

2002 No. 334

INSOLVENCY

COMPANIES AND INDIVIDUALS

**Insolvency (Northern Ireland) Order 1989 (Amendment
No. 2) Regulations (Northern Ireland) 2002**

Made - - - - - 5th November 2002

Coming into operation 5th December 2002

The Department of Enterprise, Trade and Investment being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to insolvency, in exercise of the powers conferred upon it by the said section 2(2) and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Insolvency (Northern Ireland) Order 1989 (Amendment No. 2) Regulations (Northern Ireland) 2002 and shall come into operation on 5th December 2002.

Interpretation

2.—(1) In these Regulations “the Order” means the Insolvency (Northern Ireland) Order 1989(c).

(2) The Interpretation Act (Northern Ireland) 1954(d) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Amendments to the Insolvency (Northern Ireland) Order 1989

3. The Order shall be amended as provided in regulations 4 to 16.

Modified definition of property

4. After Article 2 (general interpretation) insert –

(a) S.I. 2001/3495
(b) 1972 c. 68
(c) S.I. 1989/2405 (N.I. 19); Article 3(3) was modified by the Insolvent Partnerships Order (Northern Ireland) 1995, (S.R. 1995 No. 225), Article 14; Article 21 was amended by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, (S.I. 2001/3649); Article 104(1) was amended by the Criminal Justice (Northern Ireland) Order 1994, (S.I. 1994/2795 (N.I. 15)), Article 26(1) and Schedule 2, paragraph 16; Article 104(5) was amended by the Companies (No. 2) (Northern Ireland) Order 1990, (S.I. 1990/1504 (N.I. 10)) Article 8; Articles 359, 364 and 365 were amended, and the definition of “EC Regulation” was inserted in Article 2 by the Insolvency (Northern Ireland) Order 1989 (Amendment) Regulations (Northern Ireland) 2002, (S.R. 2002 No. 223)
(d) 1954 c. 33 (N.I.)

“Proceedings under EC Regulation: modified definition of property

2A. In the application of this Order to proceedings by virtue of Article 3 of the EC Regulation, a reference to property is a reference to property which may be dealt with in the proceedings.”.

Amendment to Article 3

5. After Article 3(5) (acting as an insolvency practitioner) add –

“(6) Nothing in this Article applies to anything done (whether in the United Kingdom or elsewhere) in relation to insolvency proceedings under the EC Regulation in a member State other than the United Kingdom.”.

Amendment to Article 6

6. After Article 6(2) (meaning of “goes into liquidation”) add –

“(3) The reference to a resolution for voluntary winding up in paragraph (2) includes a resolution deemed to occur by virtue of an order made following conversion of a voluntary arrangement or administration into winding up under Article 37 of the EC Regulation.”.

Amendment to Article 14

7. After Article 14(3) (persons who may propose a voluntary arrangement) add –

“(4) In this Part a reference to a company includes a reference to a company in relation to which a proposal for a voluntary arrangement may be made by virtue of Article 3 of the EC Regulation.”.

Amendment to Article 21

8. After Article 21(6) (power of High Court to make administration order) add –

“(7) In this Part a reference to a company includes a reference to a company in relation to which an administration order may be made by virtue of Article 3 of the EC Regulation.”.

Amendment to Article 104

9. In Article 104(1) (application for winding up) after “contributory or contributories” insert –

“, or by a liquidator (within the meaning of Article 2(b) of the EC Regulation) appointed in proceedings by virtue of Article 3(1) of the EC Regulation or a temporary administrator (within the meaning of Article 38 of the EC Regulation)”.

Amendment to Article 185

10. In Article 185(3) (winding up of unregistered companies) at the end add –

“, except in accordance with the EC Regulation”.

Amendment to Article 189

11. In Article 189 (winding up of dissolved company incorporated outside Northern Ireland) (which becomes paragraph (1)) at end add –

“(2) This Article is subject to the EC Regulation.”.

Amendment to Article 204

12. In Article 204(3) (relevant time for purpose of transaction at undervalue or preference) after sub-paragraph (a) (and before the word “and”) insert –

“(aa) in a case where Article 202 or 203 applies by reason of a company going into liquidation following conversion of administration into winding up by virtue of

Article 37 of the EC Regulation, the date of the presentation of the petition on which the administration order was made,”.

Amendment to Article 238

13. After Article 238(1)(b) (who may present a bankruptcy petition) insert –
“(ba) by a temporary administrator (within the meaning of Article 38 of the EC Regulation),
(bb) by a liquidator (within the meaning of Article 2(b) of the EC Regulation) appointed in proceedings by virtue of Article 3(1) of the EC Regulation.”.

Amendment to Article 239

14. After Article 239(2) (conditions to be satisfied in respect of debtor) add –
“(3) This Article is subject to Article 3 of the EC Regulation.”.

Amendment to Article 303

15. After Article 303(5) (final distribution) insert –
“(6) Paragraph (5) is subject to Article 35 of the EC Regulation (surplus in secondary proceedings to be transferred to main proceedings).”.

Amendments to Article 347

16. In Article 347(3) (relevant date in relation to preferential debts) –
(a) after sub-paragraph (a) insert –
“(aa) if the winding up is by the Court and the winding-up order was made following conversion of administration into winding up by virtue of Article 37 of the EC Regulation, the relevant date is the date of the making of the administration order;
(ab) if the company is deemed to have passed a resolution for voluntary winding up by virtue of an order following conversion of administration into winding up under Article 37 of the EC Regulation, the relevant date is the date of the making of the administration order;”,
(b) in sub-paragraph (b) after “sub-paragraph (a)” insert “, (aa) or (ab)”, and
(c) in sub-paragraph (c) for “either sub-paragraph (a) or (b)” substitute –
“sub-paragraph (a), (aa), (ab) or (b)”.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 5th November 2002.

(L.S.)

Michael J. Bohill

A Senior Officer of the Department of Enterprise, Trade and Investment

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations make amendments to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (“the Order”) as a result of the adoption by the Council of the European Union of Council Regulation (EC) No. 1346/2000 of 29th May 2000 on insolvency proceedings (O.J. No. L160, 30.06.00, p. 1) (“the EC Regulation”) which came into force on 31st May 2002.

The EC Regulation aims to provide for the efficient and effective functioning of cross-border insolvency proceedings in the European Union.

These Regulations provide amendments to the Order to ensure that provisions of domestic law do not conflict with the EC Regulation and generally to provide for it.

The Regulations amend the Order by –

- (a) modifying the definition of “property” in the Order (regulation 4);
- (b) providing that companies in relation to which UK courts may open proceedings under the EC Regulation may take advantage of various procedures under the Order (regulations 7, 8 and 10);
- (c) allowing temporary administrators appointed by courts in other member States of the European Union and liquidators appointed in main proceedings to present winding up petitions and bankruptcy petitions (regulations 9 and 13);
- (d) clarifying the jurisdiction of the High Court (regulation 11); and
- (e) making it clear that the conditions which must be satisfied in order to enable a person to present a bankruptcy petition are subject to the EC Regulation (regulation 14).

The Regulations also contain other technical amendments (regulations 5, 6, 12, 15 and 16).

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