

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}paragraphs 4 to 7], or

(b) it falls within sub-paragraph (2).

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

(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,

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- (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 Words in Sch. A1 para. 2(1)(a) substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 11(2) (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

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) the company is in administration,]
 - (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,
 - (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

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(ii) a voluntary arrangement which had effect at any time in that period has come to an end prematurely,

[an administrator appointed under paragraph 23 of Schedule B1 has held office in the period^{F5}(fa) of 12 months ending with the date of filing,] 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 Sch. A1 para. 4(1)(a) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 45(2)(a) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

F5 Sch. A1 para. 4(1)(fa) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 45(2)(b) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

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 administration application may be made in respect of the company,
- (da) no administrator of the company may be appointed under paragraph 15 or 23 of Schedule B1,]
- (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],
 - (b) ^{F13}
 - (c) ^{F13}
 - (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 Sch. A1 para. 23(1)(d)(da) substituted (27.3.2006) for Sch. A1 para. 23(1)(d) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 45(3) (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

F12 SR 2004/417

F13 Sch. A1 para. 23(4)(b)(c) repealed (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 11(3), 31, Sch. 9 (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

Modifications etc. (not altering text)

C1 Sch. A1 para. 23(1)(g) excluded by [Financial Markets and Insolvency \(Settlement Finality\) Regulations 1999 \(S.I. 1999/2979\)](#), [reg. 19\(4\)](#) (as inserted (1.10.2009) by [Financial Markets and Insolvency \(Settlement Finality\) \(Amendment\) Regulations 2009 \(S.I. 2009/1972\)](#), [reg. 7\(c\)](#))

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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
- (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.

Status: Point in time view as at 18/10/2006.

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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.

(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—

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- (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 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.

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(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.
- (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.

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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—
- (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

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- 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.
- (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.

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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

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.

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(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.

(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.

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(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.

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

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- (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
 - (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—

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- (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,

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

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(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
- (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

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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—

(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) Sub-paragraph (8) applies where—

(a) the appointment of an administrator has effect in relation to the company and that appointment was made in pursuance of—

(i) an administration application made, or

(ii) a notice of intention to appoint filed,

before the moratorium came into force, or

(b) the company is being wound up in pursuance of a petition presented before the moratorium came into force.

(8) 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) the liquidator.]

Status: Point in time view as at 18/10/2006.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 11 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)

F26 Sch. A1 para. 50(7)(8) substituted (27.3.2006) for Sch. A1 para. 50(7) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 45(4) (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

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
- (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—

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- (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.

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.

Status: Point in time view as at 18/10/2006.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 11 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)

(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
- (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.]

Status: Point in time view as at 18/10/2006.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 11 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)

[^{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)

C2 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

ARRANGEMENT OF SCHEDULE

Interpretation	Paragraph 1
Nature of administration	Paragraphs 2 to 10
Appointment of administrator by High Court	Paragraphs 11 to 14
Appointment of administrator by holder of floating charge	Paragraphs 15 to 22
Appointment of administrator by company or directors	Paragraphs 23 to 35
Administration application: special cases	Paragraphs 36 to 40
Effect of administration	Paragraphs 41 to 46
Process of administration	Paragraphs 47 to 59
Functions of administrator	Paragraphs 60 to 76
Ending administration	Paragraphs 77 to 87
Replacing administrator	Paragraphs 88 to 100
General	Paragraphs 101 to 111

INTRODUCTORY

Interpretation

1.—(1) In this Schedule—

“administrative receiver” has the meaning given by Article 5(1),

“administrator” has the meaning given by paragraph 2 and, where the context requires, includes a reference to a former administrator,

^{F28}
.....

“correspondence” includes correspondence by telephonic or other electronic means,

“creditors' meeting” has the meaning given by paragraph 51,

“enters administration” has the meaning given by paragraph 2,

Status: Point in time view as at 18/10/2006.

Changes to legislation: The *Insolvency (Northern Ireland) Order 1989* is up to date with all changes known to be in force on or before 11 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)

“floating charge” means a charge which is a floating charge on its creation,
 “in administration” has the meaning given by paragraph 2,
 “hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,
 “holder of a qualifying floating charge” in respect of a company's property has the meaning given by paragraph 15,
 “market value” means the amount which would be realised on a sale of property in the open market by a willing vendor,
 “the purpose of administration” means an objective specified in paragraph 4, and
 “unable to pay its debts” has the meaning given by Article 103.

[^{F29}(1A) In this Schedule, “company” means—

- (a) a company within the meaning of Article 3(1) of the Companies (Northern Ireland) Order 1986,
- (b) a company incorporated in an EEA State other than the United Kingdom, or
- (c) a company not incorporated in an EEA State but having its centre of main interests in a member State other than Denmark.

(1B) In sub-paragraph (1A), in relation to a company, “centre of main interests” has the same meaning as in the EC Regulation and, in the absence of proof to the contrary, is presumed to be the place of its registered office (within the meaning of that Regulation).]

(2) A reference in this Schedule to a thing in writing includes a reference to a thing in electronic form.

(3) In this Schedule a reference to action includes a reference to inaction.

F28 Sch. B1 para. 1(1): definition of “company” omitted (18.10. 2006) by virtue of *Insolvency (Northern Ireland) Order 1989 (Amendment) Regulations (Northern Ireland) 2006* (S.R. 2006/370), **reg. 3(4)(a)** (with reg. 4)

F29 Sch. B1 para. 1(1A)(1B) inserted (18.10.2006) by *Insolvency (Northern Ireland) Order 1989 (Amendment) Regulations (Northern Ireland) 2006* (S.R. 2006/370), **reg. 3(4)(b)** (with reg. 4)

[^{F30}Non-UK companies

F30 Sch. B1 para. 1A inserted (18.10.2006) by *Insolvency (Northern Ireland) Order 1989 (Amendment) Regulations (Northern Ireland) 2006* (S.R. 2006/370), **reg. 3(5)** (with reg. 4)

1A. A company incorporated outside Northern Ireland that has a principal place of business in England and Wales or Scotland (or both in England and Wales and in Scotland) may not enter administration under this Schedule unless it also has a principal place of business in Northern Ireland.]

NATURE OF ADMINISTRATION

Administration

2.—(1) For the purposes of this Order “administrator” of a company means a person appointed under this Schedule to manage the company's affairs, business and property.

(2) For the purposes of this Order—

Status: Point in time view as at 18/10/2006.

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- (a) a company is “in administration” while the appointment of an administrator of the company has effect,
 - (b) a company “enters administration” when the appointment of an administrator takes effect,
 - (c) a company ceases to be in administration when the appointment of an administrator of the company ceases to have effect in accordance with this Schedule, and
 - (d) a company does not cease to be in administration merely because an administrator vacates office (by reason of resignation, death or otherwise) or is removed from office.
3. A person may be appointed as administrator of a company—
- (a) by administration order of the High Court under paragraph 11,
 - (b) by the holder of a floating charge under paragraph 15, or
 - (c) by the company or its directors under paragraph 23.

Purpose of administration

- 4.—(1) The administrator of a company must perform his functions with the objective of—
- (a) rescuing the company as a going concern, or
 - (b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or
 - (c) realising property in order to make a distribution to one or more secured or preferential creditors.
- (2) Subject to sub-paragraph (4), the administrator of a company must perform his functions in the interests of the company's creditors as a whole.
- (3) The administrator must perform his functions with the objective specified in sub-paragraph (1) unless he thinks either—
- (a) that it is not reasonably practicable to achieve that objective, or
 - (b) that the objective specified in sub-paragraph (1)(b) would achieve a better result for the company's creditors as a whole.
- (4) The administrator may perform his functions with the objective specified in sub-paragraph (1) (c) only if—
- (a) he thinks that it is not reasonably practicable to achieve either of the objectives specified in sub-paragraph (1)(a) and (b), and
 - (b) he does not unnecessarily harm the interests of the creditors of the company as a whole.
5. The administrator of a company must perform his functions as quickly and efficiently as is reasonably practicable.

Status of administrator

6. An administrator is an officer of the High Court (whether or not he is appointed by the Court).

General restrictions

7. A person may be appointed as administrator of a company only if he is qualified to act as an insolvency practitioner in relation to the company.

Status: Point in time view as at 18/10/2006.

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8. A person may not be appointed as administrator of a company which is in administration (subject to the provisions of paragraphs 91 to 98 and 101 to 104 about replacement and additional administrators).

9.—(1) A person may not be appointed as administrator of a company which is in liquidation by virtue of—

- (a) a resolution for voluntary winding up, or
- (b) a winding-up order.

(2) Sub-paragraph (1)(a) is subject to paragraph 39.

(3) Sub-paragraph (1)(b) is subject to paragraphs 38 and 39.

10.—(1) A person may not be appointed as administrator of a company which—

- (a) has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 (c. 37) or 1987 (c. 22), but
- (b) is not an authorised deposit taker.

(2) A person may not be appointed as administrator of a company which effects or carries out contracts of insurance.

(3) But sub-paragraph (2) does not apply to a company which—

- (a) is exempt from the general prohibition in relation to effecting or carrying out contracts of insurance, or
- (b) is an authorised deposit taker effecting or carrying out contracts of insurance in the course of a banking business.

(4) In this paragraph—

“authorised deposit taker” means a person with permission under Part IV of the Financial Services and Markets Act 2000 (c. 8) to accept deposits, and

“the general prohibition” has the meaning given by section 19 of that Act.

(5) This paragraph shall be construed in accordance with—

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

APPOINTMENT OF ADMINISTRATOR BY HIGH COURT

Administration order

11. An administration order is an order appointing a person as the administrator of a company.

Conditions for making order

12. The High Court may make an administration order in relation to a company only if satisfied—

- (a) that the company is or is likely to become unable to pay its debts, and
- (b) that the administration order is reasonably likely to achieve the purpose of administration.

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Administration application

13.—(1) An application to the High Court for an administration order in respect of a company (an “administration application”) may be made only by—

- (a) the company,
- (b) the directors of the company,
- (c) one or more creditors of the company,
- (d) the chief clerk in the exercise of the power conferred by section 35(4A) of the Criminal Justice Act (Northern Ireland) 1945 (c. 15) (fine imposed on company),
- (e) a clerk of petty sessions in exercise of the power conferred by Article 92A of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26), (fines imposed on company), or
- (f) a combination of persons listed in paragraphs (a) to (e).

(2) As soon as is reasonably practicable after the making of an administration application the applicant shall notify—

- (a) any person who has appointed an administrative receiver of the company,
- (b) any person who is or may be entitled to appoint an administrative receiver of the company,
- (c) any person who is or may be entitled to appoint an administrator of the company under paragraph 15, and
- (d) such other persons as may be prescribed.

(3) An administration application may not be withdrawn without the permission of the Court.

(4) In sub-paragraph (1) “creditor” includes a contingent creditor and a prospective creditor.

(5) Sub-paragraph (1) is without prejudice to Article 20(4)(b).

Powers of High Court

14.—(1) On hearing an administration application the High Court may—

- (a) make the administration order sought;
- (b) dismiss the application;
- (c) adjourn the hearing conditionally or unconditionally;
- (d) make an interim order;
- (e) treat the application as a winding-up petition and make any order which the Court could make under Article 105;
- (f) make any other order which the Court thinks appropriate.

(2) An appointment of an administrator by administration order takes effect—

- (a) at a time appointed by the order, or
- (b) where no time is appointed by the order, when the order is made.

(3) An interim order under sub-paragraph (1)(d) may, in particular—

- (a) restrict the exercise of a power of the directors or the company;
- (b) make provision conferring a discretion on the Court or on a person qualified to act as an insolvency practitioner in relation to the company.

(4) This paragraph is subject to paragraph 40.

Status: Point in time view as at 18/10/2006.

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APPOINTMENT OF ADMINISTRATOR BY HOLDER OF FLOATING CHARGE

Power to appoint

15.—(1) The holder of a qualifying floating charge in respect of a company's property may appoint an administrator of the company.

(2) For the purposes of sub-paragraph (1) a floating charge qualifies if created by an instrument which—

- (a) states that this paragraph applies to the floating charge,
- (b) purports to empower the holder of the floating charge to appoint an administrator of the company, or
- (c) purports to empower the holder of the floating charge to make an appointment which would be the appointment of an administrative receiver within the meaning given by Article 5(1).

(3) For the purposes of sub-paragraph (1) a person is the holder of a qualifying floating charge in respect of a company's property if he holds one or more debentures of the company secured—

- (a) by a qualifying floating charge which relates to the whole or substantially the whole of the company's property,
- (b) by a number of qualifying floating charges which together relate to the whole or substantially the whole of the company's property, or
- (c) by charges and other forms of security which together relate to the whole or substantially the whole of the company's property and at least one of which is a qualifying floating charge.

Restrictions on power to appoint

16.—(1) A person may not appoint an administrator under paragraph 15 unless—

- (a) he has given at least 2 business days' written notice to the holder of any prior floating charge which satisfies paragraph 15(2), or
- (b) the holder of any prior floating charge which satisfies paragraph 15(2) has consented in writing to the making of the appointment.

(2) One floating charge is prior to another for the purposes of this paragraph if—

- (a) it was created first, or
- (b) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.

17. An administrator may not be appointed under paragraph 15 while a floating charge on which the appointment relies is not enforceable.

18. An administrator of a company may not be appointed under paragraph 15 if—

- (a) a provisional liquidator of the company has been appointed under Article 115, or
- (b) an administrative receiver of the company is in office.

Notice of appointment

19.—(1) A person who appoints an administrator of a company under paragraph 15 shall file with the High Court—

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- (a) a notice of appointment, and
 - (b) such other documents as may be prescribed.
- (2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—
- (a) that the person is the holder of a qualifying floating charge in respect of the company's property,
 - (b) that each floating charge relied on in making the appointment is (or was) enforceable on the date of the appointment, and
 - (c) that the appointment is in accordance with this Schedule.
- (3) The notice of appointment must identify the administrator and must be accompanied by a statement by the administrator—
- (a) that he consents to the appointment,
 - (b) that in his opinion the purpose of administration is reasonably likely to be achieved, and
 - (c) giving such other information and opinions as may be prescribed.
- (4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy).
- (5) The notice of appointment and any document accompanying it must be in the prescribed form.
- (6) A statutory declaration under sub-paragraph (2) must be made during the prescribed period.
- (7) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—
- (a) which is false, and
 - (b) which he does not reasonably believe to be true.

Commencement of appointment

- 20.** The appointment of an administrator under paragraph 15 takes effect when the requirements of paragraph 19 are satisfied.
- 21.** A person who appoints an administrator under paragraph 15—
- (a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 19 are satisfied, and
 - (b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).

Invalid appointment: indemnity

- 22.—**(1) This paragraph applies where—
- (a) a person purports to appoint an administrator under paragraph 15, and
 - (b) the appointment is discovered to be invalid.
- (2) The High Court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS

Power to appoint

- 23.—**(1) A company may appoint an administrator.

Status: Point in time view as at 18/10/2006.

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- (2) The directors of a company may appoint an administrator.

Restrictions on power to appoint

24.—(1) This paragraph applies where an administrator of a company is appointed—

- (a) under paragraph 23, or
- (b) on an administration application made by the company or its directors.

(2) An administrator of the company may not be appointed under paragraph 23 during the period of 12 months beginning with the date on which the appointment referred to in sub-paragraph (1) ceases to have effect.

25.—(1) If a moratorium for a company under Schedule A1 ends on a date when no voluntary arrangement is in force in respect of the company, this paragraph applies for the period of 12 months beginning with that date.

(2) This paragraph also applies for the period of 12 months beginning with the date on which a voluntary arrangement in respect of a company ends if—

- (a) the arrangement was made during a moratorium for the company under Schedule A1, and
- (b) the arrangement ends prematurely (within the meaning of Article 20B).

(3) While this paragraph applies, an administrator of the company may not be appointed under paragraph 23.

26. An administrator of a company may not be appointed under paragraph 23 if—

- (a) a petition for the winding up of the company has been presented and is not yet disposed of,
- (b) an administration application has been made and is not yet disposed of, or
- (c) an administrative receiver of the company is in office.

Notice of intention to appoint

27.—(1) A person who proposes to make an appointment under paragraph 23 shall give at least 5 business days' written notice to—

- (a) any person who is or may be entitled to appoint an administrative receiver of the company, and
- (b) any person who is or may be entitled to appoint an administrator of the company under paragraph 15.

(2) A person who proposes to make an appointment under paragraph 23 shall also give such notice as may be prescribed to such other persons as may be prescribed.

(3) A notice under this paragraph must—

- (a) identify the proposed administrator, and
- (b) be in the prescribed form.

28.—(1) A person who gives notice of intention to appoint under paragraph 27 shall file with the High Court as soon as is reasonably practicable a copy of—

- (a) the notice, and
- (b) any document accompanying it.

(2) The copy filed under sub-paragraph (1) must be accompanied by a statutory declaration made by or on behalf of the person who proposes to make the appointment—

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- (a) that the company is or is likely to become unable to pay its debts,
 - (b) that the company is not in liquidation, and
 - (c) that, so far as the person making the statement is able to ascertain, the appointment is not prevented by paragraphs 24 to 26, and
 - (d) to such additional effect, and giving such information, as may be prescribed.
- (3) A statutory declaration under sub-paragraph (2) must—
- (a) be in the prescribed form, and
 - (b) be made during the prescribed period.
- (4) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—
- (a) which is false, and
 - (b) which he does not reasonably believe to be true.

- 29.**—(1) An appointment may not be made under paragraph 23 unless the person who makes the appointment has complied with any requirement of paragraphs 27 and 28 and—
- (a) the period of notice specified in paragraph 27(1) has expired, or
 - (b) each person to whom notice has been given under paragraph 27(1) has consented in writing to the making of the appointment.
- (2) An appointment may not be made under paragraph 23 after the period of 10 business days beginning with the date on which the notice of intention to appoint is filed under paragraph 28(1).

Notice of appointment

- 30.**—(1) A person who appoints an administrator of a company under paragraph 23 shall file with the High Court—
- (a) a notice of appointment, and
 - (b) such other documents as may be prescribed.
- (2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—
- (a) that the person is entitled to make an appointment under paragraph 23,
 - (b) that the appointment is in accordance with this Schedule, and
 - (c) that, so far as the person making the statement is able to ascertain, the statements made and information given in the statutory declaration filed with the notice of intention to appoint remain accurate.
- (3) The notice of appointment must identify the administrator and must be accompanied by a statement by the administrator—
- (a) that he consents to the appointment,
 - (b) that in his opinion the purpose of administration is reasonably likely to be achieved, and
 - (c) giving such other information and opinions as may be prescribed.
- (4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy).
- (5) The notice of appointment and any document accompanying it must be in the prescribed form.
- (6) A statutory declaration under sub-paragraph (2) must be made during the prescribed period.

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(7) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—

- (a) which is false, and
- (b) which he does not reasonably believe to be true.

31. In a case in which no person is entitled to notice of intention to appoint under paragraph 27(1) (and paragraph 29 therefore does not apply)—

- (a) the statutory declaration accompanying the notice of appointment must include the statements and information required under paragraph 28(2), and
- (b) paragraph 30(2)(c) shall not apply.

Commencement of appointment

32. The appointment of an administrator under paragraph 23 takes effect when the requirements of paragraph 30 are satisfied.

33. A person who appoints an administrator under paragraph 23—

- (a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 30 are satisfied, and
- (b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).

34. If before the requirements of paragraph 30 are satisfied the company enters administration by virtue of an administration order or an appointment under paragraph 15—

- (a) the appointment under paragraph 23 shall not take effect, and
- (b) paragraph 33 shall not apply.

Invalid appointment: indemnity

35.—(1) This paragraph applies where—

- (a) a person purports to appoint an administrator under paragraph 23, and
- (b) the appointment is discovered to be invalid.

(2) The High Court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

ADMINISTRATION APPLICATION — SPECIAL CASES

Application by holder of floating charge

36.—(1) This paragraph applies where an administration application in respect of a company—

- (a) is made by the holder of a qualifying floating charge in respect of the company's property, and
- (b) includes a statement that the application is made in reliance on this paragraph.

(2) The High Court may make an administration order—

- (a) whether or not satisfied that the company is or is likely to become unable to pay its debts, but
- (b) only if satisfied that the applicant could appoint an administrator under paragraph 15.

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Intervention by holder of floating charge

37.—(1) This paragraph applies where—

- (a) an administration application in respect of a company is made by a person who is not the holder of a qualifying floating charge in respect of the company's property, and
- (b) the holder of a qualifying floating charge in respect of the company's property applies to the High Court to have a specified person appointed as administrator (and not the person specified by the administration applicant).

(2) The Court shall grant an application under sub-paragraph (1)(b) unless the Court thinks it right to refuse the application because of the particular circumstances of the case.

Application where company in liquidation

38.—(1) This paragraph applies where the holder of a qualifying floating charge in respect of a company's property could appoint an administrator under paragraph 15 but for paragraph 9(1)(b).

(2) The holder of the qualifying floating charge may make an administration application.

(3) If the High Court makes an administration order on hearing an application made by virtue of sub-paragraph (2)—

- (a) the Court shall discharge the winding-up order,
- (b) the Court shall make provision for such matters as may be prescribed,
- (c) the Court may make other consequential provision,
- (d) the Court shall specify which of the powers under this Schedule are to be exercisable by the administrator, and
- (e) this Schedule shall have effect with such modifications as the Court may specify.

39.—(1) The liquidator of a company may make an administration application.

(2) If the High Court makes an administration order on hearing an application made by virtue of sub-paragraph (1)—

- (a) the Court shall discharge any winding-up order in respect of the company,
- (b) the Court shall make provision for such matters as may be prescribed,
- (c) the Court may make other consequential provision,
- (d) the Court shall specify which of the powers under this Schedule are to be exercisable by the administrator, and
- (e) this Schedule shall have effect with such modifications as the Court may specify.

Effect of administrative receivership

40.—(1) Where there is an administrative receiver of a company the High Court must dismiss an administration application in respect of the company unless—

- (a) the person by or on behalf of whom the receiver was appointed consents to the making of the administration order,
- (b) the Court thinks that the security by virtue of which the receiver was appointed would be liable to be released or discharged under Articles 202 to 204 (transaction at undervalue and preference) if an administration order were made, or

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- (c) the Court thinks that the security by virtue of which the receiver was appointed would be avoided under Article 207 (avoidance of floating charge) if an administration order were made.
- (2) Sub-paragraph (1) applies whether the administrative receiver is appointed before or after the making of the administration application.

EFFECT OF ADMINISTRATION

Dismissal of pending winding-up petition

PROSPECTIVE

41.—(1) A petition for the winding up of a company—

- (a) shall be dismissed on the making of an administration order in respect of the company, and
- (b) shall be suspended while the company is in administration following an appointment under paragraph 15.

(2) Sub-paragraph (1)(b) does not apply to a petition presented under—

- (a) Article 104A (public interest),
- (b) Article 104B (SEs), or
- (c) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Services Authority).

(3) Where an administrator becomes aware that a petition was presented under a provision referred to in sub-paragraph (2) before his appointment, he shall apply to the High Court for directions under paragraph 64.

Modifications etc. (not altering text)

- C3** Sch. B1 para. 41 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 119, 134, 263(1) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

Dismissal of administrative or other receiver

42.—(1) When an administration order takes effect in respect of a company any administrative receiver of the company shall vacate office.

(2) Where a company is in administration, any receiver of part of the company's property shall vacate office if the administrator requires him to.

(3) Where an administrative receiver or receiver vacates office under sub-paragraph (1) or (2)—

- (a) his remuneration shall be charged on and paid out of any property of the company which was in his custody or under his control immediately before he vacated office, and
- (b) he need not take any further steps under Article 50.

(4) In the application of sub-paragraph (3)(a)—

- (a) “remuneration” includes expenses properly incurred and any indemnity to which the administrative receiver or receiver is entitled out of the assets of the company,

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- (b) the charge imposed takes priority over security held by the person by whom or on whose behalf the administrative receiver or receiver was appointed, and
- (c) the provision for payment is subject to paragraph 44.

Modifications etc. (not altering text)

- C4** Sch. B1 para. 42(2) excluded by Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)), art.97(1) (as subst. (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 52(2) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7))

Moratorium on insolvency proceedings

- 43.**—(1) This paragraph applies to a company in administration.
- (2) No resolution may be passed for the winding up of the company.
 - (3) No order may be made for the winding up of the company.
 - (4) Sub-paragraph (3) does not apply to an order made on a petition presented under—
 - (a) Article 104A (public interest),
 - (b) Article 104B (SEs), or
 - (c) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Services Authority).
 - (5) If a petition presented under a provision referred to in sub-paragraph (4) comes to the attention of the administrator, he shall apply to the High Court for directions under paragraph 64.

Modifications etc. (not altering text)

- C5** Sch. B1 para. 43 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 119, 134, 263(1) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

Moratorium on other legal process

- 44.**—(1) This paragraph applies to a company in administration.
- (2) No step may be taken to enforce security over the company's property except—
 - (a) with the consent of the administrator, or
 - (b) with the permission of the High Court.
 - (3) No step may be taken to repossess goods in the company's possession under a hire-purchase agreement except—
 - (a) with the consent of the administrator, or
 - (b) with the permission of the Court.
 - (4) A landlord may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company except—
 - (a) with the consent of the administrator, or
 - (b) with the permission of the Court.
 - (5) No legal process (including legal proceedings, execution and distress) may be instituted or continued against the company or property of the company except—

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- (a) with the consent of the administrator, or
 - (b) with the permission of the Court.
- (6) An administrative receiver of the company may not be appointed.
- (7) Where the Court gives permission for a transaction under this paragraph it may impose a condition on or a requirement in connection with the transaction.
- (8) In this paragraph “landlord” includes a person to whom rent is payable.

Modifications etc. (not altering text)

- C6** Sch. B1 para. 44(2)(3) excluded by Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)), art.97(1) (as subst. (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 52(2) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7))

Interim moratorium

PROSPECTIVE

45.—(1) This paragraph applies where an administration application in respect of a company has been made and—

- (a) the application has not yet been granted or dismissed, or
- (b) the application has been granted but the administration order has not yet taken effect.

(2) This paragraph also applies from the time when a copy of notice of intention to appoint an administrator under paragraph 15 is filed with the High Court until—

- (a) the appointment of the administrator takes effect, or
- (b) the period of 5 business days beginning with the date of filing expires without an administrator having been appointed.

(3) Sub-paragraph (2) has effect in relation to a notice of intention to appoint only if it is in the prescribed form.

(4) This paragraph also applies from the time when a copy of notice of intention to appoint an administrator is filed with the Court under paragraph 28(1) until—

- (a) the appointment of the administrator takes effect, or
- (b) the period specified in paragraph 29(2) expires without an administrator having been appointed.

PROSPECTIVE

(5) The provisions of paragraphs 43 and 44 shall apply (ignoring any reference to the consent of the administrator).

(6) If there is an administrative receiver of the company when the administration application is made, the provisions of paragraphs 43 and 44 shall not begin to apply by virtue of this paragraph until the person by or on behalf of whom the receiver was appointed consents to the making of the administration order.

PROSPECTIVE

- (7) This paragraph does not prevent or require the permission of the High Court for—
- (a) the presentation of a petition for the winding up of the company under a provision mentioned in paragraph 43(4),
 - (b) the appointment of an administrator under paragraph 15,
 - (c) the appointment of an administrative receiver of the company, or
 - (d) the carrying out by an administrative receiver (whenever appointed) of his functions.

Modifications etc. (not altering text)

- C7** Sch. B1 para. 45 modified (21.3.2011) by Energy Act (Northern Ireland) 2011 (c. 6), ss. 25(4), 36(1); S.R. 2011/95, art. 2(1)
- C8** Sch. B1 para. 45 modified (21.3.2011) by Energy Act (Northern Ireland) 2011 (c. 6), ss. 26(4), 36(1); S.R. 2011/95, art. 2(1)
- C9** Sch. B1 para. 45 restricted (1.10.2011) by Postal Services Act 2011 (c. 5), ss. 76(4), 85(8), 87(1)(2), 93(3); S.I. 2011/2329, art. 3(1)
- C10** Sch. B1 para. 45 restricted (1.10.2011) by Postal Services Act 2011 (c. 5), ss. 77(5), 85(8), 87(1)(2), 93(3); S.I. 2011/2329, art. 3(1)

Publicity

46.—(1) While a company is in administration every business document issued by or on behalf of the company or the administrator must state—

- (a) the name of the administrator, and
- (b) that the affairs, business and property of the company are being managed by him.

(2) Any of the following commits an offence if without reasonable excuse he authorises or permits a contravention of sub-paragraph (1)—

- (a) the administrator,
- (b) an officer of the company, and
- (c) the company.

(3) In sub-paragraph (1) “business document” means—

- (a) an invoice,
- (b) an order for goods or services, and
- (c) a business letter.

PROCESS OF ADMINISTRATION

Announcement of administrator's appointment

47.—(1) This paragraph applies where a person becomes the administrator of a company.

(2) As soon as is reasonably practicable the administrator shall—

- (a) send a notice of his appointment to the company, and
- (b) publish a notice of his appointment in the prescribed manner.

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- (3) As soon as is reasonably practicable the administrator shall—
- (a) obtain a list of the company's creditors, and
 - (b) send a notice of his appointment to each creditor of whose claim and address he is aware.
- (4) The administrator shall send a notice of his appointment to the registrar before the end of the period of 7 days beginning with the date specified in sub-paragraph (6).
- (5) The administrator shall send a notice of his appointment to such persons as may be prescribed before the end of the prescribed period beginning with the date specified in sub-paragraph (6).
- (6) The date for the purpose of sub-paragraphs (4) and (5) is—
- (a) in the case of an administrator appointed by administration order, the date of the order,
 - (b) in the case of an administrator appointed under paragraph 15, the date on which he receives notice under paragraph 21, and
 - (c) in the case of an administrator appointed under paragraph 23, the date on which he receives notice under paragraph 33.
- (7) The High Court may direct that sub-paragraph (3)(b) or (5)—
- (a) shall not apply, or
 - (b) shall apply with the substitution of a different period.
- (8) A notice under this paragraph must—
- (a) contain the prescribed information, and
 - (b) be in the prescribed form.
- (9) An administrator commits an offence if he fails without reasonable excuse to comply with a requirement of this paragraph.

Statement of company's affairs

- 48.**—(1) As soon as is reasonably practicable after appointment the administrator of a company shall by notice in the prescribed form require one or more relevant persons to provide the administrator with a statement of the affairs of the company.
- (2) The statement must—
- (a) be verified by affidavit,
 - (b) be in the prescribed form,
 - (c) give particulars of the company's property, debts and liabilities,
 - (d) give the names and addresses of the company's creditors,
 - (e) specify the security held by each creditor,
 - (f) give the date on which each security was granted, and
 - (g) contain such other information as may be prescribed.
- (3) In sub-paragraph (1) “relevant person” means—
- (a) a person who is or has been an officer of the company,
 - (b) a person who took part in the formation of the company during the period of one year ending with the date on which the company enters administration,
 - (c) a person employed by the company during that period, and
 - (d) a person who is or has been during that period an officer or employee of a company which is or has been during that year an officer of the company.

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(4) For the purpose of sub-paragraph (3) a reference to employment is a reference to employment through a contract of employment or a contract for services.

49.—(1) A person required to submit a statement of affairs must do so before the end of the period of 11 days beginning with the day on which he receives notice of the requirement.

(2) The administrator may—

- (a) revoke a requirement under paragraph 48(1), or
- (b) extend the period specified in sub-paragraph (1) (whether before or after expiry).

(3) If the administrator refuses a request to act under sub-paragraph (2)—

- (a) the person whose request is refused may apply to the High Court, and
- (b) the Court may take action of a kind specified in sub-paragraph (2).

(4) A person commits an offence if he fails without reasonable excuse to comply with a requirement under paragraph 48(1).

Administrator's proposals

PROSPECTIVE

50.—(1) The administrator of a company shall make a statement setting out proposals for achieving the purpose of administration.

PROSPECTIVE

(2) A statement under sub-paragraph (1) must, in particular—

- (a) deal with such matters as may be prescribed, and
- (b) where applicable, explain why the administrator thinks that the objective mentioned in paragraph 4(1)(a) or (b) cannot be achieved.

PROSPECTIVE

(3) Proposals under this paragraph may include—

- (a) a proposal for a voluntary arrangement under Part II of this Order (although this paragraph is without prejudice to Article 17(3));
- (b) a proposal for a compromise or arrangement to be sanctioned under Article 418 of the Companies Order (compromise with creditors or members).

(4) The administrator shall send a copy of the statement of his proposals—

- (a) to the registrar,
- (b) to every creditor of the company of whose claim and address he is aware, and
- (c) to every member of the company of whose address he is aware.

(5) The administrator shall comply with sub-paragraph (4)—

- (a) as soon as is reasonably practicable after the company enters administration, and

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- (b) in any event, before the end of the period of 8 weeks beginning with the day on which the company enters administration.
- (6) The administrator shall be taken to comply with sub-paragraph (4)(c) if he publishes in the prescribed manner a notice undertaking to provide a copy of the statement of proposals free of charge to any member of the company who applies in writing to a specified address.
- (7) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (5).
- (8) A period specified in this paragraph may be varied in accordance with paragraph 108.

Creditors' meeting

51.—(1) In this Schedule “creditors' meeting” means a meeting of creditors of a company summoned by the administrator—

- (a) in the prescribed manner, and
 - (b) giving the prescribed period of notice to every creditor of the company of whose claim and address he is aware.
- (2) A period prescribed under sub-paragraph (1)(b) may be varied in accordance with paragraph 108.
- (3) A creditors' meeting shall be conducted in accordance with the rules.

Requirement for initial creditors' meeting

52.—(1) Each copy of an administrator's statement of proposals sent to a creditor under paragraph 50(4)(b) must be accompanied by an invitation to a creditors' meeting (an “initial creditors' meeting”).

- (2) The date set for an initial creditors' meeting must be—
- (a) as soon as is reasonably practicable after the company enters administration, and
 - (b) in any event, within the period of 10 weeks beginning with the date on which the company enters administration.
- (3) An administrator shall present a copy of his statement of proposals to an initial creditors' meeting.
- (4) A period specified in this paragraph may be varied in accordance with paragraph 108.
- (5) An administrator commits an offence if he fails without reasonable excuse to comply with a requirement of this paragraph.

53.—(1) Paragraph 52(1) shall not apply where the statement of proposals states that the administrator thinks—

- (a) that the company has sufficient property to enable each creditor of the company to be paid in full,
 - (b) that the company has insufficient property to enable a distribution to be made to unsecured creditors other than by virtue of Article 150A(2)(a), or
 - (c) that neither of the objectives specified in paragraph 4(1)(a) and (b) can be achieved.
- (2) But the administrator shall summon an initial creditors' meeting if it is requested—
- (a) by creditors of the company whose debts amount to at least 10 per cent. of the total debts of the company,

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- (b) in the prescribed manner, and
 - (c) in the prescribed period.
- (3) A meeting requested under sub-paragraph (2) must be summoned for a date in the prescribed period.
- (4) The period prescribed under sub-paragraph (3) may be varied in accordance with paragraph 108.

Business and result of initial creditors' meeting

- 54.**—(1) An initial creditors' meeting to which an administrator's proposals are presented shall consider them and may—
- (a) approve them without modification, or
 - (b) approve them with modification to which the administrator consents.
- (2) After the conclusion of an initial creditors' meeting the administrator shall as soon as is reasonably practicable report any decision taken to—
- (a) the High Court,
 - (b) the registrar, and
 - (c) such other persons as may be prescribed.
- (3) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (2).

Revision of administrator's proposals

- 55.**—(1) This paragraph applies where—
- (a) an administrator's proposals have been approved (with or without modification) at an initial creditors' meeting,
 - (b) the administrator proposes a revision to the proposals, and
 - (c) the administrator thinks that the proposed revision is substantial.
- (2) The administrator shall—
- (a) summon a creditors' meeting,
 - (b) send a statement in the prescribed form of the proposed revision with the notice of the meeting sent to each creditor,
 - (c) send a copy of the statement, within the prescribed period, to each member of the company of whose address he is aware, and
 - (d) present a copy of the statement to the meeting.
- (3) The administrator shall be taken to have complied with sub-paragraph (2)(c) if he publishes a notice undertaking to provide a copy of the statement free of charge to any member of the company who applies in writing to a specified address.
- (4) A notice under sub-paragraph (3) must be published—
- (a) in the prescribed manner, and
 - (b) within the prescribed period.
- (5) A creditors' meeting to which a proposed revision is presented shall consider it and may—
- (a) approve it without modification, or

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- (b) approve it with modification to which the administrator consents.
- (6) After the conclusion of a creditors' meeting the administrator shall as soon as is reasonably practicable report any decision taken to—
 - (a) the High Court,
 - (b) the registrar, and
 - (c) such other persons as may be prescribed.
- (7) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (6).

Failure to obtain approval of administrator's proposals

- 56.**—(1) This paragraph applies where an administrator reports to the High Court that—
- (a) an initial creditors' meeting has failed to approve the administrator's proposals presented to it, or
 - (b) a creditors' meeting has failed to approve a revision of the administrator's proposals presented to it.
- (2) The Court may—
- (a) provide that the appointment of an administrator shall cease to have effect from a specified time;
 - (b) adjourn the hearing conditionally or unconditionally;
 - (c) make an interim order;
 - (d) make an order on a petition for winding up suspended by virtue of paragraph 41(1)(b);
 - (e) make any other order (including an order making consequential provision) that the Court thinks appropriate.

Further creditors' meetings

- 57.**—(1) The administrator of a company shall summon a creditors' meeting if—
- (a) it is requested in the prescribed manner by creditors of the company whose debts amount to at least 10 per cent. of the total debts of the company, or
 - (b) he is directed by the High Court to summon a creditors' meeting.
- (2) An administrator commits an offence if he fails without reasonable excuse to summon a creditors' meeting as required by this paragraph.

Creditors' committee

- 58.**—(1) A creditors' meeting may establish a creditors' committee.
- (2) A creditors' committee shall carry out functions conferred on it by or under this Order.
- (3) A creditors' committee may require the administrator—
- (a) to attend on the committee at any reasonable time of which he is given at least 7 days' notice, and
 - (b) to provide the committee with information about the exercise of his functions.

Status: Point in time view as at 18/10/2006.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 11 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)

Correspondence instead of creditors' meeting

59.—(1) Anything which is required or permitted by or under this Schedule to be done at a creditors' meeting may be done by correspondence between the administrator and creditors—

- (a) in accordance with the rules, and
- (b) subject to any prescribed condition.

(2) A reference in this Schedule to anything done at a creditors' meeting includes a reference to anything done in the course of correspondence in reliance on sub-paragraph (1).

(3) A requirement to hold a creditors' meeting is satisfied by conducting correspondence in accordance with this paragraph.

FUNCTIONS OF ADMINISTRATOR

General powers

60.—(1) The administrator of a company may do anything necessary or expedient for the management of the affairs, business and property of the company.

(2) A provision of this Schedule which expressly permits the administrator to do a specified thing is without prejudice to the generality of sub-paragraph (1).

(3) A person who deals with the administrator of a company in good faith and for value need not inquire whether the administrator is acting within his powers.

61. The administrator of a company has the powers specified in Schedule 1.

62. The administrator of a company—

- (a) may remove a director of the company, and
- (b) may appoint a director of the company (whether or not to fill a vacancy).

63. The administrator of a company may call a meeting of members or creditors of the company.

64. The administrator of a company may apply to the High Court for directions in connection with his functions.

65.—(1) A company in administration or an officer of a company in administration may not exercise a management power without the consent of the administrator.

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

- (a) “management power” means a power which could be exercised so as to interfere with the exercise of the administrator's powers,
- (b) it is immaterial whether the power is conferred by an enactment or an instrument, and
- (c) consent may be general or specific.

Distribution

66.—(1) The administrator of a company may make a distribution to a creditor of the company.

(2) Article 149 shall apply in relation to a distribution under this paragraph as it applies in relation to a winding up.

(3) A payment may not be made by way of distribution under this paragraph to a creditor of the company who is neither secured nor preferential unless the High Court gives permission.

Status: Point in time view as at 18/10/2006.

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Modifications etc. (not altering text)

C11 Sch. B1 para. 66(2) applied by Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), **reg. 14(5)(a)(i)** (as substituted (1.10.2009) by Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), **reg. 4(d)(ii)**)

67. The administrator of a company may make a payment otherwise than in accordance with paragraph 66 or paragraph 14 of Schedule 1 if he thinks it likely to assist achievement of the purpose of administration.

General duties

68. The administrator of a company shall on his appointment take custody or control of all the property to which he thinks the company is entitled.

69.—(1) Subject to sub-paragraph (2), the administrator of a company shall manage its affairs, business and property in accordance with—

- (a) any proposals approved under paragraph 54,
- (b) any revision of those proposals which is made by him and which he does not consider substantial, and
- (c) any revision of those proposals approved under paragraph 55.

(2) If the High Court gives directions to the administrator of a company in connection with any aspect of his management of the company's affairs, business or property, the administrator shall comply with the directions.

(3) The Court may give directions under sub-paragraph (2) only if—

- (a) no proposals have been approved under paragraph 54,
- (b) the directions are consistent with any proposals or revision approved under paragraph 54 or 55,
- (c) the Court thinks the directions are required in order to reflect a change in circumstances since the approval of proposals or a revision under paragraph 54 or 55, or
- (d) the Court thinks the directions are desirable because of a misunderstanding about proposals or a revision approved under paragraph 54 or 55.

Administrator as agent of company

70. In exercising his functions under this Schedule the administrator of a company acts as its agent.

Charged property: floating charge

71.—(1) The administrator of a company may dispose of or take action relating to property which is subject to a floating charge as if it were not subject to the charge.

(2) Where property is disposed of in reliance on sub-paragraph (1) the holder of the floating charge shall have the same priority in respect of acquired property as he had in respect of the property disposed of.

(3) In sub-paragraph (2) “acquired property” means property of the company which directly or indirectly represents the property disposed of.

Status: Point in time view as at 18/10/2006.

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Modifications etc. (not altering text)

C12 Sch. B1 para. 71 excluded by Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)), art.97(1) (as subst. (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 52(2) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7))

Charged property: non-floating charge

72.—(1) The High Court may by order enable the administrator of a company to dispose of property which is subject to a security (other than a floating charge) as if it were not subject to the security.

(2) An order under sub-paragraph (1) may be made only—

- (a) on the application of the administrator, and
- (b) where the Court thinks that disposal of the property would be likely to promote the purpose of administration in respect of the company.

(3) An order under this paragraph is subject to the condition that there be applied towards discharging the sums secured by the security—

- (a) the net proceeds of disposal of the property, and
- (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realised on a sale of the property at market value.

(4) If an order under this paragraph relates to more than one security, application of money under sub-paragraph (3) shall be in the order of the priorities of the securities.

(5) An administrator who makes a successful application for an order under this paragraph shall send a copy of the order to the registrar before the end of the period of 14 days starting with the date of the order.

(6) An administrator commits an offence if he fails to comply with sub-paragraph (5) without reasonable excuse.

Modifications etc. (not altering text)

C13 Sch. B1 para. 72 excluded by Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)), art.97(1) (as subst. (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 52(2) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7))

Hire-purchase property

73.—(1) The High Court may by order enable the administrator of a company to dispose of goods which are in the possession of the company under a hire-purchase agreement as if all the rights of the owner under the agreement were vested in the company.

(2) An order under sub-paragraph (1) may be made only—

- (a) on the application of the administrator, and
- (b) where the Court thinks that disposal of the goods would be likely to promote the purpose of administration in respect of the company.

Status: Point in time view as at 18/10/2006.

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(3) An order under this paragraph is subject to the condition that there be applied towards discharging the sums payable under the hire-purchase agreement—

- (a) the net proceeds of disposal of the goods, and
- (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realised on a sale of the goods at market value.

(4) An administrator who makes a successful application for an order under this paragraph shall send a copy of the order to the registrar before the end of the period of 14 days starting with the date of the order.

(5) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (4).

Modifications etc. (not altering text)

C14 Sch. B1 para. 73 excluded by Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)), art.97(1) (as subst. (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 52(2) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7))

Protection for secured or preferential creditor

74.—(1) An administrator's statement of proposals under paragraph 50 may not include any action which—

- (a) affects the right of a secured creditor of the company to enforce his security,
- (b) would result in a preferential debt of the company being paid otherwise than in priority to its non-preferential debts, or
- (c) would result in one preferential creditor of the company being paid a smaller proportion of his debt than another.

(2) Sub-paragraph (1) does not apply to—

- (a) action to which the relevant creditor consents,
- (b) a proposal for a voluntary arrangement under Part II of this Order (although this sub-paragraph is without prejudice to Article 17(3)), or
- (c) a proposal for a compromise or arrangement to be sanctioned under Article 418 of the Companies Order (compromise with creditors or members).

(3) The reference to a statement of proposals in sub-paragraph (1) includes a reference to a statement as revised or modified.

Challenge to administrator's conduct of company

75.—(1) A creditor or member of a company in administration may apply to the High Court claiming that—

- (a) the administrator is acting or has acted so as unfairly to harm the interests of the applicant (whether alone or in common with some or all other members or creditors), or
- (b) the administrator proposes to act in a way which would unfairly harm the interests of the applicant (whether alone or in common with some or all other members or creditors).

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(2) A creditor or member of a company in administration may apply to the Court claiming that the administrator is not performing his functions as quickly or as efficiently as is reasonably practicable.

(3) The Court may—

- (a) grant relief;
- (b) dismiss the application;
- (c) adjourn the hearing conditionally or unconditionally;
- (d) make an interim order;
- (e) make any other order it thinks appropriate.

(4) In particular, an order under this paragraph may—

- (a) regulate the administrator's exercise of his functions;
- (b) require the administrator to do or not do a specified thing;
- (c) require a creditors' meeting to be held for a specified purpose;
- (d) provide for the appointment of an administrator to cease to have effect;
- (e) make consequential provision.

(5) An order may be made on a claim under sub-paragraph (1) whether or not the action complained of—

- (a) is within the administrator's powers under this Schedule;
- (b) was taken in reliance on an order under paragraph 72 or 73.

(6) An order may not be made under this paragraph if it would impede or prevent the implementation of—

- (a) a voluntary arrangement approved under Part II,
- (b) a compromise or arrangement sanctioned under Article 418 of the Companies Order (compromise with creditors and members), or
- (c) proposals or a revision approved under paragraph 54 or 55 more than 28 days before the day on which the application for the order under this paragraph is made.

Modifications etc. (not altering text)

C15 Sch. B1 para. 75(1)(a)(b) modified by Financial Services and Markets Act 2000 (c. 8), s. 362(4A)(b) (as subst. (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 60(6) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2-7))

C16 Sch. B1 para. 75(1)(a)(b) modified by Financial Services and Markets Act 2000 (c. 8), s. 362(4A)(b) (as subst. (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 60(6) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2-7))

Misfeasance

76.—(1) The High Court may examine the conduct of a person who—

- (a) is or purports to be the administrator of a company, or
- (b) has been or has purported to be the administrator of a company.

(2) An examination under this paragraph may be held only on the application of—

- (a) the official receiver,
- (b) the administrator of the company,

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- (c) the liquidator of the company,
 - (d) a creditor of the company, or
 - (e) a contributory of the company.
- (3) An application under sub-paragraph (2) must allege that the administrator—
- (a) has misapplied or retained money or other property of the company,
 - (b) has become accountable for money or other property of the company,
 - (c) has breached a fiduciary or other duty in relation to the company, or
 - (d) has been guilty of misfeasance.
- (4) On an examination under this paragraph into a person's conduct the Court may order him—
- (a) to repay, restore or account for money or property;
 - (b) to pay interest;
 - (c) to contribute a sum to the company's property by way of compensation for breach of duty or misfeasance.
- (5) In sub-paragraph (3) “administrator” includes a person who purports or has purported to be a company's administrator.
- (6) An application under sub-paragraph (2) may be made in respect of an administrator who has been discharged under paragraph 99 only with the permission of the Court.

ENDING ADMINISTRATION

Automatic end of administration

77.—(1) The appointment of an administrator shall cease to have effect at the end of the period of one year beginning with the date on which it takes effect.

(2) But—

- (a) on the application of an administrator the High Court may by order extend his term of office for a specified period, and
- (b) an administrator's term of office may be extended for a specified period not exceeding 6 months by consent.

78.—(1) An order of the High Court under paragraph 77—

- (a) may be made in respect of an administrator whose term of office has already been extended by order or by consent, but
- (b) may not be made after the expiry of the administrator's term of office.

(2) Where an order is made under paragraph 77 the administrator shall as soon as is reasonably practicable notify the registrar.

(3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

79.—(1) In paragraph 77(2)(b) “consent” means consent of—

- (a) each secured creditor of the company, and
- (b) if the company has unsecured debts, creditors whose debts amount to more than 50 per cent. of the company's unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

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- (2) But where the administrator has made a statement under paragraph 53(1)(b) “consent” means—
- (a) consent of each secured creditor of the company, or
 - (b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—
 - (i) each secured creditor of the company, and
 - (ii) preferential creditors whose debts amount to more than 50 per cent. of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.
- (3) Consent for the purposes of paragraph 77(2)(b) may be—
- (a) written, or
 - (b) signified at a creditors' meeting.
- (4) An administrator's term of office—
- (a) may be extended by consent only once,
 - (b) may not be extended by consent after extension by order of the High Court, and
 - (c) may not be extended by consent after expiry.
- (5) Where an administrator's term of office is extended by consent he shall as soon as is reasonably practicable—
- (a) file notice of the extension with the Court, and
 - (b) notify the registrar.
- (6) An administrator who fails without reasonable excuse to comply with sub-paragraph (5) commits an offence.

Court ending administration on application of administrator

- 80.**—(1) On the application of the administrator of a company the High Court may provide for the appointment of an administrator of the company to cease to have effect from a specified time.
- (2) The administrator of a company shall make an application under this paragraph if—
- (a) he thinks the purpose of administration cannot be achieved in relation to the company,
 - (b) he thinks the company should not have entered administration, or
 - (c) a creditors' meeting requires him to make an application under this paragraph.
- (3) The administrator of a company shall make an application under this paragraph if—
- (a) the administration is pursuant to an administration order, and
 - (b) the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company.
- (4) On an application under this paragraph the Court may—
- (a) adjourn the hearing conditionally or unconditionally;
 - (b) dismiss the application;
 - (c) make an interim order;
 - (d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

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Termination of administration where objective achieved

81.—(1) This paragraph applies where an administrator of a company is appointed under paragraph 15 or 23.

(2) If the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company he may file a notice in the prescribed form—

- (a) with the High Court, and
- (b) with the registrar.

(3) The administrator's appointment shall cease to have effect when the requirements of sub-paragraph (2) are satisfied.

(4) Where the administrator files a notice he shall within the prescribed period send a copy to every creditor of the company of whose claim and address he is aware.

(5) The rules may provide that the administrator is taken to have complied with sub-paragraph (4) if before the end of the prescribed period he publishes in the prescribed manner a notice undertaking to provide a copy of the notice under sub-paragraph (2) to any creditor of the company who applies in writing to a specified address.

(6) An administrator who fails without reasonable excuse to comply with sub-paragraph (4) commits an offence.

Court ending administration on application of creditor

82.—(1) On the application of a creditor of a company the High Court may provide for the appointment of an administrator of the company to cease to have effect at a specified time.

(2) An application under this paragraph must allege an improper motive—

- (a) in the case of an administrator appointed by administration order, on the part of the applicant for the order, or
- (b) in any other case, on the part of the person who appointed the administrator.

(3) On an application under this paragraph the Court may—

- (a) adjourn the hearing conditionally or unconditionally;
- (b) dismiss the application;
- (c) make an interim order;
- (d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

Public interest winding-up

83.—(1) This paragraph applies where a winding-up order is made for the winding up of a company in administration on a petition presented under—

- (a) Article 104A (public interest),
- (b) Article 104B (SEs), or
- (c) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Services Authority).

(2) This paragraph also applies where a provisional liquidator of a company in administration is appointed following the presentation of a petition under any of the provisions listed in sub-paragraph (1).

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- (3) The High Court shall order—
 - (a) that the appointment of the administrator shall cease to have effect, or
 - (b) that the appointment of the administrator shall continue to have effect.
- (4) If the Court makes an order under sub-paragraph (3)(b) it may also—
 - (a) specify which of the powers under this Schedule are to be exercisable by the administrator, and
 - (b) order that this Schedule shall have effect in relation to the administrator with specified modifications.

Moving from administration to creditors' voluntary liquidation

- 84.**—(1) This paragraph applies where the administrator of a company thinks—
 - (a) that the total amount which each secured creditor of the company is likely to receive has been paid to him or set aside for him, and
 - (b) that a distribution will be made to unsecured creditors of the company (if there are any).
- (2) The administrator may send to the registrar a notice that this paragraph applies.
- (3) On receipt of a notice under sub-paragraph (2) the registrar shall register it.
- (4) If an administrator sends a notice under sub-paragraph (2) he shall as soon as is reasonably practicable—
 - (a) file a copy of the notice with the High Court, and
 - (b) send a copy of the notice to each creditor of whose claim and address he is aware.
- (5) On the registration of a notice under sub-paragraph (2)—
 - (a) the appointment of an administrator in respect of the company shall cease to have effect, and
 - (b) the company shall be wound up as if a resolution for voluntary winding up under Article 70 were passed on the day on which the notice is registered.
- (6) The liquidator for the purposes of the winding up shall be—
 - (a) a person nominated by the creditors of the company in the prescribed manner and within the prescribed period, or
 - (b) if no person is nominated under paragraph (a), the administrator.
- (7) In the application of Part V to a winding up by virtue of this paragraph—
 - (a) Article 71 shall not apply,
 - (b) Article 72 shall apply as if the reference to the time of the passing of the resolution for voluntary winding up were a reference to the beginning of the date of registration of the notice under sub-paragraph (2),
 - (c) Article 75 does not apply,
 - (d) Articles 84, 85 and 86 shall not apply,
 - (e) Article 109 shall apply as if the reference to the time of the passing of the resolution for voluntary winding up were a reference to the beginning of the date of registration of the notice under sub-paragraph (2), and
 - (f) any creditors' committee which is in existence immediately before the company ceases to be in administration shall continue in existence after that time as if appointed as a liquidation committee under Article 87.

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Moving from administration to dissolution

85.—(1) If the administrator of a company thinks that the company has no property which might permit a distribution to its creditors, he shall send a notice to that effect to the registrar.

(2) The High Court may on the application of the administrator of a company disapply sub-paragraph (1) in respect of the company.

(3) On receipt of a notice under sub-paragraph (1) the registrar shall register it.

(4) On the registration of a notice in respect of a company under sub-paragraph (1) the appointment of an administrator of the company shall cease to have effect.

(5) If an administrator sends a notice under sub-paragraph (1) he shall as soon as is reasonably practicable—

(a) file a copy of the notice with the Court, and

(b) send a copy of the notice to each creditor of whose claim and address he is aware.

(6) At the end of the period of 3 months beginning with the date of registration of a notice in respect of a company under sub-paragraph (1) the company is deemed to be dissolved.

(7) On an application in respect of a company by the administrator or another interested person the Court may—

(a) extend the period specified in sub-paragraph (6),

(b) suspend that period, or

(c) disapply sub-paragraph (6).

(8) Where an order is made under sub-paragraph (7) in respect of a company the administrator shall as soon as is reasonably practicable notify the registrar.

(9) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (5).

Discharge of administration order where administration ends

86.—(1) This paragraph applies where—

(a) the High Court makes an order under this Schedule providing for the appointment of an administrator of a company to cease to have effect, and

(b) the administrator was appointed by administration order.

(2) The Court shall discharge the administration order.

Notice to registrar where administration ends

87.—(1) This paragraph applies where the High Court makes an order under this Schedule providing for the appointment of an administrator to cease to have effect.

(2) The administrator shall send a copy of the order to the registrar within the period of 14 days beginning with the date of the order.

(3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

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REPLACING ADMINISTRATOR

Resignation of administrator

- 88.**—(1) An administrator may resign only in prescribed circumstances.
- (2) Where an administrator may resign he may do so only—
- (a) in the case of an administrator appointed by administration order, by notice in writing to the High Court,
 - (b) in the case of an administrator appointed under paragraph 15, by notice in writing to the holder of the floating charge by virtue of which the appointment was made,
 - (c) in the case of an administrator appointed under paragraph 23(1), by notice in writing to the company, or
 - (d) in the case of an administrator appointed under paragraph 23(2), by notice in writing to the directors of the company.

Removal of administrator from office

- 89.** The High Court may by order remove an administrator from office.

Administrator ceasing to be qualified

- 90.**—(1) The administrator of a company shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.
- (2) Where an administrator vacates office by virtue of sub-paragraph (1) he shall give notice in writing—
- (a) in the case of an administrator appointed by administration order, to the High Court,
 - (b) in the case of an administrator appointed under paragraph 15, to the holder of the floating charge by virtue of which the appointment was made,
 - (c) in the case of an administrator appointed under paragraph 23(1), to the company, or
 - (d) in the case of an administrator appointed under paragraph 23(2), to the directors of the company.
- (3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

Supplying vacancy in office of administrator

- 91.** Paragraphs 92 to 96 apply where an administrator—
- (a) dies,
 - (b) resigns,
 - (c) is removed from office under paragraph 89, or
 - (d) vacates office under paragraph 90.

- 92.**—(1) Where the administrator was appointed by administration order, the High Court may replace the administrator on an application under this sub-paragraph made by—
- (a) a creditors' committee of the company,
 - (b) the company,

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- (c) the directors of the company,
 - (d) one or more creditors of the company, or
 - (e) where more than one person was appointed to act jointly or concurrently as the administrator, any of those persons who remains in office.
- (2) But an application may be made in reliance on sub-paragraph (1)(b) to (d) only where—
- (a) there is no creditors' committee of the company,
 - (b) the Court is satisfied that the creditors' committee or a remaining administrator is not taking reasonable steps to make a replacement, or
 - (c) the Court is satisfied that for another reason it is right for the application to be made.

93. Where the administrator was appointed under paragraph 15 the holder of the floating charge by virtue of which the appointment was made may replace the administrator.

94.—(1) Where the administrator was appointed under paragraph 23(1) by the company it may replace the administrator.

- (2) A replacement under this paragraph may be made only—
- (a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or
 - (b) where consent is withheld, with the permission of the High Court.

95.—(1) Where the administrator was appointed under paragraph 23(2) the directors of the company may replace the administrator.

- (2) A replacement under this paragraph may be made only—
- (a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or
 - (b) where consent is withheld, with the permission of the High Court.

96. The High Court may replace an administrator on the application of a person listed in paragraph 92(1) if the Court—

- (a) is satisfied that a person who is entitled to replace the administrator under any of paragraphs 93 to 95 is not taking reasonable steps to make a replacement, or
- (b) that for another reason it is right for the Court to make the replacement.

Substitution of administrator: competing floating charge-holder

97.—(1) This paragraph applies where an administrator of a company is appointed under paragraph 15 by the holder of a qualifying floating charge in respect of the company's property.

(2) The holder of a prior qualifying floating charge in respect of the company's property may apply to the High Court for the administrator to be replaced by an administrator nominated by the holder of the prior floating charge.

- (3) One floating charge is prior to another for the purposes of this paragraph if—
- (a) it was created first, or
 - (b) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.

Status: Point in time view as at 18/10/2006.

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Substitution of administrator appointed by company or directors: creditors' meeting

98.—(1) This paragraph applies where—

- (a) an administrator of a company is appointed by a company or directors under paragraph 23, and
 - (b) there is no holder of a qualifying floating charge in respect of the company's property.
- (2) A creditors' meeting may replace the administrator.
- (3) A creditor's meeting may act under sub-paragraph (2) only if the new administrator's written consent to act is presented to the meeting before the replacement is made.

Vacation of office: discharge from liability

99.—(1) Where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect) he is discharged from liability in respect of any action of his as administrator.

(2) The discharge provided by sub-paragraph (1) takes effect—

- (a) in the case of an administrator who dies, on the filing with the High Court of notice of his death,
 - (b) in the case of an administrator appointed under paragraph 15 or 23, at a time appointed by resolution of the creditors' committee or, if there is no committee, by resolution of the creditors, or
 - (c) in any case, at a time specified by the Court.
- (3) For the purpose of the application of sub-paragraph (2)(b) in a case where the administrator has made a statement under paragraph 53(1)(b), a resolution shall be taken as passed if (and only if) passed with the approval of—
- (a) each secured creditor of the company, or
 - (b) if the administrator has made a distribution to preferential creditors or thinks that a distribution may be made to preferential creditors—
 - (i) each secured creditor of the company, and
 - (ii) preferential creditors whose debts amount to more than 50 per cent. of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.
- (4) Discharge—
- (a) applies to liability accrued before the discharge takes effect, and
 - (b) does not prevent the exercise of the High Court's powers under paragraph 76.

Vacation of office: charges and liabilities

100.—(1) This paragraph applies where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect).

(2) In this paragraph—

- “the former administrator” means the person referred to in sub-paragraph (1), and
- “cessation” means the time when he ceases to be the company's administrator.

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- (3) The former administrator's remuneration and expenses shall be—
- (a) charged on and payable out of property of which he had custody or control immediately before cessation, and
 - (b) payable in priority to any security to which paragraph 71 applies.
- (4) A sum payable in respect of a debt or liability arising out of a contract entered into by the former administrator or a predecessor before cessation shall be—
- (a) charged on and payable out of property of which the former administrator had custody or control immediately before cessation, and
 - (b) payable in priority to any charge arising under sub-paragraph (3).
- (5) Sub-paragraph (4) shall apply to a liability arising under a contract of employment which was adopted by the former administrator or a predecessor before cessation; and for that purpose—
- (a) action taken within the period of 14 days after an administrator's appointment shall not be taken to amount or contribute to the adoption of a contract,
 - (b) no account shall be taken of a liability which arises, or in so far as it arises, by reference to anything which is done or which occurs before the adoption of the contract of employment, and
 - (c) no account shall be taken of a liability to make a payment other than wages or salary.
- (6) In sub-paragraph (5)(c) “wages or salary” includes—
- (a) a sum payable in respect of a period of holiday (for which purpose the sum shall be treated as relating to the period by reference to which the entitlement to holiday accrued),
 - (b) a sum payable in respect of a period of absence through illness or other good cause,
 - (c) a sum payable in lieu of holiday,
 - (d) in respect of a period, a sum which would be treated as earnings for that period for the purposes of an enactment about social security, and
 - (e) a contribution to an occupational pension scheme.

Modifications etc. (not altering text)

C17 Sch. B1 para. 100(3) applied by [Financial Markets and Insolvency \(Settlement Finality\) Regulations 1999 \(S.I. 1999/2979\)](#), [reg. 14\(5\)\(a\)\(iv\)](#) (as substituted (1.10.2009) by [Financial Markets and Insolvency \(Settlement Finality\) \(Amendment\) Regulations 2009 \(S.I. 2009/1972\)](#), [reg. 4\(d\)\(iii\)](#))

GENERAL

Joint and concurrent administrators

- 101.**—(1) In this Schedule—
- (a) a reference to the appointment of an administrator of a company includes a reference to the appointment of a number of persons to act jointly or concurrently as the administrator of a company, and
 - (b) a reference to the appointment of a person as administrator of a company includes a reference to the appointment of a person as one of a number of persons to act jointly or concurrently as the administrator of a company.
- (2) The appointment of a number of persons to act as administrator of a company must specify—
- (a) which functions (if any) are to be exercised by the persons appointed acting jointly, and

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(b) which functions (if any) are to be exercised by any or all of the persons appointed.

102.—(1) This paragraph applies where two or more persons are appointed to act jointly as the administrator of a company.

(2) A reference to the administrator of the company is a reference to those persons acting jointly.

(3) But a reference to the administrator of a company in paragraphs 88 to 100 of this Schedule is a reference to any or all of the persons appointed to act jointly.

(4) Where an offence of omission is committed by the administrator, each of the persons appointed to act jointly—

(a) commits the offence, and

(b) may be proceeded against and punished individually.

(5) The reference in paragraph 46(1)(a) to the name of the administrator is a reference to the name of each of the persons appointed to act jointly.

(6) Where persons are appointed to act jointly in respect of only some of the functions of the administrator of a company, this paragraph applies only in relation to those functions.

103.—(1) This paragraph applies where two or more persons are appointed to act concurrently as the administrator of a company.

(2) A reference to the administrator of a company in this Schedule is a reference to any of the persons appointed (or any combination of them).

104.—(1) Where a company is in administration, a person may be appointed to act as administrator jointly or concurrently with the person or persons acting as the administrator of the company.

(2) Where a company entered administration by administration order, an appointment under sub-paragraph (1) must be made by the High Court on the application of—

(a) a person or group listed in paragraph 13(1)(a) to (f), or

(b) the person or persons acting as the administrator of the company.

(3) Where a company entered administration by virtue of an appointment under paragraph 15, an appointment under sub-paragraph (1) must be made by—

(a) the holder of the floating charge by virtue of which the appointment was made, or

(b) the High Court on the application of the person or persons acting as the administrator of the company.

(4) Where a company entered administration by virtue of an appointment under paragraph 23(1), an appointment under sub-paragraph (1) must be made either by the High Court on the application of the person or persons acting as the administrator of the company or—

(a) by the company, and

(b) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, where consent is withheld, with the permission of the Court.

(5) Where a company entered administration by virtue of an appointment under paragraph 23(2), an appointment under sub-paragraph (1) must be made either by the Court on the application of the person or persons acting as the administrator of the company or—

(a) by the directors of the company, and

(b) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, where consent is withheld, with the permission of the Court.

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(6) An appointment under sub-paragraph (1) may be made only with the consent of the person or persons acting as the administrator of the company.

Presumption of validity

105. An act of the administrator of a company is valid in spite of a defect in his appointment or qualification.

Majority decision of directors

106. A reference in this Schedule to something done by the directors of a company includes a reference to the same thing done by a majority of the directors of a company.

Penalties

107.—(1) A person who is guilty of an offence under this Schedule is liable to a fine (in accordance with Article 373 and Schedule 7).

(2) A person who is guilty of an offence under any of the following paragraphs of this Schedule is liable to a daily default fine (in accordance with Article 373 and Schedule 7)—

- (a) paragraph 21,
- (b) paragraph 33,
- (c) paragraph 47,
- (d) paragraph 49,
- (e) paragraph 50,
- (f) paragraph 52,
- (g) paragraph 54,
- (h) paragraph 55,
- (i) paragraph 57,
- (j) paragraph 72,
- (k) paragraph 73,
- (l) paragraph 78,
- (m) paragraph 79,
- (n) paragraph 81,
- (o) paragraph 85,
- (p) paragraph 87, and
- (q) paragraph 90.

Extension of time limit

108.—(1) Where a provision of this Schedule provides that a period may be varied in accordance with this paragraph, the period may be varied in respect of a company—

- (a) by the High Court, and
- (b) on the application of the administrator.

(2) A time period may be extended in respect of a company under this paragraph—

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- (a) more than once, and
- (b) after expiry.

109.—(1) A period specified in paragraph 50(5), 51(1)(b) or 52(2) may be varied in respect of a company by the administrator with consent.

(2) In sub-paragraph (1) “consent” means consent of—

- (a) each secured creditor of the company, and
- (b) if the company has unsecured debts, creditors whose debts amount to more than 50 per cent. of the company's unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(3) But where the administrator has made a statement under paragraph 53(1)(b) “consent” means—

- (a) consent of each secured creditor of the company, or
- (b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—
 - (i) each secured creditor of the company, and
 - (ii) preferential creditors whose debts amount to more than 50 per cent. of the total preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(4) Consent for the purposes of sub-paragraph (1) may be—

- (a) written, or
- (b) signified at a creditors' meeting.

(5) The power to extend under sub-paragraph (1)—

- (a) may be exercised in respect of a period only once,
- (b) may not be used to extend a period by more than 28 days,
- (c) may not be used to extend a period which has been extended by the High Court, and
- (d) may not be used to extend a period after expiry.

110. Where a period is extended under paragraph 108 or 109, a reference to the period shall be taken as a reference to the period as extended.

Amendment of provision about time

111.—(1) The Department may by order amend a provision of this Schedule which—

- (a) requires anything to be done within a specified period of time,
- (b) prevents anything from being done after a specified time, or
- (c) requires a specified minimum period of notice to be given.

(2) An order under this paragraph shall be subject to negative resolution.]

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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.
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 ^{F31}. Power to call up any uncalled capital of the company.

F31 mod. by SR 2004/307

Status: Point in time view as at 18/10/2006.

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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.

[^{F32}SCHEDULE 1A

EXCEPTIONS TO PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE RECEIVER: SUPPLEMENTARY PROVISIONS

F32 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)

Capital market arrangement

- 1.—(1) For the purposes of Article 59B 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) it involves a grant of security to—
 - (i) a party to the arrangement who issues a capital market investment, or
 - (ii) a person who holds the security as trustee for a party to the arrangement in connection with the issue of a capital market investment, or
 - (c) it involves a grant of security to a person who holds the security as trustee for a party to the arrangement who agrees to provide finance to another party, or
 - (d) at least one party guarantees the performance of obligations of another party, or
 - (e) at least one party provides security in respect of the performance of obligations of another party, or
 - (f) 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 (S.I. 2001/544) (options, futures and contracts for differences).
- (2) For the purposes of sub-paragraph (1)—
- (a) a reference to 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; and
 - (d) the reference to the provision of finance includes the provision of an indemnity.
- (3) In Article 59B(1) and this paragraph “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

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- (c) is necessary for the purposes of implementing the arrangement.

Capital market investment

- 2.—**(1) For the purposes of Article 59B an investment is a capital market investment if it—
- (a) is within article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (debt instruments), and
 - (b) is rated, listed or traded or designed to be rated, listed or traded.
- (2) In sub-paragraph (1)—
- “rated” means rated for the purposes of investment by an internationally recognised rating agency,
- “listed” means admitted to the official list within the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (c. 8) (interpretation), and
- “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)—
- “recognised investment exchange” has the meaning given by section 285 of the Financial Services and Markets Act 2000 (recognised investment exchange), and
- “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 (S.I. 2001/1335) (foreign markets).
- 3.—**(1) An investment is also a capital market investment for the purposes of Article 59B 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 Article 59B(1) 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 Article 59B(1) 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) 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 (S.I. 2001/544), and
- “commercial paper” has the meaning given by article 9(3) of that order.
- (3) For the purposes of sub-paragraph (1)—
- (a) in applying article 19(5) of the Financial Promotion Order for the purposes of sub-paragraph (1)(a)—
 - (i) in article 19(5)(b), ignore the words after “exempt person”,

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- (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).

“Agreement”

4. or the purposes of Articles 59B and 59F and this Schedule “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.

Debt

5. the debt of at least £50 million referred to in Article 59B(1)(a) or 59F(2)(a)—

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

Step-in rights

6.—(1) For the purposes of Articles 59C to 59F 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.

Project company

7.—(1) For the purposes of Articles 59C to 59F 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,
 - (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—

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- (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.

“Resources”

8. In Article 59C “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.

“Public body”

9.—(1) In Article 59C “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.

(2) A specification under sub-paragraph (1) may be—

- (a) general, or
- (b) for the purpose of the application of Article 59C to a specified case.

Regulated business

10.—(1) For the purposes of Article 59D a business is regulated if it is carried on—

- (a) in reliance on a licence under Article 8 of the Gas (Northern Ireland) Order 1996 (NI 2) (licences authorising the supply of gas, etc.),
- (b) in reliance on a licence granted by virtue of Article 40 of the Energy (Northern Ireland) Order 2003 (NI 6) (power to prescribe additional licensable activity),
- (c) in reliance on a licence under Article 10 of the Electricity (Northern Ireland) Order 1992 (NI 1) (supply of electricity),
- (d) by a universal service provider within the meaning given by section 4(3) and (4) of the Postal Services Act 2000 (c. 26),
- (e) by the Post Office company within the meaning given by section 62 of that Act (transfer of property),^{F33} . . .
- (f) by a relevant subsidiary of the Post Office Company within the meaning given by section 63 of that Act (government holding);^{F34} or
- (g) in reliance of a European licence granted pursuant to a provision contained in any instrument made for the purpose of implementing Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings, as amended by Directive 2001/13/EC dated 26th February 2001 and Directive 2004/49/EC dated 29th April 2004, both of the European Parliament and of the Council, or pursuant to any action taken by an EEA State for that purpose.]

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(2) For the purposes of Article 59D a business is also regulated to the extent that it consists in the provision of a public electronic communications network or a public electronic communications service.

[^{F35}(3) In sub-paragraph (1)(g), an “EEA State” means a member State, Norway, Iceland or Liechtenstein.]

- F33** Word in Sch. 1A para. 10(1)(e) omitted (3.1.2006) by virtue of Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 (S.R. 2005/537), regs. 1(1), 45, **Sch. 5 para. 3(a)**
- F34** Sch. 1A para. 10(1)(g) and preceding word added (3.1.2006) by virtue of Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 (S.R. 2005/537), regs. 1(1), 45, **Sch. 5 para. 3(b)**
- F35** Sch. 1A para. 10(3) added (3.1.2006) by virtue of Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 (S.R. 2005/537), regs. 1(1), 45, **Sch. 5 para. 3(c)**

“Person”

11. A reference to a person in this Schedule includes a reference to a partnership or another unincorporated group of persons.]

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.

[^{F36}**3A.** Power to bring legal proceedings under Article 177, 178, 202, 203 or 367.]

- F36** Sch. 2 para. 3A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 8 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2-7**)

Status: Point in time view as at 18/10/2006.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 11 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. [^{F37}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.

F37 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^{F38}

F38 2005 NI 7

[^{F39}8A. Power to use the company's seal.]

F39 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 18/10/2006.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 11 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(2) 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

[^{F40}SCHEDULE 2ZA

CONDITIONS FOR MAKING A DEBT RELIEF ORDER

F40 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

Status: Point in time view as at 18/10/2006.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 11 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)

(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)

C18 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 18/10/2006.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 11 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)

Modifications etc. (not altering text)

- C19** 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

[^{F41}SCHEDULE 2ZB

DEBT RELIEF RESTRICTIONS ORDERS AND UNDERTAKINGS

- F41** 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 18/10/2006.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 11 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)

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 18/10/2006.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 11 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)

- (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 18/10/2006.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 11 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)

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 18/10/2006.

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[^{F42}SCHEDULE 2A

BANKRUPTCY RESTRICTIONS ORDER AND UNDERTAKING

F42 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;
- (l) fraud or fraudulent breach of trust;
- (m) failing to cooperate with the official receiver or the trustee.

Status: Point in time view as at 18/10/2006.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 11 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)

(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—

(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,

Status: Point in time view as at 18/10/2006.

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- (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)

C20 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)—

- (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.

Status: Point in time view as at 18/10/2006.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 11 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)

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.

[^{F43}2A. Power to bring legal proceedings under Article 312, 313 or 367.]

F43 Sch. 3 para. 2A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 19 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2-7)

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.

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.

Status: Point in time view as at 18/10/2006.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 11 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)

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. [^{F44}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.

F44 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^{F45}.

F45 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,
- (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;

Status: Point in time view as at 18/10/2006.

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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

1. ^{F46}

F46 Sch. 4 paras. 1 - 2 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(a), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

2. ^{F47}

F47 Sch. 4 paras. 1 - 2 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(a), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

Category 2: Debts due to Customs and Excise

3. ^{F48}

F48 Sch. 4 paras. 3 - 5C repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(b), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

3A. ^{F49}

F49 Sch. 4 paras. 3 - 5C repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(b), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

3B. ^{F50}

F50 Sch. 4 paras. 3 - 5C repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(b), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

3C. ^{F51}

F51 Sch. 4 paras. 3 - 5C repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(b), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

4. ^{F52}

F52 Sch. 4 paras. 3 - 5C repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(b), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

5. ^{F53}

Status: Point in time view as at 18/10/2006.

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F53 Sch. 4 paras. 3 - 5C repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(b), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

5A. ^{F54}

F54 Sch. 4 paras. 3 - 5C repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(b), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

5B. ^{F55}

F55 Sch. 4 paras. 3 - 5C repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(b), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

5C. ^{F56}

F56 Sch. 4 paras. 3 - 5C repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(b), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

Category 3: Social security contributions

6. ^{F57}

F57 Sch. 4 paras. 6 - 7 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(c), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

7. ^{F58}

F58 Sch. 4 paras. 6 - 7 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 6(1)(c), 31, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

Category 4: Contributions to occupational pension schemes, etc.

8. Any sum which is owed by the debtor and is a sum to which^{F59} Schedule 3 to the Pension Schemes (Northern Ireland) Act 1993] applies (contributions to occupational pension schemes and state scheme premiums).

F59 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.

Status: Point in time view as at 18/10/2006.

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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^{F60}, and
- (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.

F60 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.

[^{F61}(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).]

F61 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.

Status: Point in time view as at 18/10/2006.

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(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
- (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.—^{F62}(1) 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.

^{F63}(2) Rules made by virtue of this paragraph about the consequence of failure to comply with practice or procedure may, in particular, include provision about the termination of administration.]

F62 Sch. 5 para. 1 renumbered (27.3.2006) as sub - para. (1) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 46(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

F63 Sch. 5 para. 1(2) added (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 46(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

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.

Status: Point in time view as at 18/10/2006.

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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.

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^{F64} Article 59, 87 or 120, or paragraph 58 of Schedule B1].

(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.

Status: Point in time view as at 18/10/2006.

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F64 Words in Sch. 5 para. 10(1) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 46(3) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

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.

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.

[^{F65}**14A.** Provision about the application of Article 150A which may include, in particular—

- (a) provision enabling a receiver to institute winding up proceedings;
- (b) provision requiring a receiver to institute winding up proceedings.]

F65 Sch. 5 para. 14A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 46(4) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

[^{F66}Administration]

F66 Sch. 5 para. 14B and preceding cross - heading inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 46(5) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

[^{F67}**14B.** Provision which—

- (a) applies in relation to administration, with or without modifications, a provision of Parts V to VII and any of Articles 5 to 8 in so far as that Article relates to that provision, or
- (b) serves a purpose in relation to administration similar to a purpose that may be served by the rules in relation to winding up by virtue of a provision of this Schedule.]

F67 Sch. 5 para. 14B and preceding cross - heading inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 46(5) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

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.

Status: Point in time view as at 18/10/2006.

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[^{F68}**16A.** Provision enabling the Department to set the rate of interest paid on sums which have been paid into the Insolvency Account.]

F68 Sch. 5 para. 16A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 27(1) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2-7)

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.

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^{F69} (refund of tax in cases of bad debts) and the supply of copies of the certificate to creditors of the company.

F69 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.

Status: Point in time view as at 18/10/2006.

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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^{F70} Article 10(4) of the Company Directors Disqualification (Northern Ireland) Order 2002] (including, in particular, requirements with respect to the making of periodic returns).

F70 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^{F71} Article 57, 111, 121(2) or 199 of, or paragraph 48 of Schedule B1 to, this Order] or^{F72} Article 10(5) of the Company Directors Disqualification (Northern Ireland) Order 2002].

F71 Words in Sch. 5 para. 29 substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 46(6) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

F72 2002 NI 4

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

SCHEDULE 6^{F73}

Article 359.

PROVISIONS CAPABLE OF INCLUSION IN INDIVIDUAL INSOLVENCY RULES

F73 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.

Status: Point in time view as at 18/10/2006.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 11 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)

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.

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.

[^{F74}Official receiver acting on voluntary arrangement]

F74 Sch. 6 para. 6A and preceding cross - heading inserted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 25, Sch. 8 para. 16(2) (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

^{F75}6A. Provision about the official receiver acting as nominee or supervisor in relation to a voluntary arrangement under Part VIII, including—

- (a) provision requiring the official receiver to act in specified circumstances;
- (b) provision about remuneration;
- (c) provision prescribing terms or conditions to be treated as forming part of a voluntary arrangement in relation to which the official receiver acts as nominee or supervisor;
- (d) provision enabling those terms or conditions to be varied or excluded, in specified circumstances or subject to specified conditions, by express provision in an arrangement.]

F75 Sch. 6 para. 6A and preceding cross - heading inserted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 25, Sch. 8 para. 16(2) (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

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.

Status: Point in time view as at 18/10/2006.

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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);
- (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.

Status: Point in time view as at 18/10/2006.

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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.

[^{F76}**19A.** Provision enabling the Department to set the rate of interest paid on sums which have been paid into the Insolvency Account.]

F76 Sch. 6 para. 19A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 27(2) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2-7)

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.

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.

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[^{F77} Bankruptcy restrictions orders and undertakings]

F77 Sch. 6 para. 27A and preceding cross - heading inserted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 25, Sch. 8 para. 16(3) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

[^{F78}27A. Provision about bankruptcy restrictions orders, interim orders and undertakings, including—

- (a) provision about evidence;
- (b) provision enabling the amalgamation of the register mentioned in paragraph 12 of Schedule 2A with another register;
- (c) provision enabling inspection of that register by the public.]

F78 Sch. 6 para. 27A and preceding cross - heading inserted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 25, Sch. 8 para. 16(3) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

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.

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)
[^{F79} 19A(1).]	[^{F79} False representation or fraud for purpose of obtaining members' or creditor's approval of proposed voluntary arrangement.]	[^{F79} 1. On indictment. ^{F79} 2. Summary.]	[^{F79} 7 years or a fine, or both. ^{F79} 6 months or the statutory maximum, or both.]	
F80	F80	F80	F80	

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40	Body corporate acting as receiver.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
41(1)	F81 ... 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.
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.	One#fiftieth of the statutory maximum.

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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) F82	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) F82	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.	
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) F82	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.

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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) F82	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) F82	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 and return of final meetings.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
92(6) F82	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	Summary.	The statutory maximum.	

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	Article 99, where no liquidator.			
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.
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.

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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.
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	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory

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	in insolvent liquidation.		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.	
[^{F79} 236A(1).]	[^{F79} False representation or fraud for purpose of obtaining creditor's approval of proposed voluntary arrangement.]	[^{F79} 1. On indictment.] [^{F79} 2. Summary.]	[^{F79} 7 years or a fine, or both.] [^{F79} 6 months or the statutory maximum, or both.]	
324(1) F82	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) F82	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) F82	Bankrupt removing property which he is required to deliver to	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	

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	official receiver or trustee.		
325(5) F82	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) F82	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) F82	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) F82	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) F82	Bankrupt making material omission in statement relating to his affairs.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
327(3) F82	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) F82	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) F82	Bankrupt conceals or removes property.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory

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			maximum, or both.
329(1) F82	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) F82	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) F82	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) F82	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) F82	Person made bankrupt in England, Wales or Scotland obtaining credit, etc., in Northern Ireland.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
F83 ...	F83 ...	F83 ...	F83 ...
F83 ...	F83 ...	F83 ...	F83 ...
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.
[^{F79} Sch. A1, para. 20(2).]	[^{F79} Directors failing to notify	[^{F79} 1. On indictment.]	[^{F79} 2 years or a fine, or both.]

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	nominee of beginning of moratorium.]	[^{F79} 2. Summary.]	[^{F79} 6 months or the statutory maximum, or both.]
[^{F79} Sch. A1, para. 21(3).]	[^{F79} Nominee failing to advertise or notify beginning of moratorium.]	[^{F79} Summary.]	[^{F79} One-fifth of the statutory maximum.]
[^{F79} Sch. A1, para. 22(2).]	[^{F79} Nominee failing to advertise or notify end of moratorium.]	[^{F79} Summary.]	[^{F79} One-fifth of the statutory maximum.]
[^{F79} Sch. A1, para. 27(2).]	[^{F79} Company and officers failing to state in correspondence etc. that moratorium in force.]	[^{F79} Summary.]	[^{F79} One-fifth of the statutory maximum.]
[^{F79} Sch. A1, para. 28(3)(a).]	[^{F79} Company obtaining credit without disclosing existence of moratorium.]	[^{F79} 1. On indictment.] [^{F79} 2. Summary.]	[^{F79} A fine.] [^{F79} The statutory maximum.]
[^{F79} Sch. A1, para. 28(3)(b).]	[^{F79} Obtaining credit for company without disclosing existence of moratorium.]	[^{F79} 1. On indictment.] [^{F79} 2. Summary.]	[^{F79} 2 years or a fine, or both.] [^{F79} 6 months or the statutory maximum, or both.]
[^{F79} Sch. A1, para. 29(3)(a).]	[^{F79} Company disposing of property otherwise than in ordinary way of business.]	[^{F79} 1. On indictment.] [^{F79} 2. Summary.]	[^{F79} A fine.] [^{F79} The statutory maximum.]
[^{F79} Sch. A1, para. 29(3)(b).]	[^{F79} Authorising or permitting disposal of company property.]	[^{F79} 1. On indictment.] [^{F79} 2. Summary.]	[^{F79} 2 years or a fine, or both.] [^{F79} 6 months or the statutory maximum, or both.]
[^{F79} Sch. A1, para. 30(3)(a).]	[^{F79} Company making payments	[^{F79} 1. On indictment.]	[^{F79} A fine.]

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	in respect of liabilities existing before beginning of moratorium.]	[^{F79} 2. Summary.]	[^{F79} The statutory maximum.]
[^{F79} Sch. A1, para. 30(3)(b).]	[^{F79} Authorising or permitting such a payment.]	[^{F79} 1. On indictment.] [^{F79} 2. Summary.]	[^{F79} 2 years or a fine, or both.] [^{F79} 6 months or the statutory maximum, or both.]
[^{F79} Sch. A1, para. 31(9).]	[^{F79} Directors failing to send to registrar office copy of court order permitting disposal of charged property.]	[^{F79} Summary.]	[^{F79} One-fifth of the statutory maximum.]
[^{F79} Sch. A1, para. 32(1).]	[^{F79} Company disposing of charged property.]	[^{F79} 1. On indictment.] [^{F79} 2. Summary.]	[^{F79} A fine.] [^{F79} The statutory maximum.]
[^{F79} Sch. A1, para. 32(2).]	[^{F79} Authorising or permitting such a disposal.]	[^{F79} 1. On indictment.] [^{F79} 2. Summary.]	[^{F79} 2 years or a fine, or both.] [^{F79} 6 months or the statutory maximum, or both.]
[^{F79} Sch. A1, para. 33(1)(a).]	[^{F79} Company entering into market contract, etc.]	[^{F79} 1. On indictment.] [^{F79} 2. Summary.]	[^{F79} A fine.] [^{F79} The statutory maximum.]
[^{F79} Sch. A1, para. 33(1)(b).]	[^{F79} Authorising or permitting company to do so.]	[^{F79} 1. On indictment.] [^{F79} 2. Summary.]	[^{F79} 2 years or a fine, or both.] [^{F79} 6 months or the statutory maximum, or both.]
[^{F79} Sch. A1, para. 35(6).]	[^{F79} Nominee failing to give notice of withdrawal of consent to act.]	[^{F79} Summary.]	[^{F79} One-fifth of the statutory maximum.]
[^{F79} Sch. A1, para. 44(3).]	[^{F79} Nominee failing to give notice of extension of moratorium.]	[^{F79} Summary.]	[^{F79} One-fifth of the statutory maximum.]

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[^{F79} Sch. A1, para. 51(2).]	[^{F79} Fraud or privity to fraud in anticipation of moratorium.]	[^{F79} 1. On indictment.] [^{F79} 2. Summary.]	[^{F79} 7 years or a fine, or both.] [^{F79} 6 months or the statutory maximum, or both.]	
[^{F79} Sch. A1, para. 51(3).]	[^{F79} Fraud or privity to fraud during moratorium.]	[^{F79} 1. On indictment.] [^{F79} 2. Summary.]	[^{F79} 7 years or a fine, or both.] [^{F79} 6 months or the statutory maximum, or both.]	
[^{F79} Sch. A1, para. 51(7).]	[^{F79} Knowingly taking in pawn or pledge, or otherwise receiving, company property.]	[^{F79} 1. On indictment.] [^{F79} 2. Summary.]	[^{F79} 7 years or a fine, or both.] [^{F79} 6 months or the statutory maximum, or both.]	
[^{F79} Sch. A1, para. 52(1).]	[^{F79} False representation or fraud for purpose of obtaining or extending moratorium.]	[^{F79} 1. On indictment.] [^{F79} 2. Summary.]	[^{F79} 7 years or a fine, or both.] [^{F79} 6 months or the statutory maximum, or both.]	
[^{F84} Sch. B1, para. 19(7).]	Making false statement in statutory declaration where administrator appointed by holder of floating charge.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.]	
[^{F84} Sch. B1, para. 21.	Holder of floating charge failing to notify administrator or others of commencement of appointment.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.	One-tenth of the statutory maximum.]
[^{F84} Sch. B1, para. 28(4).]	Making false statement in statutory declaration where appointment of administrator proposed by	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.]	

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	company or directors.				
[^{F84} Sch. B1, para. 30(7).	Making false statement in statutory declaration where administrator appointed by company or directors.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.]		
[^{F84} Sch. B1, para. 33.	Company or directors failing to notify administrator or others of commencement of appointment.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.	One-tenth of the statutory maximum.]	
[^{F84} Sch. B1, para. 46(2).	Administrator, company or officer failing to state in business document that administrator appointed.	Summary.	One-fifth of the statutory maximum.]		
[^{F84} Sch. B1, para. 47(9).	Administrator failing to give notice of his appointment.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]	
[^{F84} Sch. B1, para. 49(4).	Failing to comply with provisions about statement of affairs where administrator appointed.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.]	
[^{F84} Sch. B1, para. 50(7).	Administrator failing to send out statement of his proposals.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]	
[^{F84} Sch. B1, para. 52(5).	Administrator failing to arrange initial creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]	
[^{F84} Sch. B1, para. 54(3).	Administrator failing to report decision taken at initial creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]	

Status: Point in time view as at 18/10/2006.

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[^{F84} Sch. B1, para. 55(7).	Administrator failing to report decision taken at creditors' meeting summoned to consider revised proposal.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[^{F84} Sch. B1, para. 57(2).	Administrator failing to summon creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[^{F84} Sch. B1, para. 72(6).	Administrator failing to file Court order enabling disposal of charged property.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[^{F84} Sch. B1, para. 73(5).	Administrator failing to file Court order enabling disposal of hire-purchase property.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[^{F84} Sch. B1, para. 78(3).	Administrator failing to notify registrar of automatic end of administration.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[^{F84} Sch. B1, para. 79(6).	Administrator failing to give notice of extension by consent of term of office.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[^{F84} Sch. B1, para. 81(6).	Administrator failing to give notice of termination of administration where objective achieved.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[^{F84} Sch. B1, para. 85(9).	Administrator failing to comply with provisions where company moves to dissolution.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]

Status: Point in time view as at 18/10/2006.

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[^{F84} Sch. B1, para. 87(3).	Administrator failing to notify registrar where court terminates administration.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[^{F84} Sch. B1, para. 90(3).	Administrator failing to give notice on ceasing to be qualified.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]

F79 2002 NI 6

F80 Entries in Sch. 7 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 47(3), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 27**) ; Sch. 7 entries relating to arts. 28(8), 30(5) continue to apply for certain purposes and are amended (1.10.2009) by S.I. 2009/1941, arts. 2(1), 8, **Sch. 1 para. 114(2)** (with art. 10)

F81 Word in entry in Sch. 7 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 17(a), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2-7**)

F82 mod. by SR 2004/307

F83 Entries in Sch. 7 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 25, 31, Sch. 8 para. 17(b), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2-7**)

F84 Entries in Sch. 7 inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 47(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2-7**)

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.

Status: Point in time view as at 18/10/2006.

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(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.

(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;

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- (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 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

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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^{F85} but as if such acts included failure to comply with a statutory demand served under Article 242 of this Order.

F85 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^{F86} as applied by Article 39 of that Order (release of trustee), then—

Status: Point in time view as at 18/10/2006.

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- (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.
- (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.

F86 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^{F87} or section 51 of the Bankruptcy (Ireland) Amendment Act 1872^{F88}.

(2) Section 11 of the Bankruptcy Amendment Act (Northern Ireland) 1929^{F89} (second bankruptcy) does not apply where a person who is an undischarged bankrupt under the Bankruptcy Acts is adjudged bankrupt under this order.

F87 1857 c. 60

F88 1872 c. 58

F89 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.

Status: Point in time view as at 18/10/2006.

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(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^{F90} 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.

(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.

F90 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.

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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.

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^{F91}.

F91 1954 c. 33 (NI)

Interpretation

23. In this Schedule—

“the Bankruptcy Acts” means the Bankruptcy Acts (Northern Ireland) 1857 to 1980^{F92F93F94F95F96},

“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.

F92 1857 c. 60

F93 1872 c. 58

F94 1929 c. 1 (NI)

F95 1963 c. 23 (NI)

F96 1980 NI 4

Status: Point in time view as at 18/10/2006.

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Schedule 9—Amendments

Schedule 10—Repeals

Status:

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Changes to legislation:

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