions shall be reimbursed by the nominee.

(4) The committee shall cease to exist when the moratorium comes to an end.

Effectiveness of decisions

46.—(1) Sub-paragraph (2) applies to references to one of the following decisions having effect, that is, a decision, under paragraph 41, 42 or 45, with respect to—

- (a) the approval of a proposed voluntary arrangement,
- (b) the extension (or further extension) of a moratorium,
- (c) the bringing of a moratorium to an end,
- (d) the establishment of a committee, or
- (e) the approval of the expected cost of a nominee's intended actions.

(2) ^{F22} The decision has effect if, in accordance with the rules—

- (a) it has been taken by both meetings summoned under paragraph 39, or
- (b) subject to any order made under sub-paragraph (5)) it has been taken by the creditors' meeting summoned under that paragraph.

(3) ^{F22} If a decision taken by the creditors' meeting under any of paragraphs 41, 42 or 45 with respect to any of the matters mentioned in sub-paragraph (1) differs from one so taken by the company meeting with respect to that matter, a member of the company may apply to the High Court.

(4) ^{F22} An application under sub-paragraph (3) shall not be made after the end of the period of 28 days beginning with—

- (a) the day on which the decision was taken by the creditors' meeting, or
- (b) where the decision of the company meeting was taken on a later day, that day.

(5) ^{F22} On an application under sub-paragraph (3), the High Court may—

- (a) order the decision of the company meeting to have effect instead of the decision of the creditors' meeting, or
- (b) make such other order as it thinks fit.

F22 mod. by SR 2004/307

Effect of approval of voluntary arrangement

47.—(1) This paragraph applies where a decision approving a voluntary arrangement has effect under paragraph 46.

(2) The approved voluntary arrangement—

- (a) takes effect as if made by the company at the creditors' meeting, and

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- (b) binds every person who in accordance with the rules—
 - (i) was entitled to vote at that meeting (whether or not he was present or represented at it), or
 - (ii) would have been so entitled if he had had notice of it,

as if he were a party to the voluntary arrangement.

(3) If—

- (a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of sub-paragraph (2)(b)(ii) has not been paid, and
- (b) the arrangement did not come to an end prematurely,

the company shall at that time become liable to pay to that person the amount payable under the arrangement.

(4) Where a petition for the winding up of the company, other than an excepted petition within the meaning of paragraph 23, was presented before the beginning of the moratorium, the High Court shall dismiss the petition.

(5) The High Court shall not dismiss a petition under sub-paragraph (4)—

- (a)^{F23} at any time before the end of the period of 28 days beginning with the first day on which each of the reports of the meetings required by paragraph 40(3) has been made to the High Court, or
- (b) at any time when an application under paragraph 48 or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

F23 mod. by SR 2004/307

Challenge of decisions

48.—(1) Subject to the following provisions of this paragraph, any of the persons mentioned in sub-paragraph (2) may apply to the High Court on one or both of the following grounds—

- (a)^{F24} that a voluntary arrangement approved at one or both of the meetings summoned under paragraph 39 and which has taken effect unfairly prejudices the interests of a creditor, member or contributory of the company,
- (b)^{F24} that there has been some material irregularity at or in relation to either of those meetings.

(2) The persons who may apply under this paragraph are—

- (a)^{F24} a person entitled, in accordance with the rules, to vote at either of the meetings,
- ^{F24}(b) a person who would have been entitled, in accordance with the rules, to vote at the ^{F24}creditors' meeting if he had had notice of it, and
- (c) the nominee.

(3) An application under this paragraph shall not be made—

- (a)^{F24} after the end of the period of 28 days beginning with the first day on which each of the reports required by paragraph 40(3) has been made to the High Court, or
- (b)^{F24} in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,

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but (subject to that) an application made by a person within sub-paragraph (2)(b) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.

(4) Where on an application under this paragraph the High Court is satisfied as to either of the grounds mentioned in sub-paragraph (1), it may do any of the following—

- (a) revoke or suspend—
 - (i) any decision approving the voluntary arrangement which has effect under paragraph 46, or
 - (ii) ^{F24} in a case falling within sub-paragraph (1)(b), any decision taken by the meeting in question which has effect under that paragraph,
- (b) give a direction to any person—
 - (i) ^{F24} for the summoning of further meetings to consider any revised proposal for a voluntary arrangement which the directors may make, or
 - (ii) ^{F24} in a case falling within sub-paragraph (1)(b), for the summoning of a further company or (as the case may be) creditors' meeting to reconsider the original proposal.

(5) Where at any time after giving a direction under sub-paragraph (4)(b)(i) the High Court is satisfied that the directors do not intend to submit a revised proposal, the Court shall revoke the direction and revoke or suspend any decision approving the voluntary arrangement which has effect under paragraph 46.

(6) Where the High Court gives a direction under sub-paragraph (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect of the moratorium.

(7) Sub-paragraph (8) applies in a case where the High Court, on an application under this paragraph—

- (a) gives a direction under sub-paragraph (4)(b), or
- (b) revokes or suspends a decision under sub-paragraph (4)(a) or (5).

(8) In such a case, the High Court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—

- (a) things done under the voluntary arrangement since it took effect, and
- (b) such things done since that time as could not have been done if a moratorium had been in force in relation to the company when they were done.

(9) Except in pursuance of the preceding provisions of this paragraph, a decision taken at a meeting summoned under paragraph 39 is not invalidated by any irregularity at or in relation to the meeting.

F24 mod. by SR 2004/307

Implementation of voluntary arrangement

49.—(1) ^{F25} This paragraph applies where a voluntary arrangement approved by one or both of the meetings summoned under paragraph 39 has taken effect.

(2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred—

- (a) by virtue of the approval of the arrangement, on the nominee, or

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(b) by virtue of paragraph 41(2), on a person other than the nominee, shall be known as the supervisor of the voluntary arrangement.

(3) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the High Court.

(4) On an application under sub-paragraph (3) the High Court may—

- (a) confirm, reverse or modify any act or decision of the supervisor,
- (b) give him directions, or
- (c) make such other order as it thinks fit.

(5) The supervisor—

- (a) may apply to the High Court for directions in relation to any particular matter arising under the voluntary arrangement, and
- (b) is included among the persons who may apply to the Court for the winding up of the company or for an administration order to be made in relation to it.

(6) The High Court may, whenever—

- (a) it is expedient to appoint a person to carry out the functions of the supervisor, and
- (b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the Court,

make an order appointing a person who is qualified to act as an insolvency practitioner, or authorised to act as supervisor, in relation to the voluntary arrangement, either in substitution for the existing supervisor or to fill a vacancy.

(7) The power conferred by sub-paragraph (6) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

F25 mod. by SR 2004/307

PART VI

MISCELLANEOUS

Challenge of directors' actions

50.—(1) This paragraph applies in relation to acts or omissions of the directors of a company during a moratorium.

(2) A creditor or member of the company may apply to the High Court for an order under this paragraph on the ground—

- (a) that the company's affairs, business and property are being or have been managed by the directors in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or of some part of its creditors or members (including at least the petitioner), or
- (b) that any actual or proposed act or omission of the directors is or would be so prejudicial.

(3) An application for an order under this paragraph may be made during or after the moratorium.

(4) On an application for an order under this paragraph the High Court may—

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- (a) make such order as it thinks fit for giving relief in respect of the matters complained of,
 - (b) adjourn the hearing conditionally or unconditionally, or
 - (c) make an interim order or any other order that it thinks fit.
- (5) An order under this paragraph may in particular—
- (a) regulate the management by the directors of the company's affairs, business and property during the remainder of the moratorium,
 - (b) require the directors to refrain from doing or continuing an act complained of by the petitioner, or to do an act which the petitioner has complained they have omitted to do,
 - (c) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the High Court may direct,
 - (d) bring the moratorium to an end and make such consequential provision as the High Court thinks fit.
- (6) In making an order under this paragraph the High Court shall have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.
- ^{F26}(7) In relation to any time when an administration order is in force in relation to the company, or the company is being wound up, in pursuance of a petition presented before the moratorium came into force, no application for an order under this paragraph may be made by a creditor or member of the company; but such an application may be made instead by the administrator or (as the case may be) liquidator.

F26 prosp. subst. by [2005 NI 10](#)

Offences

- 51.**—(1) This paragraph applies where a moratorium has been obtained for a company.
- (2) If, within the period of 12 months ending with the day on which the moratorium came into force, a person who was at the time an officer of the company—
- (a) did any of the things mentioned in paragraphs (a) to (f) of sub-paragraph (4), or
 - (b) was privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of that sub-paragraph,
- he is to be treated as having committed an offence at that time.
- (3) If, at any time during the moratorium, a person who is an officer of the company—
- (a) does any of the things mentioned in paragraphs (a) to (f) of sub-paragraph (4), or
 - (b) is privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of that sub-paragraph,
- he shall be guilty of an offence.
- (4) Those things are—
- (a) concealing any part of the company's property to the value of £500 or more, or concealing any debt due to or from the company, or
 - (b) fraudulently removing any part of the company's property to the value of £500 or more, or
 - (c) concealing, destroying, mutilating or falsifying any book or paper affecting or relating to the company's property or affairs, or
 - (d) making any false entry in any book or paper affecting or relating to the company's property or affairs, or

Status: Point in time view as at 01/01/2006.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 13 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)

- (e) fraudulently parting with, altering or making any omission in any document affecting or relating to the company's property or affairs, or
 - (f) pawning, pledging or disposing of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business).
- (5) For the purposes of this paragraph, officer includes a shadow director.
- (6) It is a defence—
- (a) for a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in paragraph (a) or (f) of sub-paragraph (4) to prove that he had no intent to defraud, and
 - (b) for a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in paragraph (c) or (d) of sub-paragraph (4) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.
- (7) Where a person pawns, pledges or disposes of any property of a company in circumstances which amount to an offence under sub-paragraph (2) or (3), every person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in circumstances which—
- (a) would, if a moratorium were obtained for the company within the period of 12 months beginning with the day on which the pawning, pledging or disposal took place, amount to an offence under sub-paragraph (2), or
 - (b) amount to an offence under sub-paragraph (3),
- shall be guilty of an offence.
- (8) The money sums specified in paragraphs (a) and (b) of sub-paragraph (4) are subject to increase or reduction by order under Article 362.

52.—(1) If, for the purpose of obtaining a moratorium, or an extension of a moratorium, for a company, a person who is an officer of the company—

- (a) makes any false representation, or
- (b) fraudulently does, or omits to do, anything,

he shall be guilty of an offence.

- (2) Sub-paragraph (1) applies even if no moratorium or extension is obtained.
- (3) For the purposes of this paragraph, officer includes a shadow director.

Void provisions in floating charge documents

53.—(1) A provision in an instrument creating a floating charge is void if it provides for—

- (a) obtaining a moratorium, or
- (b) anything done with a view to obtaining a moratorium (including any preliminary decision or investigation),

to be an event causing the floating charge to crystallise or causing restrictions which would not otherwise apply to be imposed on the disposal of property by the company or a ground for the appointment of a receiver.

(2) In sub-paragraph (1), receiver includes a manager and a person who is appointed both receiver and manager.

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Functions of the Financial Services Authority

54.—(1) This Schedule has effect in relation to a moratorium for a regulated company with the modifications in sub-paragraphs (2) to (16).

(2) Any notice or other document required by virtue of this Schedule to be sent to a creditor of a regulated company must also be sent to the Authority.

(3) The Authority is entitled to be heard on any application to the High Court for leave under paragraph 31(2) or 31(3) (disposal of charged property, etc.).

(4) Where paragraph 36(1) (challenge of nominee's actions, etc.) applies, the persons who may apply to the High Court include the Authority.

(5) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(6) Where paragraph 37(1) (challenge of nominee's actions, etc.) applies, the persons who may apply to the High Court include the Authority.

(7) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(8) The persons to be summoned to a creditors' meeting under paragraph 39 include the Authority.

(9) A person appointed for the purpose by the Authority is entitled to attend and participate in (but not to vote at)—

(a) any creditors' meeting summoned under that paragraph,

(b) any meeting of a committee established under paragraph 45 (moratorium committee).

(10) The Authority is entitled to be heard on any application under paragraph 46(3) (effectiveness of decisions).

(11) Where paragraph 48(1) (challenge of decisions) applies, the persons who may apply to the High Court include the Authority.

(12) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(13) Where paragraph 49(3) (implementation of voluntary arrangement) applies, the persons who may apply to the High Court include the Authority.

(14) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(15) Where paragraph 50(2) (challenge of directors' actions) applies, the persons who may apply to the High Court include the Authority.

(16) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(17) This paragraph does not prejudice any right the Authority has (apart from this paragraph) as a creditor of a regulated company.

(18) In this paragraph—

the Authority means the Financial Services Authority, and
regulated company means a company which—

(a) is, or has been, an authorised person within the meaning given by section 31 of the Financial Services and Markets Act 2000,

(b) is, or has been, an appointed representative within the meaning given by section 39 of that Act, or

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- (c) is carrying on, or has carried on, a regulated activity, within the meaning given by section 22 of that Act, in contravention of the general prohibition within the meaning given by section 19 of that Act.

Subordinate legislation

55.—(1) Regulations made by the Department under this Schedule may make such consequential, incidental, supplemental and transitional provision as appears to the Department necessary or expedient.

(2) Any power of the Department to make regulations under this Schedule may be exercised by amending or repealing any provision contained in this Order (including one contained in this Schedule) or contained in the Company Directors Disqualification (Northern Ireland) Order 2002.

(3) An order made by the Department under this Schedule shall be subject to negative resolution.]

VALID FROM 27/03/2006

[^{F27}SCHEDULE B1

ADMINISTRATION

F27 Sch. B1 inserted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(2), Sch. 1 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2-7**)

Modifications etc. (not altering text)

C1 Sch. B1 applied (with modifications) (1.10.2011) by [Postal Services Act 2011 \(c. 5\)](#), ss. 73, 87(1)(2), 93(3), **Sch. 10 Pt. 1, Sch. 10 Pt. 2**

SCHEDULE 1

Articles 27, 52.

POWERS OF ADMINISTRATOR OR ADMINISTRATIVE RECEIVER

1. Power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him expedient.
2. Power to sell or otherwise dispose of the company's property, including the goodwill and book debts of any business.
3. Power to make, on such terms and conditions as he may think proper, a sub#fee farm grant of land or any part thereof, or a sub#lease of land or any part thereof with a nominal reversion (and to sell the rent or reversion), where such sub#fee farm grant or sub#lease amounts in substance to a sale and he has satisfied himself that it is the most appropriate method of disposing of the land.
4. Power to raise or borrow money and grant security therefor over the property of the company.
5. Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.

Status: Point in time view as at 01/01/2006.

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6. Power to bring or defend any action or other legal proceedings in the name and on behalf of the company.
7. Power to refer to arbitration any question affecting the company.
8. Power to effect and maintain insurances in respect of the business and property of the company.
9. Power to use the company's seal.
10. Power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document.
11. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.
12. Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.
13. Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the company.
14. Power to make any payment which is necessary or incidental to the performance of his functions.
15. Power to carry on the business of the company.
16. Power to establish subsidiaries of the company.
17. Power to transfer to subsidiaries of the company the whole or any part of the business and property of the company.
18. Power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.
19. Power to make any arrangement or compromise on behalf of the company.
- 20 ^{F29}. Power to call up any uncalled capital of the company.

F29 mod. by SR 2004/307

21. Power to rank and claim in the bankruptcy, insolvency or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person.
22. Power to present or defend a petition for the winding up of the company.
23. Power to change the situation of the company's registered office.
24. Power to do all other things incidental to the exercise of the foregoing powers.

Status: Point in time view as at 01/01/2006.

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VALID FROM 27/03/2006

[^{F30}SCHEDULE 1A

EXCEPTIONS TO PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE RECEIVER: SUPPLEMENTARY PROVISIONS

F30 Sch. 1A inserted (27.3.2006) by *Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10))*, arts. 1(3), 5(2), Sch. 3 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

SCHEDULE 2

Articles 140, 142.

POWERS OF LIQUIDATOR IN A WINDING UP

PART I

POWERS EXERCISABLE WITH SANCTION

1. Power to pay any class of creditors in full.
2. Power to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company, or whereby the company may be rendered liable.
3. Power to compromise, on such terms as may be agreed—
 - (a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and
 - (b) all questions in any way relating to or affecting the assets or the winding up of the company,
 and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

F34

F34 prosp. insertion by 2005 NI 10

Status: Point in time view as at 01/01/2006.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 13 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)

PART II

POWERS EXERCISABLE WITHOUT SANCTION IN VOLUNTARY WINDING UP, WITH SANCTION IN WINDING UP BY THE HIGH COURT

4. Power to bring or defend any action or other legal proceeding in the name and on behalf of the company.
5. Power to carry on the business of the company so far as may be necessary for its beneficial winding up.

PART III

POWERS EXERCISABLE WITHOUT SANCTION IN ANY WINDING UP

6. Power to sell any part of the company's property, including the goodwill and book debts of any business.
7. [^{F35}Without prejudice to Article 28 or 30 of the Property (Northern Ireland) Order 1997,] power to make, on such terms and conditions as the liquidator may think proper, a sub#fee farm grant of land or any part thereof, or a sub#lease of land or any part thereof with a nominal reversion (and to sell the rent or reversion), where such sub#fee farm grant or sub#lease amounts in substance to a sale and the liquidator has satisfied himself that it is the most appropriate method of disposing of the land.

F35 1997 NI 8

8. Power to do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents^{F36}

F36 2005 NI 7

[^{F37}8A. Power to use the company's seal.]

F37 2005 NI 7

9. Power to prove, rank and claim in the bankruptcy or insolvency of any contributory for any balance against his estate, and to receive dividends in the bankruptcy or insolvency in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.
10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the company's liability as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business.
11. Power to raise on the security of the assets of the company any money requisite.
- 12.—(1) Power to take out in his official name any letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot conveniently be done in the name of the company.

Status: Point in time view as at 01/01/2006.

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(2) For the purposes of sub#paragraph (1) the money due is deemed, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, to be due to the liquidator himself.

13. Power to appoint an agent to do any business which the liquidator is unable to do himself.

14. Power to do all such other things as may be necessary for winding up the company's affairs and distributing its assets.

VALID FROM 30/06/2011

[^{F38}SCHEDULE 2ZA

CONDITIONS FOR MAKING A DEBT RELIEF ORDER

F38 Sch. 2ZA inserted (30.6.2011) by Debt Relief Act (Northern Ireland) 2010 (c. 16), ss. 2, 7(1); S.R. 2011/13, art. 2

PART 1

CONDITIONS WHICH MUST BE MET

Connection with Northern Ireland

- 1.**—(1) The debtor—
- (a) is domiciled in Northern Ireland on the application date; or
 - (b) at any time in the 3 years immediately preceding that date—
 - (i) was ordinarily resident, or had a place of residence, in Northern Ireland; or
 - (ii) carried on business in Northern Ireland.
- (2) The reference in sub-paragraph (1)(b)(ii) to the debtor carrying on business includes—
- (a) the carrying on of business by a firm or partnership of which he is a member;
 - (b) the carrying on of business by an agent or manager for him or for such a firm or partnership.

Debtor's previous insolvency history

- 2** The debtor is not, on the determination date—
- (a) an undischarged bankrupt;
 - (b) subject to an interim order or voluntary arrangement under Chapter 2 of Part 8; or
 - (c) subject to a bankruptcy restrictions order or a debt relief restrictions order.
- 3** A debtor's petition for the debtor's bankruptcy under Part 9—
- (a) has not been presented by the debtor before the determination date;
 - (b) has been so presented, but proceedings on the petition have been finally disposed of before that date; or

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(c) has been so presented and proceedings in relation to the petition remain before the High Court at that date, but the Court has referred the debtor under Article 248A(2) for the purposes of making an application for a debt relief order.

4 A creditor's petition for the debtor's bankruptcy under Part 9—

- (a) has not been presented against the debtor at any time before the determination date;
- (b) has been so presented, but proceedings on the petition have been finally disposed of before that date; or
- (c) has been so presented and proceedings in relation to the petition remain before the Court at that date, but the person who presented the petition has consented to the making of an application for a debt relief order.

5 A debt relief order has not been made in relation to the debtor in the period of 6 years ending with the determination date.

Limit on debtor's overall indebtedness

6.—(1) The total amount of the debtor's debts on the determination date, other than unliquidated debts and excluded debts, does not exceed the amount specified by order under Article 362(1)(b).

(2) For this purpose an unliquidated debt is a debt that is not for a liquidated sum payable to a creditor either immediately or at some future certain time.

Limit on debtor's monthly surplus income

7.—(1) The debtor's monthly surplus income (if any) on the determination date does not exceed the amount specified by order under Article 362(1)(b).

(2) For this purpose “monthly surplus income” is the amount by which a person's monthly income exceeds the amount necessary for the reasonable domestic needs of himself and his family.

(3) The rules may—

- (a) make provision as to how the debtor's monthly surplus income is to be determined;
- (b) provide that particular descriptions of income are to be excluded for the purposes of this paragraph.

Modifications etc. (not altering text)

C17 Sch. 2ZA para. 7 modified by S.R. 1991/364, Rule 5A.18 (as inserted (30.6.2011) by Insolvency (Amendment) Rules (Northern Ireland) 2011 (S.R. 2011/151), Rule 8, Sch. 1)

Limit on value of debtor's property

8.—(1) The total value of the debtor's property on the determination date does not exceed the amount specified by order under Article 362(1)(b).

(2) The rules may—

- (a) make provision as to how the value of a person's property is to be determined;
- (b) provide that particular descriptions of property are to be excluded for the purposes of this paragraph.

Status: Point in time view as at 01/01/2006.

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Modifications etc. (not altering text)

C18 Sch. 2ZA para. 8 modified by S.R. 1991/364, Rule 5A.18 (as inserted (30.6.2011) by Insolvency (Amendment) Rules (Northern Ireland) 2011 (S.R. 2011/151), Rule 8, Sch. 1)

PART 2

OTHER CONDITIONS

9.—(1) The debtor has not entered into a transaction with any person at an undervalue during the period between—

- (a) the start of the period of 2 years ending with the application date; and
- (b) the determination date.

(2) For this purpose a debtor enters into a transaction with a person at an undervalue if—

- (a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration;
- (b) he enters into a transaction with that person in consideration of marriage or the formation of a civil partnership; or
- (c) he enters into a transaction with that person 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 the individual.

10.—(1) The debtor has not given a preference to any person during the period between—

- (a) the start of the period of 2 years ending with the application date; and
- (b) the determination date.

(2) For this purpose a debtor gives a preference to a person if—

- (a) that person is one of the debtor's creditors to whom a qualifying debt is owed or is a surety or guarantor for any such debt, and
- (b) the debtor does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event that a debt relief order is made in relation to the debtor, will be better than the position he would have been in if that thing had not been done.]

VALID FROM 30/06/2011

[^{F39}SCHEDULE 2ZB

DEBT RELIEF RESTRICTIONS ORDERS AND UNDERTAKINGS

F39 Sch. 2ZB inserted (30.6.2011) by Debt Relief Act (Northern Ireland) 2010 (c. 16), ss. 3, 7(1); S.R. 2011/13, art. 2

Status: Point in time view as at 01/01/2006.

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Debt relief restrictions order

1.—(1) A debt relief restrictions order may be made by the High Court in relation to a person in respect of whom a debt relief order has been made.

(2) An order may be made only on the application of—

- (a) the Department, or
- (b) the official receiver acting on a direction of the Department.

Grounds for making order

2.—(1) The High Court shall grant an application for a debt relief restrictions order if it thinks it appropriate to do so having regard to the conduct of the debtor (whether before or after the making of the debt relief order).

(2) The Court shall, in particular, take into account any of the following kinds of behaviour on the part of the debtor—

- (a) failing to keep records which account for a loss of property by the debtor, or by a business carried on by him, where the loss occurred in the period beginning 2 years immediately preceding the application date for the debt relief order and ending with the date of the application for the debt relief restrictions order;
- (b) failing to produce records of that kind on demand by the official receiver;
- (c) entering into a transaction at an undervalue in the period beginning 2 years before the application date for the debt relief order and ending with the date of the determination of that application;
- (d) giving a preference in the period beginning 2 years before the application date for the debt relief order and ending with the date of the determination of that application;
- (e) making an excessive pension contribution;
- (f) a failure to supply goods or services that were wholly or partly paid for;
- (g) trading at a time, before the date of the determination of the application for the debt relief order, when the debtor knew or ought to have known that he was unable to pay his debts;
- (h) incurring, before the date of the determination of the application for the debt relief order, a debt which the debtor had no reasonable expectation of being able to pay;
- (i) failing to account satisfactorily to the Court or the official receiver for a loss of property or for an insufficiency of property to meet his debts;
- (j) carrying on any gambling, rash and hazardous speculation or unreasonable extravagance which may have materially contributed to or increased the extent of his inability to pay his debts before the application date for the debt relief order or which took place between that date and the date of the determination of the application for the debt relief order;
- (k) neglect of business affairs of a kind which may have materially contributed to or increased the extent of his inability to pay his debts;
- (l) fraud or fraudulent breach of trust;
- (m) failing to co-operate with the official receiver.

(3) The High Court shall also, in particular, consider whether the debtor was an undischarged bankrupt at some time during the period of 6 years ending with the date of the application for the debt relief order.

Status: Point in time view as at 01/01/2006.

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- (4) For the purposes of sub-paragraph (2)—
 “excessive pension contribution” shall be construed in accordance with Article 315A;
 “preference” shall be construed in accordance with paragraph 10(2) of Schedule 2ZA;
 “undervalue” shall be construed in accordance with paragraph 9(2) of that Schedule.

Timing of application for order

- 3 An application for a debt relief restrictions order in respect of a debtor may be made—
 (a) at any time during the moratorium period relating to the debt relief order in question, or
 (b) after the end of that period, but only with the permission of the Court.

Duration of order

- 4.—(1) A debt relief restrictions order—
 (a) comes into force when it is made, and
 (b) ceases to have effect at the end of a date specified in the order.
 (2) The date specified in a debt relief restrictions order under sub-paragraph (1)(b) must not be—
 (a) before the end of the period of 2 years beginning with the date on which the order is made, or
 (b) after the end of the period of 15 years beginning with that date.

Interim debt relief restrictions order

- 5.—(1) This paragraph applies at any time between—
 (a) the institution of an application for a debt relief restrictions order, and
 (b) the determination of the application.
 (2) The High Court may make an interim debt relief restrictions order if the Court thinks that—
 (a) there are prima facie grounds to suggest that the application for the debt relief restrictions order will be successful, and
 (b) it is in the public interest to make an interim debt relief restrictions order.
 (3) An interim debt relief restrictions order may only be made on the application of—
 (a) the Department, or
 (b) the official receiver acting on a direction of the Department.
 (4) An interim debt relief restrictions order—
 (a) has the same effect as a debt relief restrictions order, and
 (b) comes into force when it is made.
 (5) An interim debt relief restrictions order ceases to have effect—
 (a) on the determination of the application for the debt relief restrictions order,
 (b) on the acceptance of a debt relief restrictions undertaking made by the debtor, or
 (c) if the Court discharges the interim debt relief restrictions order on the application of the person who applied for it or of the debtor.

Status: Point in time view as at 01/01/2006.

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6.—(1) This paragraph applies to a case in which both an interim debt relief restrictions order and a debt relief restrictions order are made.

(2) Paragraph 4(2) has effect in relation to the debt relief restrictions order as if a reference to the date of that order were a reference to the date of the interim debt relief restrictions order.

Debt relief restrictions undertaking

7.—(1) A debtor may offer a debt relief restrictions undertaking to the Department.

(2) In determining whether to accept a debt relief restrictions undertaking the Department shall have regard to the matters specified in paragraph 2(2) and (3).

8 A reference in a statutory provision to a person in respect of whom a debt relief restrictions order has effect (or who is “the subject of” a debt relief restrictions order) includes a reference to a person in respect of whom—

- (a) an interim debt relief restrictions order; or
- (b) a debt relief restrictions undertaking,

has effect.

9.—(1) A debt relief restrictions undertaking—

- (a) comes into force on being accepted by the Department, and
- (b) ceases to have effect at the end of a date specified in the undertaking.

(2) The date specified under sub-paragraph (1)(b) must not be—

- (a) before the end of the period of 2 years beginning with the date on which the undertaking is accepted, or
- (b) after the end of the period of 15 years beginning with that date.

(3) On an application by the debtor the High Court may—

- (a) annul a debt relief restrictions undertaking;
- (b) provide for a debt relief restrictions undertaking to cease to have effect before the date specified under sub-paragraph (1)(b).

Effect of revocation of debt relief order

10 Unless the High Court directs otherwise, the revocation at any time of a debt relief order does not—

- (a) affect the validity of any debt relief restrictions order, interim debt relief restrictions order or debt relief restrictions undertaking which is in force in respect of the debtor;
- (b) prevent the determination of any application for a debt relief restrictions order, or an interim debt relief restrictions order, in relation to the debtor that was instituted before that time;
- (c) prevent the acceptance of a debt relief restrictions undertaking that was offered before that time; or
- (d) prevent the institution of an application for a debt relief restrictions order or interim debt relief restrictions order in respect of the debtor, or the offer or acceptance of a debt relief restrictions undertaking by the debtor, after that time.]

Status: Point in time view as at 01/01/2006.

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VALID FROM 27/03/2006

[^{F40}SCHEDULE 2A

BANKRUPTCY RESTRICTIONS ORDER AND UNDERTAKING

F40 Sch. 2A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 13(2), Sch. 5 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

Bankruptcy restrictions order

- 1.—(1) A bankruptcy restrictions order may be made by the High Court.
- (2) An order may be made only on the application of—
- (a) the Department, or
 - (b) the official receiver acting on a direction of the Department.

Grounds for making order

2.—(1) The High Court shall grant an application for a bankruptcy restrictions order if it thinks it appropriate having regard to the conduct of the bankrupt (whether before or after the making of the bankruptcy order).

(2) The Court shall, in particular, take into account any of the following kinds of behaviour on the part of the bankrupt—

- (a) failing to keep records which account for a loss of property by the bankrupt, or by a business carried on by him, where the loss occurred in the period beginning 2 years immediately preceding petition and ending with the date of the application;
- (b) failing to produce records of that kind on demand by the official receiver or the trustee;
- (c) entering into a transaction at an undervalue;
- (d) giving a preference;
- (e) making an excessive pension contribution;
- (f) a failure to supply goods or services which were wholly or partly paid for which gave rise to a claim provable in the bankruptcy;
- (g) trading at a time before commencement of the bankruptcy when the bankrupt knew or ought to have known that he was unable to pay his debts;
- (h) incurring, before commencement of the bankruptcy, a debt which the bankrupt had no reasonable expectation of being able to pay;
- (i) failing to account satisfactorily to the Court, the official receiver or the trustee for a loss of property or for an insufficiency of property to meet bankruptcy debts;
- (j) carrying on any gambling, rash and hazardous speculation or unreasonable extravagance which may have materially contributed to or increased the extent of the bankruptcy or which took place between presentation of the petition and commencement of the bankruptcy;
- (k) neglect of business affairs of a kind which may have materially contributed to or increased the extent of the bankruptcy;

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- (l) fraud or fraudulent breach of trust;
- (m) failing to cooperate with the official receiver or the trustee.

(3) The Court shall also, in particular, consider whether the bankrupt was an undischarged bankrupt at some time during the period of 6 years ending with the date of the bankruptcy to which the application relates.

- (4) For the purpose of sub-paragraph (2)—
- “immediately preceding petition” shall be construed in accordance with Article 322(c),
 - “excessive pension contribution” shall be construed in accordance with Article 315A,
 - “preference” shall be construed in accordance with Article 313, and
 - “undervalue” shall be construed in accordance with Article 312.

Timing of application for order

3.—(1) An application for a bankruptcy restrictions order in respect of a bankrupt must be made—

- (a) before the end of the period of one year beginning with the date on which the bankruptcy commences, or
- (b) with the permission of the High Court.¹

(2) The period specified in sub-paragraph (1)(a) shall cease to run in respect of a bankrupt while the period set for his discharge is suspended under Article 253(3).

Duration of order

4.—(1) A bankruptcy restrictions order—

- (a) shall come into force when it is made, and
- (b) shall cease to have effect at the end of a date specified in the order.

(2) The date specified in a bankruptcy restrictions order under sub-paragraph (1)(b) must not be—

- (a) before the end of the period of 2 years beginning with the date on which the order is made, or
- (b) after the end of the period of 15 years beginning with that date.

Interim bankruptcy restrictions order

5.—(1) This paragraph applies at any time between—

- (a) the institution of an application for a bankruptcy restrictions order, and
- (b) the determination of the application.

(2) The High Court may make an interim bankruptcy restrictions order if the Court thinks that—

- (a) there are prima facie grounds to suggest that the application for the bankruptcy restrictions order will be successful, and
- (b) it is in the public interest to make an interim order.

(3) An interim order may be made only on the application of—

- (a) the Department, or
- (b) the official receiver acting on a direction of the Department.

(4) An interim order—

Status: Point in time view as at 01/01/2006.

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- (a) shall have the same effect as a bankruptcy restrictions order, and
 - (b) shall come into force when it is made.
- (5) An interim order shall cease to have effect—
- (a) on the determination of the application for the bankruptcy restrictions order,
 - (b) on the acceptance of a bankruptcy restrictions undertaking made by the bankrupt, or
 - (c) if the Court discharges the interim order on the application of the person who applied for it or of the bankrupt.

6.—(1) This paragraph applies to a case in which both an interim bankruptcy restrictions order and a bankruptcy restrictions order are made.

(2) Paragraph 4(2) shall have effect in relation to the bankruptcy restrictions order as if a reference to the date of that order were a reference to the date of the interim order.

Bankruptcy restrictions undertaking

7.—(1) A bankrupt may offer a bankruptcy restrictions undertaking to the Department.

(2) In determining whether to accept a bankruptcy restrictions undertaking the Department shall have regard to the matters specified in paragraph 2(2) and (3).

8. A reference in a statutory provision to a person in respect of whom a bankruptcy restrictions order has effect (or who is “the subject of” a bankruptcy restrictions order) includes a reference to a person in respect of whom—

- (a) an interim bankruptcy restrictions order, or
- (b) a bankruptcy restrictions undertaking,

has effect.

9.—(1) A bankruptcy restrictions undertaking—

- (a) shall come into force on being accepted by the Department, and
- (b) shall cease to have effect at the end of a date specified in the undertaking.

(2) The date specified under sub-paragraph (1)(b) must not be—

- (a) before the end of the period of 2 years beginning with the date on which the undertaking is accepted, or
- (b) after the end of the period of 15 years beginning with that date.

(3) On an application by the bankrupt the High Court may—

- (a) annul a bankruptcy restrictions undertaking;
- (b) provide for a bankruptcy restrictions undertaking to cease to have effect before the date specified under sub-paragraph (1)(b).

Modifications etc. (not altering text)

C19 Sch. 2A para. 9 modified by S.R. 1991/364, rule 6.242 (as inserted (27.3.2006) by Insolvency (Amendment) Rules (Northern Ireland) 2006 (S.R. 2006/47), Sch. 1 para. 92)

Effect of annulment of bankruptcy order

10. Where a bankruptcy order is annulled under Article 256(1)(a)—

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- (a) any bankruptcy restrictions order, interim order or undertaking which is in force in respect of the bankrupt shall be annulled,
- (b) no new bankruptcy restrictions order or interim order may be made in respect of the bankrupt, and
- (c) no new bankruptcy restrictions undertaking by the bankrupt may be accepted.

11. Where a bankruptcy order is annulled under Article 235, 237D or 256(1)(b)—

- (a) the annulment shall not affect any bankruptcy restrictions order, interim order or undertaking in respect of the bankrupt,
- (b) the High Court may make a bankruptcy restrictions order in relation to the bankrupt on an application instituted before the annulment,
- (c) the Department may accept a bankruptcy restrictions undertaking offered before the annulment, and
- (d) an application for a bankruptcy restrictions order or interim order in respect of the bankrupt may not be instituted after the annulment.

Registration

12. The Department shall maintain a register of—

- (a) bankruptcy restrictions orders,
- (b) interim bankruptcy restrictions orders, and
- (c) bankruptcy restrictions undertakings.]

SCHEDULE 3

Article 287.

POWERS OF TRUSTEE IN BANKRUPTCY

PART I

POWERS EXERCISABLE WITH SANCTION

1. Power to carry on any business of the bankrupt so far as may be necessary for winding it up beneficially and so far as the trustee is able to do so without contravening any requirement imposed by or under any statutory provision.

2. Power to bring, institute or defend any action or legal proceedings relating to the property comprised in the bankrupt's estate.

F41

F41 prosp. insertion by 2005 NI 10

3. Power to accept as the consideration for the sale of any property comprised in the bankrupt's estate a sum of money payable at a future time subject to such stipulations as to security or otherwise as the creditors' committee or the High Court thinks fit.

4. Power to mortgage or pledge any part of the property comprised in the bankrupt's estate for the purpose of raising money for the payment of his debts.

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5. Power, where any right, option or other power forms part of the bankrupt's estate, to make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of the right, option or power.

6. Power to refer to arbitration, or compromise on such terms as may be agreed on, any debts, claims or liabilities subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt.

7. Power to make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of bankruptcy debts.

8. Power to make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the bankrupt's estate made or capable of being made on the trustee by any person or by the trustee on any person.

PART II

POWERS EXERCISABLE WITHOUT SANCTION

9. Power to sell any part of the property for the time being comprised in the bankrupt's estate, including the goodwill and book debts of any business.

10. [^{F42}Without prejudice to Article 28 or 30 of the Property (Northern Ireland) Order 1997,] power to make, on such terms and conditions as the trustee may think proper, a sub#fee farm grant of land or any part thereof, or a sub#lease of land or any part thereof with a nominal reversion (and to sell the rent or reversion), where such sub#fee farm grant or sub#lease amounts in substance to a sale and the trustee has satisfied himself that it is the most appropriate method of disposing of the land.

F42 1997 NI 8

11. Power to give receipts for any money received by him, being receipts which effectually discharge the person paying the money from all responsibility in respect of its application.

12. Power to prove, rank, claim and draw a dividend in respect of such debts due to the bankrupt as are comprised in his estate.

13. Power to exercise in relation to any property comprised in the bankrupt's estate any powers the capacity to exercise which is vested in him under Parts VIII to X.

14. Power to deal with any property comprised in the estate to which the bankrupt is beneficially entitled as tenant in tail to the same extent as a commissioner under sections 49 to 61 of the Fines and Recoveries (Ireland) Act 1834^{F43}.

F43 1834 c. 92

PART III

ANCILLARY POWERS

15. For the purposes of, or in connection with, the exercise of any of his powers under Parts VIII to X, the trustee may, by his official name—

- (a) hold property of every description,
- (b) make contracts,

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- (c) sue and be sued,
- (d) enter into engagements binding on himself and, in respect of the bankrupt's estate, on his successors in office,
- (e) employ an agent,
- (f) execute any power of attorney, deed or other instrument;

and he may do any other act which is necessary or expedient for the purposes of or in connection with the exercise of those powers.

SCHEDULE 4

Article 346.

THE CATEGORIES OF PREFERENTIAL DEBTS

Category 1: Debts due to Inland Revenue

^{F44}**1.**—(1) Sums due at the relevant date from the debtor on account of deductions of income tax from^{F45} taxable earnings (as defined by section 10 of the Income Tax (Earnings and Pensions) Act 2003)] paid during the period of 12 months next before that date.

(2) The deductions referred to in sub#paragraph (1) are those which the debtor was liable to make under^{F45} regulations made under section 684 of that Act (PAYE regulations)], less the amount of the repayments of income tax which the debtor was liable to make during that period.

F44 prosp. rep. by [2005 NI 10](#)
F45 [2003 c. 1](#)

^{F46}**2.** Sums due at the relevant date from the debtor in respect of such deductions as are required to be made by the debtor for that period under section 559 of that Act of 1988 (sub#contractors in the construction industry).

F46 prosp. rep. by [2005 NI 10](#)

Category 2: Debts due to Customs and Excise

^{F47}**3.**—(1) Any value added tax which is referable to the period of 6 months next before the relevant date (which period is referred to as “the 6#month period”).

(2) For the purposes of sub#paragraph (1)—

- (a) where the whole of the prescribed accounting period to which any value added tax is attributable falls within the 6#month period, the whole amount of that tax is referable to that period; and
- (b) in any other case the amount of any value added tax which is referable to the 6#month period is the proportion of the tax which is equal to such proportion (if any) of the accounting reference period in question as falls within the 6#month period.

(3) In sub#paragraph (2)(a) “prescribed” means prescribed by regulations under the Value Added Tax Act 1983^{F48}.

Status: Point in time view as at 01/01/2006.

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F47 prosp. rep. by [2005 NI 10](#)

F48 [1983 c. 55](#)

^[F49F50]**3A.** Any insurance premium tax which is referable to the period of 6 months next before the relevant date (which period is referred to below as “the 6#month period”).

For the purposes of this paragraph—

- (a) where the whole of the accounting period to which any insurance premium tax is attributable falls within the 6#month period, the whole amount of that tax is referable to that period; and
- (b) in any other case the amount of any insurance premium tax which is referable to the 6# month period is the proportion of the tax which is equal to such proportion (if any) of the accounting period in question as falls within the 6#month period;

and references here to accounting periods shall be construed in accordance with Part III of the Finance Act 1994.]

F49 [1994 c. 9](#)

F50 prosp. rep. by [2005 NI 10](#)

^[F51F52]**3B.** Any landfill tax which is referable to the period of 6 months next before the relevant date (which period is referred to below as “the 6#month period”).

For the purposes of this paragraph—

- (a) where the whole of the accounting period to which any landfill tax is attributable falls within the 6#month period, the whole amount of that tax is referable to that period; and
- (b) in any other case the amount of any landfill tax which is referable to the 6#month period is the proportion of the tax which is equal to such proportion (if any) of the accounting period in question as falls within the 6#month period;

and references here to accounting periods shall be construed in accordance with Part III of the Finance Act 1996.]

F51 [1996 c. 8](#)

F52 prosp. rep. by [2005 NI 10](#)

^[F53F54]**3C.** Any climate change levy which is referable to the period of 6 months next before the relevant date (which period is referred to below as “the 6#month period”).

For the purposes of this paragraph—

- (a) where the whole of the accounting period to which any climate change levy is attributable falls within the 6#month period, the whole amount of that levy is referable to that period; and
- (b) in any other case the amount of any climate change levy which is referable to the 6# month period is the proportion of the levy which is equal to such proportion (if any) of the accounting period in question as falls within the 6#month period;

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and references here to accounting periods shall be construed in accordance with Schedule 6 to the Finance Act 2000.]

F53 2000 c. 17
F54 prosp. rep. by 2005 NI 10

^{F55F56}**4.** The amount of any car tax which is due at the relevant date from the debtor and which became due within a period of 12 months next before that date.

F55 prosp. inserted by 2001 c. 9
F56 prosp. rep. by 2005 NI 10

^{F57}**5.** Any amount which is due—

- (a) by way of general betting duty^{F58}, bingo duty or gaming duty], or
- (b) under section 16 of the Miscellaneous Transferred Excise Duties Act (Northern Ireland) 1972^{F59} (general betting duty and pool betting duty recoverable from agent collecting stakes),^{F60} . . .

Sub-para.(c) rep. by 1997 c.16

from the debtor at the relevant date and which became due within the period of 12 months next before that date.

F57 prosp. rep. by 2005 NI 10
F58 1997 c. 16
F59 1972 c. 11 (NI)
F60 1997 c. 16

[^{F61F62}**5A.** The amount of any excise duty on beer which is due at the relevant date from the debtor and which became due within a period of 6 months next before that date.]

F61 1991 c. 31
F62 prosp. rep. by 2005 NI 10

[^{F63F64}**5B.** Any amount which is due by way of lottery duty from the debtor at the relevant date and which became due within the period of 12 months next before that date.]

F63 1993 c. 34
F64 prosp. rep. by 2005 NI 10

[^{F65F66}**5C.** Any amount which is due by way of air passenger duty from the debtor at the relevant date and which became due within the period of six months next before that date.]

F65 1994 c. 9

Status: Point in time view as at 01/01/2006.

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F66 prosp. rep. by [2005 NI 10](#)

Category 3: Social security contributions

^{F67}6. All sums which on the relevant date are due from the debtor on account of Class 1 or Class 2 contributions under^{F68} the Social Security Contributions and Benefits Act 1992 or the Social Security Contributions and Benefits (Northern Ireland) Act 1992] and which became due from the debtor in the 12 months next before the relevant date.

F67 prosp. rep. by [2005 NI 10](#)

F68 [1992 c. 9](#)

^{F69}7. All sums which on the relevant date have been assessed on and are due from the debtor on account of Class 4 contributions under either of those Acts of 1975, being sums which—

- (a) are due to the Commissioners of Inland Revenue (rather than to the Secretary of State or the Department of Health and Social Services), and
- (b) are assessed on the debtor up to 5th April next before the relevant date,

but not exceeding, in the whole, any one year's assessment.

F69 prosp. rep. by [2005 NI 10](#)

Category 4: Contributions to occupational pension schemes, etc.

8. Any sum which is owed by the debtor and is a sum to which^{F70} Schedule 3 to the Pension Schemes (Northern Ireland) Act 1993] applies (contributions to occupational pension schemes and state scheme premiums).

F70 [1993 c. 49](#)

Category 5: Remuneration, etc., of employees

9. So much of any amount which—

- (a) is owed by the debtor to a person who is or has been an employee of the debtor, and
- (b) is payable by way of remuneration in respect of the whole or any part of the period of 4 months next before the relevant date,

as does not exceed so much as may be specified in an order made by the Department.

10. An amount owed by way of accrued holiday remuneration, in respect of any period of employment before the relevant date, to a person whose employment by the debtor has been terminated, whether before, on or after that date.

11. So much of any sum owed in respect of money advanced for the purpose as has been applied for the payment of a debt which, if it had not been paid, would have been a debt falling within paragraph 9 or 10.

12. So much of any amount which—

- (a) is ordered (whether before or after the relevant date) to be paid by the debtor under the Reserve Forces (Safeguard of Employment) Act 1985^{F71}, and

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(b) is so ordered in respect of a default made by the debtor before that date in the discharge of his obligations under that Act,
as does not exceed such amount as may be specified in an order made by the Department.

F71 1985 c. 17

Interpretation for Category 5

13.—(1) For the purposes of paragraphs 9 to 12, a sum is payable by the debtor to a person by way of remuneration in respect of any period if—

- (a) it is paid as wages or salary (whether payable for time or for piece work or earned wholly or partly by way of commission) in respect of services rendered to the debtor in that period, or
- (b) it is an amount falling within sub#paragraph (2) and is payable by the debtor in respect of that period.

[^{F72}(2) An amount falls within this sub#paragraph if it is—

- (a) a guarantee payment under Part V of the Employment Rights (Northern Ireland) Order 1996 (employee without work to do);
- (b) any payment for time off under Article 81 (time off to look for work or arrange training), Article 84 (time off for ante#natal care) or Article 93 (time off for carrying out trade union duties etc.) of that Order;
- (c) remuneration on suspension on medical grounds, or on maternity grounds, under Part VIII of that Order; or
- (d) remuneration under a protective award made under Article 217 of that Order (redundancy dismissal with compensation).]

F72 1996 NI 16

14.—(1) This paragraph relates to a case in which a person's employment has been terminated by or in consequence of his employer going into liquidation or being adjudged bankrupt (his employer being a company not in liquidation) by or in consequence of—

- (a) a receiver being appointed as mentioned in Article 50 (debenture#holders secured by floating charge), or
- (b) the taking of possession by debenture#holder (so secured), as mentioned in Article 205 of the Companies Order.

(2) For the purposes of paragraphs 9 to 12, holiday remuneration is deemed to have accrued to that person in respect of any period of employment if, by virtue of his contract of employment or of any statutory provision, that remuneration would have accrued in respect of that period if his employment had continued until he became entitled to be allowed the holiday.

(3) The reference in sub#paragraph (2) to any statutory provision includes an order or direction made under a statutory provision.

15. Without prejudice to paragraphs 13 and 14—

- (a) any remuneration payable by the debtor to a person in respect of a period of holiday or of absence from work through sickness or other good cause is deemed to be wages or (as the case may be) salary in respect of services rendered to the debtor in that period, and

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- (b) references here and in those paragraphs to remuneration in respect of a period of holiday include any sums which, if they had been paid, would have been treated for the purposes of the statutory provisions relating to social security as earnings in respect of that period.

Orders under Category 5

- 16.** An order under paragraph 9 or 12—
- (a) may contain such transitional provisions as may appear to the Department necessary or expedient;
- (b) shall be subject to negative resolution.

Category 6: Levies on coal and steel production

- 17.** Any sums due at the relevant date from the debtor in respect of—
- (a) the levies on the production of coal and steel referred to in Articles 49 and 50 of the E.C.S.C. Treaty, or
- (b) any surcharge for delay provided for in Article 50(3) of that Treaty and Article 6 of Decision 3/52 of the High Authority of the Coal and Steel Community.

SCHEDULE 5

Article 359.

PROVISIONS CAPABLE OF INCLUSION IN COMPANY INSOLVENCY RULES

High Court

- 1.** ^{F73}Provision for regulating the practice and procedure of the High Court so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies, being any provision that could be made by rules of court.^{F74}

F73 prosp. renumbered by 2005 NI 10
F74 prosp. addition by 2005 NI 10

- 2.** Provision conferring rights of audience, in the High Court so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies, on the official receiver.

Notices, etc.

- 3.** Provision requiring notice of any proceedings in connection with or arising out of the insolvency or winding up of a company to be given or published in the prescribed manner.

4. Provision with respect to the form, manner of serving, contents and proof of any petition, application, order, notice, statement or other document required to be presented, made, given, published or prepared under any statutory provision relating to, or to matters connected with or arising out of, the insolvency or winding up of companies.

- 5.** Provision specifying the persons to whom any notice is to be given.

Registration of voluntary arrangements

- 6.** Provision for the registration of voluntary arrangements approved under Part II, including provision for the keeping and inspection of a register.

Status: Point in time view as at 01/01/2006.

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Provisional liquidator

7. Provision as to the manner in which a provisional liquidator appointed under Article 115 is to carry out his functions.

Conduct of insolvency

8. Provision with respect to the certification of any person as, and as to the proof that a person is, the liquidator, administrator or administrative receiver of a company.

9. The following provision with respect to meetings of a company's creditors, contributories or members—

- (a) provision as to the manner of summoning a meeting (including provision as to how any power to require a meeting is to be exercised, provision as to the manner of determining the value of any debt or contribution for the purposes of any such power and provision making the exercise of any such power subject to the deposit of a sum sufficient to cover the expenses likely to be incurred in summoning and holding a meeting);
- (b) provision specifying the time and place at which a meeting may be held and the period of notice required for a meeting;
- (c) provision as to the procedure to be followed at a meeting (including the manner in which decisions may be reached by a meeting and the manner in which the value of any vote at a meeting is to be determined);
- (d) provision for requiring a person who is or has been an officer of the company to attend a meeting;
- (e) provision creating, in the prescribed circumstances, a presumption that a meeting has been duly summoned and held;
- (f) provision as to the manner of proving the decisions of a meeting.

10.—(1) Provision as to the functions, membership and proceedings of a committee established under^{F75} Article 38, 59, 87 or 120.

(2) The following provision with respect to the establishment of a committee under Article 87 or 120, that is to say—

- (a) provision for resolving differences between a meeting of the company's creditors and a meeting of its contributories or members;
- (b) provision authorising the establishment of the committee without a meeting of contributories in a case where a company is being wound up on grounds including its inability to pay its debts; and
- (c) provision modifying the requirements of this Order with respect to the establishment of the committee in a case where a winding#up order has been made immediately upon the discharge of an administration order.

F75 prosp. subst. by [2005 NI 10](#)

11. Provision as to the manner in which any requirement that may be imposed on a person under any of Parts II to VII by the official receiver, the liquidator, administrator or administrative receiver of a company or a special manager appointed under Article 151 is to be so imposed.

12. Provision as to the debts that may be proved in a winding up, as to the manner and conditions of proving a debt and as to the manner and expenses of establishing the value of any debt or security.

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13. Provision with respect to the manner of the distribution of the property of a company that is being wound up, including provision with respect to unclaimed funds and dividends.

14. Provision which, with or without modifications, applies in relation to the winding up of companies any provision contained in Parts VIII to X.

F76

F76 prosp. insertion by [2005 NI 10](#)

F77

F77 prosp. insertion by [2005 NI 10](#)

Financial provisions

15. Provision as to the amount, or manner of determining the amount, payable to the liquidator, administrator or administrative receiver of a company or a special manager appointed under Article 151, by way of remuneration for the carrying out of functions in connection with or arising out of the insolvency or winding up of a company.

16. Provision with respect to the manner in which money received by the liquidator of a company in the course of carrying out his functions as such is to be paid into and out of the Insolvency Account, invested or otherwise handled and with respect to the payment of interest on sums which, in pursuance of rules made by virtue of this paragraph, have been paid into the Insolvency Account.

F78

F78 prosp. insertion by [2005 NI 10](#)

17. Provision as to the costs that may be treated as the expenses of a winding up.

18. Provision as to the costs that may be treated as properly incurred by the administrator or administrative receiver of a company.

19. Provision as to the costs that may be incurred for any of the purposes of Part II or in the administration of any voluntary arrangement approved under that Part.

Information and records

20. Provision requiring officers of the High Court—

- (a) to keep books and other records with respect to the exercise of the jurisdiction of the Court in relation to, or to matters connected with or arising out of, the insolvency or winding up of companies, and
- (b) to make returns to the Department of the business of the Court.

21. Provision requiring a creditor, member or contributory, or such a committee as is mentioned in paragraph 10, to be supplied (on payment in prescribed cases of the prescribed fee) with such information and with copies of such documents as may be prescribed.

22. Provision as to the manner in which public examinations under Articles 113 and 114 and proceedings under Articles 200 and 201 are to be conducted, as to the circumstances in which records of such examinations or proceedings are to be made available to prescribed persons and as to the costs of such examinations and proceedings.

Status: Point in time view as at 01/01/2006.

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23. Provision imposing requirements with respect to—

- (a) the preparation and keeping by the liquidator, administrator or administrative receiver of a company, or by the supervisor of a voluntary arrangement approved under Part II, of prescribed books, accounts and other records;
- (b) the production in the manner and at the location prescribed of those books, accounts and records for inspection by prescribed persons;
- (c) the auditing of accounts kept by the liquidator, administrator or administrative receiver of a company, or the supervisor of such a voluntary arrangement; and
- (d) the issue by the administrator or administrative receiver of a company of such a certificate as is mentioned in section 22(3)(b) of the Value Added Tax Act 1983^{F79} (refund of tax in cases of bad debts) and the supply of copies of the certificate to creditors of the company.

F79 1983 c. 55

24. Provision requiring the person who is the supervisor of a voluntary arrangement approved under Part II, when it appears to him that the voluntary arrangement has been fully implemented and that nothing remains to be done by him under the arrangement—

- (a) to give notice of that fact to persons bound by the voluntary arrangement, and
- (b) to report to those persons on the carrying out of the functions conferred on the supervisor of the arrangement.

25. Provision as to the manner in which the liquidator of a company is to act in relation to the books, papers and other records of the company, including provision authorising their disposal.

26. Provision imposing requirements in connection with the carrying out of functions under^{F80} Article 10(4) of the Company Directors Disqualification (Northern Ireland) Order 2002] (including, in particular, requirements with respect to the making of periodic returns).

F80 2002 NI 4

General

27. Provision conferring power on the Department to make regulations with respect to so much of any matter that may be provided for in the rules as relates to the Insolvency Account or to the carrying out of the functions of the liquidator, administrator or administrative receiver of a company.

28. Provision conferring a discretion on the High Court.

29. Provision conferring power on the High Court to make orders for the purpose of securing compliance with obligations imposed by or under^{F81} Article 34, 57, 111, 121(2) or 199 of this Order or^{F82} Article 10(5) of the Company Directors Disqualification (Northern Ireland) Order 2002].

F81 prosp. subst. by 2005 NI 10

F82 2002 NI 4

30. Provision making non-compliance with any of the rules a criminal offence.

Status: Point in time view as at 01/01/2006.

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SCHEDULE 6 ^{F83}

Article 359.

PROVISIONS CAPABLE OF INCLUSION IN INDIVIDUAL INSOLVENCY RULES

F83 mod. by SR 2004/307

High Court

1. Provision for regulating the practice and procedure of the High Court for the purposes of Parts VIII to X, being any provision that could be made by rules of court.

2. Provision conferring rights of audience, in the High Court for the purposes of Parts VIII to X, on the official receiver.

Notices, etc.

3. Provision requiring notice of any proceedings under Parts VIII to X or of any matter relating to or arising out of a proposal under Part VIII or a bankruptcy to be given or published in the prescribed manner.

4. Provision with respect to the form, manner of serving, contents and proof of any petition, application, order, notice, statement or other document required to be presented, made, given, published or prepared under any provision contained in Parts VIII to X, or Articles 359 to 366 (including provision requiring prescribed matters to be verified by affidavit).

5. Provision specifying the persons to whom any notice under Parts VIII to X is to be given.

VALID FROM 30/06/2011

^{F84}Debt relief orders

F84 Sch. 6 paras. 5A-5E and cross-headings inserted (30.6.2011) by [Debt Relief Act \(Northern Ireland\) 2010](#) (c. 16), ss. 6, 7(1), **Sch. para. 4(14)(f)**; S.R. 2011/13, **art. 2**

5A Provision as to the manner in which the official receiver is to carry out his functions under Part 7A.

5B Provision as to the manner in which any requirement that may be imposed by the official receiver on a person under Part 7A is to take effect.

5C Provision modifying the application of Part 7A in relation to an individual who has died at a time when a moratorium period under a debt relief order applies in relation to him.

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VALID FROM 30/06/2011

Debt relief restrictions orders and undertakings

5D Provision about debt relief restrictions orders, interim orders and undertakings, including provision about evidence.

VALID FROM 30/06/2011

Register of debt relief orders and debt relief restrictions orders, etc.

5E Provision about the register required to be maintained by Article 208W and the information to be contained in it, including provision—

- (a) enabling the amalgamation of the register with another register;
- (b) enabling inspection of the register by the public.]

Deeds of arrangement and voluntary arrangements

6. Provision for endorsement, execution and certification of deeds of arrangement registered under Article 211 and for the registration of other voluntary arrangements approved under Part VIII, including provision for the keeping and inspection of a register.

F85

F85 prosp. insertion by [2005 NI 10](#)

Interim receiver

7. Provision as to the manner in which an interim receiver appointed under Article 259 is to carry out his functions, including any such provision as is specified in relation to the trustee of a bankrupt's estate in paragraph 19 or 25.

Receiver or manager

8. Provision as to the manner in which the official receiver is to carry out his functions as receiver or manager of a bankrupt's estate under Article 260, including any such provision as is specified in relation to the trustee of a bankrupt's estate in paragraph 19 or 25.

Administration of individual insolvency

9. Provision with respect to the certification of the appointment of any person as trustee of a bankrupt's estate and as to the proof of that appointment.

10. The following provision with respect to meetings of creditors—

- (a) provision as to the manner of summoning a meeting (including provision as to how any power to require a meeting is to be exercised, provision as to the manner of determining the value of any debt for the purposes of any such power and provision making the exercise of any such power subject to the deposit of a sum sufficient to cover the expenses likely to be incurred in summoning and holding a meeting);

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- (b) provision specifying the time and place at which a meeting may be held and the period of notice required for a meeting;
 - (c) provision as to the procedure to be followed at such a meeting (including the manner in which decisions may be reached by a meeting and the manner in which the value of any vote at a meeting is to be determined);
 - (d) provision for requiring a bankrupt or debtor to attend a meeting;
 - (e) provision creating, in the prescribed circumstances, a presumption that a meeting has been duly summoned and held; and
 - (f) provision as to the manner of proving the decisions of a meeting.
- 11.** Provision as to the functions, membership and proceedings of a creditors' committee established under Article 274.
- 12.** Provision as to the manner in which any requirement that may be imposed on a person under Parts VIII to X by the official receiver, the trustee of a bankrupt's estate or a special manager appointed under Article 341 is to be so imposed and, in the case of any requirement imposed under Article 278(3) (information, etc., to be given by the trustee to the official receiver), provision conferring power on the High Court to make orders for the purpose of securing compliance with that requirement.
- 13.** Provision as to the manner in which any requirement imposed by virtue of Article 283(3) (compliance with income payments order) is to take effect.
- 14.** Provision as to the terms and conditions that may be included in a charge under Article 286 (dwelling house forming part of bankrupt's estate).
- 15.** Provision as to the debts that may be proved in any bankruptcy, as to the manner and conditions of proving a debt and as to the manner and expenses of establishing the value of any debt or security.
- 16.** Provision with respect to the manner of the distribution of a bankrupt's estate, including provision with respect to unclaimed funds and dividends.
- 17.** Provision modifying the application of Parts VIII to X in relation to a debtor or bankrupt who has died.

Financial provisions

- 18.** Provision as to the amount, or manner of determining the amount, payable to an interim receiver, the trustee of a bankrupt's estate or a special manager appointed under Article 341 by way of remuneration for the performance of functions in connection with or arising out of the bankruptcy of any person.
- 19.** Provision with respect to the manner in which money received by the trustee of a bankrupt's estate in the course of carrying out his functions as such is to be paid into and out of the Insolvency Account, invested or otherwise handled and with respect to the payment of interest on sums which, in pursuance of rules made by virtue of this paragraph, have been paid into the Insolvency Account.

F86

F86 prosp. insertion by 2005 NI 10

- 20.** Provision as to the costs that may be treated as the expenses of a bankruptcy.
- 21.** Provision as to the costs that may be incurred for any of the purposes of Part VIII or in the administration of any voluntary arrangement approved under that Part.

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Information and records

22. Provision requiring officers of the High Court—

- (a) to keep books and other records with respect to the exercise of the jurisdiction of the Court under Parts VIII to X, and
- (b) to make returns to the Department of the business of the Court.

23. Provision requiring a creditor or a committee established under Article 274 to be supplied (on payment in prescribed cases of the prescribed fee) with such information and with copies of such documents as may be prescribed.

24. Provision as to the manner in which public examinations under Article 263 and proceedings under Articles 337 to 339 are to be conducted, as to the circumstances in which records of such examinations and proceedings are to be made available to prescribed persons and as to the costs of such examinations and proceedings.

25. Provision imposing requirements with respect to—

- (a) the preparation and keeping by the trustee of a bankrupt's estate, the trustee of a deed of arrangement or the supervisor of a voluntary arrangement approved under Part VIII, of prescribed books, accounts and other records;
- (b) the production in the manner and at the location prescribed of those books, accounts and records for inspection by prescribed persons; and
- (c) the auditing of accounts kept by the trustee of a bankrupt's estate, the trustee of a deed of arrangement or the supervisor of such a voluntary arrangement.

26. Provision requiring the person who is the supervisor of a voluntary arrangement approved under Part VIII, when it appears to him that the voluntary arrangement has been fully implemented and that nothing remains to be done by him under it—

- (a) to give notice of that fact to persons bound by the voluntary arrangement, and
- (b) to report to those persons on the carrying out of the functions conferred on the supervisor of it.

27. Provision as to the manner in which the trustee of a bankrupt's estate is to act in relation to the books, papers and other records of the bankrupt, including provision authorising their disposal.

F87

F87 prosp. insertion by 2005 NI 10

General

28. Provision conferring power on the Department to make regulations with respect to so much of any matter that may be provided for in the rules as relates to deeds of arrangement, the Insolvency Account or to the carrying out of the functions of an interim receiver appointed under Article 259, of the official receiver while acting as a receiver or manager under Article 260 or of a trustee of a bankrupt's estate.

29. Provision conferring a discretion on the High Court.

30. Provision making non-compliance with any of the rules a criminal offence.

Status: Point in time view as at 01/01/2006.

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SCHEDULE 7

Article 373.

PUNISHMENT OF OFFENCES UNDER THIS ORDER

Article of Order creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
[^{F88} 19A(1).]	[^{F88} False representation or fraud for purpose of obtaining members' or creditor's approval of proposed voluntary arrangement.]	[^{F88} 1. On indictment.] [^{F88} 2. Summary.]	[^{F88} 7 years or a fine, or both.] [^{F88} 6 months or the statutory maximum, or both.]	
^{F89} 25(2)	^{F89} Company and others failing to state in correspondence, etc., that administrator appointed.	^{F89} Summary.	^{F89} One#fifth of the statutory maximum.	
^{F89} 28(8)	^{F89} Failure of administrator to register office copy of High Court order permitting disposal of charged property.	^{F89} Summary.	^{F89} One#fifth of the statutory maximum.	^{F89} One#fiftieth of the statutory maximum.
^{F89} 30(5)	^{F89} Failure of administrator to register office copy of High Court order varying or discharging administration order.	^{F89} Summary.	^{F89} One#fifth of the statutory maximum.	^{F89} One#fiftieth of the statutory maximum.
^{F89} 33(3)	^{F89} Administrator failing to register administration order and	^{F89} Summary.	^{F89} One#fifth of the statutory maximum.	^{F89} One#fiftieth of the statutory maximum.

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	give notice of appointment.			
F89 34(6)	F89 Failure to comply with provisions relating to statement of affairs, where administrator appointed.	F89 1. On indictment. F89 2. Summary.	F89 A fine. F89 The statutory maximum.	F89 One#tenth of the statutory maximum.
F89 35(3)	F89 Administrator failing to send out, register and lay before creditors statement of his proposals.	F89 Summary.	F89 One#fifth of the statutory maximum.	F89 One#fiftieth of the statutory maximum.
F89 36(7)	F89 Administrator failing to file High Court order discharging administration order under Article 36.	F89 Summary.	F89 One#fifth of the statutory maximum.	F89 One#fiftieth of the statutory maximum.
F89 39(6)	F89 Administrator failing to file High Court order discharging administration order under Article 39.	F89 Summary.	F89 One#fifth of the statutory maximum.	F89 One#fiftieth of the statutory maximum.
40	Body corporate acting as receiver.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
41(1)	F89 Undischarged bankrupt acting as receiver or manager.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
48(4)	Receiver failing to deliver accounts to registrar.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.

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49(2)	Company and others failing to state in correspondence that receiver appointed.	Summary.	One#fifth of the statutory maximum.	
53(6)	Administrative receiver failing to file office copy of order permitting disposal or charged property.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
55(5)	Administrative receiver failing to file notice of vacation of office.	Summary.	One#fifth of the statutory maximum.	^{F90} One#fiftieth of the statutory maximum.
56(4)	Administrative receiver failing to give notice of his appointment.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
57(6)	Failure to comply with provisions relating to statement of affairs, where administrative receiver appointed.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One#tenth of the statutory maximum.
58(8)	Administrative receiver failing to comply with requirements as to his report.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
71(2) ^{F91}	Company failing to give notice in Belfast Gazette of resolution for voluntary winding up.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
75(4) ^{F91}	Director making statutory declaration of company's solvency without reasonable grounds for his opinion.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	

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75(6)	Declaration under Article 75 not delivered to registrar within prescribed time.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
79(3) F91	Liquidator failing to summon general meeting of company at each year's end.	Summary.	One#fifth of the statutory maximum.	
80(4)	Liquidator failing to send to registrar a copy of account of winding up and return of final meeting.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
80(6)	Liquidator failing to call final meeting.	Summary.	One#fifth of the statutory maximum.	
81(6)	Liquidator failing to comply with Article 81 where company insolvent.	Summary.	The statutory maximum.	
84(4)	Company failing to comply with Article 84 in respect of summoning and giving notice of creditors' meeting.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
85(3) F91	Directors failing to attend and lay statement in prescribed form before creditors' meeting.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
91(3) F91	Liquidator failing to summon company general meeting and creditors' meeting at each year's end.	Summary.	One#fifth of the statutory maximum.	
92(4)	Liquidator failing to send to registrar account of winding up	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.

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	and return of final meetings.			
92(6) F91	Liquidator failing to call final meeting of company or creditors.	Summary.	One#fifth of the statutory maximum.	
95(2)	Liquidator failing to publish, or deliver to the registrar, notice of his appointment.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
99(4)	Directors exercising powers in breach of Article 99, where no liquidator.	Summary.	The statutory maximum.	
111(7)	Failing to comply with requirements as to statement of affairs, where liquidator appointed.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One#tenth of the statutory maximum.
139	Giving, offering, etc., corrupt inducement affecting appointment of liquidator.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
141(7)	Liquidator failing to comply with requirements of Article 141 in creditors' voluntary winding up.	Summary.	The statutory maximum.	
159(2)	Default in compliance with Article 159 as to notification that company being wound up.	Summary.	One#fifth of the statutory maximum.	
162(2)	Liquidator failing to notify registrar as to progress of winding up.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.

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166(4)	Failing to deliver to registrar office copy of High Court order deferring dissolution.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
168(6)	Failing to deliver to registrar copy of directions or result of appeal under Article 168.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
169(5)	Failing to deliver to registrar copy of Department's directions or High Court order deferring dissolution.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
170(1)	Fraud, etc., in anticipation of winding up.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
170(2)	Privity to fraud in anticipation of winding up; fraud, or privity to fraud, after commencement of winding up.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
171(1)	Officer of company entering into transaction in fraud of company's creditors.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
172(1)	Officer of company misconducting himself in course of winding up.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
173	Officer or contributory destroying, falsifying, etc., company's books.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	

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174(1)	Officer of company making material omission from statement relating to company's affairs.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
175(1)	False representation or fraud for purpose of obtaining creditors' consent to an agreement in connection with winding up.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
180(4)	Contravening restrictions on re#use of name of company in insolvent liquidation.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
199(5)	Failing to co#operate with office#holder.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One#tenth of the statutory maximum.
217(2)	Default in compliance with Article 374 as to notification that deed is void.	Summary.	One#fifth of the statutory maximum.	
218(1)	Trustee acting when deed of arrangement void.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
222(3)	Failing to transmit accounts.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
223	Preferential payment to creditor.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
[^{F88} 236A(1).]	[^{F88} False representation or fraud for purpose of obtaining creditor's approval of proposed voluntary arrangement.]	[^{F88} 1. On indictment.] [^{F88} 2. Summary.]	[^{F88} 7 years or a fine, or both.] [^{F88} 6 months or the statutory maximum, or both.]	

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324(1) F91	Bankrupt failing to disclose property or disposals to official receiver or trustee.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
325(1) F91	Bankrupt failing to deliver property to, or concealing property from, official receiver or trustee.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
325(3) F91	Bankrupt removing property which he is required to deliver to official receiver or trustee.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
325(5) F91	Bankrupt failing to account for loss of substantial part of property.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
326(1) F91	Bankrupt failing to deliver books, papers and records to official receiver or trustee.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
326(2) F91	Bankrupt concealing, destroying etc., books, papers or records, or making false entries in them.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
326(3) F91	Bankrupt disposing of, or altering, books, papers or records relating to his estate or affairs.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
327(1) F91	Bankrupt making material omission in statement	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory

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	relating to his affairs.		maximum, or both.
327(3) F91	Bankrupt making false statement, or failing to inform trustee, where false debt proved.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
328(1) F91	Bankrupt fraudulently disposing of property.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
328(3) F91	Bankrupt conceals or removes property.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
329(1) F91	Bankrupt absconding with property he is required to deliver to official receiver or trustee.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
330(1) F91	Bankrupt disposing of property obtained on credit and not paid for.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
330(3) F91	Obtaining property in respect of which money is owed by a bankrupt.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
331(1) F91	Bankrupt obtaining credit or engaging in business without disclosing his status or name in which he was made bankrupt.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
331(3) F91	Person made bankrupt in	1. On indictment. 2. Summary.	2 years or a fine, or both.

Status: Point in time view as at 01/01/2006.

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	England, Wales or Scotland obtaining credit, etc., in Northern Ireland.		6 months or the statutory maximum, or both.
F89 332(1) F91	F89 Bankrupt failing to keep proper accounting records.	F89 1. On indictment. 2. Summary.	F89 2 years or a fine, or both. 6 months or the statutory maximum, or both.
F89 333(1) F91	F89 Bankrupt increasing extent of insolvency by gambling.	F89 1. On indictment. 2. Summary.	F89 2 years or a fine, or both. 6 months or the statutory maximum, or both.
348(1)	Acting as insolvency practitioner when not qualified.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
[F88Sch. A1, para. 20(2).]	[F88Directors failing to notify nominee of beginning of moratorium.]	[F881. On indictment.] [F882. Summary.]	[F882 years or a fine, or both.] [F886 months or the statutory maximum, or both.]
[F88Sch. A1, para. 21(3).]	[F88Nominee failing to advertise or notify beginning of moratorium.]	[F88Summary.]	[F88One-fifth of the statutory maximum.]
[F88Sch. A1, para. 22(2).]	[F88Nominee failing to advertise or notify end of moratorium.]	[F88Summary.]	[F88One-fifth of the statutory maximum.]
[F88Sch. A1, para. 27(2).]	[F88Company and officers failing to state in correspondence etc. that moratorium in force.]	[F88Summary.]	[F88One-fifth of the statutory maximum.]
[F88Sch. A1, para. 28(3)(a).]	[F88Company obtaining	[F881. On indictment.]	[F88A fine.]

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	credit without disclosing existence of moratorium.]	[^{F88} 2. Summary.]	[^{F88} The statutory maximum.]
[^{F88} Sch. A1, para. 28(3)(b).]	[^{F88} Obtaining credit for company without disclosing existence of moratorium.]	[^{F88} 1. On indictment.]	[^{F88} 2 years or a fine, or both.]
		[^{F88} 2. Summary.]	[^{F88} 6 months or the statutory maximum, or both.]
[^{F88} Sch. A1, para. 29(3)(a).]	[^{F88} Company disposing of property otherwise than in ordinary way of business.]	[^{F88} 1. On indictment.]	[^{F88} A fine.]
		[^{F88} 2. Summary.]	[^{F88} The statutory maximum.]
[^{F88} Sch. A1, para. 29(3)(b).]	[^{F88} Authorising or permitting disposal of company property.]	[^{F88} 1. On indictment.]	[^{F88} 2 years or a fine, or both.]
		[^{F88} 2. Summary.]	[^{F88} 6 months or the statutory maximum, or both.]
[^{F88} Sch. A1, para. 30(3)(a).]	[^{F88} Company making payments in respect of liabilities existing before beginning of moratorium.]	[^{F88} 1. On indictment.]	[^{F88} A fine.]
		[^{F88} 2. Summary.]	[^{F88} The statutory maximum.]
[^{F88} Sch. A1, para. 30(3)(b).]	[^{F88} Authorising or permitting such a payment.]	[^{F88} 1. On indictment.]	[^{F88} 2 years or a fine, or both.]
		[^{F88} 2. Summary.]	[^{F88} 6 months or the statutory maximum, or both.]
[^{F88} Sch. A1, para. 31(9).]	[^{F88} Directors failing to send to registrar office copy of court order permitting disposal of charged property.]	[^{F88} Summary.]	[^{F88} One-fifth of the statutory maximum.]
[^{F88} Sch. A1, para. 32(1).]	[^{F88} Company disposing of charged property.]	[^{F88} 1. On indictment.]	[^{F88} A fine.]
		[^{F88} 2. Summary.]	[^{F88} The statutory maximum.]
[^{F88} Sch. A1, para. 32(2).]	[^{F88} Authorising or permitting such a disposal.]	[^{F88} 1. On indictment.]	[^{F88} 2 years or a fine, or both.]

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		[^{F88} 2. Summary.]	[^{F88} 6 months or the statutory maximum, or both.]
[^{F88} Sch. A1, para. 33(1)(a).]	[^{F88} Company entering into market contract, etc.]	[^{F88} 1. On indictment.] [^{F88} 2. Summary.]	[^{F88} A fine.] [^{F88} The statutory maximum.]
[^{F88} Sch. A1, para. 33(1)(b).]	[^{F88} Authorising or permitting company to do so.]	[^{F88} 1. On indictment.] [^{F88} 2. Summary.]	[^{F88} 2 years or a fine, or both.] [^{F88} 6 months or the statutory maximum, or both.]
[^{F88} Sch. A1, para. 35(6).]	[^{F88} Nominee failing to give notice of withdrawal of consent to act.]	[^{F88} Summary.]	[^{F88} One-fifth of the statutory maximum.]
[^{F88} Sch. A1, para. 44(3).]	[^{F88} Nominee failing to give notice of extension of moratorium.]	[^{F88} Summary.]	[^{F88} One-fifth of the statutory maximum.]
[^{F88} Sch. A1, para. 51(2).]	[^{F88} Fraud or privity to fraud in anticipation of moratorium.]	[^{F88} 1. On indictment.] [^{F88} 2. Summary.]	[^{F88} 7 years or a fine, or both.] [^{F88} 6 months or the statutory maximum, or both.]
[^{F88} Sch. A1, para. 51(3).]	[^{F88} Fraud or privity to fraud during moratorium.]	[^{F88} 1. On indictment.] [^{F88} 2. Summary.]	[^{F88} 7 years or a fine, or both.] [^{F88} 6 months or the statutory maximum, or both.]
[^{F88} Sch. A1, para. 51(7).]	[^{F88} Knowingly taking in pawn or pledge, or otherwise receiving, company property.]	[^{F88} 1. On indictment.] [^{F88} 2. Summary.]	[^{F88} 7 years or a fine, or both.] [^{F88} 6 months or the statutory maximum, or both.]
[^{F88} Sch. A1, para. 52(1).]	[^{F88} False representation or fraud for purpose of obtaining	[^{F88} 1. On indictment.] [^{F88} 2. Summary.]	[^{F88} 7 years or a fine, or both.] [^{F88} 6 months or the statutory

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or extending
moratorium.]

maximum, or
both. ^{F92F92F92F92F92}]

F88 2002 NI 6
F89 prosp. rep. by 2005 NI 10
F90 prosp. rep. by 1990 NI 10
F91 mod. by SR 2004/307
F92 prosp. addition by 2005 NI 10

SCHEDULE 8

Article 379.

TRANSITIONAL PROVISIONS AND SAVINGS

PART I

COMPANY INSOLVENCY AND WINDING UP

Administration orders

1.—(1) Where any right to appoint an administrative receiver of a company is conferred by any debentures or floating charge created before the commencement date, the conditions precedent to the exercise of that right are deemed to include the presentation of a petition applying for an administration order to be made in relation to the company.

(2) In sub#paragraph (1) “administrative receiver” has the meaning assigned by Article 5(1).

Receivers and managers

2.—(1) Parts IV and VII do not apply in relation to any receiver or manager of a company's property who was appointed before the commencement date.

(2) In relation to any such receiver or manager as is mentioned in sub#paragraph (1) the Companies Order has effect without the amendments and repeals specified in Article 12 and in Schedules 9 and 10.

(3) This paragraph is without prejudice to the power conferred by this Order under which rules under Article 359 may make transitional provision in connection with the coming into operation of those rules; and such provision may apply those rules in relation to the receiver or manager of a company's property notwithstanding that he was appointed before the coming into operation of the rules or Article 359.

Winding up already in progress

3.—(1) Subject to the following provisions of this Part, Parts V to VII do not apply in relation to any winding up which has commenced, or is treated as having commenced, before the commencement date.

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(2) In relation to any such winding up as is mentioned in sub#paragraph (1) the statutory provisions specified in Schedules 9 and 10 have effect without the amendments and repeals specified in Article 13 and in those Schedules.

(3) Where any instrument made under a statutory provision referred to in sub#paragraph (2) is in operation immediately before the commencement date, that instrument continues to have effect on and after that date in relation to any such winding up as is mentioned in sub#paragraph (1).

Statement of affairs

4.—(1) Where a winding up by the High Court has commenced, or is treated as having commenced, before the commencement date, the official receiver or (on appeal from a refusal by him) the Court may, at any time on or after that date—

- (a) release a person from an obligation imposed on him by or under Article 489 of the Companies Order (statement of affairs), or
- (b) extend the period specified in paragraph (6) of that Article.

(2) Accordingly, on and after the commencement date, Article 489(6) of the Companies Order has effect in relation to a winding up to which this paragraph applies with the omission of the words from “or within” onwards.

Provisions relating to liquidator

5.—(1) This paragraph applies as regards the liquidator in the case of a winding up by the High Court commenced, or treated as having commenced, before the commencement date.

(2) The official receiver may, at any time when he is liquidator of the company, apply to the Department for the appointment of a liquidator in his (the official receiver's) place; and on any such application the Department shall either make an appointment or decline to make one.

(3) Where immediately before the appointed day the liquidator of the company has not made an application under Article 506 of the Companies Order (release of liquidators), then—

- (a) except where the Department otherwise directs, Articles 124(1) and (2) and 146(7) of this Order apply, and Article 508 of the Companies Order does not apply, in relation to any liquidator of that company who holds office on or at any time after the commencement date and is not the official receiver;
- (b) Article 124(3) of this Order applies in relation to the carrying out at any time after that date by any liquidator of the company of any of his functions; and
- (c) a liquidator in relation to whom Article 146(7) of this Order has effect by virtue of this paragraph has his release with effect from the time specified in Article 148(4)(d) of this Order.

(4) Paragraph (6) of Article 148 of this Order has effect for the purposes of sub#paragraph (3) (c) as it has for the purposes of that Article, but as if the reference to Article 176 were to Article 584 of the Companies Order.

Saving for power to make rules

6. Paragraphs 3 to 5 are without prejudice to the power conferred by this Order under which rules made under Article 359 may make transitional provision in connection with the coming into operation of those rules; and such provision may apply those rules in relation to a winding up

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notwithstanding that the winding up commenced, or is treated as having commenced, before the coming into operation of the rules or Article 359.

Setting aside of preferences and other transactions

7.—(1) Where a provision in Part V of this Order applies in relation to a winding up or in relation to a case in which an administration order has been made, a preference given, floating charge created or other transaction entered into before the commencement date shall not be set aside under that provision except to the extent that it could have been set aside under the law in operation immediately before that date, assuming for this purpose that any relevant administration order had been a winding#up order.

(2) The references in sub#paragraph (1) to setting aside a preference, floating charge or other transaction include the making of an order which varies or reverses any effect of a preference, floating charge or other transaction.

PART II

INDIVIDUAL INSOLVENCY

Bankruptcy general

8.—(1) Subject to the following provisions of this Part, Parts VIII to X do not apply in relation to any case in which a bankruptcy petition was presented, or an adjudication in bankruptcy was made, before the commencement date.

(2) In relation to any such case as is mentioned in sub#paragraph (1), the statutory provisions specified in Schedules 9 and 10, so far as they relate to bankruptcy, have effect without the amendments and repeals specified in those Schedules.

(3) Where any instrument made under a statutory provision referred to in sub#paragraph (2) is in operation immediately before the commencement date, that instrument continues to have effect on and after that date in relation to any such case as is mentioned in sub#paragraph (1).

9.—(1) In relation to any such case as is mentioned in paragraph 8(1) the references in any statutory provision to a petition, order or other matter which is provided for under the Bankruptcy Acts and corresponds to a petition, order or other matter provided for under provisions of Parts VIII to X of this Order continue on and after the commencement date to have effect as references to the petition, order or matter provided for by those Acts.

(2) Without prejudice to sub#paragraph (1), in determining for the purposes of Article 253 (period of bankruptcy) or paragraph 11 whether any person was an undischarged bankrupt at a time before the commencement date, an adjudication in bankruptcy and an annulment of a bankruptcy under the Bankruptcy Acts are to be taken into account in the same way, respectively, as a bankruptcy order under the provisions of Parts VIII to X of this Order and the annulment under Article 256 of this Order of such an order.

10. Transactions entered into before the commencement date have effect on and after that date as if references to acts of bankruptcy in the provisions for giving effect to those transactions continued to be references to acts of bankruptcy within the meaning of section 21 of the Bankruptcy (Ireland) Amendment Act 1872^{F93} but as if such acts included failure to comply with a statutory demand served under Article 242 of this Order.

Status: Point in time view as at 01/01/2006.

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F93 1872 c. 58

Discharge from old bankruptcy

11.—(1) Where a person—

- (a) was adjudged bankrupt before the commencement date or is adjudged bankrupt on or after that date on a petition presented before that date, and
- (b) that person was not an undischarged bankrupt at any time in the period of 15 years ending with the adjudication,

that person is deemed (if not previously discharged) to be discharged from his bankruptcy for the purposes of the Bankruptcy Acts, at the end of the discharge period.

(2) Subject to sub#paragraph (3), the discharge period for the purposes of this paragraph is—

- (a) in the case of a person adjudged bankrupt before the commencement date, the period of 3 years beginning with that date, and
- (b) in the case of a person who is adjudged bankrupt on or after that date on a petition presented before that date, the period of 3 years beginning with the date of the adjudication.

(3) Where the High Court exercising jurisdiction in relation to a bankruptcy to which this paragraph applies is satisfied, on the application of the official receiver, that the bankrupt has failed, or is failing, to comply with any of his obligations under the Bankruptcy Acts, any rules made under those Acts or any such rules as are mentioned in paragraph 16(1), the Court may order that the discharge period shall cease to run for such period, or until the fulfilment of such conditions (including a condition requiring the Court to be satisfied as to any matter) as may be specified in the order.

Provisions relating to trustee

12.—(1) This paragraph applies as regards the trustee in the case of a person adjudged bankrupt before the commencement date, or adjudged bankrupt on or after that date on a petition presented before that date.

(2) Where on the commencement date the trustee of a bankrupt's estate has not made an application under Article 27 of the Bankruptcy Amendment (Northern Ireland) Order 1980^{F94} as applied by Article 39 of that Order (release of trustee), then—

- (a) except where the Department otherwise directs, Articles 271(7), 277 and 304(1) to (3) of this Order apply, and Article 27 of that Order of 1980 as applied by Article 39 of that Order does not apply, in relation to any trustee of the bankrupt's estate who holds office on or at any time after the commencement date;
- (b) Article 304(4) of this Order applies in relation to the carrying out at any time on or after the commencement date by the trustee of the bankrupt's estate of any of his functions; and
- (c) a trustee in relation to whom Article 271(7) of this Order has effect by virtue of this paragraph has his release with effect from the time specified in Article 272(3)(d).

(3) Paragraph (5) of Article 272 has effect for the purposes of sub#paragraph (2)(c) as it has for the purposes of that Article.

(4) In the application of paragraph (3) of Article 304 in relation to a case by virtue of this paragraph, the reference in that paragraph to Article 303(1) has effect as a reference to Article 22(7) and (8) of the Bankruptcy Amendment (Northern Ireland) Order 1980 as applied by Article 39 of that Order of 1980.

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(5) The trustee of the bankrupt's estate may employ a solicitor to assist him in the carrying out of his functions without the permission of the committee of inspection; but if he does so employ a solicitor, he shall inform the committee of inspection that he has done so.

F94 1980 NI 4

Second bankruptcy

13.—(1) Articles 307 and 308 of this Order apply with the following modifications where the earlier bankruptcy (within the meaning of Article 307) is a bankruptcy in relation to which the Bankruptcy Acts apply instead of Parts VIII to X of this Order, that is to say—

- (a) references to the existing trustee include references to the assignees of the bankrupt's estate for the purposes of the earlier bankruptcy; and
- (b) references to property vested in the existing trustee under Article 280(3) of this Order have effect as references to such property vested in that trustee as was acquired by or devolved on the bankrupt after the commencement (within the meaning of the Bankruptcy Acts) of the earlier bankruptcy; and
- (c) references to an order under Article 283 of this Order have effect as references to an order under section 319 of the Irish Bankrupt and Insolvent Act 1857^{F95} or section 51 of the Bankruptcy (Ireland) Amendment Act 1872^{F96}.

(2) Section 11 of the Bankruptcy Amendment Act (Northern Ireland) 1929^{F97} (second bankruptcy) does not apply where a person who is an undischarged bankrupt under the Bankruptcy Acts is adjudged bankrupt under this order.

F95 1857 c. 60

F96 1872 c. 58

F97 1929 c. 1 (NI)

Setting aside of preferences and other transactions

14.—(1) A preference given, assignment made or other transaction entered into before the commencement date shall not be set aside under any of Articles 312 to 317 of this Order except to the extent that it could have been set aside under the law in operation immediately before that date.

(2) References in sub#paragraph (1) to setting aside a preference, assignment or other transaction include the making of any order which varies or reverses any effect of a preference, assignment or other transaction.

Bankruptcy offences

15.—(1) Where a bankruptcy order is made under this Order on or after the commencement date, a person is not guilty of an offence under Chapter VI of Part IX in respect of anything done before that date; but, notwithstanding the repeal by Article 382 and Schedule 10 of sections 11, 12 and 13(4) of the Debtors (Ireland) Act 1872^{F98} and sections 25 and 26 of the Bankruptcy Amendment Act (Northern Ireland) 1929 is guilty of an offence under the Act of 1872 or 1929 in respect of anything done before the commencement date which would have been an offence under that Act if the making of the bankruptcy order had been the making of an adjudication order under the Bankruptcy Acts.

Status: Point in time view as at 01/01/2006.

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(2) Paragraph (5) of Article 321 of this Order applies (instead of section 25(2) or 26(2) of the Bankruptcy Amendment Act (Northern Ireland) 1929) in relation to proceedings for an offence under that Act which are instituted (whether by virtue of sub#paragraph (1) or otherwise) after the commencement date.

F98 1872 c. 57

Power to make rules

16.—(1) The preceding provisions of this Part of this Schedule are without prejudice to the power conferred by this Order under which rules under Article 359 may make transitional provision in connection with the coming into operation of those rules; and such provision may apply those rules in relation to a bankruptcy notwithstanding that it arose from a petition presented before either the coming into operation of the rules or the commencement date.

(2) Rules under Article 359 may provide for such debtor's summons served before the commencement date as may be prescribed to be treated for the purposes of this Order as statutory demands served under Article 242.

PART III

OTHER TRANSITIONAL PROVISIONS AND SAVINGS

Deeds of arrangement

17. Chapter I of Part VIII does not apply in relation to any deed of arrangement registered before the commencement date.

Insolvency practitioners

18. Where an individual began to act as an insolvency practitioner in relation to any person before the commencement date, nothing in Article 349(2) or (3) prevents that individual from being qualified to act as an insolvency practitioner in relation to that person.

Official receiver

19. Any property vested in the Official Assignee for bankruptcy for Northern Ireland, either alone or together with a creditor's assignee, before the commencement date, shall, on that date, vest in the official receiver without any conveyance, assignment or transfer.

Transitional effect of Articles 367 to 369

20.—(1) A transaction entered into before the commencement date shall not be set aside under Articles 367 to 369 except to the extent that it could have been set aside under the law in operation immediately before that date.

(2) References in sub#paragraph (1) to setting aside a transaction include the making of any order which varies or reverses any effect of a transaction.

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Periods of time

21. Where any period of time specified in any provision repealed by Article 382 and Schedule 10 is current immediately before the commencement date, this Order has effect as if the corresponding provision had been in operation when the period began to run; and (without prejudice to the foregoing) any period of time so specified and current is deemed for the purposes of this Order—

- (a) to run from the date or event from which it was running immediately before the commencement date, and
- (b) to expire (subject to any provision of this Order for its extension) whenever it would have expired if this Order had not come into operation;

and any rights, priorities, liabilities, reliefs, obligations, requirements, powers, duties or exemptions dependent on the beginning, duration or end of such a period shall be under this Order as they were or would have been under that repealed provision.

Saving

22. The provisions of this Schedule shall have effect without prejudice to sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954^{F99}.

F99 1954 c. 33 (NI)

Interpretation

23. In this Schedule—

“the Bankruptcy Acts” means the Bankruptcy Acts (Northern Ireland) 1857 to 1980^{F100F101F102F103F104},

“the commencement date” for the purpose of any provision of this Schedule, means the day appointed under Article 1(2) for the coming into operation of that provision.

F100 1857 c. 60

F101 1872 c. 58

F102 1929 c. 1 (NI)

F103 1963 c. 23 (NI)

F104 1980 NI 4

Schedule 9—Amendments

Schedule 10—Repeals

Status:

Point in time view as at 01/01/2006.

Changes to legislation:

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