



Department for the

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**Our ref: CQ DfE 254/25**

**Your Ref: EC2025:358**

**Date: 08 09 2025**

Dear Peter

### **Insolvency (Amendment) Bill**

Further to your letter dated 20 June 2025, to advise that the Economy Committee wished to receive the following documents,

- The Keeling Schedule for the Bill
- The Equality Impact Assessment or screening document, and
- The Delegated Powers Memorandum.

Please see response below which has been cleared by Minister Archibald. This submission, and the accompanying documents, with the exception of the equality screening, which is on the Department's website, are not disclosable by the Department as they relate to the development of government policy. The Economy Committee may, however, decide to disclose any, or all, of the documents sent to it.

Officials have now completed preparation of all three documents, which are attached for the Committee's information. The Keeling Schedule is in three parts as there are three pieces of legislation amended by the Bill.

Yours sincerely

A solid black rectangular box used to redact the signature of the Departmental Assembly Liaison Officer.

**Departmental Assembly Liaison Officer**

# **INSOLVENCY (AMENDMENT) BILL**

## **DELEGATED POWERS MEMORANDUM**

**Prepared by the Department for the Economy**

### **Introduction**

1. This Memorandum identifies those provisions in the Insolvency Amendment) Bill which confer power to make delegated legislation. It explains in each case why the power has been taken, why the matter has been left to be dealt with by delegated legislation, and the reasons for choosing the Assembly control selected.
2. The Bill makes amendments to the Insolvency (Northern Ireland) 1989 (“the Insolvency Order”) most of which correspond to amendments made to the Insolvency Act 1986 (“the Insolvency Act”) applying in England and Wales by the Enterprise and Regulatory Reform Act 2013, the Deregulation Act 2015 and the Small Business, Enterprise and Employment Act 2015. There are a small number of amendments to the Company Directors Disqualification (Northern Ireland) Order 2002 (“the Disqualification Order”).
3. The Bill also makes amendments to the Insolvent Partnerships Order (Northern Ireland) 1995, which is subordinate legislation. These amendments are mostly consequential on the ones made to the Insolvency and Disqualification Orders.

### **Overview of the Insolvency (Amendment) Bill**

4. The Bill will,
  - give administrators the right to take action against directors for fraudulent or wrongful trading and to assign causes of action
  - ensure that the proceeds of claims brought, or assignments made, by liquidators and administrators go to ordinary unsecured creditors, not floating charge holders
  - do away with the requirement for trustees in bankruptcy and liquidators to obtain sanction (that is, permission) from creditors or the Department for the Economy (“the Department”) before undertaking certain actions
  - provide that decisions by creditors, and in the case of companies, contributories, are made in ways which do not involve a physical meeting, unless insisted upon

- enable creditors in company and individual insolvencies to opt out of receiving correspondence about the insolvency
- replace requirements for liquidators to present accounts at final meetings of company members and creditors with a requirement to instead send copies of the accounts to the members and creditors
- replace the requirement for trustees in bankruptcy to present a report at a final meeting of the creditors with a requirement to instead give notice to the creditors that their administration of the bankrupt's estate is complete, together with a copy of their report
- provide a mechanism for the liquidator to be released if a winding-up order is rescinded
- enable rules to be made allowing creditors in company and individual insolvency proceedings who are owed small debts to receive a dividend without submitting a proof of debt claim
- provide for the official receiver to become trustee of the bankrupt's estate immediately a bankruptcy order is made
- enable administrators to make payments to creditors out of "the prescribed part" of a company's property subject to a floating charge which is set aside for the benefit of unsecured creditors, without having to obtain permission from the Court
- abolish fast-track voluntary arrangements
- give the Department power to legislate to strengthen existing provision intended to ensure continuity of supply of essential goods and services to businesses which are being kept open by insolvency practitioners to facilitate their rescue
- give the Department power to legislate to ensure that termination clauses in contracts do not prevent essential supplies being made to businesses being kept open in the case of voluntary arrangements and in the case of companies, administrations
- put in place requirements for the Enforcement of Judgments Office to be notified if a resolution for the voluntary winding up of a company is proposed or has been passed
- remove provision enabling a bankruptcy petition to be presented even if the debtor is only personally present in Northern Ireland on the day on which the petition is presented

- update the Insolvent Partnerships Order (Northern Ireland) 1995 in line with changes made to the Insolvent Partnerships Order 1994 applying in England and Wales
- provide for the Company Directors Disqualification (Northern Ireland) Order 2002 to apply where a partnership has entered administration
- provide that the Insolvent Partnerships Order (Northern Ireland) 1995 will no longer apply provisions in the Company Directors Disqualification (Northern Ireland) Order 2002 which relate to breach of competition law
- prevent the presentation of a winding up petition being used as a tactic to stymie the appointment of an administrator
- increase the period by which an administrator's appointment can be extended with the consent of creditors from six months to one year
- enable administrators to obtain their release without the need for a formal resolution from all creditors in cases where there will be no distribution to unsecured creditors
- alter the requirement to give notice of intention to appoint an administrator to prescribed persons so that it only applies in cases where they can have a say over the appointment
- repeal provision allowing the High Court to order money due to a company it has wound up to be paid into a bank appointed by the Court instead of directly to the liquidator
- enable the Department to seek information directly from directors of insolvent companies
- make it possible for insolvency practitioners as well as the Official Receiver to be appointed as interim receiver
- change the requirement for persons made bankrupt on a creditor's petition to provide a statement of affairs so that they will only have to do so if the Official Receiver requests it
- make necessary amendments to insolvency legislation and the Company Directors Disqualification (Northern Ireland) Order 2002 to take account of changes to the procedure for individuals in England and Wales to have themselves declared bankrupt.

## Delegated Powers

5. The Bill contains 121 clauses and four schedules. The provisions which contain powers to make rules or regulations by Statutory Rule are set out in the following table.

Clause or paragraph in schedule / provision inserted into other legislation	Nature of statutory rule which can be made	Assembly control	Notes
Clause 7(1)  Article 208ZE inserted into IO*	Rules	Negative resolution	Subsection (1) of clause 7 inserts new Article 208ZE into the Insolvency Order, paragraph (11) of which is a power to prescribe or authorize a procedure under paragraph 8A of Schedule 5 to the Insolvency Order.
Clause 7(1)  Article 208ZF inserted into IO*	Rules	Negative resolution	Subsection (1) of clause 7 inserts new Article 208ZF into the Insolvency Order, paragraphs (2) and (10) of which are powers to make rules.
Clause 7(1)  Article 208ZG inserted into IO*	Regulations	Draft affirmative	Subsection (1) of clause 7 inserts new Article 208ZG into the Insolvency Order, paragraphs (1) to (5) of which are powers to make regulations.
Clause 7(2)  Paragraph 8A inserted into Schedule 5 to the IO*	Rules	Negative resolution	Subsection (2) of clause 7 inserts new paragraph 8A into Schedule 5 to the Insolvency Order. Paragraph 8A makes provision about matters which can be included in rules.
Clause 8(1)  Article 345A inserted into IO*	Rules	Negative resolution	Subsection (1) of clause 8 inserts new Article 345A into the Insolvency Order, paragraph (11) of which is a power to prescribe or authorize a procedure under paragraph 9A of Schedule 6 to the Insolvency Order.
Clause 8(1)  Article 345B inserted into IO*	Rules	Negative resolution	Subsection (1) of clause 8 inserts new Article 345B into the Insolvency Order, paragraphs (2) and (9) of which are powers to make rules.
Clause 8(1)  Article 345C inserted into the IO*	Regulations	Draft affirmative	Subsection (1) of clause 8 inserts new Article 345C into the Insolvency Order, paragraphs (1) to (5) of which are powers to make regulations.

<b>Clause or paragraph in schedule / provision inserted into other legislation</b>	<b>Nature of statutory rule which can be made</b>	<b>Assembly control</b>	<b>Notes</b>
Clause 8(2)  Paragraph 9A inserted into Schedule 6 to the IO*	Rules	Negative resolution	Subsection (2) of clause 8 inserts new paragraph 9A into Schedule 6 to the Insolvency Order. Paragraph 9A makes provision about matters which can be included in rules.
Clause 9(1)  Article 208ZJ inserted into the IO*	Rules	Negative resolution	Subsection (1) of clause 9 inserts new Article 208ZJ into the Insolvency Order, paragraphs (1) and (3) of which are powers to make rules.
Clause 9(1)  Article 8A inserted into the IO*	Rules	Negative resolution	Subsection (2) of clause 9 inserts new Article 8A into the Insolvency Order, paragraph (1)(b) of which is a power to make rules.
Clause 9(3)  Paragraph 5A inserted into Schedule 5 to the IO*	Rules	Negative resolution	Subsection (3) of clause 9 inserts new paragraph 5A into Schedule 5 to the Insolvency Order. Paragraph 5A makes provision about matters which can be included in rules.
Clause 10(1)  Article 345E inserted into the IO*	Rules	Negative resolution	Subsection (1) of clause 10 inserts new Article 345E into the Insolvency Order, paragraphs (1) and (3) of which are powers to make rules.
Clause 10(2)  Article 11A inserted into the IO*	Rules	Negative resolution	Subsection (2) of clause 10 inserts new Article 11A into the Insolvency Order, paragraph (1)(b) of which is a power to make rules.
Clause 10(3)  Paragraph 5ZA inserted into Schedule 6 to the IO*	Rules	Negative resolution	Subsection (3) of clause 10 inserts new paragraph 5ZA into Schedule 6 to the Insolvency Order. Paragraph 5ZA makes provision about matters which can be included in rules.
Clause 13	Rules	Negative resolution	The amendment made by clause 13 alters an existing power under Article 13H of the Insolvency Order to make rules.

<b>Clause or paragraph in schedule / provision inserted into other legislation</b>	<b>Nature of statutory rule which can be made</b>	<b>Assembly control</b>	<b>Notes</b>
Clause 16(6)	Rules	Negative resolution	The amendment made by clause 16(6) alters an existing power under Article 17(5) of the Insolvency Order to make rules.
Clause 16(8)  New paragraph (6A) inserted into Article 17 of the IO*	Rules	Negative resolution	Subsection (8) of clause 16 inserts new paragraph (6A) into Article 17 of the Insolvency Order. Subparagraph (b) of paragraph (6A) includes a power to make rules.
Clause 17(2)	Rules	Negative resolution	The amendment made by clause 17(2) alters an existing power under Article 17A(2) of the Insolvency Order to make rules.
Clause 19(4)(a)	Rules	Negative resolution	The amendment made by clause 19(4)(a) alters an existing power under Article 19(2)(a) of the Insolvency Order to make rules.
Clause 24	Rules	Negative resolution	Following the amendment made by clause 24, paragraph (1) in Article 59 of the Insolvency Order will contain a power to make rules.
Clause 27(2)  New paragraph (1A) inserted into Article 81 of the IO*	Rules	Negative resolution	Subsection (2) of clause 27 inserts new paragraph (1A) into Article 81 of the Insolvency Order. Subparagraph (a) of paragraph (1A) includes a power to make rules.
Clause 27(4)  New paragraphs (4A) & (4B) inserted into Article 81 of the IO*	Rules	Negative resolution	Subsection (4) of clause 27 inserts new paragraphs (4A) & (4B) into Article 81 of the Insolvency Order. New paragraphs (4A) & (4B) each include a power to make rules.
Clause 31(2)  Substitute paragraph (1) in Article 85 of the IO*	Rules	Negative resolution	Subsection (2) of clause 31 replaces paragraph (1) in Article 85 of the Insolvency Order with a substitute. Subparagraph (a) of the substitute paragraph includes a power to make rules.



<b>Clause or paragraph in schedule / provision inserted into other legislation</b>	<b>Nature of statutory rule which can be made</b>	<b>Assembly control</b>	<b>Notes</b>
Clause 32  Substitutes paragraph (1) in Article 86 of the IO*	Rules	Negative resolution	Clause 32 replaces paragraph (1) in Article 86 of the Insolvency Order with paragraphs (1), (1A) and (1B). Paragraphs (1A) and (1B) include a power to make rules.
Clause 33(2)	Rules	Negative resolution	Following the amendment made by clause 33(2), paragraph (1) in Article 87 of the Insolvency Order will contain a power to make rules.
Clause 35	Rules	Negative resolution	The amendment made by clause 35 alters an existing power under Article 91(1)(b) of the Insolvency Order to make rules.
Clause 36  Substitute Article 92 of the IO*	Rules	Negative resolution	Clause 36 replaces Article 92 of the Insolvency Order with a substitute, paragraph (4) of which is a power to make rules.
Clause 38(2)	Rules	Negative resolution	Following the amendment made by clause 38(2), paragraph (4) in Article 116 of the Insolvency Order will contain a power to make rules.
Clause 38(3)  Substitute paragraph (5)(c) in Article 116 of the IO*	Rules	Negative resolution	Clause 38(3) replaces paragraphs (5) & (6) in Article 116 of the Insolvency Order with paragraphs (5) to (8). Paragraph (5)(c) includes a power to make rules.
Clause 40(3)	Rules	Negative resolution	Following the amendment made by clause 40(3), paragraph (2) in Article 118 of the Insolvency Order will contain a power to make rules.
Clause 42  Substitute paragraphs (2), (3) & (3B) in Article 120 of the IO*	Rules	Negative resolution	Clause 42 replaces paragraphs (1) to (3) in Article 120 of the Insolvency Order with paragraphs (1) to (3C). Paragraphs (2), (3) and (3B) include a power to make rules.

<b>Clause or paragraph in schedule / provision inserted into other legislation</b>	<b>Nature of statutory rule which can be made</b>	<b>Assembly control</b>	<b>Notes</b>
Clause 43  Substitute Article 124 of the IO*	Rules	Negative resolution	Clause 43 replaces 124 of the Insolvency Order with a substitute, paragraph (5) of which is a power to make rules.
Clause 44	Rules	Negative resolution	The replacement by clause 44 of subparagraph (a) in Article 137(1) of the Insolvency Order with a substitute alters an existing power under paragraph (1) of Article 137 to make rules.
Clause 47(2)	Rules	Negative resolution	The amendment made by clause 47(2) alters an existing power under Article 145(2)(b) of the Insolvency Order to make rules.
Clause 47(3) Substitute paragraphs (3) & (3A) in Article 145 of the IO*	Rules	Negative resolution	Subsection (3) of clause 47 replaces paragraphs (3) of Article 145 of the Insolvency Order with paragraphs (3) & (3A). Paragraphs (3)(c) and (3A)(c) include a power to make rules.
Clause 48(2)	Rules	Negative resolution	The amendment made by clause 48(2) alters an existing power under Article 146(2) of the Insolvency Order to make rules.
Clause 48(3)	Rules	Negative resolution	The amendment made by clause 48(3) alters an existing power under Article 146(3) of the Insolvency Order to make rules.
Clause 49(2)  Substitute paragraphs (2) to (2I) in Article 147 of the IO*	Rules	Negative resolution	Subsection (2) of clause 49 replaces paragraph (2) of Article 147 of the Insolvency Order with paragraphs (2) to (2I). Paragraphs (2A), (2B)(b), (2C), (2F) and (2H)(a) include power to make rules.
Clause 50(3)  Substitute paragraphs (4) to (4G) in Article 148 of the IO*	Rules	Negative resolution	Subsection (3) of clause 50 replaces paragraph (4) of Article 147 of the Insolvency Order with paragraphs (4) to (4G). Paragraphs (4A)(b), (4B), (4E), and (4F)(a) include power to make rules.

<b>Clause or paragraph in schedule / provision inserted into other legislation</b>	<b>Nature of statutory rule which can be made</b>	<b>Assembly control</b>	<b>Notes</b>
Clause 62(2)  Paragraph 9A inserted into Schedule 5 to the IO*	Rules	Negative resolution	Subsection (2) of clause 62 inserts new paragraph 9A into Schedule 5 to the Insolvency Order. Paragraph 9A makes provision about matters which can be included in rules.
Clause 62(3) to (5)	Rules	Negative resolution	The amendment made by subsections (3) to (5) of clause 62 alter the existing power under paragraph 10 of Schedule 5 to the Insolvency Order to make provision about matters which can be included in rules.
Clause 67(2)  Substitute paragraph (1) of Article 233 of the IO*	Rules	Negative resolution	Subsection (2) of clause 67 replaces paragraph (1) of Article 233 of the Insolvency Order with a substitute, subparagraph (b) of which contains a power to make rules.
Clause 68(3)(b)	Rules	Negative resolution	The amendment made by subsection (3)(b) of clause 68 alters an existing power under Article 234(2)(b) of the Insolvency Order to make rules.
Clause 70(4)	Rules	Negative resolution	The amendment made by subsection (4) of clause 70 alters an existing power under Article 236(2)(b)(i) of the Insolvency Order to make rules.
Clause 78(2)	Rules	Negative resolution	The amendment made by subsection (2) of clause 78 alters an existing power under Article 271(1) of the Insolvency Order to make rules.
Clause 78(4)  New paragraph (3A) inserted into Article 271 of the IO*	Rules	Negative resolution	Subsection (4) of clause 78 inserts new paragraphs (3A) & (3B) into Article 271 of the Insolvency Order. New paragraph (3A) includes a power to make rules.
Clause 78(6)  New paragraph (7A)(a) inserted into Article 271 of the IO*	Rules	Negative resolution	Subsection (6) of clause 78 inserts new paragraph (7A) into Article 271 of the Insolvency Order, subparagraph (a) of which includes a power to make rules.

<b>Clause or paragraph in schedule / provision inserted into other legislation</b>	<b>Nature of statutory rule which can be made</b>	<b>Assembly control</b>	<b>Notes</b>
Clause 79(3)  Substitute paragraphs (3) to (3G) in Article 272 of the IO*	Rules	Negative resolution	Subsection (3) of clause 79 replaces paragraph (3) of Article 272 of the Insolvency Order with paragraphs (3) to (3G). Paragraphs (3A)(b), (3B), (3E), and (3F)(a) include power to make rules.
Clause 80(2)  Substitute paragraph (3A) in Article 273 of the IO*	Rules	Negative resolution	Subsection (2) of clause 80 replaces paragraph (3) of Article 273 of the Insolvency Order with paragraphs (3) & (3A). Paragraph (3A) includes a power to make rules.
Clause 81(2)	Rules	Negative resolution	The amendment made by subsection (2) of clause 81 alters an existing power under Article 274(1) of the Insolvency Order to make rules.
Clause 87(2)  Paragraph 10A inserted into Schedule 6 to the IO*	Rules	Negative resolution	Subsection (2) of clause 87 inserts new paragraph 10A into Schedule 6 to the Insolvency Order. Paragraph 10A makes provision about matters which can be included in rules.
Clause 87(3)	Rules	Negative resolution	The amendment made by subsections (3) of clause 87 alters the existing power under paragraph 11 of Schedule 6 to the Insolvency Order to make provision about matters which can be included in rules.
Clause 90  Paragraph 13A inserted into Schedule 5 to the IO*	Rules	Negative resolution	Clause 90 inserts new paragraph 13A into Schedule 5 to the Insolvency Order. Paragraph 13A makes provision about matters which can be included in rules.
Clause 91  Paragraph 16A inserted into Schedule 6 to the IO*	Rules	Negative resolution	Clause 91 inserts new paragraph 16A into Schedule 6 to the Insolvency Order. Paragraph 16A makes provision about matters which can be included in rules.

<b>Clause or paragraph in schedule / provision inserted into other legislation</b>	<b>Nature of statutory rule which can be made</b>	<b>Assembly control</b>	<b>Notes</b>
Clause 94	Regulations	Draft affirmative	Subsection (1) of clause 94 is a power for the Department to make regulations, subsection (3) provides that “specified” in clause 94 means specified in the regulations. There is further provision about what regulations under clause 94 can contain in clause 100(1).
Clause 95	Regulations	Draft affirmative	Subsection (1) of clause 95 is a power for the Department to make regulations, subsection (2), (3), (4), and (5) make provision about what regulations made in exercise of this power may or must contain. There is further provision about what regulations under clause 95 can contain in clause 100(2).
Clause 98	Regulations	Draft affirmative	Subsection (1) of clause 98 is a power for the Department to make regulations, subsection (2) provides that “specified” in clause 98 means specified in the regulations. There is further provision about what regulations under clause 98 can contain in clause 100(1).
Clause 99	Regulations	Draft affirmative	Subsection (1) of clause 99 is a power for the Department to make regulations, subsection (2), (3), (4), (5) and (6) make provision about what regulations made in exercise of this power may or must contain. There is further provision about what regulations under clause 99 can contain in clause 100(2).
Clause 101(1)  Article 208ZH inserted into the IO*	Rules	Negative resolution	Clause 101 inserts new Article 208ZH into the Insolvency Order. Paragraph (8)(b) of Article 208ZH is a power to make rules.
Clause 101(1)  Article 208ZI inserted into the IO*	Rules	Negative resolution	Clause 101 inserts new Article 208ZI into the Insolvency Order. Paragraph (1)(b) of Article 208ZI is a power to make rules.

<b>Clause or paragraph in schedule / provision inserted into other legislation</b>	<b>Nature of statutory rule which can be made</b>	<b>Assembly control</b>	<b>Notes</b>
Clause 101(2)  Article 345D inserted into the IO*	Rules	Negative resolution	Clause 101 inserts new Article 345D into the Insolvency Order. Subparagraphs (a) and (b) in paragraph (2) of Article 345D are powers to make rules.
Clause 119	Order	Can be draft affirmative or negative resolution, depending on purpose.	Clause 119 enables the making of consequential provision.
Paragraph 7 of Schedule 1	Rules	Negative resolution	The amendment made by paragraph 7 of Schedule 1 alters an existing power under paragraph 53(2) of Schedule B1 to the Insolvency Order to make rules.
Paragraph 8 of Schedule 1  Substitute subparagraph (3) in paragraph 53 of Schedule B1 to the IO*	Rules	Negative resolution	Paragraph 8 of Schedule 1 replaces subparagraph (3) in paragraph 53 of Schedule B1 to the Insolvency Order with a substitute which contains a power to make rules.
Paragraph 11 of Schedule 1	Rules	Negative resolution	The amendment made by paragraph 11 of Schedule 1 alters an existing power under paragraph 54(2) of Schedule B1 to the Insolvency Order to make rules.
Paragraph 17 of Schedule 1	Rules	Negative resolution	The amendment made by paragraph 17 of Schedule 1 alters an existing power under paragraph 55(6) of Schedule B1 to the Insolvency Order to make rules.
Paragraph 20 of Schedule 1	Rules	Negative resolution	The amendment made by paragraph 20 of Schedule 1 alters an existing power under paragraph 57(1) of Schedule B1 to the Insolvency Order to make rules.
Paragraph 22 of Schedule 1	Rules	Negative resolution	The amendment made by paragraph 22 of Schedule 1 will result in paragraph 58(1) of Schedule B1 to the Insolvency Order containing a power to make rules.

<b>Clause or paragraph in schedule / provision inserted into other legislation</b>	<b>Nature of statutory rule which can be made</b>	<b>Assembly control</b>	<b>Notes</b>
Paragraph 8 of Schedule 2	Rules	Negative resolution	The amendment made by paragraph 8 of Schedule 2 to paragraph (3) of Article 271 of the Insolvency Order will alter the circumstances in which the existing power under paragraph (1) of that Article to make rules can be exercised.
Paragraph 3 of Schedule 3	Rules	Negative resolution	The amendment made by paragraph 3 of Schedule 3 to paragraph 27(2) in Schedule B1 to the Insolvency Order will alter the circumstances in which the existing powers under paragraph 27(2) to make rules can be exercised.
Paragraph 13(3) of Schedule 3	Rules	Negative resolution	Paragraph 13(3) of Schedule 3 inserts new paragraph (2A) into Article 261 of the Insolvency Order. Paragraph (2A) includes a power to make rules.
Paragraph 18(2) of Schedule 3	Rules	Negative resolution	The amendment made by paragraph 18(2) of Schedule 3 to paragraph (3)(a) in Article 349 of the Insolvency Order will alter the circumstances in which the existing powers to make rules under paragraph (3)(b) of that Article are to be exercised.
Paragraph 19 of Schedule 3  Substitute paragraphs (a) & (aa) in Article 24 of the Insolvency (NI) Order 2005	Order	Affirmative resolution	The replacement by paragraph 19 of Schedule 3 of paragraph (9)(a) in Article 24 of the Insolvency (Northern Ireland) Order 2005 with new paragraphs (a) and (aa) will alter the circumstances in which the existing powers to make an order under paragraph (1) of that Article can be exercised.
Paragraph 6(5) of Schedule 4	Rules	Negative resolution	The amendment made by paragraph 6(5) of Schedule 4 will alter the purpose for which the power to make rules under modified Article 17(5) of the Insolvency Order in Schedule 1 to IPO(NI)1995** can be exercised.
Paragraph 6(6) of Schedule 4	Rules	Negative resolution	The amendment made by paragraph 6(6) of Schedule 4 to modified Article 17(6) of the Insolvency Order in Schedule 1 to the IPO(NI)1995** alters an existing power to make rules under

<b>Clause or paragraph in schedule / provision inserted into other legislation</b>	<b>Nature of statutory rule which can be made</b>	<b>Assembly control</b>	<b>Notes</b>
			modified Article 17(6).
Paragraph 7(2) of Schedule 4  Substitute paragraph (2) in modified Article 17A of the IO* in Schedule 1 to the IPO(NI)1995**	Rules	Negative resolution	Paragraph 7(2) of Schedule 4 to the Insolvency Order replaces paragraph (2) of modified Article 17A in Schedule 1 to the IPO(NI)1995** with a substitute, which contains a power to make rules.
Paragraph 8(3) & (4) of Schedule 4	Rules	Negative resolution	The amendment made by paragraph 8(3) and (4) of Schedule 4 will alter the purpose for which the power to make rules under modified Article 18(2)(b) of the Insolvency Order in Schedule 1 to IPO(NI)1995** can be exercised.
Paragraph 9(4) of Schedule 4	Rules	Negative resolution	The amendment made by paragraph 9(4) of Schedule 4 will alter the purpose for which the power to make rules under modified Article 19(2)(a) and (b) of the Insolvency Order in Schedule 1 to IPO(NI) 1995** can be exercised.
Paragraph 21(2) of Schedule 4	Rules	Negative resolution	The amendment made by paragraph 21(2) of Schedule 4 will alter the purpose for which the powers to make rules under modified paragraph 53(2) of Schedule B1 to the Insolvency Order in paragraph 28 of Schedule 2 to the IPO(NI)1995** can be exercised.
Paragraph 21(3) of Schedule 4	Rules	Negative resolution	Paragraph 21(3) of Schedule 4 to the Insolvency Order replaces subparagraph (3) in modified paragraph 53 of Schedule B1 to the Insolvency Order in paragraph 28 of Schedule 2 to the IPO(NI)1995** with a substitute, which contains a power to make rules.
Paragraph 35 of Schedule 4  Modified Article 120 of the IO* in	Rules	Negative resolution	Paragraph 35 of Schedule 4 inserts new paragraphs 8A to 8I into Schedule 3 to the IPO(NI)1995**. Paragraph 8D provides a modified version of Article 120 of the Insolvency Order. Paragraphs (2), (4), (6) and (7) of modified Article



<b>Clause or paragraph in schedule / provision inserted into other legislation</b>	<b>Nature of statutory rule which can be made</b>	<b>Assembly control</b>	<b>Notes</b>
paragraph 8D inserted into Schedule 3 to the IPO(NI) 1995**			120 contain powers to make rules.
Paragraph 43(3) of Schedule 4	Rules	Negative resolution	The amendment made by paragraph 43(3) of Schedule 4 will result in paragraph (4) of modified Article 116 of the Insolvency Order in paragraph 12 of Schedule 4 to the IPO(NI) 1995** containing a power to make rules.
Paragraph 43(4) of Schedule 4  Paragraph (5)(c) inserted into modified Article 116 of the IO* in paragraph 12 of Schedule 4 to the IPO(NI) 1995**	Rules	Negative resolution	Paragraph 43(4) of Schedule 4 inserts new paragraph (5) into modified Article 116 of the Insolvency Order in paragraph 12 of Schedule 4 to the IPO(NI) 1995**. Subparagraph (c) of paragraph (5) contains a power to make rules.
Paragraph 49 of Schedule 4  Paragraphs (2) & (4) of substitute modified Article 120 of the IO*	Rules	Negative resolution	Paragraph 49 of Schedule 4 replaces modified Article 120 in paragraph 16 of Schedule 4 to the IPO(NI) 1995** with a substitute, paragraphs (2) and (4) of which contain powers to make rules.
Paragraph 50(3) of Schedule 4	Rules	Negative resolution	The amendment made by paragraph 50(3) of Schedule 4 to paragraph (6) of modified Article 120A of the Insolvency Order in Schedule 4 to the IPO(NI) 1995** alters an existing power to make rules under paragraph (6) of the modified Article.
Paragraph 51 of Schedule 4	Rules	Negative resolution	Paragraph 51 of Schedule 4 replaces modified Article 124 of the Insolvency Order in paragraph 18 of Schedule 4 to

<b>Clause or paragraph in schedule / provision inserted into other legislation</b>	<b>Nature of statutory rule which can be made</b>	<b>Assembly control</b>	<b>Notes</b>
Paragraph (5) of substitute modified Article 124 of the IO*			the IPO(NI)1995** with a substitute, paragraph (5) of which contains a power to make rules.
Paragraph 55(3) of Schedule 4  Substitute paragraphs (4A) & (4E) in modified Article 148 in paragraph 22 of Schedule 4 to the IPO(NI) 1995**	Rules	Negative resolution	Paragraph 55(3) of Schedule 4 replaces paragraph (4) of modified Article 148 of the Insolvency Order in paragraph 22 of Schedule 4 to the IPO(NI)1995 **with paragraphs (4) to (4E). Paragraphs (4A) and (4E)(a) contain powers to make rules.
Paragraph 61 of Schedule 4  Paragraph (11) of modified Article 208ZE of the IO* in included in paragraph 27ZA inserted into Schedule 4 to the IPO(NI) 1995**	Rules	Negative resolution	Paragraph 61 of Schedule 4 inserts new paragraph 27ZA into Schedule 4 to the IPO(NI)1995**. Paragraph 27ZA contains a modified version of Article 208ZE of the Insolvency Order. The definitions of “qualifying decision procedure” and “creditors’ decision procedure” in paragraph (11) of modified Article 208ZE contain powers to make rules.
Paragraph 61 of Schedule 4  Paragraph (3) of modified Article 208ZF of the IO* included in paragraph 27ZB inserted into Schedule 4 to the IPO(NI) 1995**	Rules	Negative resolution	Paragraph 61 of Schedule 4 inserts new paragraph 27ZB into Schedule 4 to the IPO(NI)1995**. Paragraph 27ZB contains a modified version of Article 208ZF of the Insolvency Order, paragraph (3) of which contains a power to make rules.

<b>Clause or paragraph in schedule / provision inserted into other legislation</b>	<b>Nature of statutory rule which can be made</b>	<b>Assembly control</b>	<b>Notes</b>
Paragraph 76(2) of Schedule 4	Rules	Negative resolution	The amendment made by paragraph 76(2) of Schedule 4 will result in paragraph (1) of modified Article 271 of the Insolvency Order in paragraph 15 of Schedule 7 to the IPO(NI) 1995**containing a power to make rules.
Paragraph 76(3) of Schedule 4  Paragraph (1B) inserted into modified Article 271 of the IO* in paragraph 15 of Schedule 7 to the IPO(NI) 1995**	Rules	Negative resolution	Paragraph 76(3) of Schedule 4 inserts new paragraphs (1A) to (1C) into modified Article 271 of the Insolvency Order in paragraph 15 of Schedule 7 to the IPO(NI)1995**. Paragraph (1B) contains a power to make rules.
Paragraph 77(3) of Schedule 4  Substitute paragraphs (3A) & (3E)(a) in modified Article 272 of the IO* in paragraph 16 of Schedule 7 to the IPO(NI) 1995**	Rules	Negative resolution	Paragraph 77(3) of Schedule 4 replaces paragraph (3) of modified Article 272 of the Insolvency Order in paragraph 16 of Schedule 7 to the IPO(NI)1995** with paragraphs (3) to (3E). Paragraphs (3A) and (3E)(a) contain powers to make rules.
Paragraph 79(2) of Schedule 4	Rules	Negative resolution	The amendment made by paragraph 79(2) of Schedule 4 will result in paragraph (1) of modified Article 274 of the Insolvency Order in paragraph 18 of Schedule 7 to the IPO(NI) 1995**containing a power to make rules.
Paragraph 83 of Schedule 4  Paragraph (4) of substitute modified Article	Rules	Negative resolution	Paragraph 83 of Schedule 4 replaces modified Article 304 of the Insolvency Order in paragraph 22 of Schedule 7 to the IPO(NI)1995** with a substitute, paragraph (4) of which contains a power to make rules.

<b>Clause or paragraph in schedule / provision inserted into other legislation</b>	<b>Nature of statutory rule which can be made</b>	<b>Assembly control</b>	<b>Notes</b>
304 of the IO*			
Paragraph 93 of Schedule 4  Paragraph (1) & (7) of modified Article 22 of the Disqualification Order	Regulations	Negative resolution	Paragraph 93 of Schedule 4 inserts modified versions of Articles 22, 23 and 23A of the Disqualification Order into Schedule 8 to the IPO(NI) 1995**. Paragraphs (1) and (7) of modified Article 22 contains powers to make regulations.
Paragraph 93 of Schedule 4	Rules or regulations	Negative resolution	Paragraph 93 of Schedule 4 inserts modified versions of Articles 22, 23 and 23A of the Disqualification Order into Schedule 8 to the IPO(NI) 1995**. Paragraph (3) of modified Article 23 contains powers to make rules or regulations.

\*Insolvency (Northern Ireland) Order 1989

\*\*Insolvent Partnership Order (Northern Ireland) 1995

6. Much of the Bill consists of the insertion of provisions into the Insolvency Order. The inserted provisions provide for several matters to be “prescribed”. This term is defined by Article 2 of the Insolvency Order to mean, subject to certain exceptions, prescribed by rules. The only exception relevant to the Bill is Part XII of the Insolvency Order, which includes Article 349. Paragraph 18(1) of Schedule 3 to the Bill makes a minor amendment to paragraph (3)(a) Article 349, and that amendment does not include the word “prescribed”.
7. The rules in question are made by the Department of Justice, under Article 359 of the Insolvency Order, for the purpose of giving effect to that Order. Rules made under Article 359 of the Insolvency Order are subject to negative resolution procedure. The concurrence of this Department and in the case of rules affecting court procedure, the Lady Chief Justice are required. In all cases the Insolvency Rules Committee, which is an advisory committee to the Department of Justice, has to be consulted. The current rules are the Insolvency Rules (Northern Ireland) 1991 (S.R. 1991 No. 364). These rules have been subject to extensive amendment during the years that they have been in operation and are to be replaced by new set of consolidated rules. The new rules are essential to the working of some of the Bill provisions and it will only be possible to bring these provisions into operation once the new rules

have been made and brought into operation. References in the remainder of this memorandum to “prescribed” and “rules” are to prescription by the consolidated rules which will to replace the current rules.

## **CLAUSES IN THE BILL WHICH CREATE NEW DELEGATED POWERS OR WHICH AMEND OR ALTER THE EFFECT OF EXISTING ONES**

### **Clause 7 of the Bill: Abolition of requirements to hold meetings: company insolvency**

8. Clause 7 inserts three Articles into the Insolvency Order and one paragraph into Schedule 5 to that Order which contain delegated powers. Two of the Articles inserted into the Insolvency Order provide for the making of Rules by negative resolution of the Assembly, as does the paragraph inserted into Schedule 5. The third Article contains power to make regulations by draft affirmative resolution.

### **Article 208ZE(11) : Decisions by creditors and contributories: general**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

9. Article 208ZE, inserted into the Insolvency Order by clause 7(1) of the Bill, makes provision about the method to be used by a company’s creditors or contributories to make decisions for the purposes of Parts 1A to 7 of the Insolvency Order. Paragraph (2) of Article 208ZE provides that decisions for the purposes of Parts 1A to 7 are to be made using what is termed a qualifying decision procedure. Paragraph (2), together with paragraph (3) also provide that decisions are not to be made by meetings unless, what is termed the minimum number of creditors or contributories, request it.
10. The use of the term “qualifying decision procedure” in paragraph (2) of Article 208ZE makes it necessary to set out what such a procedure is. Paragraph (11) of Article 208ZE enables provision to be made for this purpose. Paragraph (11) provides that a “qualifying decision procedure” is a procedure “prescribed or authorized under paragraph 8A of Schedule 5” to the Insolvency Order. Schedule 5 lists matters which can be included in company insolvency rules, made under Article 359 of the Insolvency Order and paragraph 8A is inserted into that Schedule by subsection (2) of clause 7.

11. The definition of “qualifying decision procedure” is best dealt with in delegated legislation for two reasons. The first is that the definition includes a detailed list of procedures. The second is that the list may require updating as other procedures which could appropriately be used by creditors and contributories to make decisions are identified or emerge due to technological change, and it will be easier to amend the list if it is in delegated legislation.
12. The definition relates to the procedure to be used by creditors and contributories to make decisions and it is normal practice for any matters relating to insolvency procedures to be legislated for in Rules which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control as Rules are subject to scrutiny by the committee referred to in paragraph 7, before being laid at the Assembly. The committee is chaired by a High Court Judge and its membership includes the Master in Bankruptcy and representatives from the legal and insolvency professions, who can bring specialist knowledge to bear when considering draft Rules.
13. Paragraph (11) of Article 208ZE corresponds to subsection (11) of section 246ZE in the Insolvency Act.

#### **Paragraph 8A inserted into Schedule 5 to the Insolvency Order**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

14. As explained in paragraph 10 above, paragraph (11) of new Article 208ZE defines a “qualifying decision procedure” in Parts 1A to 7 of the Insolvency Order as a procedure prescribed or authorized under paragraph 8A of Schedule 5 to that Order.
15. Paragraph 8A, inserted into Schedule 5 by clause 7(2) of the Bill, enables provision prescribing particular procedures to be used by creditors and contributories when making decisions to be included in company insolvency rules and lists particular matters which can be included in such provisions. Paragraph 8A also establishes that the rules can authorize the use of procedures other than those prescribed but that if they do, they must provide that those procedures have to comply with prescribed requirements.
16. The rationale for leaving prescription of the procedures to be used by creditors and contributories when making decisions to be dealt with in delegated legislation is as explained in paragraph 12 above. The reasons for negative

resolution being considered to be an adequate form of control are the same as set out in paragraph 12.

17. Paragraph 8A inserted into Schedule 5 to the Insolvency Order corresponds to paragraph 8A in Schedule 9 to the Insolvency Act.

#### **Article 208ZF(2) : Deemed consent procedure**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

18. Article 208ZF, inserted into the Insolvency Order by clause 7(1) of the Bill, sets out a procedure, known as the deemed consent procedure, which can be used by a company's creditors and contributories as an alternative to the qualifying decision procedure, when making decisions. The creditors or contributories are given notice of the matter about which they are to make a decision and the proposed decision. If less than 10% by value of the creditors or contributories object to the proposed decision, it is treated as having been made.
19. Paragraph (2) of Article 208ZF creates an exception to the right to use the deemed consent procedure. Paragraph (2) provides that rules which give creditors or contributories the right to make a decision about a person's remuneration must provide that the decision has to be made using a qualifying decision procedure.
20. The purpose of paragraph (2) is to prevent individuals, generally insolvency practitioners, using the deemed consent procedure to seek approval for a decision which they have made as to what their remuneration should be or how it should be calculated. Forcing them to use a qualifying decision procedure gives those making the decision maximum opportunity to freely decide what the remuneration should be, instead of being limited to either agreeing or disagreeing with a pre-determined proposal as to what it should be. Paragraph (2) does not directly forbid the use of the deemed consent procedure. Neither does it create any right to make delegated legislation. Schedule 5 to the Insolvency Order already includes power to make rules which make provision as to the amount, or manner of determining the amount, payable to insolvency office-holders by way of remuneration and any rules made for this purpose will, like any other rules, be subject to negative resolution in the Assembly. Paragraph (2) in Article 208ZF simply puts in place a limit on what rules made under this existing power can do. They cannot provide for decisions about remuneration to be made using the deemed consent procedure; they can only provide for them to be made using a qualifying decision procedure.

21. Paragraph (2) of Article 208ZF corresponds to subsection (2) of section 246ZF in the Insolvency Act.

**Article 208ZF(10) : Deemed consent procedure**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

22. Article 208ZF sets out in broad terms how the deemed consent procedure for making decisions is to be carried out.
23. However paragraph (10) of that Article provides that further provision about the procedure can be made by the rules.
24. The purpose of paragraph (10) is to enable more detailed requirements for the conduct of the procedure, which it would not be appropriate to include in primary legislation, to be set out in delegated legislation.
25. As explained in paragraph 12, it is normal practice for any matters relating to insolvency procedures to be legislated for in Rules which are subject to negative resolution in the Assembly. Negative resolution is considered to be an adequate form of Assembly control for the same reasons as set out in paragraph 12.
26. Paragraph 10 of Article 208ZF corresponds to subsection (10) of section 246ZF in the Insolvency Act.

**Article 208ZG(1) : Power to amend Articles 208ZE and 208ZF**

*Power conferred on: The Department for the Economy*

*Power exercisable by: Regulations*

*Assembly procedure: Draft affirmative resolution*

27. Paragraph (2) of Article 208ZE enables decisions to be made by creditors and contributories using any qualifying decision procedure, with the proviso that a meeting is not to be used unless paragraph (3) of Article 208ZE applies. Paragraph (3) applies if at least what is termed the minimum number of creditors or contributories request in writing that the decision be made at a



meeting. Paragraph (4) provides that if this happens, the person seeking the decision has to summon a meeting of the creditors or contributories.

28. The fact that paragraph (3) refers to “the minimum number” of creditors” or contributories makes it necessary to provide a definition of that term. The definition is provided by paragraph (7) which states that for the purposes of paragraph (3) the “minimum number” is,
  - 10% in value of the creditors or contributories
  - 10% in number of the creditors or contributories
  - 10 creditors or contributories
29. Paragraph (1) of Article 208ZG, inserted into the Insolvency Order by clause 7(1) of the Bill, is an enabling power which gives the Department the right to make regulations to alter the minimum number.
30. The choice of what proportion or number of creditors or contributories should be able to insist on a decision being taken at a meeting is a subjective one and perceptions of what that figure should be might change over time. It is therefore desirable that a mechanism should be in place to allow the figure to be changed. Paragraph (1) of Article 208ZG provides for the creation of the necessary mechanism.
31. Paragraph (3) of Article 208ZG would apply if any regulations were being made, so that the change to the minimum number of creditors or contributories able to insist on a decision being taken at a meeting could be to any or all of the proportion in value, the proportion in number, or the absolute number. Paragraph (4) of Article 208ZG would apply so that the change could be made either with respect to all creditors or contributories, or only to creditors or contributories of a particular description. Paragraph (5) of Article 208ZG would apply to enable the regulations by which the change was being made to include transitional provisions.
32. Providing for the mechanism to be in delegated legislation would allow any change to be made sooner than would otherwise be the case. Draft affirmative resolution is considered the correct choice for Assembly control because any change would be to amounts which are currently set in primary legislation and it is right that the Assembly should have the opportunity to vote for or against such a change, prior to its being made.
33. Paragraph (1) of Article 208ZG corresponds to subsection (1) of section 246ZG of the Insolvency Act.

## **Article 208ZG(2) : Power to amend Articles 208ZE and 208ZF**

*Power conferred on: The Department for the Economy*

*Power exercisable by: Regulations*

*Assembly procedure: Draft affirmative resolution*

34. Paragraph (4) of Article 208ZF provides that, in the case of a deemed consent procedure being used to seek a decision, the decision is to be treated as having been made if less than the appropriate number of relevant creditors or contributories object.
35. “Relevant creditors” are defined by paragraph (7) of Article 208ZF as creditors, who, if the decision were to be made by a qualifying decision procedure, would be entitled to vote in that procedure.
36. “Relevant contributories” are defined by paragraph (8) of Article 208ZF, as contributories, who, if the decision were to be made by a qualifying decision procedure, would be entitled to vote in that procedure.
37. The fact that paragraph (4) confers the right to successfully object to a proposed decision on the appropriate number of relevant creditors or relevant contributories make it necessary to define the term “appropriate number”. The definition is provided by paragraph (6), which states that for the purposes of paragraph (4), the “appropriate number” of relevant creditors or relevant contributories is 10% in value of those creditors or contributories.
38. Paragraph (2) of Article 208ZG is an enabling power which gives the Department the right to make regulations to alter the appropriate number of relevant creditors or contributories.
39. The choice of the percentage of creditors or contributories able to successfully object to a proposed decision is inevitably a subjective one and perceptions of what that percentage should be might change over time. It is therefore desirable that a mechanism should be in place to allow the percentage to be changed. Paragraph (2) of Article 208ZG provides for the creation of the necessary mechanism.
40. Paragraph (3) of Article 208ZG would apply if any regulations were being made under paragraph (2). The appropriate number is currently defined only in terms of the value of the debt owed to creditors and contributories. Application of paragraph (3) of Article 208ZA could result in the appropriate number being defined instead, or in addition, as the proportion in number or the absolute number.

41. Paragraph (5) of Article 208ZG would apply to enable the regulations by which the change was being made to include transitional provisions.
42. Providing for the mechanism to alter what constitutes the “appropriate number to be in delegated legislation would enable any change to be made sooner than would otherwise be the case. Draft affirmative resolution is considered the correct choice for Assembly control because the “appropriate number” is currently defined in primary legislation and it is right that the Assembly should have the opportunity to vote for or against any change to that definition, prior to its being made.
43. Paragraph (2) of Article 208ZG corresponds to subsection (2) of section 246ZG of the Insolvency Act.

**Clause 8 of the Bill: Abolition of requirements to hold meetings: individual insolvency**

44. Clause 8 inserts three Articles into the Insolvency Order and one paragraph into Schedule 6 to that Order which contain delegated powers. Two of the Articles inserted into the Insolvency Order provide for the making of Rules by negative resolution of the Assembly, as does the paragraph inserted into Schedule 6. The third Article contains power to make regulations by draft affirmative resolution.
45. Article 345A, inserted into the Insolvency Order by clause 8(1) of the Bill, makes provision about the method to be used by an individual’s creditors to make decisions for the purposes of Parts 7A to 10 of the Insolvency Order. Paragraph (2) of Article 345A provides that decisions for the purposes of Parts 7A to 10 are to be made using what is termed a creditors’ decision procedure. Paragraph (2), together with paragraph (3) also provide that decisions are not to be made by meetings unless, what is termed the minimum number of creditors, request it.
46. The use of the term “creditors’ decision procedure” in paragraph (2) of Article 345A makes it necessary to set out what such a procedure is. Paragraph (11) of Article 345A enables provision to be made for this purpose. Paragraph (11) provides that a “creditors’ decision procedure” is a procedure “prescribed or authorized under paragraph 9A of Schedule 6” to the Insolvency Order. Schedule 6 lists matters which can be included in individual insolvency rules, made under Article 359 of the Insolvency Order and paragraph 9A is inserted into that schedule by subsection (2) of clause 8.
47. The definition of “creditors’ decision procedure” is best dealt with in delegated legislation for two reasons. The first is that the definition includes a detailed list of procedures. The second is that the list may require updating as other procedures which could appropriately be used by creditors to make decisions

are identified or emerge due to technological change, and it will be easier to amend the list if it is in delegated legislation.

48. The definition relates to the procedure to be used by creditors to make decisions and it is normal practice for any matters relating to insolvency procedures to be legislated for in Rules which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control as Rules are subject to scrutiny by the committee referred to in paragraph 7, before being laid at the Assembly. The committee is chaired by a High Court Judge and its membership includes the Master in Bankruptcy and representatives from the legal and insolvency professions, who can bring specialist knowledge to bear when considering draft Rules.
49. Paragraph (11) of Article 345A corresponds to subsection (11) of section 379ZA in the Insolvency Act.

### **Paragraph 9A inserted into Schedule 6 to the Insolvency Order**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

50. As explained in paragraph 46 above, paragraph (11) of new Article 345A defines a “creditors’ decision procedure” in Parts 7A to 10 of the Insolvency Order as a procedure prescribed or authorized under paragraph 9A of Schedule 6 to that order.
51. Paragraph 9A inserted into Schedule 6 by clause 8(2) of the Bill, enables provision prescribing particular procedures to be used by creditors when making decisions to be included in individual insolvency rules and lists particular matters which can be included in such provisions. Paragraph 9A also establishes that the rules can authorize the use of procedures other than those prescribed but that if they do, they must provide that those procedures have to comply with prescribed requirements.
52. The rationale for leaving prescription of the procedures to be used by creditors when making decisions to be dealt with in delegated legislation is as explained in paragraph 47 above. The reasons for negative resolution being considered to be an adequate form of control are the same as set out in paragraph 48.
53. Paragraph 9A inserted into Schedule 6 to the Insolvency Order corresponds to paragraph 11A in Schedule 9 to the Insolvency Act.

## **Article 345B(2) : Deemed consent procedure**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

54. Article 345B, inserted into the Insolvency Order by clause 8(1) of the Bill, sets out a procedure, known as the deemed consent procedure, which can be used by an individual's creditors as an alternative to the creditors' decision procedure, when making decisions. The creditors are given notice of the matter about which they are to make a decision and the proposed decision. If less than 10% by value of the creditors object to the proposed decision, it is treated as having been made.
55. Paragraph (2) of Article 345B creates an exception to the right to use the deemed consent procedure. Paragraph (2) provides that rules which give creditors the right to make a decision about a person's remuneration must provide that the decision has to be made using a creditors' decision procedure.
56. The purpose of paragraph (2) is to prevent individuals, generally insolvency practitioners, using the deemed consent procedure to seek approval for a decision which they have made as to what their remuneration should be or how it should be calculated. Forcing them to use a creditors' decision procedure gives those making the decision maximum opportunity to freely decide what the remuneration should be, instead of being limited to either agreeing or disagreeing with a pre-determined proposal as to what it should be. Paragraph (2) does not directly forbid the use of the deemed consent procedure. Neither does it create any right to make delegated legislation. Schedule 6 to the Insolvency Order already includes power to make rules which make provision as to the amount, or manner of determining the amount payable to insolvency office-holders by way of remuneration and any rules made for this purpose will, like any other rules, be subject to negative resolution in the Assembly. Paragraph (2) in Article 345ZB simply puts in place a limit on what rules made under this existing power can do. They cannot provide for decisions about remuneration to be made using the deemed consent procedure; they can only provide for them to be made using a creditors' decision procedure.
57. Paragraph (2) of Article 345B corresponds to subsection (2) of section 379ZB in the Insolvency Act.

## **Article 345B(9) : Deemed consent procedure**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

58. Article 345B sets out in broad terms how the deemed consent procedure for making decisions is to be carried out.
59. However paragraph (9) of that Article provides that further provision about the procedure can be made by the rules.
60. The purpose of paragraph (9) is to enable more detailed requirements for the conduct of the procedure, which it would not be appropriate to include in primary legislation, to be set out in delegated legislation.
61. As explained in paragraph 12, it is normal practice for any matters relating to insolvency procedures to be legislated for in Rules which are subject to negative resolution in the Assembly. Negative resolution is considered to be an adequate form of Assembly control for the same reasons as set out in paragraph 12.
62. Paragraph 9 of Article 345B corresponds to subsection (10) of section 379ZB in the Insolvency Act.

## **Article 345C(1) : Power to amend Articles 345A and 345B**

*Power conferred on: The Department for the Economy*

*Power exercisable by: Regulations*

*Assembly procedure: Draft affirmative resolution*

63. Paragraph (2) of Article 345A enables decisions to be made by creditors using any creditors' decision procedure, with the proviso that a meeting is not to be used unless paragraph (3) of Article 345A applies. Paragraph (3) applies if at least what is termed the minimum number of creditors request in writing that the decision be made at a meeting. Paragraph (4) provides that if this happens, the person seeking the decision has to summon a creditors' meeting.
64. The fact that paragraph (3) refers to "the minimum number" of creditors makes it necessary to provide a definition of that term. The definition is provided by

paragraph (7) which states that for the purposes of paragraph (3) the “minimum number” is,

- 10% in value of the creditors
- 10% in number of the creditors
- 10 creditors

65. Paragraph (1) of Article 345C, inserted into the Insolvency Order by clause 8(1) of the Bill, is an enabling power which gives the Department the right to make regulations to alter the minimum number.
66. The choice of what proportion or number of creditors should be able to insist on a decision being taken at a meeting is a subjective one and perceptions of what that figure should be might change over time. It is therefore desirable that a mechanism should be in place to allow the figure to be changed. Paragraph (1) of Article 345C provides for the creation of the necessary mechanism.
67. Paragraph (3) of Article 345C would apply if any regulations were being made, so that the change to the minimum number of creditors able to insist on a decision being taken at a meeting could be to any or all of the proportion in value, the proportion in number, or the absolute number. Paragraph (4) of Article 345C would apply so that the change could be made either with respect to all creditors, or only to creditors of a particular description. Paragraph (5) of Article 345C would apply to enable the regulations by which the change was being made to include transitional provisions.
68. Providing for the mechanism to be in delegated legislation would allow any change to be made sooner than would otherwise be the case. Draft affirmative resolution is considered the correct choice for Assembly control because any change would be to amounts which are currently set in primary legislation and it is right that the Assembly should have the opportunity to vote for or against such a change, prior to its being made.
69. Paragraph (1) of Article 345C corresponds to subsection (1) of section 379ZC of the Insolvency Act.

#### **Article 345C(2) : Power to amend Articles 345A and 345B**

*Power conferred on: The Department for the Economy*

*Power exercisable by: Regulations*

*Assembly procedure: Draft affirmative resolution*

70. Paragraph (4) of Article 345B provides that in the case of a deemed consent procedure being used to seek a decision, the decision is to be treated as

having been made if less than the appropriate number of relevant creditors object.

71. “Relevant creditors” are defined by paragraph (7) of Article 345B as creditors, who, if the decision were to be made by a creditors’ decision procedure, would be entitled to vote in that procedure.
72. The fact that paragraph (4) confers the right to successfully object to a proposed decision on the appropriate number of relevant creditors makes it necessary to define the term “appropriate number”. The definition is provided by paragraph (6), which states that for the purposes of paragraph (4), the “appropriate number” of relevant creditors is 10% in value of those creditors.
73. Paragraph (2) of Article 345C is an enabling power which gives the Department the right to make regulations to alter the appropriate number of relevant creditors.
74. The choice of the percentage of creditors able to successfully object to a proposed decision is inevitably a subjective one and perceptions of what that percentage should be might change over time. It is therefore desirable that a mechanism should be in place to allow the percentage to be changed. Paragraph (2) of Article 345C provides for the creation of the necessary mechanism.
75. Paragraph (3) of Article 345C would apply if any regulations were being made under paragraph (2). The appropriate number is currently defined only in terms of the value of the debt owed to creditors. Application of paragraph (3) of Article 345C could result in the appropriate number being defined instead, or in addition, as the proportion in number or the absolute number.
76. Paragraph (5) of Article 345C would apply to enable the regulations by which the change was being made to include transitional provisions.
77. Providing for the mechanism to alter what constitutes the “appropriate number” to be in delegated legislation would enable any change to be made sooner than would otherwise be the case. Draft affirmative resolution is considered the correct choice for Assembly control because the “appropriate number” is currently defined in primary legislation and it is right that the Assembly should have the opportunity to vote for or against any change to that definition, prior to its being made.
78. Paragraph (2) of Article 345C corresponds to subsection (2) of section 397ZC of the Insolvency Act.



**Clause 9 of the Bill: Ability for creditors to opt not to receive certain notices: company insolvency**

79. Clause 9 inserts two Articles into the Insolvency Order and one paragraph into Schedule 5 to that Order which contain delegated powers. The two Articles and the paragraph all provide for the making of Rules by negative resolution of the Assembly.

**Article 208ZJ(1) : Creditors' ability to opt out of receiving certain notices**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

80. Article 208ZJ, inserted into the Insolvency Order by clause 9(1), introduces the concept of opted-out creditors in the case of company insolvency proceedings. Paragraph (1) of Article 208ZJ includes power to prescribe in the rules circumstances in which requirements under the rules for office-holders in company insolvency proceedings to give notice to creditors do not apply in the case of opted-out creditors.
81. Even if a creditor has opted out of receiving documents relating to insolvency proceedings, circumstances may still exist in which it would be desirable for them to receive particular documents. The disapplication of requirements to give notice to creditors may need to be targeted so that it only applies in certain circumstances. That is the purpose of the Article 208ZJ(1) power. It enables the circumstances in which requirements to give notice to opted-out creditors are disapplied to be precisely set out. The circumstances are best set out in delegated legislation for two reasons. The first is that the provision required is likely to be detailed. The second is that views on what the circumstances should be may change over time, and the provision by which they are established is more readily amended if it is in delegated legislation.
82. The provision deals with procedure to be carried out by office-holders in company insolvency proceedings and it is normal for any matters relating to insolvency procedure to be legislated for in the Rules, which are subject to negative resolution by the Assembly. The reasons for negative resolution being considered to be an adequate form of control are the same as set out in paragraph 12.
83. Paragraph (1) of Article 208ZJ corresponds to subsection (1) of section 246C of the Insolvency Act.

## **Article 208ZJ(3) : Creditors' ability to opt out of receiving certain notices**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

84. Creditors in company insolvency proceedings who have opted out of receiving notices from the office-holder will not receive notice of qualifying decision procedures or deemed consent procedures.
85. Paragraph (3) of Article 208ZJ clarifies that opted-out creditors can participate and vote in such procedures if they find out about them in other ways. This right to participate and vote is stated to be subject to any exception provided for by the rules.
86. This power to create exceptions ensures that, were it to be discovered that the right under Article 208ZJ(3) to participate and vote was being abused, or was being availed of in inappropriate ways, provision is in place to enable legislation to be made to address the problem. It is best that the provision should be in delegated legislation as this provides the flexibility to respond quickly to any problems which might arise.
87. The Rules would be subject to negative resolution in the Assembly and this is considered to be an adequate form of control for the same reasons as set out in paragraph 12.
88. Paragraph (3) of Article 208ZJ corresponds to subsection (3) of section 246C of the Insolvency Act.

## **Article 8A (1): Opted-out creditor**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

89. Article 8A, inserted into the Insolvency Order by clause 9(2), provides, for the purposes of Parts 2 to 7 of that Order, a definition of the term “opted-out creditor” in relation to an office-holder of a company. An opted-out creditor is defined in paragraph (1) of Article 8A as a creditor who, in accordance with the rules, has elected or is deemed to have elected to be and not to cease to be

such a creditor. This enables how to elect, or what constitutes deeming to have elected to become an opted-out creditor to be set out in the rules. As these are detailed procedural matters, they are best left to be dealt with in delegated legislation.

90. The Rules would be subject to negative resolution in the Assembly and this is considered to be an adequate form of control for the same reasons as set out in paragraph 12.
91. Paragraph (1) of Article 8A corresponds to subsection (1) of section 248A of the Insolvency Act.

### **Paragraph 5A inserted into Schedule 5 to the Insolvency Order**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

92. As explained in paragraph 89 above, paragraph (1) of new Article 8A inserted into the Insolvency Order, defines an “opted-out creditor” in Parts 2 to 7 of that Order as a creditor who has elected to be, or is deemed to have elected to be, such a creditor and who has neither elected, not been deemed to have elected, to cease to be such a creditor. Election, or deeming to have elected, has to be in accordance with the rules.
93. Paragraph 5A inserted into Schedule 5 to the Insolvency Order by clause 9(3) of the Bill, enables provision enabling a creditor of a company to elect to become an opted-out creditor, or to cease to be an opted-out creditor, to be included in company insolvency rules. Paragraph 5A goes on to state two specific matters that can be dealt with in such provision. Firstly the provision can include requirements for office holders to provide creditors with information about how they can elect to become, or to cease to be opted-out creditors. Secondly it may establish when election to be, or to cease to be, an opted-out creditor in relation to a particular office-holder of a company can be deemed to be such an election in relation to any other office-holder of the company.
94. The rationale for including the provision in delegated legislation is as explained in paragraph 89 above. The reasons for negative resolution being considered to be an adequate form of control are the same as set out in paragraph 12.
95. Paragraph 8A inserted into Schedule 5 to the Insolvency Order corresponds to paragraph 5A in Schedule 8 to the Insolvency Act.

**Clause 10 of the Bill: Ability for creditors to opt not to receive certain notices: individual insolvency**

96. Clause 10 inserts two Articles into the Insolvency Order and one paragraph into Schedule 6 to that Order which contain delegated powers. The two Articles and the paragraph all provide for the making of Rules by negative resolution of the Assembly.

**Article 345E : Creditors' ability to opt out of receiving certain notices**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

97. Article 345E, inserted into the Insolvency Order by clause 10(1), introduces the concept of opted-out creditors in the case of individual insolvency proceedings. Paragraph (1) of Article 345E includes power to prescribe in the rules circumstances in which requirements under the rules for office-holders to give notice to an individual's creditors do not apply in the case of opted-out creditors.
98. Even if a creditor has opted out of receiving documents relating to insolvency proceedings, circumstances may still exist in which it would be desirable for them to receive particular documents. The disapplication of requirements to give notice to creditors may need to be targeted so that it only applies in certain circumstances. That is the purpose of the Article 345E(1) power. It enables the circumstances in which requirements to give notice to opted-out creditors are disapplied to be precisely set out. The circumstances are best set out in delegated legislation for two reasons. The first is that the provision required is likely to be detailed. The second is that views on what the circumstances should be may change over time, and the provision by which they are established is more readily amended if it is in delegated legislation.
99. The provision deals with procedure to be carried out by office-holders in individual insolvency proceedings and it is normal for any matters relating to insolvency procedure to be legislated for in the Rules, which are subject to negative resolution by the Assembly. The reasons for negative resolution being considered to be an adequate form of control are the same as set out in paragraph 12.
100. Paragraph (1) of Article 345E corresponds to subsection (1) of 379C of the Insolvency Act.

### **Article 345E(3) : Creditors' ability to opt out of receiving certain notices**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

101. Creditors in individual insolvency proceedings who have opted out of receiving notices from the office-holder will not receive notice of creditors' decision procedures or deemed consent procedures.
102. Paragraph (3) of Article 345E clarifies that opted-out creditors can participate and vote in such procedures if they find out about them in other ways. This right to participate and vote is stated to be subject to any exception provided for by the rules.
103. This power to create exceptions ensures that, were it to be discovered that the right under Article 345E(3) to participate and vote was being abused, or was being availed of in inappropriate ways, provision is in place to enable legislation to be made to address the problem. It is best that the provision should be in delegated legislation as this provides the flexibility to respond quickly to any problems which might arise.
104. The Rules would be subject to negative resolution in the Assembly and this is considered to be an adequate form of control for the same reasons as set out in paragraph 12.
105. Paragraph (3) of Article 345E corresponds to subsection (3) of section 379C of the Insolvency Act.

### **Article 11A(1): Opted-out creditor**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

106. Article 11A, inserted into the Insolvency Order by clause 10(2), provides, for the purposes of Parts 7A to 10 of that Order, a definition of the term "opted-out creditor" in relation to an office-holder for an individual. An opted-out creditor is defined in paragraph (1) of Article 11A as a creditor who, in accordance with the rules, has elected or is deemed to have elected to be and not to cease to be

such a creditor. This enables how to elect, or what constitutes deeming to have elected to become an opted-out creditor, to be set out in the rules. As these are detailed procedural matters, they are best left to be dealt with in delegated legislation.

107. The Rules would be subject to negative resolution in the Assembly and this is considered to be an adequate form of control for the same reasons as set out in paragraph 12.

108. Paragraph (1) of Article 11A corresponds to subsection (1) of section 383A of the Insolvency Act.

### **Paragraph 5ZA inserted into Schedule 6 to the Insolvency Order**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

109. As explained in paragraph 106 above, paragraph (1) of new Article 11A inserted into the Insolvency Order, defines an “opted-out creditor” in Parts 7A to 10 of that Order, as a creditor who has elected to be, or is deemed to have elected to be, such a creditor and who has neither elected, not been deemed to have elected, to cease to be such a creditor. Election, or deeming to have elected, has to be in accordance with the rules.

110. Paragraph 5ZA inserted into Schedule 6 to the Insolvency Order by clause 10(3) of the Bill, enables provision enabling a creditor of an individual to elect to become an opted-out creditor, or to cease to be an opted-out creditor, to be included in individual insolvency rules. Paragraph 5ZA goes on to state two specific matters that can be dealt with in such provision. Firstly the provision can include requirements for office holders to provide creditors with information about how they can elect to become, or to cease to be opted-out creditors. Secondly it may establish when election to be, or to cease to be, an opted-out creditor in relation to a particular office-holder for an individual can be deemed to be such an election in relation to any other office-holder for the individual.

111. The rationale for including the provision in delegated legislation is as explained in paragraph 106 above. The reasons for negative resolution being considered to be an adequate form of control are the same as set out in paragraph 12.

112. Paragraph 5ZA inserted into Schedule 6 to the Insolvency Order corresponds to paragraph 7A in Schedule 9 to the Insolvency Act.

### **Clause 13 of the Bill: Regulated companies: modifications to Part 1A**

113. Part 1A of the Insolvency Order comprises provisions enabling eligible companies to obtain a temporary respite from creditor pressure by entering a moratorium.
114. The amendment made by clause 13 preserves an existing delegated power to make rules in paragraph (6) of Article 13H in Part 1A of the Insolvency Order, but will alter the purpose for which it can be used. The alteration is needed because the Bill provides for what is termed a qualifying decision procedure, rather than a meeting, to be used by creditors when making decisions in company insolvency proceedings.
115. Paragraph (6) of Article 13H currently provides that the appropriate regulator (as defined in paragraph (13) of Article 13H), or a person appointed by the appropriate regulator, is entitled “in the way provided for by the rules” to participate, but not to vote, in any meeting of a company’s creditors held for the purposes of Part 1A of the Insolvency Order.
116. Clause 13 amends Article 13H so that it will now provide that the appropriate regulator, or a person appointed by the appropriate regulator, can participate in any qualifying decision procedure which the company’s creditors are using to make a decision for the purposes of Part 1A of the Insolvency Order. The regulator, or their appointee, will not be allowed to vote in the procedure. The matter about which the rules will now make provision will therefore become the way in which the regulator or a person appointed by them can participate in the qualifying decision procedure.
117. The amendment made by clause 13 is needed as a consequence of changes to the procedure to be used by creditors when making decisions. There is no reason why provision about the way in which the appropriate regulator or their appointee can participate in the new procedure should not be in rules. There is therefore no reason to alter the existing delegated power under paragraph (6) of Article 13H.
118. Paragraph (6) of Article 13H corresponds to subsection (6) of section A49 of the Insolvency Act.

### **Clause 16 of the Bill: Decisions of meetings**

119. Clause 16 amends Article 17 of the Insolvency Order, which makes provision about how proposals for company voluntary arrangements are to be approved.
120. One of the amendments is to paragraph (5) of Article 17. Paragraph (5) as it stands, includes a power to make delegated legislation in the form of rules.

Clause 16 also inserts a new paragraph (6A), which includes a power to make rules, into Article 17 and reduces the ambit of existing paragraph (6).

### **The amendment to paragraph (5) of Article 17**

121. Subsection (6) in clause 16 amends paragraph (5) of Article 17 of the Insolvency Order. The amendment preserves the existing delegated power under paragraph (5) to make rules, but alters the purpose for which that power can be used. The alteration is needed as a result of the Bill providing for what is termed a qualifying decision procedure, rather than a meeting, to be used by creditors when making decisions in company insolvency proceedings.
122. Article 17 of the Insolvency Order as it stands, provides that the decision on whether to approve a proposal for a company voluntary arrangement is to be made at meetings summoned under Article 16, that is by meetings of the company and its creditors. Paragraph (5) of Article 17 currently provides that, subject to paragraphs (3) to (4B) of that Article, each of the meetings is to be conducted in accordance with the rules. The requirement for the meetings to be conducted in accordance with the rules constitutes a delegated power to make rules as to how the meetings are to be conducted.
123. Amendments made by clause 15 of the Bill to Article 16 of the Insolvency Order will result in the latter providing that, while the company will still make its decision whether to approve the proposal at a meeting, the creditors will instead use a qualifying decision procedure to make their decision.
124. The amendment made by subsection (6) of Clause 16 is needed as a consequence of the change to the procedure to be used by the creditors when making their decision. It will result in paragraph (5) of Article 17 providing that it is the meeting of the company and the qualifying decision procedure to be used by the creditors which are to be conducted in accordance with the rules.
125. The amendment will result in the present power under paragraph (5) of Article 17 to make rules about the conduct of meetings of a company and its creditors held for the purpose of deciding whether to approve a proposed voluntary arrangement, becoming a power to make rules establishing how the meeting of the company and the qualifying decision procedure to be used by its creditors are to be conducted.
126. The core requirement under paragraph (5) of Article 17, both as it currently reads and as it will read following the amendment to be made by subsection (6) of Clause 16, is for the procedure to be used by a company's creditors in deciding whether to approve a proposed voluntary arrangement to be conducted in accordance with the rules. There will be the same need to have power to establish in rules how the new procedure is to be carried out as there was to have power to establish in rules how the existing procedure is to be



carried out. There is therefore no need to alter the existing delegated power to make rules in paragraph (5) of Article 17.

127. Paragraph (5) of Article 17 corresponds to subsection (5) of section 4 of the Insolvency Act.

### **Paragraph (6A) inserted into Article 17**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

128. As explained in paragraph 120 above, clause 16 inserts a new paragraph into Article 17 of the Insolvency Order.
129. Paragraph (6) in Article 17, as it stands, sets out action to be taken by the chairman of meetings of a company and its creditors held for the purpose of deciding whether to approve a proposed company voluntary arrangement. Paragraph (6) provides that, once either meeting had concluded “in accordance with the rules” the chairman of the meeting has to report the result of the meeting to the High Court and, immediately after doing so, give notice of the result to “such persons as may be prescribed”.
130. Paragraph (6) therefore contains two powers to make rules. There is power to make rules as to how meetings of a company and its creditors held for the purpose of deciding whether to approve a proposed voluntary arrangement are to be concluded and there is power to prescribe in rules persons to whom the chairman of those meetings is required to give notice of the meeting results.
131. The amendment made by subsection (7) of clause 16 is to take account of the fact that the company creditors are to make their decision whether to approve a proposed voluntary arrangement using a qualifying decision procedure instead of at a meeting. It will result in the requirements to report the result of the meeting to the High Court and give notice of the result to prescribed persons only applying to the chairman of the company meeting. It will also result in the powers under paragraph (6) of Article 17 to make rules being exercisable only with respect to meetings of a company held for the purpose of deciding whether to approve a proposed voluntary arrangement.
132. The fact that the amendment made by subsection (7) of clause 16 will reduce the ambit of the rule making powers under paragraph (6) of Article 17 is not a reason to alter those powers or the type of Assembly control, to which legislation made using them is subject.

133. The fact that the creditors are now to make their decision using a qualifying decision procedure creates a need to have a provision to require their decision to be reported. Paragraph (6A) inserted into Article 17 by clause 16(8) is that provision. Paragraph (6A) provides that after the company's creditors have made their decision, the person who sought the decision has to report that decision to the High Court and immediately after doing so, give notice of it to "such persons as may be prescribed".
134. The power under the new provision to prescribe in rules persons to whom notice of the creditors' decision is to be given is no different to the power under paragraph (6) of Article 17, as it stands, to prescribe in rules persons to whom notice of the result of the meeting of creditors which currently takes place is to be sent. The only thing which has changed is the procedure which the creditors are to use to make their decision. As the delegated power exists for the same purpose, that is to enable rules to be made prescribing who is to be given notice of the creditors' decision there is no reason to alter that power. Rules made under the delegated power in the new provision will be subject to negative resolution. This was considered to be a satisfactory form of control when the creditors were making their decisions at meetings and there is no reason why it should not be considered satisfactory form of control now that they are to make their decisions using a qualifying decision procedure.
135. Paragraph (6) of Article 17 and paragraph (6A) inserted by subsection (8) of clause 16 respectively correspond to subsections (6) and (6A) of section 4 of the Insolvency Act.

### **Clause 17 of the Bill: Approval of arrangement**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

136. Subsection (2) of clause 17 amends paragraph (2) of Article 17A of the Insolvency Order. Paragraph (2) contains a delegated power to make rules.
137. Paragraph (2) of Article 17A, as it stands, establishes requirements which have to be met if decisions taken by meetings of a company and its creditors on whether to approve a proposed company voluntary arrangement are to have effect. Paragraph (2) provides that a decision has effect if either,
- It has been taken by both meetings summoned under Article 16, that is if the meeting of the company and the meeting of its creditors have made the same decision, or

- Subject to any order made by the High Court under paragraph (6), it has been taken by the creditors' meeting summoned under Article 16.
138. This is subject to the proviso that in both cases the decision has to have been taken "in accordance with the rules." This ensures that the requisite power is in place to make rules prescribing how decisions are to be made at meetings both of the company and of its creditors, summoned for the purpose of deciding whether to approve a proposed company voluntary arrangement.
139. The amendments which subsection (2) of clause 17 makes to paragraph (2) of Article 17A are to accommodate the switch to the use by creditors of qualifying decision procedures, instead of meetings, for the purpose of deciding whether to approve proposed company voluntary arrangements. They will do so by removing any direct or indirect reference to meetings of the partnership creditors, while leaving in place a requirement for a decision taken by the meeting of the company to have been taken in accordance with the rules.
140. The amendments will result in the requirements under paragraph (2) of Article 17A for a decision with respect to the approval of a company voluntary arrangement to have effect becoming that,
- it has been taken by the meeting of the company summoned under Article 16 and by the company's creditors pursuant to that Article, or
  - subject to any order made by the High Court under paragraph (6), it has been taken by the company's creditors' pursuant to Article 16.
141. There will be the same proviso that the decisions by the meeting of the company and by its creditors must be made to be "in accordance with the rules".
142. The amendments to paragraph (2) of Article 17A made by subsection (2) of clause 17(2) of the Bill will leave unaltered the requirement that for the decision made by the company at its meeting to have effect the meeting has to have been summoned under Article 16 and in accordance with the rules. The requirement for the creditors' decision to have effect will become simply that their decision has been taken pursuant to Article 16 and in accordance with the rules.
143. As regards to the creditors, the power to make rules under paragraph (2) of modified Article 17, will following the amendments made to that paragraph by clause 17(2) of the Bill, become power to prescribe in rules how the creditors are to decide whether to approve a proposed company voluntary arrangement.
144. When the creditors were to take their decision at a meeting Article 17A provided that the decision had to be taken in accordance with the rules to be effective.

There is no reason for that requirement to be any different now that the creditors are to take their decision using a qualifying decision procedure.

145. Paragraph (2) of Article 17 corresponds to subsection (2) of section 4A in the Insolvency Act 1986.

### **Clause 18 of the Bill: Effect of Approval**

146. Paragraphs (b) and (c) in subsection (2) of clause 18 amend paragraph (2)(b) of Article 18 of the Insolvency Order, to take account of the fact that decisions by creditors to approve a company voluntary arrangement are to be made using a qualifying decision procedure instead of at a meeting. Paragraph (2)(b) of Article 18 includes a delegated power to make rules.
147. Paragraph (2)(b) of Article 18 applies where a decision approving a partnership voluntary arrangement has effect under Article 17A. Head (i) in paragraph (2)(b) as it stands, provides that every person who was entitled to vote at the creditor's meeting held for the purpose of deciding whether to approve the arrangement is bound by the arrangement even if they did not attend the meeting and were not represented at it. Head (ii) clarifies that they are bound by the arrangement, even if they did not receive notice of the meeting.
148. For a person to be bound by the arrangement, their right to have voted at the creditor's meeting has to have been in accordance with the rules. Implicit in these words is power to prescribe in rules criteria for determining eligibility to vote at a creditors' meeting held for the purpose of deciding whether to approve a company voluntary arrangement.
149. The amendments made by paragraphs (b) and (c) in subsection (2) of clause 18 will result in head (i) in paragraph (2)(b) of Article 18 instead providing that every person who was entitled to vote in the qualifying decision procedure by which the creditors decided to approve the company voluntary arrangement is bound by the arrangement. Head (ii) will clarify that they are bound even if they did not receive notice of the procedure.
150. The amendments will result in the power to make rules under paragraph (2)(b) of Article 18 becoming power to prescribe in rules criteria for determining eligibility to vote in a qualifying decision procedure carried out for the purpose of enabling a company's creditors to decide whether to approve a voluntary arrangement.
151. Prescription of the criteria to be used in deciding whether a person had the right to vote at a creditors' meeting held for the purpose of deciding whether to approve a company voluntary arrangement was obviously considered something best left to be dealt with in rules subject to negative resolution in the Assembly. There is no reason why the criteria to be used in deciding whether a

person has the right to vote in the qualifying decision procedure which is to be used for this purpose in future should not likewise be in rules. There is therefore no reason to alter the delegated power to make rules which is implicit in the words “in accordance with the rules” in paragraph (2)(b) of Article 18.

152. Paragraph (2) of Article 18 corresponds to subsection (2) of section 5 of the Insolvency Act 1986.

### **Clause 19 of the Bill: Challenge of decisions**

153. Subsection (4) of clause 19 amends sub-paragraphs (a) and (aa) in paragraph (2) of Article 19 of the Insolvency Order to take account of the fact that the Bill provides that decisions by creditors to approve a company voluntary arrangement are to be made using a qualifying decision procedure, instead of at a meeting. Sub-paragraphs (a) and (aa) of paragraph (2) in Article 19 each include a delegated power to make rules.

154. Paragraph (1) of Article 19 of the Insolvency Order enables any of the persons specified in paragraph (2) to apply to the High Court on the grounds that,

- a company voluntary arrangement which has taken effect under Article 17A unfairly prejudices the interests of a creditor, a company member or a contributory, or
- there has been some material irregularity at or in relation to either the meeting of the company or the meeting of its creditors summoned for the purpose of deciding whether to approve the arrangement.

155. The persons entitled to apply to the High Court under Article 19 are listed in paragraph (2) of that Article. The list includes, at sub-paragraph (2)(a), “persons entitled, in accordance with the rules, to vote at either of the meetings” (that is either the company meeting or the meeting of its creditors) and at sub-paragraph (aa), “a person who would have been entitled, in accordance with the rules, to vote at the creditors’ meeting if he had received notice of it”. The fact that it is stated in both case that the person’s entitlement is to be “in accordance with the rules” implies power to prescribe in rules requirements or conditions which have to be met for a person to be entitled to vote at the meeting.

156. Clause 19 of the Bill amends Article 19 to take account of the fact that the Bill provides that creditors are to make their decision whether or not to approve a proposed company voluntary arrangement using a qualifying decision procedure.

157. Subsection (4) of clause 19 amends sub-paragraphs (a) and (aa) of paragraph (2) of Article 19. The amendments change the characterization of the persons entitled under those two subparagraphs to apply to the High Court. Those

entitled under sub-paragraph (a) will become persons entitled, in accordance with the rules, to vote at the meeting of the company or in the relevant qualifying decision procedure. Those entitled under sub-paragraph (aa) will become persons who would have been entitled, in accordance with the rules, to vote in the relevant qualifying decision procedure if they had received notice of it. The relevant qualifying decision procedure referred to in the amended sub-paragraphs is the qualifying decision procedure by which the company's creditors decided whether to approve the voluntary arrangement.

158. The amendments will result in the power to make rules under sub-paragraph (a) becoming power to prescribe in rules requirements or conditions which have to be met for a person to be entitled to vote at the meeting of the company or in the qualifying decision procedure used by the company's creditors to decide whether to approve the voluntary arrangement. The power to make rules under sub-paragraph (aa) will become power to prescribe in rules requirements or conditions which have to be met for a person to be entitled to vote in the qualifying decision procedure used by the company's creditors to decide whether to approve the voluntary arrangement.
159. The amendments made by subsection (4) of clause 19 to paragraph (2) of Article 19 are to accommodate the change to the procedure to be used by creditors when deciding whether to approve a proposal for a company voluntary arrangement. Entitlement to vote in the existing procedure is to be decided in accordance with the rules, there is no reason why the criterion for deciding whether a person is entitled to vote in the new procedure should not also be in rules. There is therefore no reason to alter the existing delegated power in paragraph (2) of Article 19.
160. Paragraph (2) of Article 19 corresponds to subsection (2) of section 6 in the Insolvency Act 1986.

#### **Clause 24 of the Bill: Committee of creditors**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

161. Clause 24 of the Bill amends paragraph (1) of Article 59 of the Insolvency Order. The amendment will result in a delegated power to make rules being included in that provision.
162. Articles 58 and 59 apply where an administrative receiver has been appointed over a company's property. Article 58(2) provides that the administrative

receiver must, within three months of being appointed, or such longer period as the court may allow, either send a report to the unsecured creditors or publish the report. In addition, the administrative receiver has to lay the report before a meeting of the company's unsecured creditors. Paragraph (1) of Article 59, as it stands, gives this meeting the right, if it thinks fit, to establish a committee, known as the creditors' committee, to exercise functions conferred on it by or under the Insolvency Order. Paragraph (1) of Article 59 as it stands, does not include any power to make delegated legislation.

163. An amendment made to Article 58(2) by clause 23 of the Bill will result in the administrative receiver no longer being required to lay their report before a meeting of the unsecured creditors.
164. The amendment made by clause 24 of the Bill will result in paragraph (1) of Article 59 re-stating the unsecured creditors' right to establish a creditors' committee so that it will arise once the administrative receiver has sent or published a report as mentioned in Article 58(2) and is to be exercised, in accordance with the rules.
165. Providing that the establishment of a creditors' committee has to be done in accordance with the rules constitutes a delegated power to make rules about how a creditors' committee is to be established. With the unsecured creditors no longer having the opportunity to attend a meeting at which a creditors' committee can be established a procedure needs to be put in place to enable them to do so. That is the purpose of the delegated power. It is to equip the unsecured creditors with a procedure which they can use to establish a creditors' committee, should they wish to do so.
166. It is normal practice for insolvency procedures to be legislated for in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.
167. Paragraph (1) of Article 59 corresponds to subsection (1) of section 49 in the Insolvency Act 1986.

#### **Clause 27 of the Bill: Effect of company's insolvency**

168. Clause 27 amends Article 81 of the Insolvency Order, which sets out actions the liquidator is required to take on discovering that a company in members' voluntary winding up will not be able to pay its debts in full, plus interest, as stated in the directors' declaration made under Article 95.
169. Two the amendments consist of the insertion of new paragraphs into Article 81, and the three paragraphs inserted all include power to make delegated legislation in the form of rules.

**Insertion of new paragraph (1A) into Article 81 of the Insolvency Order by clause 27(2) of the Bill**

170. Paragraph (3) of Article 81 as it stands includes a power to make delegated legislation in the form of rules. Paragraph (3) places the liquidator under a requirement to make out a statement, in the prescribed form, as to the affairs of the company and to lay it before a meeting of the creditors. The fact that it is stated in paragraph (3) that the statement has to be in the prescribed form enables rules to be made to prescribe that form.
171. Paragraph (3) is revoked by subsection (3) of clause 27.
172. The requirements for the liquidator to make out a statement of affairs and for that statement to be in the prescribed form are relocated in a new paragraph (1A) inserted into Article 81 by subsection (2) of clause 27. Under new paragraph (1A) the liquidator in a members' voluntary liquidation will be required, within seven days of forming an opinion that a company will be unable to pay its debts in full plus interest, to make out a statement as to its affairs in the prescribed form, and to send that statement to the company's creditors.
173. As the power to make rules implicit in the words "in the prescribed form" exists for the same purpose as before, that is to enable the form which the statement of affairs is to take to be prescribed, there is no need for any alteration to that power.
174. Paragraph (1A) inserted into Article 81 by subsection (2) of clause 27 corresponds to subsection (1A) of section 95 of the Insolvency Act 1986.

**Insertion of new paragraphs (4A) and (4B) into Article 81 of the Insolvency Order by clause 27(4) of the Bill**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

175. The amendments being made to Article 81 of the Insolvency Order by clause 27 of the Bill will result in the liquidator in a members' voluntary liquidation no longer being required to call a meeting of creditors on discovering that the company will not be able to pay its debts in full, plus interest, as stated in the directors' declaration made under Article 95. This removes the opportunity presented by the meeting for the creditors to appoint a different insolvency practitioner to act in the ensuing creditors' voluntary liquidation.



176. New paragraph (4A) inserted into Article 81 by subsection (4) of clause 27 of the Bill, will instead give the creditors the right to nominate a person to be the liquidator in the creditors' voluntary winding up. New paragraph (4A) will provide that the nomination is to be "in accordance with the rules" thereby ensuring that power exists to prescribe in rules the procedure to be used by the creditors to make their nomination.
177. New paragraph (4B), also inserted by subsection (4) will oblige the liquidator who acted in the members' voluntary liquidation to seek a nomination from the company's creditors for a person to take over as liquidator during the creditors' voluntary winding up. New paragraph (4B) will provide that the liquidator must seek the nomination "in accordance with the rules" thereby ensuring that power exists to prescribe in rules the procedure which the liquidator must use to seek the nomination.
178. The purpose of the delegated power in new paragraph (4A) is to enable a procedure to be put in place for the creditors to use if they wish to nominate a different liquidator to act in the creditors' voluntary winding up. The purpose of the delegated power in new paragraph (4B) is to enable a procedure to be put in place for the liquidator in the members' voluntary liquidation to use when seeking a nomination from the creditors for a person to take over as liquidator during the ensuing creditors voluntary winding up. It is normal practice for insolvency procedures to be legislated for in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.
179. Paragraphs (4A) and (4B) inserted into Article 81 by subsection (4) of clause 27 respectively correspond to subsections (4B) and (4C) of section 95 of the Insolvency Act 1986.

### **Clause 31 of the Bill: Directors' statement of affairs to creditors**

180. Subsection (2) of clause 31 replaces paragraph (1) of Article 85 of the Insolvency Order with a substitute. The substitute, like its predecessor, contains a delegated power to make rules.
181. Under the law as it stands, two meetings have to be held at the start of a creditors' voluntary winding up. The process begins with a meeting of the company at which the resolution to wind the company up voluntarily is put. A meeting of the creditors has to be held within 14 days of the company meeting. Paragraph (1) of Article 85 of the Insolvency Order provides that the directors of the company have to make out a statement, in the prescribed form, as to the affairs of the company, and cause it to be laid before the creditors' meeting. The fact that it is stated in paragraph (1) that the statement has to be in the prescribed form enables rules to be made to prescribe that form.

182. The requirement to hold a meeting of the creditors was in Article 84 of the Insolvency Order, and Article 84 is repealed by clause 30 of the Bill.
183. Paragraph (1) of Article 85, as substituted, will provide that the directors will in future have to send a statement of the company's affairs to the company's creditors. They will be required to do so, within seven days of the resolution for voluntary winding up being passed and the statement will have to be "in the prescribed form".
184. The substitute paragraph does not alter the requirement for the directors to prepare a statement of affairs. The only alterations are that a deadline for doing so is put in place and the procedure for making the statement available to the creditors is changed.
185. As the power to make rules implicit in the words "in the prescribed form" exists for the same purpose as before, that is to enable the form which the statement of affairs is to take to be prescribed, there is no need for any alteration to that power.
186. Paragraph (1) of Article 85, as substituted by subsection (2) of clause 31, corresponds to subsection (1) of section 99 of the Insolvency Act 1986.

### **Clause 32 of the Bill: Appointment of liquidator**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

187. Clause 32 replaces paragraph (1) of Article 86 of the Insolvency Order with a substitute and inserts two new paragraphs, (1A) and (1B).
188. Article 86 makes provision as to how the liquidator is to be chosen in the case of a creditors' voluntary winding up.
189. Paragraph (1) of Article 86, as it stands, gives the creditors and the company the right to nominate a liquidator during the meetings held at the start of a creditors' voluntary winding up. However as the Bill will do away with the requirement for a creditors' meeting the creditors will no longer be able to make their nomination in this way.
190. Paragraph (1) as substituted by clause 32 preserves the company's right to nominate a liquidator at the initial meeting at which the resolution for voluntary

winding up is passed. Neither paragraph (1) as it stands, nor the replacement, contain any delegated powers.

191. New paragraph (1A) will simply state that the creditors may, “in accordance with the rules” nominate a person to be liquidator. The fact that paragraph (1A) will provide that the nomination has to be “in accordance with the rules” will ensure that power exists to prescribe in rules the procedure to be used by the creditors to make their nomination.
192. New paragraph (1B) will oblige the directors to seek a nomination from the company’s creditors for a person to be liquidator. New paragraph (1B) will provide that they must do so “in accordance with the rules” thereby ensuring that power exists to prescribe in rules the procedure which the directors must use to seek the nomination.
193. The purpose of the delegated power in new paragraph (1A) is to enable a procedure to be put in place for the creditors to use when making a nomination. The purpose of the delegated power in new paragraph (1B) is to enable a procedure to be put in place which the directors will be required to use when seeking a nomination from the creditors for a person to act as liquidator. It is normal practice for insolvency procedures to be legislated for in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.
194. Paragraphs (1), (1A) and (1B) as inserted into Article 86 by clause 32 respectively correspond to subsections (1), (1A) and (1B) of the Insolvency Act 1986.

### **Clause 33 of the Bill: Appointment of liquidation committee**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

195. Clause 33 of the Bill amends paragraph (1) of Article 87 of the Insolvency Order. The amendment will result in a delegated power to make rules being included in that provision.
196. Article 87 applies in the case of a creditors’ voluntary winding up. Under the law as it stands a meeting of the creditors must be held within 14 days of a resolution to wind a company up voluntarily being passed at a company meeting. Paragraph (1) of Article 87 as it stands, gives the creditors, either at

this meeting, or at any subsequent meeting, the right, if they think fit, to appoint a committee of up to five persons, known as the liquidation committee, to exercise functions conferred on it by or under the Insolvency Order. Paragraph (1) of Article 87 as it stands, does not include any power to make delegated legislation.

197. The repeal of Article 84 of the Insolvency Order by clause 30 of the Bill will do away with the requirement for a creditors' meeting to be held after a company passes a resolution for voluntary winding up. The creditors will therefore no longer have the opportunity to appoint a liquidation committee at that meeting.
198. Subsection (2) of clause 33 will amend paragraph (1) of Article 87 so as to remove all reference to meetings. The result will be that the creditors will simply be given the right to, in accordance with the rules, appoint a liquidation committee.
199. The purpose of this delegated power to make rules is to enable a procedure to be put in place which the creditors can use to establish a liquidation committee should they wish to do so.
200. It is normal practice for insolvency procedures to be legislated for in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.
201. Paragraph (1) of Article 87 corresponds to subsection (1) of section 101 in the Insolvency Act 1986.

#### **Clause 35 of the Bill: Progress report to company and creditors**

202. Clause 35 does not create any new delegated powers or alter any existing ones. It simply makes a minor amendment to an Article in the Insolvency Order which includes several delegated powers to make rules.
203. Article 91 of the Insolvency Order, as substituted by section 3(2) of the Insolvency (Amendment) Act (Northern Ireland) 2016, places the liquidator of a company in a creditors' voluntary winding up under a requirement to produce a progress report relating to prescribed matters for each prescribed period and to send it to members of the company and to such other persons as may be prescribed. In accordance with Article 2(2) of the Insolvency Order prescription in Article 91 would mean prescription in rules.
204. The amendment made by clause 35 is to paragraph (1)(b)(i) in Article 91 and will result in the report not having to be sent to creditors who have opted out of receiving correspondence about the winding-up.

205. Paragraph (1)(b)(i) of Article 91 corresponds to subsection (1)(b)(i) of section 104 of the Insolvency Act 1986.

### **Clause 36 of the Bill: Final meeting prior to dissolution**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

206. Clause 36 replaces Article 92 of the Insolvency Order with a substitute. Article 92 applies where a company is in creditors' voluntary winding up. The substitute Article includes a delegated power to make rules, the existing Article does not.

207. Article 92 as it stands provides that once it appears that the company's affairs have been fully wound up the liquidator has to lay an account before a general meeting of the company and a meeting of its creditors. Paragraph (3) of the Article places the liquidator under a duty to send a copy of the account and a return of the holding of the meetings and the dates on which they were held to the Registrar of Companies.

208. The replacement Article will do away with the requirement for the liquidator to present their account at meetings of the company and its creditors. The liquidator will instead be required to send the account to the company's members and to its creditors, other than any creditors who have opted out. Paragraph (3) of the replacement Article will place the liquidator under a duty to send a copy of the account and a statement of whether any of the creditors objected to their release to the Registrar of Companies. This has to be done during the relevant period, which is defined by paragraph (4) as the seven day period following the last day of the period allowed for creditors to object to the liquidator's release. Paragraph (4) provides for the latter period to be prescribed in rules.

209. The power in paragraph (4) to prescribe in rules the period within which the creditors may object to the liquidator's release enables a limit to be set on the time allowed for them to object, thereby enabling the liquidator to get their release. As prescription of the period is a matter of detail it is best provided for in delegated legislation. Prescription is to be in rules which will be subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.

210. The same power to prescribe in rules the period allowed for the creditors to object to the liquidator's release is also present in paragraph (4F)(a) inserted

into Article 148 of the Insolvency Order by subsection (3) of clause 50. It is essential that the two powers should align.

211. Paragraph (4) of Article 92, as substituted by the Bill, corresponds to subsection (4) of section 106 of the Insolvency Act 1986.

**Clause 38 of the Bill: Functions of official receiver in relation to office of liquidator**

212. Article 116 of the Insolvency Order provides that the official receiver becomes the liquidator of a company on its being wound up by the High Court and sets out the duties which the official receiver is then under. Subsection (2) of clause 38 amends paragraph (4) of Article 116 and subsection (3) replaces existing paragraphs (5) and (6) with new paragraphs (5) to (8).

**The amendment to paragraph (4) of Article 116**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

213. Subsection (2) of clause 38 amends paragraph (4) of Article 116 of the Insolvency Order. Paragraph (4) as it stands does not include any delegated power to make legislation.
214. Paragraph (4) of Article 116, as it stands, provides that the official receiver can, at any time when acting as the liquidator of a company, summon separate meetings of the creditors and contributories for the purpose of choosing a person to take over from him as liquidator.
215. The amendment made by subsection (2) of clause 38 will result in paragraph (4) instead providing that the official receiver can, at any time when acting as the liquidator of a company, seek nominations from the creditors and contributories for the purpose of choosing a person to take over from him as liquidator. The nominations will have to be sought “in accordance with the rules” thereby ensuring that power exists to prescribe in rules the procedure which the official receiver is to use to seek the nominations. The purpose of this delegated power is to enable a procedure to be put in place for the official receiver to use when seeking nominations for a person to take over as liquidator. It is normal practice for insolvency procedures to be legislated for in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.

216. Paragraph (4) of Article 116 corresponds to subsection (4) in section 136 of the Insolvency Act 1986.

**Insertion of new paragraphs (5) to (8) into Article 116 of the Insolvency Order by clause 38(3) of the Bill**

217. Existing paragraph (5)(c) in Article 116 of the Insolvency Order places the official receiver under a duty to exercise his or her power under paragraph (4) to summon meetings of the company's creditors and contributories for the purpose of choosing a person to replace the official receiver as liquidator if one quarter by value of the creditors request it. The request must be made "in accordance with the rules".

218. Paragraph (5)(c) as substituted by subsection (3) of clause 38 is identical to the existing provision, except that all reference to meetings is removed. The duty which the official receiver is under will be stated simply as being to exercise his or her power under paragraph (4) if one quarter by value of the creditors request it. As before, the request will have to be made in accordance with the rules.

219. As the power to make rules implicit in the words "in the prescribed form" exists for the same purpose as before, that is to enable the procedure which the creditors are to use if making a request to the official receiver to take action to have a person appointed to replace him or her as liquidator to be established, there is no need for any alteration to that power.

220. Paragraph (5)(c) in Article 116 as substituted by subsection (3) of clause 38 corresponds to subsection (5)(c) of section 136 of the Insolvency Act 1986.

**Clause 40 of the Bill: Choice of liquidator at meetings of creditors and contributories**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

221. Clause 40 amends Article 118 of the Insolvency Order. Paragraph (1) of Article 118, as it stands, provides that this Article applies if a company is being wound up by the High Court and separate meetings of the company's creditors and contributories have been summoned for the purpose of choosing a liquidator. Paragraph (2) gives the creditors and the contributories the right, at their

respective meetings, to nominate a person to be liquidator. Neither of the two paragraphs includes a power to make delegated legislation.

222. Clause 40 removes all reference to meetings out of Article 118. Subsection (2) of clause 40 amends paragraph (1) of Article 118. The stipulation that the Article applies if a company is being wound up by the High Court is left unaltered. However the second condition for Article 118 to apply will become simply that nominations are being sought from the company's creditors and contributories for the purpose of choosing a liquidator.
223. Subsection (3) of clause 40 amends paragraph (2) of Article 118. Instead of paragraph (2) providing that the creditors' and contributories' right to nominate a person to be liquidator is to be exercised at meetings, paragraph (2) will state simply that it is to be exercised "in accordance with the rules". The fact that paragraph (2) will provide that the nomination has to be "in accordance with the rules" will ensure that the necessary power exists to prescribe in rules the procedure to be used by the creditors and contributories to make their nominations.
224. The purpose of the new delegated power in paragraph (2) is to enable a procedure to be put in place for the creditors and contributories to use when making their nominations. It is normal practice for insolvency procedures to be legislated for in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.
225. Paragraph (2) of Article 118 corresponds to subsection (2) of section 139 of the Insolvency Act 1986.

#### **Clause 42 of the Bill: Liquidation committee**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

226. Article 120 of the Insolvency Order, which applies where a company is being wound up by the High Court, gives the creditors and contributories the right to appoint a committee, known as the liquidation committee, to exercise functions conferred on it by or under the Insolvency Order. Article 120 currently provides for any decision to establish a liquidation committee to be made at meetings of the creditors and contributories.



227. Clause 42 replaces existing paragraphs (1) to (3) of Article 120 with new paragraphs (1) to (3C). The new paragraphs will provide for any decision to establish a liquidation committee to be instead made using decision procedures. The new paragraphs will re-state two existing powers to make rules and insert a third.
228. Paragraph (1) of Article 120, as it stands, gives meetings of the creditors and contributories summoned for the purpose of appointing a liquidator the right to establish a liquidation committee. Paragraph (2) applies where a liquidator other than the official receiver is in office, and gives the liquidator the right, at any time, to summon meetings of the creditors and contributories for the specific purpose of deciding if a liquidation committee should be established, and if they decide that it should, of establishing one. Neither right involves any delegated powers.
229. Paragraph (1) of Article 120, as substituted by clause 42, will make no reference to meetings. It will simply provide that if a company's creditors and contributories both decide that a liquidation committee should be established, one is to be established in accordance with the rules.
230. The requirement for the committee to be established in accordance with the rules constitutes a delegated power to make rules about how the committee is to be established. The fact that whether there is to be a liquidation committee is no longer to be decided at meetings of the creditors and contributories means that the opportunity for a liquidation committee to be established at these meetings no longer exists. An alternative procedure needs to be put in place which creditors and contributories can use to establish a liquidation committee. That is the purpose of the delegated power in substitute paragraph (1). It is to equip creditors and contributories with a procedure which they can use to establish a liquidation committee, should they wish to do so.
231. It is normal practice for insolvency procedures to be legislated for in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.
232. As mentioned in paragraph 228 above, paragraph (2) of Article 120 as it stands, gives a liquidator, other than the official receiver, the right, at any time, to summon meetings of the creditors and contributories for the purpose of deciding if a liquidation committee should be established, and if they decide that it should, of establishing one. Paragraph (2), as it stands, also places a liquidator other than the official receiver, under a duty to summons such meetings if requested to do so by, in accordance with the rules, one tenth in value of the company's creditors.

233. New paragraph (3B), as substituted by clause 42, will instead place a liquidator, other than the official receiver, under a duty to seek a decision from the creditors and contributories as to whether a liquidation committee should be established, if requested to do so by, in accordance with the rules, one tenth in value of the company's creditors. New paragraph (3C) will provide that paragraph (3B) does not apply to the official receiver when acting as liquidator.
234. The duty which new paragraph (3C) places the liquidator under is fundamentally the same as under existing paragraph (2). It is to take action to find out if the creditors and contributories want to have a liquidation committee established, if the requisite proportion of creditors request it. The only change will be to the procedure which the liquidator is required to use to do this. Instead of being required to summon meetings of the creditors and contributories, the liquidator will now be required to "seek a decision". The fact that the procedure which the liquidator is to use is changing is not a reason to alter the power to make provision in rules about how the creditors can request the liquidator to carry out the procedure.
235. Paragraph (3) of Article 120 deals with the situation where meetings of the creditors and contributories take place and one of the meetings decides that a liquidation committee should be established but the other either decides that it should not or makes no decision about the matter. Paragraph (3) provides that if this happens a liquidation committee is to be established in accordance with the rules, unless the High Court orders otherwise.
236. Paragraph (3) of Article 120 as substituted by clause 42 substantially restates existing paragraph (3). The substitute paragraph provides that in the event of only the creditors, or only the contributories deciding that a liquidation committee is to be established, a liquidation committee is still to be established in accordance with the rules, unless the court decides otherwise. Given that both the situation dealt with and the way in which it is to be dealt with fundamentally remain the same there is no reason to alter the power to prescribe in rules how the liquidation committee is to be established.
237. Paragraphs (2), (3) and (3B) inserted into Article 120 by clause 42 respectively correspond to subsections (2), (3) and (3B) in section 141 of the Insolvency Act 1986.

### **Clause 43 of the Bill : Duty to summon final meeting**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

238. Clause 43 replaces Article 124 of the Insolvency Order with a substitute. Article 124 applies where a company is being wound up by the High Court and the liquidator is not the official receiver. Both the existing Article and its replacement include a delegated power to make rules.
239. Article 124 as it stands provides that once it appears that the winding up is for practical purposes complete the liquidator has to summon a final meeting of the company's creditors for the purpose of receiving the liquidator's report and deciding if the liquidator should be released. Paragraph (4) of the Article places the liquidator under a duty to send a copy of the report and a statement of whether any of the creditors objected to their release to the High Court and the Registrar of Companies. This has to be done during the relevant period, which is defined by paragraph (5) as the seven day period following the last day of the period allowed for creditors to object to the liquidator's release. Paragraph (5) provides for the latter period to be prescribed in rules.
240. The replacement Article will do away with the requirement for the liquidator to present a report at a meeting of the creditors. The liquidator will instead be required to prepare an account and to send it to the creditors, other than any who have opted out. Paragraph (4) of the replacement Article will place the liquidator under a duty to send a copy of the account and a statement of whether any of the creditors objected to their release to the High Court and the Registrar. There will be the same requirement for these documents to be sent to the High Court during the relevant period as applies is in the case of the documents which have to be sent to the High Court and the Registrar under paragraph (4) of the existing Article. The relevant period will be defined by paragraph (5) in the replacement Article in exactly the same way as it is defined in the existing Article. Paragraph (5) in the replacement Article will include the same power to prescribe in rules the period within which the creditors may object to the liquidator's release as was present in paragraph (5) of the existing Article.
241. None of the changes made by the substitution of Article 124 affects in any way the need to establish how long the creditors have to object to the liquidator's release. There is therefore no need to alter the way in which this is to be done. Paragraph (5) of the existing Article provides that the period allowed is to be prescribed by the rules, there is no reason which paragraph (5) of the replacement Article should not do the same. The same power to prescribe in rules the period allowed for the creditors to object to the liquidator's release is also present in paragraph (4F) inserted into Article 148 of the Insolvency Order by subsection (3) of clause 50. It is essential that the two powers should align.
242. Paragraph (5) of Article 124, as substituted by the Bill, corresponds to subsection (5) of section 146 of the Insolvency Act 1986.

### **Clause 44 of the Bill : Delegation of High Court's powers to liquidator**

243. Paragraph (1) of Article 137 of the Insolvency Order lists matters with respect to which provision may be made by rules requiring or enabling powers and duties conferred and imposed on the High Court to be exercised or performed by the liquidator.
244. The only alteration made by clause 44 is to one of the matters with respect to which rules providing for powers and duties of the High Court to be exercised or performed by the liquidator can be made. The change is required as a consequence of meetings no longer being routinely used to make decisions.
245. Paragraph (1) of Article 137 corresponds to subsection (1) of section 160 of the Insolvency Act 1986.

### **Clause 47 of the Bill: Removal of liquidator : voluntary winding up**

246. Article 145 of the Insolvency Order makes provision as to how the liquidator in a voluntary liquidation can be removed from office, resign, or vacate office. Subsection (2) of clause 47 amends paragraph (2)(b) of Article 145 and subsection (3) replaces paragraph (3) with new paragraphs (3) and (3A). The amendment made by subsection (2) leaves in place an existing power to make rules. The new paragraphs inserted by subsection (3) each include a delegated power to make rules.

### **The amendment made by subsection (2)**

247. Paragraph (2)(b) in Article 145 as it stands provides that the liquidator in a creditors' voluntary winding-up can be removed by a general meeting of the company's creditors summoned specially for the purpose in accordance with the rules.
248. The amendment made by subsection (2) of clause 47 will remove the reference to a general meeting. Paragraph (2)(b) will instead provide that the liquidator in a creditors' voluntary winding-up can be removed by a decision of the company's creditors made by a qualifying decision procedure instigated specially for that purpose in accordance with the rules.
249. The fact that paragraph (2)(b) as it stands provides that the summoning of a general meeting of the creditors for the purpose of removing the liquidator is to be done in accordance with the rules provides the necessary power to enable a procedure for the creditors to use to summon such a meeting to be set out in rules. The instigation of a qualifying decision procedure equates to summoning a meeting. There is no reason why the delegated power to enable a procedure to be put in place for the creditors to use to instigate the new procedure should be any different. There is no reason why the power to make provision about

how a decision procedure is to be instigated should not likewise provide that the provision is to be in rules made by the Department of Justice, with the concurrence of the Department for the Economy and subject to negative resolution in the Assembly. There is therefore no reason to change the requirement for the instigation of a qualifying decision procedure to remove the liquidator to be in accordance with the rules.

250. Paragraph (2)(b) in Article 145 corresponds to subsection (2)(b) in section 171 of the Insolvency Act 1986.

**Insertion of new paragraphs (3) and (3A) into Article 145 of the Insolvency Order by clause 47(3) of the Bill**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

251. Subsection (3) of clause 47 provides for the replacement of paragraph (3) in Article 145 of the Insolvency Order by new paragraphs (3) and (3A).
252. For paragraph (3) of Article 145 as it stands to apply, the liquidator must have been appointed by the High Court under Article 94 of the Insolvency Order. Paragraph (3) applies in both members' and creditors' voluntary winding up and places restrictions on, in the first case, the rights of members and in the second case, the rights of creditors, to summon meetings for the purpose of replacing the liquidator. In all cases, the meeting has to be summoned in accordance with the rules.
253. In future, any decision to remove a liquidator appointed under Article 94 in a creditors' winding-up is to be made by the creditors using a qualifying decision procedure. However any decision to remove a liquidator appointed under Article 94 in a members' voluntary winding-up will still be made by a general meeting of the company. This difference in procedure has resulted in provision to remove a liquidator appointed under Article 94 in a voluntary winding-up having to be split into two separate paragraphs, (3) and (3A). Paragraph (3) will apply where the company is in members' voluntary winding-up, paragraph (3A) will apply where it is in creditors' voluntary winding-up.
254. Substitute paragraph (3) will provide that for a meeting to be summoned at the request of the members, members with at least half of the total voting rights of all the members who would be entitled to vote at the meeting would have to request it.

255. New paragraph (3A) will provide for a qualifying decision procedure to remove the liquidator in a creditors' voluntary winding-up to be instigated at the request of the creditors, a minimum of one half in value of the creditors would have to request it.
256. Requests for, in the case of substitute paragraph (3), the summoning of a meeting of members, and in the case of substitute paragraph (3A) the summoning of a meeting of creditors, will have to be made in accordance with the rules.
257. The fact that paragraph (3) of Article 145 as it stands provides that requests for meetings of company members and creditors for the purpose of removing a liquidator have to be made in accordance with the rules provides the necessary power to enable procedures for the members and creditors to use when requesting that such meetings should be summoned to be set out in rules.
258. The procedure to be used by the company to remove a liquidator appointed under Article 94 in a members' voluntary winding up will be exactly the same under substitute paragraph 3 as it is under the existing paragraph. Any decision to remove the liquidator will be made at general meeting of the company. Therefore no reason exists to alter the requirement for any request to summon such a meeting to be made in accordance with the rules. Retention of this requirement will ensure that in the case of members' voluntary winding up the requisite power remains in place to enable procedures to be established in rules for members to use if requesting the summoning of meetings for the purpose of removing a liquidator appointed under Article 94.
259. The procedure to be used by the creditors in a creditors' voluntary winding up to remove a liquidator appointed under Article 94 will be different under new paragraph (3A). It does not follow that the power to provide in delegated legislation how a request to have the new procedure carried out should be any different. The fact that paragraph (3A) provides that any request to carry out the new procedure has to be made in accordance with the rules will ensure that power is in place to enable procedures to be established in rules for creditors to use if requesting the instigation of a qualifying decision procedure for the purpose of removing a liquidator appointed under Article 94.
260. Paragraphs (3) and (3A) inserted by into Article 145 by subsection (3) of clause 47 correspond to subsections (3) and (3A) of section 171 of the Insolvency Act 1986.

#### **Clause 48 of the Bill: Removal of liquidator: winding up by the High Court**

261. Article 146 of the Insolvency Order makes provision as to how the liquidator of a company being wound up by the High Court, or a provisional liquidator can be removed from office, resign, or vacate office. Subsections (2) and (3) of clause

48 respectively amend paragraphs (2) and (3) of Article 146. The amendments made by subsections (2) and (3) will leave in place powers in paragraphs (2) and (3) to make delegated legislation in the form of rules.

### **The amendment made by subsection (2)**

262. Paragraph (2) in Article 146 as it stands provides that the liquidator of a company which is being wound up by the High Court can be removed either by an order of the High Court or by a general meeting of the company's creditors summoned specially for the purpose in accordance with the rules.
263. The amendment made by subsection (2) of clause 48 will remove the reference to a general meeting. Paragraph (2) will instead provide that the liquidator of a company being wound up by the High Court can be removed by an order of the High Court or by a decision of the company's creditors made by a qualifying decision procedure instigated in accordance with the rules.
264. The fact that paragraph (2) as it stands provides that the summoning of a general meeting of the creditors for the purpose of removing the liquidator is to be done in accordance with the rules provides the necessary power to enable a procedure for the creditors to use to summon such a meeting to be set out in rules. The instigation of a qualifying decision procedure equates to summoning a meeting. There is no reason why the power to make provision about how a decision procedure is to be instigated should not likewise provide that the provision is to be in rules made by the Department of Justice, with the concurrence of the Department for the Economy and subject to negative resolution in the Assembly. There is therefore no reason to change the requirement for the instigation of a qualifying decision procedure to remove the liquidator to be in accordance with the rules.
265. Paragraph (2) in Article 146 corresponds to subsection (2) in section 172 of the Insolvency Act 1986.

### **The amendment made by subsection (3)**

266. Paragraph (3) of Article 146 as it stands, places restrictions on when a general meeting of the company's creditors can be summoned for the purpose of replacing the liquidator in cases where a company is being wound up by the High Court and subject to certain exceptions, either the official receiver is liquidator, or the liquidator was appointed by the High Court or the Department. In such cases a general meeting of the creditors for the purpose of replacing the liquidator can only be summoned if the liquidator thinks fit, or the Court directs, or at least one-quarter of the creditors, by value, request it. Any request by the creditors to summon a meeting for the purpose of replacing the liquidator has to be made in accordance with the rules.

267. The amendment made by subsection (3) of clause 48 will remove the reference to a general meeting. The restrictions imposed by paragraph (3) of Article 146 will instead be stated to be on the instigation of a qualifying decision procedure such as is mentioned in paragraph (2) of that Article. It will only be possible to instigate such a procedure if the liquidator thinks fit, or the High Court directs or at least one quarter of the creditors by value request it. Any request by the creditors will have to be made in accordance with the rules. The qualifying procedure mentioned in paragraph (2) as substituted by subsection (2) of clause 48, is for the purpose of removing a liquidator from office.
268. The amendment to paragraph (3) is required because decisions by creditors to remove a liquidator are now to be made using qualifying decision procedures instead of at a meeting. The fact that the restrictions imposed by paragraph (3) will now be on the use which can be made of that new procedure is not a reason to alter the power to make provision in delegated legislation as to how any request by the creditors to have the procedure carried out is to be made. The fact that paragraph (3) as it stands provides that the summoning of a general meeting of the creditors for the purpose of removing the liquidator is to be done in accordance with the rules provides the necessary power to enable a procedure for the creditors to use to summon such a meeting to be set out in rules. The instigation of a qualifying decision procedure equates to summoning a meeting. There is no reason why the power to make provision about how a decision procedure is to be instigated should not likewise provide that the provision is to be in rules made by the Department of Justice, with the concurrence of the Department for the Economy and subject to negative resolution in the Assembly. There is therefore no reason to change the requirement for the instigation of a qualifying decision procedure to remove the liquidator to be in accordance with the rules.
269. Paragraph (3) in Article 146 corresponds to subsection (3) in section 172 of the Insolvency Act 1986.

#### **Clause 49 of the Bill: Release of liquidator: voluntary winding up**

270. Paragraph (2) of Article 147 of the Insolvency Order, as it stands, makes provision about when the liquidator of a company which is being wound up voluntarily is to have their release. Subsection (2) of clause 49 provides for paragraph (2) to be replaced by a set of paragraphs numbered (2) to (21). Some of the substitute paragraphs provide for the liquidator's release to be in accordance with rules.

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*



## *Assembly procedure: Negative resolution*

### **Paragraph (2A)**

271. Substitute paragraph (2A) will apply where the liquidator has been removed from office by a general meeting of the company and will provide for the liquidator to have their release with effect from the time at which notice is given to the registrar, in accordance with the rules, that they have ceased to hold office. The requirement for the notice be given to the registrar in accordance with the rules constitutes power to prescribe in rules the procedure which is to be used to give the notice to the registrar. Substitute paragraph (2A) re-states provision in sub-paragraph (a) of paragraph (2) of Article 147 as it stands, including that the notice has to be given to the registrar in accordance with the rules.
272. Sub-paragraph (2A), as substituted by subsection (2) of clause 49 corresponds to sub-section (2)(a)(i) of section 173 of the Insolvency Act 1986.

### **Paragraph (2B)(b)**

273. Substitute paragraph (2B)(b) will apply where the liquidator has been removed from office by a decision of the company's creditors and they have not decided against the liquidator's release. The liquidator will have their release with effect from the time at which notice is given to the registrar, in accordance with the rules, that they have ceased to hold office. The requirement for the notice be given to the registrar in accordance with the rules constitutes power to prescribe in rules the procedure which is to be used to give the notice to the registrar. The provision for the liquidator's release made by substitute paragraph (2)(b) is similar to that made by sub-paragraph (a) of paragraph (2) of Article 147 as it stands, for the release of a liquidator who has been removed from office by a meeting of the company's creditors which has not resolved against the liquidator's release, including that the notice that they have ceased to hold office has to be given to the registrar in accordance with the rules.
274. Paragraph (2B)(b), as substituted by subsection (2) of clause 49 corresponds to sub-section (2)(a)(ii) of section 173 of the Insolvency Act 1986.

### **Paragraph (2C)**

275. Substitute paragraph (2C) will apply where the liquidator has died. Paragraph (2C) provides for the liquidator will have their release, posthumously, with effect from the time at which notice is given to the registrar, in accordance with the rules, that they have ceased to hold office. The requirement for the notice be given to the registrar in accordance with the rules constitutes power to prescribe in rules the procedure which is to be used to give the notice to the registrar. Substitute paragraph (2C) re-states provision in sub-paragraph (a) of

paragraph (2) of Article 147 as it stands, including that the notice has to be given to the registrar in accordance with the rules.

276. Paragraph (2C), as substituted by subsection (2) of clause 49, corresponds to sub-section (2)(a)(iii) of section 173 of the Insolvency Act 1986.

#### **Paragraph (2F)**

277. Substitute paragraph (2F) will apply where the liquidator has resigned. Paragraph (2F) provides for the liquidator to have their release with effect from such time as may be prescribed. The existence of the delegated power to prescribe the time in rules will enable detailed provision about when that time will be to be included in the rules. Substitute paragraph (2F) re-states provision in sub-paragraph (c) of paragraph (2) of Article 147 as it stands, including that the liquidator is to have their release from such time as may be prescribed.

278. Paragraph (2F), as substituted by subsection (2) of clause 49, corresponds to sub-section (2)(c) of section 173 of the Insolvency Act 1986.

#### **Paragraph (2H)(a)**

279. Substitute paragraph (2H)(a) will apply where the liquidator has vacated office under Article 145(6). Article 145(6) will provide that in a members' or creditors', voluntary winding up, the liquidator vacates office once they have sent their final account to the registrar. Paragraph (2H)(a) provides that if any of the creditors have objected to the liquidator's release before the end of the period for so objecting prescribed by the rules, the liquidator has to apply to the Department for their release and their release does not take effect until such time as the Department determines. The citing of the power to prescribe in rules the period allowed for the creditors to object to the liquidator's release replicates the citing of the same power in paragraph (4) of Article 92, as substituted by clause 36. Substitute paragraph (2H)(a) is similar to the provision made for the liquidator's release by, in the case of a creditors' voluntary winding-up, sub-paragraph (e)(i) of paragraph (2) of Article 147 as it stands, except that there is no reference in the latter to a prescribed time period.

280. Paragraph (2H)(a), as substituted by subsection (2) of clause 49, corresponds to sub-section (2)(e)(i) of section 173 of the Insolvency Act 1986.

#### **Clause 50 of the Bill : Release of liquidator : winding-up by the High Court**

281. Article 148 of the Insolvency Order, as it stands, makes provision about when the liquidator of a company which is being wound up by the High Court, or a provisional liquidator is to have their release. Provision about when a liquidator other than the official receiver is to have their release is in paragraph (4) of that Article. Subsection (3) of clause 50 provides for paragraph (4) to be replaced by

a set of paragraphs numbered (4) to (4G). Some of the substitute paragraphs provide for the liquidator's release to be in accordance with rules.

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

### **Paragraph (4A)(b)**

282. Substitute paragraph (4A)(b) will apply where the liquidator has been removed from office by a decision of the company's creditors and they have not decided against the liquidator's release. The liquidator will have their release with effect from the time at which notice is given to the High Court, in accordance with the rules, that they have ceased to hold office. The requirement for the notice be given to the High Court in accordance with the rules constitutes power to prescribe in rules the procedure which is to be used to give the notice to the High Court. The provision for the liquidator's release made by substitute paragraph (4A)(b) is similar to that made by sub-paragraph (a) of paragraph (4) of Article 148 as it stands, for the release of a liquidator who has been removed from office by a meeting of the company's creditors which has not resolved against the liquidator's release, including that the notice that they have ceased to hold office has to be given to the High Court in accordance with the rules.

283. Paragraph (4A)(b), as substituted by subsection (3) of clause 50, corresponds to sub-section (4)(a)(i) of section 174 of the Insolvency Act 1986.

### **Paragraph (4B)**

284. Substitute paragraph (4B) will apply where the liquidator has died. Paragraph (4B) provides for the liquidator to have their release, posthumously, with effect from the time at which notice is given to the High Court, in accordance with the rules, that they have ceased to hold office. The requirement for the notice be given to the High Court in accordance with the rules constitutes power to prescribe in rules the procedure which is to be used to give the notice to the High Court. Substitute paragraph (4B) re-states provision in sub-paragraph (a) of paragraph (4) of Article 148 as it stands, including that the notice has to be given to the High Court in accordance with the rules.

285. Paragraph (4B), as substituted by subsection (2) of clause 50, corresponds to sub-section (4)(a)(ii) of section 174 of the Insolvency Act 1986.

## **Paragraph (4E)**

286. Substitute paragraph (4E) will apply where the liquidator has resigned. Paragraph (4E) provides for the liquidator to have their release with effect from such time as may be prescribed. The existence of the delegated power to prescribe the time in rules will enable detailed provision about when that time will be, to be included in the rules. Substitute paragraph (4E) re-states provision in sub-paragraph (c) of paragraph (4) of Article 148 as it stands, including that the liquidator is to have their release from such time as may be prescribed.
287. Paragraph (4E), as substituted by subsection (2) of clause 50, corresponds to sub-section (4)(c) of section 174 of the Insolvency Act 1986.

## **Paragraph (4F)(a)**

288. Substitute paragraph (4F)(a) will apply where the liquidator has vacated office under Article 146(7). Article 146(7) will provide that in a winding-up by the High Court, the liquidator vacates office once they have sent their final account to the High Court and the registrar. Paragraph (4F)(a) provides that if any of the creditors have objected to the liquidator's release before the end of the period for so objecting prescribed by the rules, the liquidator has to apply to the Department for their release and their release does not take effect until such time as the Department determines. The citing of the power to prescribe in rules the period allowed for the creditors to object to the liquidator's release replicates the citing of the same power in paragraph (4) of Article 92, as substituted by clause 36. Substitute paragraph (4F)(a) is similar to the provision made for the liquidator's release by in a winding up by the court, by sub-paragraph (d)(i) of paragraph (4) of Article 148 as it stands, except that there is no reference in the latter to a prescribed time period.
289. Paragraph (4F)(a), as substituted by subsection (3) of clause 50, corresponds to sub-section (4)(d)(i) of section 174 of the Insolvency Act 1986.

## **Clause 62 : Provisions that may be included in company insolvency rules**

290. Subsection (2) of clause 62 inserts new paragraph 9A into Schedule 5 to the Insolvency Order and subsections (3) to (5) make minor textual amendments to existing paragraph 10.

## **Paragraph 9A inserted into Schedule 5 to the Insolvency Order**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

291. Subsection (2) of clause 62 inserts a new power to make rules into Schedule 5 to the Insolvency Order.
292. The new power is needed because the amendments made by, in the case of creditors' winding up, clause 32 of the Bill to Article 86 of the Insolvency Order and in the case of winding up by the High Court, clause 40 of the Bill to Article 118, will result in nominations by creditors for a person to act as liquidator no longer making being made at a meeting. A procedure will therefore need to be established for the creditors to use to make their nominations.
293. The insertion of new paragraph 9A into Schedule 5 to the Insolvency Order by clause 62(2) will enable provision to be included in company insolvency rules to establish a procedure for the creditors to use.
294. As stated in paragraph 12, it is normal for procedures to be used in insolvency proceedings to be legislated for in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the same reasons as set out in paragraph 12.
295. Paragraph 9A inserted into Schedule 5 by clause 62(2) corresponds to paragraph 9A in Schedule 8 to the Insolvency Act 1986.

**The amendments made by subsections (3) to (5) of clause 62 to paragraph 10 of Schedule 5 to the Insolvency Order**

296. Subparagraph (1) of paragraph 10 in Schedule 5 to the Insolvency Order as it stands provides power to make provision in company insolvency rules as to the functions, membership and proceedings of,
- creditors' committees established under, in the case of administrative receiverships, Article 59 of the Insolvency Order, and in the case of administrations, paragraph 58 of Schedule B1 to the Insolvency Order, and
  - liquidation committees, established under, in the case of creditors' voluntary winding up, Article 87 of the Insolvency Order, and in the case of winding up by the High Court, Article 120 of the Insolvency Order.
297. Subsection (4) of clause 62 makes two amendments to subparagraph (1). Subparagraph (1) of paragraph 10 as it stands provides power to include provision in company insolvency rules about the functions, membership and proceedings of the four types of committees mentioned in that subparagraph. The amendment made by subsection (4)(a) of clause 62 will extend this power so that it can also be used to make provision about the establishment of these committees. The power to include provision in rules about the establishment of

these committees is needed because creditors and contributories will no longer have the opportunity to establish these committees at meetings and an alternative procedure to enable them to do so will therefore need to be put in place. The other amendment to subparagraph (1) is consequential on the first amendment. It would not make sense for subparagraph (1) to be left stating that provision can be made as to the establishment of a committee already established under Articles 59, 87, or 120 of paragraph 58 of Schedule B1. The amendment will rectify this, by providing for subparagraph (1) to instead refer to a committee provided for by Articles 59, 87, or 120 of paragraph 58 of Schedule B1.

298. Subparagraph (2) of paragraph 10 in Schedule 5 to the Insolvency Order as it stands includes heads (a), (b) and (c). These constitute power to enable provision with respect to three aspects of the establishment of liquidation committees formed under Articles 87 and 120 to be included in company insolvency rules. Subsection (5) of clause 62 amends two of these heads.
299. Head (a) as it stands would enable provision to be included for resolving differences between a meeting of the company's creditors and a meeting of its contributories or members.
300. The amendment made by subsection (5)(a) of clause 62 accommodates the move away from meetings as a way of making decisions by removing all reference to meetings in head (a). Head (a) will simply state that provision for resolving differences between the company's creditors and its contributories, or members, over the establishment of a committee under Article 87 or 120 of the Insolvency Order, can be included in company insolvency rules.
301. Head (b) as it stands makes it possible to include provision in company insolvency rules to allow a liquidation committee under Article 87 or 120 of the Insolvency Order to be established without a meeting of contributories in cases where the grounds on which a company is being wound up include not being able to pay its debts.
302. The amendment made by subsection (5)(b) of clause 62 accommodates the switch from meetings to decision procedures by removing the reference to a meeting of contributories. What will instead be permitted is the establishment of a liquidation committee under Article 87 or 120 without a decision being sought from the creditors.
303. As the amendments made by subsection (5) of clause 62 are to procedural requirements and as mentioned in paragraph 12, it is normal for any matters relating to insolvency procedures to be legislated for in Rules which are subject to negative resolution in the Assembly.

304. Paragraph 10 in Schedule 5 corresponds to paragraph 10 in Schedule 8 to the Insolvency Act 1986.

### **Clause 67 of the Bill: Report of decisions to High Court**

305. Subsection (2) of clause 67 replaces paragraph (1) of Article 233 of the Insolvency Order with a substitute.

306. Existing paragraph (1) in Article 233 applies where a meeting of creditors had been held for the purpose of deciding whether to approve a proposal for an individual voluntary arrangement. It provides that, once the meeting had ended, the chairman of the meeting has to report the result to the High Court and, immediately after doing so, give notice of the result to “such persons as may be prescribed”

307. Changes made by the Bill will result in the decision by the creditors whether to approve the debtor’s proposal being made using a creditors’ decision procedure instead of at a meeting. This change in how the creditors are to make their decision gave rise to a need to alter the reporting requirements under paragraph (1) of Article 233 of the Insolvency Order. Subsection (2) of clause 67 provides for the replacement of paragraph (1) by a substitute. This will provide that once the creditors have made their decision, the nominee or the nominee’s replacement under Article 230(3) or 230A(4), has to report the creditors’ decision to the High Court and immediately after doing so, give notice of it to “such persons as may be prescribed”.

308. The power under the new provision to prescribe in rules persons to whom notice is to be given is no different from the power to be used for the same purpose when the creditors were to make their decision at a meeting. The only thing which has changed is the procedure which the creditors are to use to make their decision. There is no reason why the delegated power to make rules prescribing the persons to whom notice of that decision is to be given should be different. Rules made under the delegated power in the new provision will be subject to negative resolution. This was considered to be a satisfactory form of control when the creditors were making their decisions at meetings and there is no reason why it should not be considered satisfactory form of control now that they are to make their decisions using a creditors’ decision procedure.

309. Paragraph (1) of Article 233 corresponds to subsection (1) of section 259 of the Insolvency Act.

### **Clause 68 of the Bill: Effect of approval**

310. Clause 68 amends Article 234 of the Insolvency Order, which makes provision as to what happens when a proposal for an individual voluntary arrangement is approved. The amendments are needed because the Bill will provide that

decisions by creditors as to whether to approve individual voluntary arrangements are to be made using creditors' decision procedures instead of at meetings.

311. Paragraph (2)(b) of Article 234 makes provision as to who is bound by an approved voluntary arrangement. Paragraph (2)(b) as it stands, provides that once an arrangement has been approved, it binds two groups. It first of all binds every person, who in accordance with the rules, was entitled to vote at the meeting, even if they were not present or represented at the meeting.
312. Secondly it binds every person who, in accordance with the rules, would have been, entitled to vote at the meeting, if they had received notice of it.
313. The requirement that entitlement to vote at the meeting has to be in accordance with the rules constitutes a delegated power to make rules setting out requirements, or conditions which have to be met, to be entitled to vote at a meeting of creditors held for the purpose of deciding whether to approve a proposal for an individual voluntary arrangement.
314. Subsection (3)(b) and (c) of clause 68 remove all reference to meetings. The amendments made by subsection (3)(b) and (c) will result in paragraph (2)(b) of Article 234 providing that an approved voluntary arrangement binds every person, who in accordance with the rules, was entitled to vote in the creditors' decision procedure by which the decision to approve the proposal was made, or who would, in accordance with the rules, have been entitled to vote in that procedure if they had received notice of it.
315. The requirement for entitlement to vote in the creditors' decision procedure to be in accordance with the rules will be no different from the requirement under the legislation as it stands for entitlement to vote in creditors' meetings held to decide whether to approve proposals for individual voluntary arrangements to be in accordance with the rules. The amendments made by subsection (3)(b) and (c) of clause 68 are needed as a consequence of changes to the procedure to be used by creditors when deciding whether to approve a proposal for an individual voluntary arrangement. There is no reason why provision about the creditors' entitlement to vote under the new procedure should not be in rules. There is therefore no reason to alter the existing delegated power in paragraph (2)(b) of Article 234.
316. Following the amendments to be made by subsections (4) and (5) of clause 70, paragraph (2)(b) of Article 236 will include a similar power to make rules for establishing a person's entitlement to vote in a creditors' decision procedure on whether to approve an individual voluntary arrangement.
317. Paragraph (2) of Article 234 corresponds to subsection (2) of section 260 of the Insolvency Act 1986.



## **Clause 70 of the Bill: Challenge of meeting's decision**

318. Subsections (4) and (5) of clause 70 amend paragraph (2) of Article 236 of the Insolvency Order. Paragraph (2) contains delegated powers to make rules.
319. Article 236 of the Insolvency Order enables an application to be made to the High Court on the grounds that an individual voluntary arrangement approved by the creditors at their meeting summoned under Article 231 unfairly prejudices the interests of a creditor, or that there has been some material irregularity at or in relation to the meeting.
320. Clause 70 of the Bill amends Article 236 to take account of the fact that the Bill provides that creditors are to make their decision whether or not to approve a proposal for an individual voluntary arrangement using a creditors' decision procedure.
321. The persons entitled to apply to the High Court under Article 236 are listed in paragraph (2) of that Article. The list includes, at subparagraph (2)(b) persons who were entitled, in accordance with the rules, to vote at the creditors' meeting or who would have been entitled, in accordance with the rules, to vote at it if they had received notice of it.
322. Subsections (4) and (5) of clause 70 amends paragraph (2)(b) of Article 236 so that the characterization of these two categories of person is changed. The first category will become persons who were entitled to vote in the creditors' decision procedure, the second will become persons who would have been entitled to vote in that procedure if they had received notice of it. The criterion for establishing a person's entitlement to vote will, in both cases, be that that their entitlement is "in accordance with the rules". This creates power to prescribe in rules what requirements or conditions have to be met for a person to be entitled to vote in the creditors' decision procedure.
323. The amendments made by subsections (4) and (5) of clause 70 to paragraph (2)(b) of Article 236 are to accommodate the change to the procedure to be used by creditors when deciding whether to approve a proposal for an individual voluntary arrangement. Entitlement to vote in the existing procedure is to be decided in accordance with the rules, there is no reason why the criterion for deciding whether a person is entitled to vote in the new procedure should be any different.
324. Following the amendments to be made by subsections (3)(b) and (c) of clause 68, paragraph (2)(b) of Article 234 will include a similar power to make rules for establishing a person's entitlement to vote in a creditors' decision procedure on whether to approve an individual voluntary arrangement.

325. Paragraph (2)(b) of Article 236 corresponds to subsection (2)(b) of section 262 in the Insolvency Act 1986.

### **Clause 78 of the Bill: Trustee's vacation of office**

326. Article 271 of the Insolvency Order makes provision as to how the trustee of a bankrupt's estate can be removed from office, resign, or vacate office. Subsection (2) of clause 78 amends paragraph (1) of Article 271, subsection (4) inserts new paragraphs (3A) and (3B) and subsection (6) inserts new paragraph (7A). The amendments made by subsection (2) will leave in place power in paragraph (1) of Article 271 to make delegated legislation in the form of rules. New paragraphs (3A) and (7A) each contain a power to make delegated legislation in the form of rules.

### **The amendment made by subsection (2)**

327. Paragraph (1) in Article 271 as it stands, provides that the trustee of a bankrupt's estate can be removed either by an order of the High Court or by a general meeting of the bankrupt's creditors summoned specially for the purpose in accordance with the rules.
328. The amendment made by subsection (2) of clause 78 will remove the reference to a general meeting. Paragraph (2) will instead provide that the trustee of a bankrupt's estate can be removed by an order of the High Court or by a decision of the bankrupt's creditors made by a creditors' decision procedure instigated in accordance with the rules.
329. The fact that paragraph (1) as it stands provides that the summoning of a general meeting of the creditors for the purpose of removing the trustee is to be done in accordance with the rules provides the necessary power to enable a procedure for the creditors to use to summon such a meeting to be set out in rules. The instigation of a creditors' decision procedure equates to summoning a meeting. There is no reason why the delegated power to enable a procedure to be put in place for the creditors to use to instigate the new procedure should be any different. There is no reason why the power to make provision about how a decision procedure is to be instigated should not likewise provide that the provision is to be in rules made by the Department of Justice, with the concurrence of the Department for the Economy and subject to negative resolution in the Assembly. There is therefore no reason to change the requirement for the instigation of a creditors' decision procedure to remove the trustee to be in accordance with the rules.
330. Paragraph (1) in Article 271 corresponds to subsection (1) in section 298 of the Insolvency Act 1986.

### **Insertion of new paragraphs (3A) and (3B) into Article 271 of the Insolvency Order by clause 78(4) of the Bill**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

331. Subsection (4) of clause 78 inserts new paragraphs (3A) and (3B) into Article 271 of the Insolvency Order. New paragraph (3A) includes a delegated power to make rules.
332. New paragraph (3A) provides that where a bankrupt's creditors decide to remove a trustee, they may in accordance with the rules appoint another person to take over from them as trustee.
333. With meetings to remove trustees being done away creditors will no longer have the opportunity afforded by a meeting to appoint another person to take over as trustee if they decide to remove the existing one. A procedure will need to be put in place to enable them to do so. The fact that new paragraph (3A) provides that the replacement is to be made in accordance with the rules will enable a procedure which the creditors can use to appoint a replacement trustee to be set down in rules. It is normal practice for insolvency procedures to be legislated for in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.
334. Paragraph (3A) inserted into Article 271 by subsection (4) of clause 78 corresponds to subsection (4A) in section 298 of the Insolvency Act 1986.

### **Insertion of new paragraph (7A) into Article 271 of the Insolvency Order by clause 78(6) of the Bill**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

335. Subsection (6) of clause 78 inserts new paragraph (7A) into Article 271 of the Insolvency Order. Subparagraph (a) of the new paragraph includes a delegated power to make rules.

336. Subparagraph (a) of the new paragraph (7A) will provide that a notice must not be given under paragraph (7) until the period prescribed by the rules as the period within which the bankrupt's creditors may object to the trustee's release has ended. Following amendment by clause 78(5) of the Bill, paragraph (7) will provide that the trustee vacates office on giving notice to the High Court that they have given notice under Article 304(2). The notice which the trustee is required to give under Article 304(2), as substituted by clause 84(3) is to the bankrupt's creditors, other than any who have opted out, and is to confirm that it appears to the trustee that their administration of the bankrupt's estate is for practical purposes complete.
337. In plain language, subparagraph (a) of new paragraph (7A) will provide that a trustee has to wait until the period allowed for the creditors to object to their release has ended before giving notice to the High Court that they have given notice to the bankrupt's creditors that their administration of the bankrupt's estate is for practical purposes complete.
338. The fact that subparagraph (a) of new paragraph (7A) refers to the period within which the bankrupt's creditors may object to the trustee's release being prescribed by rules constitutes power to provide in rules how long that period is to be. This will enable a limit to be set on the time allowed for creditors to object, thereby enabling the trustee to get their release. As prescription of the period is a matter of detail it is best provided for in delegated legislation. Prescription is to be in rules which will be subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.
339. Paragraph (3F) inserted into Article 272 of the Insolvency Order by subsection (3) of clause 79 will include a similar power to prescribe in rules the period allowed for the bankrupt's creditors to object to the trustee's release.
340. New paragraph (7A) inserted into Article 271 of the Insolvency Order by subsection (6) of clause 78 of the Bill corresponds to subsection (8A) of section 298 of the Insolvency Act.

#### **Clause 79 of the Bill: Release of trustee**

341. Paragraph (3) of Article 272 of the Insolvency Order, as it stands, makes provision about when the trustee of a bankrupt's estate is to have their release. Subsection (3) of clause 79 provides for paragraph (3) to be replaced by a set of paragraphs numbered (3) to (3G). Some of the substitute paragraphs provide for the trustee's release to be in accordance with rules.

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

### **Paragraph (3A)**

342. Paragraph (3A)(b) will apply where the trustee has been removed from office by a decision of the bankrupt's creditors and they have not decided against the trustee's release. The trustee will have their release with effect from the time at which notice is given to the High Court, in accordance with the rules, that they have ceased to hold office. The requirement for the notice be given to the High Court, in accordance with the rules constitutes power to prescribe in rules the procedure which is to be used to give the notice to the High Court. The provision for the trustee's release made by substitute paragraph (3A)(b) is similar to that made by sub-paragraph (a) of paragraph (3) of Article 272 as it stands, for the release of a trustee who has been removed from office by a meeting of the bankrupt's creditors which has not resolved against the trustee's release, including that the notice that they have ceased to hold office has to be given to the High Court in accordance with the rules.
343. Paragraph (3A)(b), as substituted by subsection (3) of clause 79 corresponds to sub-section (3)(a)(i) of section 299 of the Insolvency Act 1986.

### **Paragraph (3B)**

344. Substitute paragraph (3B) will apply where the trustee has died. Paragraph (3B) provides for the trustee to have their release, posthumously, with effect from the time at which notice is given to the High Court, in accordance with the rules, that they have ceased to hold office. The requirement for the notice be given to the High Court in accordance with the rules constitutes power to prescribe in rules the procedure which is to be used to give the notice to the High Court. Substitute paragraph (3B) re-states provision in sub-paragraph (a) of paragraph (3) of Article 272 as it stands, including that the notice has to be given to the High Court in accordance with the rules.
345. Paragraph (3B), as substituted by subsection (3) of clause 79, corresponds to sub-section (3)(a)(ii) of section 299 of the Insolvency Act 1986.

### **Paragraph (3E)**

346. Substitute paragraph (3E) will apply where the trustee has resigned. Paragraph (3E) provides for the trustee to have their release with effect from such time as may be prescribed. The existence of the delegated power to prescribe the time in rules will enable detailed provision about when that time will be to be included in the rules. Substitute paragraph (3E) re-states provision in sub-

paragraph (c) of paragraph (3) of Article 272 as it stands, including that the trustee is to have their release from such time as may be prescribed.

347. Paragraph (3E), as substituted by subsection (3) of clause 79, corresponds to sub-section (3)(c) of section 299 of the Insolvency Act 1986.

### **Paragraph (3F)**

348. Substitute paragraph (3F) will apply where the trustee has vacated office under Article 271(7), which the trustee does by giving notice to the High Court that they have given notice to the creditors that their administration of the bankrupt's estate is for practical purposes complete – see paragraphs 336 and 337. Paragraph (3F) provides that if any of the creditors object to the trustee's release before the end of the period for so objecting prescribed by the rules, the trustee has to apply to the Department for their release and their release does not take effect until such time as the Department determines. The citing of the power to prescribe in rules the period allowed for the creditors to object to the trustee's release replicates the citing of the same power in subparagraph (a) of paragraph (7A) inserted into Article 271 by subsection (6) of clause 78. Substitute paragraph (3F) corresponds to paragraph (3)(d)(i) in Article 272 as it stands. However, under the latter it is the passing of a resolution against the trustee's release at the final meeting of the bankrupts' creditors which takes place under the existing legislation which triggers the requirement for the trustee to apply to the Department for release. Also paragraph (3)(d)(i) in Article 272 as it stands does not contain any delegated power. Under paragraph (3F)(a) the requirement for the trustee to apply to the Department for release will instead be triggered by objections from creditors. This makes it essential to put in place a limit on the time allowed for creditors to object. That is the purpose of including power in paragraph (3F)(a) to prescribe in rules the period allowed for the creditors to object to the trustee's release. As prescription of the period is a matter of detail it is best provided for in delegated legislation. Prescription is to be in rules which will be subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.

349. Paragraph (3F), as substituted by subsection (3) of clause 79, corresponds to sub-section (3)(d)(i) in section 299 of the Insolvency Act 1986.

### **Clause 80 of the Bill: Vacancy in office of trustee**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

350. Subsection (2) of clause 80 replaces paragraph (3) of Article 273 of the Insolvency Order with substitute paragraphs (3) and (3A). New paragraph (3A) includes a delegated power to make rules.
351. Existing paragraph (3) provides for a vacancy in the office of trustee to be dealt with by the summoning of a general meeting of the bankrupt's creditors for the purpose of filling the vacancy.
352. In keeping with the policy of doing away with meetings, substitute paragraph (3) will instead provide that the official receiver can ask the bankrupt's creditors to appoint a trustee and must do so if one-tenth or more of the creditors by value request it.
353. Paragraph (3A) will provide that if the official receiver does ask the creditors to appoint a trustee, they may in accordance with the rules appoint one. This requirement for the appointment to be in accordance with the rules constitutes power to make rules to prescribe the procedure to be used by the creditors to make the appointment. It is normal practice for insolvency procedures to be legislated for in rules, which are subject to negative resolution by the Assembly. The reasons for negative resolution being considered to be an adequate form of control are the same as set out in paragraph 12.
354. Paragraph (3A) of Article 273 of the Insolvency Order corresponds to subsection (3A) in section 300 of the Insolvency Act 1986.

#### **Clause 81 of the Bill : Creditors' committee**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

355. Subsection (2) of clause 81 amends paragraph (1) of Article 274 of the Insolvency Order. The amendment to be made by subsection (2) of clause 81 preserves an existing power under paragraph (1) to make legislation in the form of rules.
356. Paragraph (1) gives a bankrupt's creditors the right, to establish a committee, known as the creditors' committee, to exercise functions conferred on it by or under the Insolvency Order. Paragraph (1) as it stands, provides that the establishment of a creditors' committee has to be done at a general meeting of the creditors and in accordance with the rules.

357. Subsection (2) of clause 81 does away with the requirement for a general meeting of the creditors. Paragraph (1) of Article 274 will simply provide that a bankrupt' creditors "may, in accordance with the rules, establish a committee ("the creditors committee") to exercise the functions conferred on it by or under this order."
358. The existing requirement for a creditors' committee to be established in accordance with the rules constitutes a delegated power to prescribe in rules how a creditors' committee is to be established. If there was a need for such a power while the establishment of a creditors' committee was a function of a creditor's meeting, the need must be even greater now that there is no meeting. The creditors need to be equipped with a procedure which they can use to establish a creditors' committee, should they wish to do so. That is the why the delegated power in paragraph (1) needs to be retained. It will enable rules to be made to provide the creditors with the necessary procedure.
359. It is normal practice for insolvency procedures to be legislated for in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.
360. Paragraph (1) of Article 274 of the Insolvency Order corresponds to subsection (1) of section 301 of the Insolvency Act 1986.

**Clause 87 of the Bill: Provision that may be included in individual insolvency rules**

361. Subsection (2) of clause 87 inserts new paragraph 10A into Schedule 5 to the Insolvency Order and subsection (3) makes minor textual amendments to existing paragraph 11.

**Paragraph 10A inserted into Schedule 6 to the Insolvency Order**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

362. Subsection (2) of clause 87 inserts a new power to make rules into schedule 6 to the Insolvency Order.
363. The repeal of Articles 266 to 268 of the Insolvency Order by paragraph 5 of Schedule 2 to the Bill will result in it no longer being possible for a trustee in bankruptcy to be appointed by a meeting of creditors. It will therefore be



necessary to establish an alternative procedure which creditors can use to appoint a trustee.

364. The insertion of new paragraph 10A into Schedule 6 to the Insolvency Order by clause 87(2) will enable provision to be included in individual insolvency rules to establish a procedure for the creditors to use.
365. As stated in paragraph 12, it is normal for procedures to be used in insolvency proceedings to be legislated for in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the same reasons as set out in paragraph 12.
366. Paragraph 10A inserted into Schedule 6 by clause 87(2) corresponds to paragraph 12A in Schedule 9 to the Insolvency Act 1986.

**The amendments made by subsection (3) of clause 87 to paragraph 11 of Schedule 6 to the Insolvency Order**

367. Paragraph 11 in Schedule 6 to the Insolvency Order as it stands provides power to make provision in individual insolvency rules as to the functions, membership and proceedings of a creditors' committee established under Article 274 of the Insolvency Order.
368. Subsection (3) of clause 87 makes two amendments to paragraph 11. Head (a) in subsection 3 of clause 87 will extend the power under paragraph 11 of Schedule 6, so that it can be used to make provision about the establishment of creditors' committees under Article 274 of the Insolvency Order, as well as about their functions, membership and proceedings. The power to include provision in rules about the establishment of a creditors' committee under Article 274 is needed because creditors will no longer have the opportunity to establish these committees at meetings and an alternative procedure to enable them to do so will need to be put in place. The other amendment to paragraph 11 is made by head (b) and is consequential on the first. It would not make sense for paragraph 11 to be left stating that provision can be made as to the establishment of a committee already established under Article 274. The amendment will rectify this, by providing for paragraph 11 to instead refer to a committee provided for by Article 274.
369. Paragraph 11 in Schedule 6 corresponds to paragraph 13 in Schedule 9 to the Insolvency Act 1986.

**Clause 90 of the Bill: Creditors not required to prove small debts: company insolvency**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

370. Clause 90 inserts new paragraph 13A into Schedule 5 to the Insolvency Order.

371. Paragraph 13A is a power to include in rules provision to enable a creditor who has not proved a small debt to be treated as if they have done so for purposes relating to the distribution of a company's property. The existence of such a provision in the rules would allow office-holders in corporate insolvency proceedings to pay a dividend to a creditor even though the creditor had not submitted a proof of debt claim. However it would only be possible for the office-holder to do this where the debt owed to the creditor is below a prescribed amount (the intention is that this will be set initially at £1,000). This purpose is to save creditors in company insolvency proceedings adding to their losses through by having to pay staff to prepare claims where the amount due from the insolvent company is comparatively small.

372. There are a number of reasons why the provision would be best included in subordinate legislation under a delegated power. The provision is innovative and could more readily be altered, should the need arise, if it is in subordinate legislation. There will be a need for the precise circumstances in which a creditor can be deemed to have submitted a claim to be set out in detail, together with any requirements which they and the office-holder will need to comply with. It is standard practice for matters of detail to be included in rules. Allowing dividends to be paid to creditors who have not submitted a claim increases the risks of creditors being paid more than what they are due or of payments being made when no debt is due. To mitigate these risks there needs to be a cap on the amount of debt in respect of which a dividend can be paid without a claim having to be submitted. That cap may need to be changed and this can more readily done if the cap is set by subordinate legislation.

373. The power is to include the provision in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the same reasons as set out in paragraph 12.

374. New paragraph 13A in Schedule 5 corresponds to paragraph 13A in Schedule 8 to the Insolvency Act 1986.

**Clause 91 of the Bill: Creditors not required to prove small debts: individual insolvency**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

375. Clause 91 inserts new paragraph 16A into Schedule 6 to the Insolvency Order.

376. Paragraph 16A is a power to include in rules provision to enable a creditor who has not proved a small debt to be treated as if they have done so for purposes relating to the distribution of a bankrupt's estate. The existence of such a provision in the rules would allow trustees in bankruptcy to pay a dividend to a creditor even though the creditor had not submitted a proof of debt claim. However it would only be possible trustee to do this where the debt owed to the creditor is below a prescribed amount (the intention is that this will be set initially at £1,000). This purpose is to save creditors in bankruptcies adding to their losses through having to pay staff to prepare claims where the amount they are owed is comparatively small.

377. There are a number of reasons why the provision would be best included in subordinate legislation under a delegated power. The provision is innovative and could more readily be altered, should the need arise, if it is in subordinate legislation. There will be a need for the precise circumstances in which a creditor can be deemed to have submitted a claim to be set out in detail, together with any requirements which they and the trustee will need to comply with. It is standard practice for matters of detail to be included in rules. Allowing dividends to be paid to creditors who have not submitted a claim increases the risks of creditors being paid more than what they are due or of payments being made when no debt is due. To mitigate these risks there needs to be a cap on the amount of debt in respect of which a dividend can be paid without a claim having to be submitted. That cap may need to be changed and this can more readily done if the cap is set by subordinate legislation.

378. The power is to include the provision in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the same reasons as set out in paragraph 12.

New paragraph 16A in Schedule 6 corresponds to paragraph 18A in Schedule 9 to the Insolvency Act 1986.

### **Clause 94 of the Bill : Power to add to supplies protected under the 1989 Order**

*Power conferred on: The Department for the Economy*

*Power exercisable by: Regulations*

*Assembly procedure: Draft affirmative procedure*

379. Clause 94 of the Bill is a Henry VIII power enabling the Department to amend Article 197 of the Insolvency Order using regulations.
380. Article 197 exists to facilitate companies which are in insolvency proceedings being able to continue trading if the office-holder considers that this would facilitate their rescue or sale. If the company is to be able to continue trading it will almost certainly need to have continued access to utility services, such as water, gas and electricity. Article 197 is intended to ensure that it does.
381. Paragraph (2) of Article 197 forbids suppliers of any of the supplies listed in paragraph (3) refusing to continue the supply unless outstanding charges for supplies made before the start of the insolvency proceedings are paid. There is a safeguard for suppliers in that they can insist on the office-holder personally guaranteeing that any supplies made subsequent to the start of the insolvency proceedings will be paid for.
382. The power afforded to the Department by clause 94 would enable the Department to add two further categories of supplies to those listed in paragraph (3) of Article 197.
383. Subsection (1)(a) of clause 94 will allow “a supply of electricity, gas, water or sewerage services or communication services by a specified description of person” to be added. This will enable Article 197 to be extended to cover cases where the contract for the supply of a utility service is with what is termed an “on-seller” such as a landlord, instead of directly with the utility supplier. Specifying types of on-seller is a matter of detail best left to be dealt with in subordinate legislation. Providing for the matter to be dealt with in subordinate legislation will also provide the flexibility to specify additional types of on-seller, should these emerge.
384. Subsection (1)(b) of clause 94 would allow “a supply of a specified description of goods or services by a specified description of person where the supply is for the purposes of enabling or facilitating anything to be done by electronic means” to be added. This would enable Article 197 to be extended to cover the supply of electronic services, such as broadband, which are indispensable to most businesses to-day. Specification of electronic goods and services and their suppliers is a matter of detail. The nature of electronic goods and services and the way in which they are supplied is constantly and rapidly changing. This makes it essential to be able to quickly add to the categories of such supplies listed in paragraph (3) of Article 197. Making it possible for this to be done using subordinate legislation provides the necessary flexibility to do this.
385. The power under heads (a) and (b) of clause 94(1) to add to the supplies listed in paragraph (3) of Article 197 would be exercisable in regulations, which under clause 100(4), would be subject to draft affirmative procedure in the Assembly. This form of Assembly control is considered appropriate because the

amendments to be made by the regulations would be to provision in primary legislation.

386. Clause 94(1) corresponds to section 92(1) of the Enterprise and Regulatory Reform act 2013.

**Clause 95 of the Bill: Power to give further protection to essential supplies**

*Power conferred on: The Department for the Economy*

*Power exercisable by: Regulations*

*Assembly procedure: Draft affirmative procedure*

387. Subsection (1) of clause 95 delegates to the Department power to make regulations for the purpose of rendering inoperative insolvency-related terms in contracts for the supply of essential goods and services, as listed in Article 197(3), to companies. Insolvency-related terms are provisions in a contract under which would result in the contract or the supply automatically terminating, or which would permit the supplier to terminate the contract or supply, on a company entering administration or a voluntary arrangement taking effect.
388. Clause 95 includes requirements for any regulations made under subsection (1) to contain safeguards to protect the interests of suppliers.
389. Clause 95 is not stated as a Henry VIII power. However it corresponds to section 93 of the Enterprise and Regulatory Reform Act 2013 applying in GB, subsection (1) of which gives the Secretary of State the same power to make orders as the Department for the Economy will have to make regulations under subsection (1) of clause 95. The power afforded to the Secretary of State has been used to enable the insertion by Article (4) of the Insolvency (Protection of Essential Supplies) Order 2015 (S.I. 2015 No. 989) of new section 233A into the Insolvency Act 1986. New section 233A provides for the further protection of essential supplies, as envisaged by section 93 of the Enterprise and Regulatory Reform Act 2013. Provision corresponding to section 233A of the Insolvency Act 1986 was inserted into the Insolvency Order as Article 197A by section 17 of the Corporate Insolvency and Governance Act 2020. Nonetheless it is still considered prudent to include provision corresponding to section 93 of the Enterprise and Regulatory Reform Act 2013 in the Bill so that if any further orders are made in GB using the powers under section 93 of the Enterprise and Regulatory Reform Act 2013, the Department will be in a position to replicate them.
390. Legislative Counsel has explained that the power in Northern Ireland is to make regulations rather than orders because the use of orders as a form of subordinate legislation is becoming defunct.

391. Additional provision about what the power to make regulations under clause 95 includes and excludes are in subsections (2) and (3) of clause 100. Under subsection (4) of clause 100, regulations made under clause 95 would be subject to draft affirmative resolution in the Assembly. It is appropriate that they should be subject to this level of Assembly control given their potential to interfere with the operation of terms in contracts.
392. Clause 95 corresponds to section 93 of the Enterprise and Regulatory Reform Act 2013.

**Clause 98 of the Bill: Power to add to supplies protected under the Order**

*Power conferred on: The Department for the Economy*

*Power exercisable by: Regulations*

*Assembly procedure: Draft affirmative procedure*

393. Clause 98 of the Bill is a Henry VIII power enabling the Department to amend Article 343 of the Insolvency Order using regulations.
394. Article 343 exists to facilitate businesses being carried on by individuals who have been made bankrupt or who have entered a voluntary arrangement continuing to trade if the office-holder considers that this would facilitate their rescue or sale. For any business to be able to continue trading it will almost certainly need to have continued access to utility services, such as water, gas and electricity. Article 343 is intended to ensure that it does.
395. Paragraph (2) of Article 343 forbids suppliers of any of the supplies listed in paragraph (4) refusing to continue the supply unless outstanding charges for supplies made before the date of the bankruptcy order or the date on which the individual voluntary arrangement was approved are paid. There is a safeguard for suppliers in that they can insist on the office-holder personally guaranteeing that any supplies made after those dates will be paid for.
396. The power afforded to the Department by clause 98 would enable the Department to add two further categories of supplies to those listed in paragraph (4) of Article 343.
397. Subsection (1)(a) of clause 98 will allow “a supply of electricity, gas, water or sewerage services or communication services by a specified description of person” to be added. This will enable Article 343 to be extended to cover cases where the contract for the supply of a utility service is with what is termed an “on-seller” such as a landlord, instead of directly with the utility supplier. Specifying types of on-seller is a matter of detail best left to be dealt with in

subordinate legislation. Providing for the matter to be dealt with in subordinate legislation will also provide the flexibility to specify additional types of on-seller, should these emerge.

398. Subsection (1)(b) of clause 98 would allow “a supply of a specified description of goods or services by a specified description of person where the supply is for the purposes of enabling or facilitating anything to be done by electronic means” to be added. This would enable Article 343 to be extended to cover the supply of electronic services, such as broadband, which are indispensable to most businesses to-day. Specification of electronic goods and services and their suppliers is a matter of detail. The nature of electronic goods and services and the way in which they are supplied is constantly and rapidly changing. This makes it essential to be able to quickly add to the categories of such supplies listed in paragraph (4) of Article 343. Making it possible for this to be done using subordinate legislation provides the necessary flexibility to do this.
399. The power under heads (a) and (b) of clause 98(1) to add to the supplies listed in paragraph (4) of Article 343 would be exercisable in regulations, which under clause 100(4), would be subject to draft affirmative procedure in the Assembly. This form of Assembly control is considered appropriate because the amendments to be made by the regulations would be to provision in primary legislation.
400. Clause 98 corresponds to section 92(2) of the Enterprise and Regulatory Reform act 2013.

### **Clause 99 of the Bill: Power to give further protection to essential supplies**

*Power conferred on: The Department for the Economy*

*Power exercisable by: Regulations*

*Assembly procedure: Draft affirmative procedure*

401. Subsection (1) of clause 99 delegates to the Department power to make regulations for the purpose of rendering inoperative insolvency-related terms in contracts for the supply of essential goods and services as listed in Article 343(4) to businesses being carried on by individuals. Insolvency-related terms are provisions in a contract under which would result in the contract or the supply automatically terminating, or which would permit the supplier to terminate the contract or supply, on a voluntary arrangement proposed by an individual being approved.
402. Clause 99 includes requirements for any regulations made under subsection (1) to contain safeguards to protect the interests of suppliers.

403. Clause 99 is not stated as a Henry VIII power. However it corresponds to section 94 of the Enterprise and Regulatory Reform Act 2013 applying in GB, subsection (1) of which gives the Secretary of State the same power to make orders as the Department for the Economy will have to make regulations under subsection (1) of clause 99. The power afforded to the Secretary of State has been used to enable the insertion by Article (5) of the Insolvency (Protection of Essential Supplies) Order 2015 (S.I. 2015 No. 989) of new section 372A into the Insolvency Act 1986. New section 372A provides for the further protection of essential supplies, as envisaged by section 94 of the Enterprise and Regulatory Reform Act 2013. Clause 97(1) of the Bill will insert provision corresponding to section 372A of the Insolvency Act 1986 into the Insolvency Order as Article 343A. Nonetheless it is still considered prudent to include provision corresponding to section 94 of the Enterprise and Regulatory Reform Act 2013 in the Bill so that if any further orders are made in GB using the powers under section 94 of the Enterprise and Regulatory Reform Act 2013, the Department will be in a position to replicate them.
404. Legislative Counsel has explained that the power in Northern Ireland is to make regulations rather than orders because the use of orders as a form of subordinate legislation is becoming defunct.
405. Additional provision about what the power to make regulations under clause 99 includes and excludes are in subsections (2) and (3) of clause 100. Under subsection (4) of clause 100, regulations made under clause 99 would be subject to draft affirmative resolution in the Assembly. It is appropriate that they should be subject to this level of Assembly control given their potential to interfere with the operation of terms in contracts.
406. Clause 99 corresponds to section 94 of the Enterprise and Regulatory Reform Act 2013.

### **Clause 101 of the Bill: Remote attendance at meetings**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

407. Clause 101 inserts three new Articles, 208ZH, 208ZI and 345D, into the Insolvency Order, each of which contains delegated powers to make rules.

### **Article 208ZH: Remote attendance at meetings**

408. Article 208ZH will apply where an office-holder in company insolvency proceedings is summoning a meeting of the company members. Paragraph (2) will provide that if the office-holder, otherwise known as the convener, considers



it appropriate, the meeting “may be conducted and held in such a way that persons who are not present together at the same place may attend it”. This will enable meetings of the members to take place remotely.

- 409. Article 208ZH corresponds to what was previously Article 208ZA of the Insolvency Order as inserted by section 1 of the Insolvency (Amendment) Act (Northern Ireland) 2016. Section 1 has not been commenced and is repealed by subsection (3)(a) of clause 101.
- 410. Paragraph (8) of Article 208ZH give company members rights to insist on a physical meeting. Paragraph (8) applies where a notice of a meeting does not specify a place at which it is to be held. Paragraph (8) places the convener under a duty to specify a place if members request it. For the request to be valid, the conditions under head (b) and (c) of paragraph (8) have to be met. The condition under head (b) is that the request is made in accordance with the rules. The condition under head (c) is that the request has to be made by members with at least 10% of the total voting rights of all the members.
- 411. The requirement under head (b) for the request to be made in accordance with the rules constitutes a power to prescribe in rules a procedure which company members summoned to a virtual meeting can use to request that the meeting take place at an actual physical location.
- 412. As stated in paragraph 12, it is normal for procedures to be used in insolvency proceedings to be legislated for in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the same reasons as set out in paragraph 12.
- 413. Paragraph (8) of Article 208ZH corresponds to subsection (9) of section 246A of the Insolvency Act 1986.

#### **Article 208ZI: Use of websites**

- 414. Article 208ZI applies where there are requirements under the Insolvency Order or the rules for office holders in corporate insolvency proceedings to send notices or other documents or information to someone. Article 208ZI will provide that such requirements are to be treated as having been satisfied if the notice, document or information is made available on a website. This is subject to the proviso that the display of the notice etc. on the website must be done in accordance with the rules and in such circumstances as may be prescribed. “Prescribed” will, in accordance with the definition of that term in Article 2(2) of the Insolvency Order, mean prescribed in rules.
- 415. Article 208ZI corresponds to what was previously Article 208ZB of the Insolvency Order as inserted by section 1 of the Insolvency (Amendment) Act (Northern Ireland) 2016. Section 1 has not been commenced and is repealed by subsection (3)(a) of clause 101.
- 416. The fact that the display of notices etc. has to be done in accordance with the rules constitutes power to prescribe requirements which have to be met when

displaying documents on a website as an alternative to sending copies of the notices or documents to individuals. It would, for example, enable requirements to be put in place aimed at ensuring that persons entitled to see the notice or document are made aware that it has been placed on the website. Providing that a notice or document can be placed on a website as an alternative to being sent to persons “in prescribed circumstances” ensures that a legislative mechanism exists which can be used, if necessary, to limit the use of this form of communication to situations in which its use is appropriate and is not in conflict with other legislative requirements.

417. Prescription the circumstances in which notices etc. can be displayed on websites as an alternative to be sent out and requirements which have to be met if doing so are matters best left to delegated legislation for two reasons. Firstly they are matters of detail. Secondly, the use of websites is a novel technique, and it is desirable to have the flexibility which delegated legislation offers to be able to readily alter the circumstances in which it can be used should any unforeseen need to do so arise.

418. It is normal practice for any matters relating to insolvency procedure to be legislated for in rules which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the same reasons as set out in paragraph 12.

419. Article 208ZI corresponds to section 246B of the Insolvency Act 1986.

#### **Article 345D: Use of websites**

420. Article 345D is inserted into the Insolvency Order by subsection (2) of clause 101. Article 345D will apply where an individual has been made bankrupt or an interim receiver of their property has been appointed or the individual is proposing to enter, or has entered, an individual voluntary arrangement. Article 345D will provide that in these cases, any requirements under the Insolvency Order or the rules for office-holders to send notices or other documents or information to someone will be satisfied if the notice, document or information is made available on a website. This is subject to the proviso that the display of the notice etc. on the website must be done in accordance with the rules and in such circumstances as may be prescribed. “Prescribed” will, in accordance with the definition of that term in Article 2(2) of the Insolvency Order, mean prescribed in rules.

421. Article 345D corresponds to what was previously Article 345B of the Insolvency Order as inserted by section 1 of the Insolvency (Amendment) Act (Northern Ireland) 2016. Section 1 has not been commenced and is repealed by subsection (3)(a) of clause 101.

422. The purpose in including power in Article 345D to make delegated legislation in the form of rules establishing requirements which have to be met when displaying notices etc, on a website as an alternative to sending them out and prescribing the circumstances in which this can be done is the same as mentioned in paragraphs 416 and 417. The reason that negative resolution in

the Assembly is considered to be an adequate form of control for the same as set out in paragraph 12.

423. Article 345D corresponds to section 379B of the Insolvency Act 1986.

### **Clause 119 of the Bill: Power to make consequential amendments, repeals and revocations**

*Power conferred on the Department*

*Power exercisable by Order*

*Assembly procedure: orders which alter Northern Ireland legislation are subject to draft affirmative procedure, other orders are subject to negative resolution*

424. Sub-section (1) of clause 119 gives the Department power to make consequential provisions by order, including the repeal, revocation, amendment or modification of statutory provisions. Sub-section (2) provides that such orders can include transitional, transitory or saving provisions.

### **Clause 120 of the Bill: Commencement**

*Power conferred on the Department*

*Power exercisable by Order*

*Assembly procedure: none required*

425. Sub-section (1) of clause 120 provides for Part 9 (Protection of Essential Supplies) and Part 13 (General) to come into operation on the day after the day on which the Bill receives Royal Assent. Clause 120(2) provides the Department with the power to bring the remaining provisions into operation at the appropriate time and clause 120(3) provides for orders made for this purpose to contain transitional or saving provisions. As is normal, such commencement orders are not subject to any Assembly procedure.

## **PROVISIONS IN SCHEDULE 1 TO THE BILL WHICH CREATE NEW DELEGATED POWERS OR WHICH AMEND OR ALTER THE EFFECT OF EXISTING ONES**

### **Paragraph 7 of Schedule 1 to the Bill**

426. Paragraph (7) of Schedule 1 to the Bill amends sub-paragraph (2) of paragraph 53 in Schedule B1 to the Insolvency Order. The amendment is to take account of the policy that creditors should take decisions in ways which do not involve a physical meeting. Sub-paragraph (2) of paragraph 53 includes two delegated powers to make legislation in the form of rules.

427. Provision in Schedule B1, as it stands, requires an administrator to send a statement of proposals for achieving the purposes of the administration to the

creditors. Paragraph 52 of Schedule B1 provides that the statement has to be accompanied by an invitation to an initial creditors' meeting. However sub-paragraph (1) of paragraph 53 provides that an invitation to an initial creditors' meeting does not have to be sent if any of the facts mentioned in that sub-paragraph apply. These are that the administrator thinks that,

- The company has sufficient property to enable all the creditors to be paid in full, or
- The company has insufficient property to enable a distribution to be made to unsecured creditors other than by virtue of Article 150(2)(a), or
- Neither of the objectives in paragraph 4(1)(a) and (b) of Schedule B1 can be achieved.

428. If the administrator takes advantage of the dispensation under sub-paragraph (1) of paragraph 53 so that the statement sent to the creditors is not accompanied by an invitation to an initial creditors' meeting, the creditors can still insist that one is held. Sub-paragraph (2) of paragraph 53 as it stands, places an administrator under a duty to summon an initial meeting of the creditors if requested to so by creditors with debts amounting to at least ten percent of the company's total debt. The request has to be made in the prescribed manner and in the prescribed period.

429. Amendments made by the Bill will result in the administrator no longer being required to invite the creditors to an initial meeting. The administrator will instead be required, within ten weeks of the administration starting, to seek a decision from the creditors as to whether they approve the administrator's proposals. The dispensation under sub-paragraph (1) of paragraph 53 will therefore become a dispensation from having to seek a decision if any of the facts stated in paragraph 53(1) apply.

430. The amendment made by paragraph 7 of Schedule 1 to the Bill to paragraph 53(2) of Schedule B1 will result in creditors no longer having the right to insist on an initial creditors' meeting being held. Their right will instead be, if creditors who are owed at least ten percent of the total debt owed request it, to ask for a decision to be sought from the creditors as to whether they approve the proposals set out in the administrator's statement. The requirements for the request to be made in the prescribed manner and in the prescribed period and therefore the power to make provision about these matters in rules, will remain the same. The only change will be to what can be requested, which will be a decision by the creditors, not an initial creditors meeting.

431. Because the procedure which the creditors can ask to have carried out is changing it does not follow that there should be any alteration to the power to establish in rules the manner in which their request has to be made or the period within which it has to be made. Rules made under the delegated power in paragraph 53(2) will continue to be subject to negative resolution in the Assembly. This was considered to be a satisfactory form of control when the creditors' right was to request a meeting to consider whether to approve the

administrators' proposals and there is no reason why it should not be a considered a satisfactory form of control now that their right will be to request that a decision be sought for the same purpose. No reason therefore exists to alter the delegated powers in paragraph 53(2) of Schedule B1.

432. Paragraph 53(2) of Schedule B1 corresponds to paragraph 52(2) of Schedule B1 to the Insolvency Act 1986.

### **Paragraph 8 of Schedule 1 to the Bill**

433. Paragraph 8 of Schedule 1 to the Bill replaces sub-paragraph (3) of paragraph 53 in Schedule B1 to the Insolvency Order with a substitute. The substitution is required for the same reason as the amendment made by paragraph 7 of Schedule 1; it is to take account of the policy that creditors should take decisions in ways which do not involve a physical meeting. Sub-paragraph (3) of paragraph 53 includes a delegated power to make legislation in the form of rules.
434. Existing sub-paragraph (3) of paragraph 53 provides that a meeting requested under sub-paragraph (2), that is a meeting requested by the creditors, must be summoned for a date in the prescribed period.
435. As the Bill will provide that any decision by the creditors as to whether to approve the administrator's proposals is to be made in ways which do not involve a meeting it will no longer be appropriate for the power under sub-paragraph (3) to be to set a time limit for the holding of a meeting. Paragraph 8 of Schedule 1 to the Bill replaces sub-paragraph (3) with a substitute, which will instead provide that where a decision is sought by virtue of sub-paragraph (2), that is at the request of the creditors, it is the initial decision date as defined in paragraph 52(3) which has to be within the prescribed period.
436. Paragraph 52(3) defines the initial decision date in two different ways, according to whether the decision is sought using a deemed consent procedure or a qualifying decision procedure.
437. If the decision is sought using a deemed consent procedure, the initial decision date is the date on which the decision will be made, if the creditors approve the proposal. If the decision is sought using a qualifying decision procedure, the initial decision date will be either the date on which the decision is to be treated as made, or the actual date on which the decision is made, if earlier.
438. Providing that the initial decision date has to be within the prescribed period will ensure that power exists to prescribe in rules, subject to negative resolution in the Assembly, a limit to the length of the period which the administrator can allow for the creditors to make their decision as to whether to approve the administrator's proposals. The power is needed for exactly the same reason as the power, under sub-paragraph (3) as it stands, to prescribe in rules the period within which a meeting requested by the creditors for the purpose of deciding whether to approve a voluntary arrangement must be held. It is to ensure that the creditors are afforded the right to decide whether or not to allow the

administration to continue, before it has progressed too far. As the reason for the existence of the power is unchanged, there is no need for any alteration to that power, or to the form of Assembly procedure to which its exercise is subject.

439. Paragraph 53(3) of Schedule B1 corresponds to paragraph 52(3) of Schedule B1 to the Insolvency Act 1986.

#### **Paragraph 11 of Schedule 1 to the Bill**

440. Paragraph 11 of Schedule 1 to the Bill makes minor amendments to sub-paragraph (2) of paragraph 54 in Schedule B1 to the Insolvency Order. The amendments are to take account of the policy that creditors should take decisions in ways which do not involve a physical meeting.
441. Sub-paragraph (2) of paragraph 54 as it stands provides that as soon as possible after an initial creditors' meeting has ended, the administrator has to report any decision taken to the High Court, the registrar, the Financial Conduct Authority and "such other persons as may be prescribed". The fact that the decision has to be reported to "such other persons as may be prescribed" constitutes power to prescribe in rules, subject to negative resolution in the Assembly, persons other than those mentioned in sub-paragraph (2), to whom the administrator is required to report any decision made by the creditors at their initial meeting held to decide whether to approve the administrator's proposals.
442. The amendments made by paragraph 11 of Schedule 1 to the Bill will remove the reference in sub-paragraph (2) of paragraph 54 to an initial creditors' meeting. The delegated power under sub-paragraph (2) will therefore become simply to prescribe in rules persons, other than those listed in sub-paragraph (2) itself, to whom the decision made by the creditors as to whether to approve the administrator's proposals has to be reported. The purpose served by the power will not change; it is to make it possible to specify in subordinate legislation persons who should be informed as to whether the creditors have approved the administrator's proposals or not. There is therefore no need for any alteration to the power.
443. Paragraph 54(2) of Schedule B1 corresponds to paragraph 53(2) of Schedule B1 to the Insolvency Act 1986.

#### **Paragraph 17 of Schedule 1 to the Bill**

444. Paragraph 17 of Schedule 1 to the Bill makes minor amendments to sub-paragraph (6) of paragraph 55 in Schedule B1 to the Insolvency Order. The amendments are to take account of the policy that creditors should take decisions in ways which do not involve a physical meeting.
445. Paragraph 55 of Schedule B1 as it stands, applies where an administrator is proposing to revise proposals approved by the creditors at their initial meeting and the administrator thinks that the revision is substantial. The administrator

has to present a statement of the proposed revision, in the prescribed form, to the creditors at a meeting. Sub-paragraph (5) enables the creditors, at this meeting, to either approve the proposed revision without modification, or to approve it with modification to which the administrator consents.

446. Amendments made by paragraphs 12 to 16 of Schedule 1 to the Bill will result in the creditors making their decision without attending a physical meeting.
447. Sub-paragraph (6) of paragraph 55 as it stands, provides that as soon as possible after a creditors' meeting, at which a proposed revision has been presented, has ended, the administrator has to report any decision taken to the High Court, the registrar, the Financial Conduct Authority and "such other persons as may be prescribed". The fact that the decision has to be reported to "such other persons as may be prescribed" constitutes power to prescribe in rules, subject to negative resolution in the Assembly, persons other than those mentioned in sub-paragraph (6), to whom the administrator is required to report any decisions made by the creditors at their meeting.
448. The amendments made by paragraph 17 of Schedule 1 to the Bill will remove the reference to a meeting in sub-paragraph (6) of paragraph 55. The delegated power under sub-paragraph (6) will become power to prescribe in rules persons, other than those listed in sub-paragraph (6) itself, to whom whatever decision the creditors make has to be reported. The purpose in having the power will remain unchanged; it is to make it possible to specify in subordinate legislation persons who should be informed as to whether the creditors have approved the revision being proposed by the administrator or not. There is therefore no need for any alteration to the power.
449. Paragraph 55(6) of Schedule B1 corresponds to paragraph 54(6) of Schedule B1 to the Insolvency Act 1986.

### **Paragraph 20 of Schedule 1 to the Bill**

450. Paragraph 20 of Schedule 1 to the Bill amends sub-paragraph (1) of paragraph 57 in Schedule B1 to the Insolvency Order. The amendments are to take account of the policy that creditors should take decisions in ways which do not involve a physical meeting.
451. Sub-paragraph (1)(a) of paragraph 57 in Schedule B1, as it stands, places an administrator under a duty to summon a creditors' meeting if requested to do so by creditors with debts amounting to at least ten percent of the company's total debt. The request has to be made in the prescribed manner.
452. The amendments made by paragraph 20 of Schedule 1 to the Bill to paragraph 57(1) of Schedule B1 will result in the creditors' right under sub-paragraph (a) of paragraph 57(1) to request the holding of a creditors' meeting being replaced by a right to request that a decision be sought from the creditors. For the request to result in the administrator coming under a duty to seek a decision from the creditors on any matter it will have to have been made by creditors who are owed at least ten percent of the total debt owed by the company and it

will have to have been made in the prescribed manner. The requirement for the request to be made in the prescribed manner will ensure that power exists to prescribe in rules the procedure which creditors are to use should they wish to ask an administrator to seek a decision from the creditors on any matter.

453. Because the procedure which the creditors can ask to have carried out is changing it does not follow that there should be any alteration to the power to establish in rules the manner in which their request is to be made. Rules made under the delegated power in paragraph 57(1)(a) will continue to be subject to negative resolution in the Assembly. This was considered to be a satisfactory form of control when the creditors' right was to request a meeting, and there is no reason why it should not be considered a satisfactory form of control now that their right will be to request that a decision be sought. No reason therefore exists to alter the delegated power in paragraph 57(1)(a) of Schedule B1.
454. Paragraph 57(1) of Schedule B1 corresponds to paragraph 56(1) of Schedule B1 to the Insolvency Act 1986.

### **Paragraph 22 of Schedule 1 to the Bill**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

455. Paragraph 22 of Schedule 1 to the Bill amends sub-paragraph (1) of paragraph 58 in Schedule B1 to the Insolvency Order. The amendment is to take account of the policy that creditors should take decisions in ways which do not involve a physical meeting and will result in a delegated power to make rules being included in sub-paragraph (1) of paragraph 58 of Schedule B1.
456. Sub-paragraph (1) as it stands gives creditors the right, exercisable during meetings held in the course of an administration, to establish a creditors committee. Sub-paragraph (2) provides that a creditors' committee is to exercise functions conferred on it by or under the Insolvency Order.
457. The amendment made by paragraph 22 of Schedule 1 will ensure that creditors continue to have the right to establish a committee, should they wish to do so, despite the abolition of creditors' meetings. It will do so by removing the reference to a meeting in sub-paragraph (1) of paragraph 58 in Schedule B1 leaving that provision to simply state that the company's creditors may, in accordance with the rules, establish a creditors' committee.
458. Providing that the establishment of a creditors' committee has to be done in accordance with the rules constitutes a delegated power to make rules about how a creditors' committee is to be established. Given that it will no longer be possible for the creditors to establish a committee while attending meetings, it will be essential to put in place an alternative procedure which they can use to



establish a creditors' committee should they wish to do so. That is the purpose of the delegated power. It will enable the creditors in a company administration to be equipped with a procedure which they can use to establish a creditors' committee, should they wish to do so.

459. It is normal practice for insolvency procedures to be legislated for in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.
460. Paragraph (58)(1) of Schedule B1 corresponds to paragraph 57(1) of Schedule B1 to the Insolvency Act 1986.

## **PROVISIONS IN SCHEDULE 2 TO THE BILL WHICH ALTER THE EFFECT OF AN EXISTING DELEGATED POWER**

### **Paragraph 8 of Schedule 2 to the Bill**

461. Paragraph 8 of Schedule 2 to the Bill amends legislative references in paragraph (3) of Article 271 of the Insolvency Order which, following amendments made by clause 78 of the Bill, will set limits on when a creditors' decision procedure can be instigated for the purpose of removing a trustee in bankruptcy. This will affect the ambit of the power under paragraph (1) of Article 271 to make rules.
462. Paragraph (3) of Article 271, as it stands, establishes that there are circumstances in which a general meeting of the bankrupt's creditors for the purpose of replacing a trustee cannot be summoned unless certain conditions are satisfied. These circumstances are,
- (a) The official receiver is trustee by virtue of Article 266(3) or 268(4).
  - (b) The trustee has been appointed by the Department
  - (c) The trustee has been appointed by the High Court, otherwise than under Article 270(4).
463. Following amendment made by clause 78(3) of the Bill the restrictions set by paragraph (3) will be on the instigation of a creditors' decision procedure for the purpose of removing a trustee.
464. Paragraph 8 of Schedule 2 to the Bill will replace the reference to Article 266(3) or 268(4) with a reference to Article 264A(1) and the reference to Article 270(4) with a reference to Article 264A(3). The references need to be changed as a consequence of firstly, the repeal of Articles 266 and 268 of the Insolvency Order by paragraph 5 of Schedule 2 to the Bill, secondly the repeal of Article 270 by paragraph 7 of that schedule, and thirdly the insertion of new Article 264A by clause 92(1) of the Bill.

465. The changes to the legislative references in paragraph (3) of Article 271 will result in whatever procedure for instigating a creditors' decision procedure is established in rules made under the power in paragraph (1) of that Article,
- not being usable if the official receiver is trustee by virtue of Article 264A(1) unless the conditions mentioned in paragraph (3) of Article 264 are satisfied.
  - being usable if the trustee was appointed by the High Court and the appointment was under Article 264A(3)
466. Paragraph (3) of Article 271 corresponds to subsection (4) of section 298 of the Insolvency Act 1986.

### **PROVISIONS IN SCHEDULE 3 TO THE BILL WHICH CREATE NEW DELEGATED POWERS OR WHICH AMEND OR ALTER THE EFFECT OF EXISTING ONES**

#### **Paragraph 3 of Schedule 3 to the Bill**

467. Paragraph 3 of Schedule 3 to the Bill amends sub-paragraph (2) of paragraph 27 in Schedule B1 to the Insolvency Order, which includes two delegated powers to prescribe in rules.
468. Paragraph 23 of Schedule B1 provides that a company, or the directors of a company, can appoint an administrator.
469. Under sub-paragraphs (1) and (2) of paragraph 27 of Schedule B1, as they stand, a person who is proposing to make an appointment under paragraph 23 must always give notice to certain parties. Under sub-paragraph (1) they have to give at least five business days' notice to anyone who is either entitled to appoint an administrative receiver or who would themselves, be entitled, under paragraph 15, to appoint an administrator. Under sub-paragraph (2), as it stands, they have to give "such notice as may be prescribed to such other persons as may be prescribed".
470. The effect of the amendment which paragraph 3 of Schedule 3 to the Bill will make to sub-paragraph (2) of paragraph 27 of Schedule B1 is that the requirement to give "such notice as may be prescribed to such other persons as may be prescribed" will only be triggered in cases where notice has had to be given under sub-paragraph (1), that is in cases where notice has had to be given to creditors who would be entitled to appoint an administrative receiver or who would be entitled, under paragraph 15, to appoint an administrator.
471. This will mean that the requirement to give notice, as prescribed in rules made under the delegated powers in paragraph 27(3), to persons prescribed in rules made under those powers, will no longer apply if there are no creditors who would be entitled to appoint an administrative receiver, or who would be entitled, under paragraph 15, to appoint an administrator. The overall effect

will be that, if there are no creditors who would be entitled to appoint an administrative receiver, or who would be entitled, under paragraph 15, to appoint an administrator, a person proposing to appoint an administrator under paragraph 23 of Schedule B1 will no longer be required to give notice to anyone.

472. Paragraph 27 of Schedule B1 corresponds to paragraph 26 of Schedule B1 to the Insolvency Act 1986.

### **Paragraph 13(3) of Schedule 3 to the Bill**

473. Sub-paragraph (3) of paragraph 13 in Schedule 3 to the Bill inserts new paragraph (2A) into Article 261 of the Insolvency Order. The new paragraph includes a delegated power to make rules.
474. Under Article 261 as it stands anyone made bankrupt otherwise than under their own petition is required to submit a statement of their affairs to the official receiver within 21 days from the commencement of their bankruptcy. The official receiver can release the bankrupt from this requirement if he sees fit.
475. Subparagraph (2) of paragraph 13 in Schedule 3 to the Bill will replace paragraph (1) of Article 261 with a substitute. The substitute will provide that those made bankrupt otherwise than under their own petition will only be required to submit a statement of their affairs if the official receiver requires them to do so.
476. New paragraph (2A) will provide that where the official receiver does require a bankrupt to submit a statement of affairs, the bankrupt, must, subject to paragraph (3), do so within 21 days of being given prescribed notice of the requirement to do so.
477. Power to prescribe in rules the form which a notice requiring a bankrupt to submit a statement of affairs is to take is implicit in the words “prescribed notice”.
478. As prescription of what form the notice is to take is a matter of detail it is best provided for in delegated legislation. Prescription is to be in rules which will be subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the same reasons as set out in paragraph 12.
479. Paragraph (2A) inserted into Article 261 corresponds to subsection (2A) in section 288 of the Insolvency Act 1986.

### **Paragraph 18(2) of Schedule 3 to the Bill**

480. Sub-paragraph (2) of paragraph 18 in Schedule 3 to the Bill corrects an error in paragraph (3)(a) of Article 349 of the Insolvency Order.

481. Paragraph (3)(b) includes a delegated power to make legislation in the form of rules with respect to paragraph (3)(a). Any alteration to the latter therefore potentially affects the delegated power under (3)(b).
482. Paragraph (3) of Article 349 currently provides that a person is not qualified to act as an insolvency practitioner unless,
- “(a) there is in force at that time security, and*
- (b) that security meets the prescribed requirements with respect to his acting in relation to that other person.”*
483. The amendment made by sub-paragraph (2) of paragraph 18 of Schedule 3 to the Bill will result in sub-paragraph (a) of paragraph (3) of Article 349 stating,
- “(a) there is in force at that time security for the proper performance of the practitioner’s functions, and”*
484. Although there will be no alteration to the text in sub-paragraph (b) the amendment to sub-paragraph (a) will feed through into sub-paragraph (b), resulting in the requirement under the latter becoming to have in force security *for the proper performance of the practitioner’s functions* which meets the prescribed requirements.
485. The amendment made by sub-paragraph (2) of paragraph 18 of Schedule 3 to the Bill simply makes explicit what was previously implicit, namely that whatever security an insolvency practitioner has in place for the carrying out their work to a proper standard has to meet requirements prescribed in rules. No alteration is therefore required to either the delegated power or to the form of Assembly control to which any rules made under that power will be subject.
486. Paragraph (3) of Article 349 corresponds to subsection (3) of section 390 of the Insolvency Act 1986.

### **Paragraph 19 of Schedule 3 to the Bill**

487. Paragraph 19 of Schedule 3 to the Bill replaces paragraph (9)(a) of Article 24 of the Insolvency (Northern Ireland) Order 2005 with a substitute and inserts a new sub-paragraph (aa). This alters the definition of the term “bankrupt” as used in Article 24, which has implications for a delegated power under paragraph (1) of that Article to make orders.
488. Paragraph (1) of Article 24 is a delegated power for any Northern Ireland Department to make an order under that Article in relation to a disqualification provision. A disqualification provision is defined by paragraph (2) as a provision which disqualifies a bankrupt or class of bankrupts from being elected to, appointed to, or holding an office or position or from becoming or remaining a member of a body or group.

489. Orders made under paragraph (1) of Article 24 are subject to affirmative resolution in the Assembly.
490. “Bankrupt” is defined by paragraph (9)(a) of Article 24, as it stands, as including an individual “who has been adjudged bankrupt by the High Court in Northern Ireland or by a court in England and Wales”.
491. The substitution made by paragraph 19 of Schedule 3 to the Bill will result in paragraph (9)(a) instead defining a bankrupt as including an individual made bankrupt by the High Court, that is the High Court in Northern Ireland. A new sub-paragraph (aa) will be inserted into paragraph (9) which will define a bankrupt as including an individual who has been made bankrupt in England and Wales (under Part 9 of the Insolvency Act 1986).
492. This insertion of new sub-paragraph (aa) will result in the delegated power under paragraph (1) of Article 24 being to make orders in relation to disqualification provisions in the case of individuals who have been made bankrupt in England and Wales, whether by court order or by an adjudicator.
493. The amendment will not result in any change to the purpose for which orders can be made under paragraph (1) of Article 24. That purpose will remain as being able to make orders disqualifying individuals who are bankrupt in England and Wales from being in offices, positions, bodies or groups in Northern Ireland. The change has been made solely to accommodate a change to the way in which bankruptcy orders are made in England and Wales in the case of individuals wishing to have themselves declared bankrupt. Individuals in England and Wales wishing to have themselves declared bankrupt now apply to an adjudicator instead of petitioning a court. There is therefore no need for any alteration to the delegated power in paragraph (1) of Article 24 or to the form of Assembly control to which orders made under that provision are subject.
494. Paragraph (9)(a) of Article 24 of the Insolvency (Northern Ireland) Order 2005 corresponds to section 9(a) of the Enterprise Act 2002.

## **PROVISIONS IN SCHEDULE 4 TO THE BILL WHICH CREATE NEW DELEGATED POWERS OR WHICH AMEND OR ALTER THE EFFECT OF EXISTING ONES**

### **Part 1 of Schedule 4**

495. Part 1 of Schedule 4 to the Bill amends modified versions of provisions in the Insolvency Order in Schedule 1 to the Insolvent Partnerships Order (Northern Ireland) 1995 (“the 1995 Order”). These modified versions apply in the case of partnership voluntary arrangements.

### **Paragraph 6 of Schedule 4 to the Bill**

496. Schedule 1 to the 1995 Order contains a modified version of Article 17 of the Insolvency Order, which makes provision about how proposals for a partnership voluntary arrangement are to be approved.

497. Paragraph 6 in Part 1 of Schedule 4 to the Insolvency Bill amends this version of Article 17. Amendments made to paragraphs (5) and (6) of modified Article 17 will alter the use which can be made of delegated powers under these two paragraphs to make subordinate legislation in the form of rules.

#### **Sub-paragraph (5) of paragraph 6 in Schedule 4 to the Bill**

498. Paragraph 6(5) in Part 1 of Schedule 4 to the Bill amends paragraph (5) of modified Article 17. The amendment preserves the existing power under that paragraph to make delegated legislation in the form of rules but alters the purpose for which it can be used.

499. Modified Article 17 as it stands, provides that the decision on whether to approve a proposal for a partnership voluntary arrangement is to be made at the meetings under Article 16, that is by meetings of the members of the partnership and its creditors. Paragraph (5) of modified Article 17 currently provides that, subject to paragraphs (3) and (4) of that Article, each of the meetings is to be conducted in accordance with the rules. The requirement for the meetings to be conducted in accordance with the rules constitutes a delegated power to make rules as to how the meetings are to be conducted.

500. Paragraph 5 in Part 1 of Schedule 4 to the Bill replaces modified Article 16 with a substitute which provides that, while the members of a partnership will still make their decision on whether to approve a proposed voluntary arrangement at a meeting, the creditors will instead use a qualifying decision procedure to make their decision.

501. The amendment made by paragraph 6(5) in Part 1 of Schedule 4 of Schedule 4 to the Bill is needed as a consequence of the change to the procedure to be used by the creditors when making their decision. It will result in paragraph (5) of modified Article 17 now providing that it is the meeting of the members of the partnership and the qualifying decision procedure to be used by the creditors which are to be conducted in accordance with the rules.

502. The amendment will result in the present power under paragraph (5) of modified Article 17 to make rules establishing how meetings of the members of a partnership and of its creditors held for the purpose of deciding whether to approve a proposed partnership voluntary arrangement are to be conducted becoming a power to make rules establishing how the meeting of the members of the partnership and the qualifying decision procedure to be used by its creditors are to be conducted.

503. The core requirement under paragraph (5) of modified Article 17, both as it currently reads and as it will read following the amendment to be made by paragraph 6(5) in Part 1 of Schedule 4 to the Bill, is for the procedure to be used by a partnership creditors in deciding whether to approve a proposed voluntary arrangement to be conducted in accordance with the rules. There will be the same need to have power to establish in rules how the new procedure is to be carried out as there was to have power to establish in rules how the

existing procedure is to be carried out. There is therefore no need to alter the existing delegated power to make rules in paragraph (5) of modified Article 17.

504. Paragraph (5) in modified Article 17 corresponds to subsection (5) of modified section 4 of the Insolvency Act 1986 in Part 1 of Schedule 1 to the Insolvent Partnerships Order 1994.

**Sub-paragraph (6) in Paragraph 6 of Schedule 4 to the Bill**

505. Paragraph 6(6) in Part 1 of Schedule 4 to the Bill amends paragraph (6) of modified Article 17 of the Insolvency Order in Schedule 1 to the 1995 Order.
506. Paragraph (6) of modified Article 17, as it stands, sets out action to be taken by the chairman of meetings of partnership members and creditors held for the purpose of deciding whether to approve a proposed partnership voluntary arrangement. Paragraph (6) provides that once either meeting has concluded “in accordance with the rules” the chairman of that meeting has to report the result of the meeting to the High Court and immediately after doing so, give notice of the result to everyone who was sent notice of the meeting “in accordance with the rules”. Paragraph (6) therefore contains two powers to make rules. There is a power to make rules as to how meetings of partnership members and creditors held for the purpose of deciding whether to approve a proposed voluntary arrangement are to be concluded and there is a power to make rules about how to send notice of the result of these meetings.
507. The amendment made by paragraph 6(6) in Part 1 of Schedule 4 to the Bill is to take account of the fact that the partnership creditors are to make their decision whether to approve a proposed voluntary arrangement using a qualifying decision procedure instead of at a meeting. The amendment will result in the requirements to report the result of the meeting to the High Court and to give notice of the result to those sent notice of the meeting only applying to the chairman of the meeting of the members of the partnership. It will also result in the powers under paragraph (6) of modified Article 17 to make rules being exercisable only with respect to meetings of the members of a partnership held for the purpose of deciding whether to approve a proposed voluntary arrangement. Reporting and notification requirements in relation to the decision made by the partnership’s creditors will be moved into a new paragraph (6A) inserted into modified Article 17 by paragraph 6(7) of Part 1 of Schedule 4 to the Bill. New paragraph (6A) will not contain any delegated powers.
508. The fact that the amendment made by paragraph 6(6) of Schedule 4 to the Bill will reduce the ambit of the rule making powers under paragraph (6) of modified Article 17 is not a reason to alter those powers or the type of Assembly control to which legislation made using them is subject.
509. Paragraph (6) in modified Article 17 corresponds to subsection (6) of modified section 4 of the Insolvency Act 1986 in Part 1 of Schedule 1 to the Insolvent Partnerships Order 1994.

## **Paragraph 7(2) of Schedule 4 to the Bill**

510. Paragraph 7(2) in Part 1 of Schedule 4 to the Bill replaces paragraph (2) of modified Article 17A of the Insolvency Order in Schedule 1 to the 1995 Order with a substitute. Paragraph (2) of modified Article 17A, both as it stands, and as it will read following the substitution, includes a delegated power to make rules.
511. Paragraph (2) of modified Article 17A, as it stands, establishes requirements which have to be met if decisions taken at meetings of the members of a partnership and of the partnership creditors on whether to approve a proposed voluntary arrangement are to have effect. Paragraph (2) provides that a decision has effect if either,
- it has been taken by both meetings summoned under Article 16, that is if the meeting of the members of the partnership and the meeting of the partnership creditors have both made the same decision, or
  - subject to any order made by the High Court under paragraph (6), it has been taken by the creditors' meeting summoned under Article 16.
512. This is subject to the proviso that in both cases the decision has to have been taken "in accordance with the rules". This ensures that the requisite power is in place to make rules prescribing how decisions are to be made at meetings both of partnerships and of their creditors, summoned for the purpose of deciding whether to approve a proposed partnership voluntary arrangement.
513. Paragraph (2) of modified Article 17A, as substituted by paragraph 7(2) in Part 1 of Schedule 4 to the Bill will accommodate the switch to the use by creditors of qualifying decision procedures, instead of meetings, for the purpose of deciding whether to approve proposals for partnership voluntary arrangements. It does so by omitting any direct or indirect reference to meetings of the partnership creditors. It will provide that a decision with respect to whether to approve a proposed voluntary arrangement is to have effect if either,
- it has been taken by the meeting of the members of the partnership summoned under Article 16 and by the partnership's creditors pursuant to that Article, or
  - subject to any order made by the High Court under paragraph (6), it has been taken by the partnerships' creditors pursuant to that Article
514. There will be the same proviso that the decisions by the meeting of the members of the partnership and by the partnerships' creditors must be made "in accordance with the rules".
515. The substitution of paragraph (2) of modified Article 17A made by paragraph 7(2) in Part 1 of Schedule 4 to the Bill will leave unaltered the requirement that for the decision made by the members of the partnership at their meeting to have effect their meeting has to have been summoned under Article 16 and in



accordance with the rules. The requirement for the creditors' decision to have effect will become simply that their decision has been taken pursuant to Article 16 and in accordance with the rules.

516. As regards to the creditors, the power to make rules under paragraph (2) of modified Article 17A, as substituted by paragraph 7(2) in Part 1 of Schedule 4 to the Bill will be power to prescribe in rules how the creditors are to decide whether to approve a partnership voluntary arrangement.
517. When the creditors were to take their decision at a meeting, paragraph (2) of modified Article 17A provided that the decision had to be taken in accordance with the rules to be effective. There is no reason that requirement should be any different now that the creditors are to take their decision using a qualifying decision procedure. That will be the purpose of the power under substitute paragraph (2) of modified Article 17A, insofar as it makes it possible to prescribe in rules how a partnership's creditors are to take their decision. It is customary for procedure to be established in rules which are subject to negative resolution in the Assembly, which, for the same reasons as set out in paragraph 12, is considered to be an adequate form of control.
518. Paragraph (2) of modified Article 17A, as substituted by paragraph 7(2) in Part 1 of Schedule 4 to the Bill, corresponds to subsection (2) of modified section 4A of the Insolvency Act 1986 in Part 1 of Schedule 1 to the Insolvent Partnerships Order 1994.

#### **Paragraph 8(3) and (4) of Schedule 4 to the Bill**

519. Sub-paragraphs (3) and (4) of paragraph 8 in Part 1 of Schedule 4 to the Bill amend paragraph 2(b) of modified Article 18 of the Insolvency Order, in Schedule 1 to the 1995 Order, to take account of the fact that decisions by creditors to approve a partnership voluntary arrangement are to be made using a qualifying decision procedure instead of at a meeting. Paragraph 2(b) of modified Article 18 includes a delegated power to make rules.
520. Paragraph 2(b) of modified Article 18 applies where a decision approving a partnership voluntary arrangement has effect under Article 17A. Head (i) in paragraph 2(b) as it stands, provides that every person who would have been entitled to vote at the creditor's meeting held for the purpose of deciding whether to approve the arrangement is bound by the arrangement even if they did not attend the meeting and were not represented at it. Head (ii) clarifies that they are bound by the arrangement, even if they did not receive notice of the meeting.
521. For a person to be bound by the arrangement, their right to have voted at the creditor's meeting has to have been in accordance with the rules. Implicit in these words is power to prescribe in rules criteria for determining eligibility to vote at a creditors' meeting held for the purpose of deciding whether to approve a partnership voluntary arrangement.

522. The amendments made by sub-paragraphs (3) and (4) of paragraph 8 in Part 1 of Schedule 4 to the Bill will result in head (i) in paragraph 2(b) of modified Article 18 instead providing that every person who was entitled to vote in the qualifying decision procedure by which the creditors decided to approve the partnership voluntary arrangement is bound by the arrangement. Head (ii) will clarify that they are bound even if they did not receive notice of the procedure.
523. The amendments will result in the power to make rules under paragraph 2(b) of modified Article 18 becoming power to prescribe in rules criteria for determining eligibility to vote in a qualifying decision procedure carried out for the purpose of enabling a partnership's creditors to decide whether to approve a voluntary arrangement.
524. Prescription of the criteria to be used in deciding whether a person had the right to vote at a creditors' meeting held for the purpose of deciding whether to approve a partnership voluntary arrangement was obviously considered something best left to be dealt with in rules subject to negative resolution in the Assembly. There is no reason why the criteria to be used in deciding whether a person has the right to vote in the qualifying decision procedure which is to be used for this purpose in future should not likewise be in rules. There is therefore no reason to alter the delegated power to make rules which is implicit in the words "in accordance with the rules" in paragraph 2(b) of modified Article 18.
525. Paragraph (2) of modified Article 18 corresponds to subsection (2) of modified section 5 of the Insolvency Act 1986 in Part 1 of Schedule 1 to the Insolvent Partnerships Order 1994.

#### **Paragraph 9(4) of Schedule 4 to the Bill**

526. Sub-paragraph (4) of paragraph 9 in Part 1 of Schedule 4 to the Bill amends sub-paragraphs (a) and (b) in paragraph (2) of modified Article 19 of the Insolvency Order, in Schedule 1 to the 1995 Order, to take account of the fact that the Bill provides that decisions by creditors to approve a partnership voluntary arrangement are to be made using a qualifying decision procedure instead of at a meeting. Sub-paragraphs (a) and (b) of paragraph (2) in modified 19 each include a delegated power to make rules.
527. Paragraph (1) in the modified version of Article 19 of the Insolvency Order which is in Schedule 1 to the 1995 Order enables any of the persons specified in paragraph (2) to apply to the High Court on the grounds that,
- a partnership voluntary arrangement which has taken effect under Article 17A unfairly prejudices the interests of a creditor, a member or a contributory of the partnership, or
  - that there has been some material irregularity at or in relation to either the meeting of the members of the partnership or the meeting of the partnership's creditors summoned for the purpose of deciding whether to approve the arrangement.

528. The persons entitled to apply to the High Court under modified Article 19 are listed in paragraph (2) of that Article. The list includes, at sub-paragraph (2)(a) “persons entitled, in accordance with the rules, to vote at either of the meetings” (that is at either the meeting of the members of the partnership or the meeting of the partnership’s creditors), and at sub-paragraph (b), “ a person who would have been entitled, in accordance with the rules, to vote at the creditors’ meeting if he had had notice of it”. The fact that it is stated in both cases the person’s entitlement is to be “in accordance with the rules” implies power to prescribe in rules requirements or conditions which have to be met for a person to be entitled to vote at the meeting.
529. Paragraph 9 in Part 1 of Schedule 4 to the Bill amends modified Article 19 to take account of the fact that the Bill provides that creditors are to make their decision whether or not to approve a proposed partnership voluntary arrangement using a qualifying decision procedure.
530. Sub-paragraph (4) of paragraph 9 in Part 1 of Schedule 4 amends sub-paragraphs (a) and (b) of paragraph (2) of modified Article 19. The amendments change the characterization of the persons entitled under those two sub-paragraphs to apply to the High Court. Those entitled under sub-paragraph (a) will become persons entitled, in accordance with the rules, to vote at the meeting of the members of the partnership or in the relevant qualifying decision procedure. Those entitled under sub-paragraph (b) will become persons who would have been entitled, in accordance with the rules, to vote in the relevant qualifying procedure if they had received notice of it. The relevant qualifying procedure referred to in the amended sub-paragraphs is the qualifying decision procedure by which the partnership creditors decided whether to approve the voluntary arrangement.
531. The amendments will result in the power to make rules under sub-paragraph (a) becoming power to prescribe in rules requirements or conditions which have to be met for a person to be entitled to vote at the meeting of the members of the partnership or in the qualifying decision procedure used by the partnership creditors to decide whether to approve the voluntary arrangement. The power to make rules under sub-paragraph (b) will become power to prescribe in rules requirements or conditions which have to be met for a person to be entitled to vote in the qualifying decision procedure used by the partnership creditors to decide whether to approve the voluntary arrangement.
532. The amendments made by sub-paragraph (4) of paragraph 9 in Part 1 of Schedule 4 to paragraph (2) of modified Article 19 are to accommodate the change to the procedure to be used by creditors when deciding whether to approve a proposal for a partnership voluntary arrangement. Entitlement to vote in the existing procedure is to be decided in accordance with the rules, there is no reason why the criterion for deciding whether a person is entitled to vote in the new procedure should not also be in rules. There is therefore no reason to alter the existing delegated power in paragraph (2) of modified Article 19.

533. Paragraph (2) of modified Article 19 corresponds to subsection (2) of modified section 6 of the Insolvency Act 1986 in Part 1 of Schedule 1 to the Insolvent Partnerships Order 1994.

#### **Part 2 of Schedule 4**

534. Part 2 of Schedule 4 to the Bill amends modified versions of Schedules B1 and 1 to the Insolvency Order in Schedule 2 to the Insolvent Partnerships Order (Northern Ireland) 1995 ("the 1995 Order"). These modified versions apply for the purposes of Article 6 of the 1995 Order in the case of partnership administrations

#### **Paragraph 21(2) of Schedule 4 to the Bill**

535. Paragraph 28 of Schedule 2 to the 1995 Order contains a modified version of paragraph 53 of Schedule B1 to the Insolvency Order, to apply in the case of insolvent partnerships. Paragraph 21 in Part 2 of Schedule 4 to the Bill amends this provision. The amendments, which comprise changes to sub-paragraph (2) of modified paragraph 53 and the replacement of sub-paragraph (3) with a substitute, are to take account of the policy that creditors should take decisions in ways which do not involve a physical meeting. Sub-paragraphs (2) and (3) each include a delegated power to make legislation in the form of rules.

#### **Sub-paragraph (2) of paragraph 21 in Schedule 4 to the Bill**

536. Under modified paragraph 50 of Schedule B1, in paragraph 27 of Schedule 2 to the 1995 Order, the administrator of an insolvent partnership has to send a statement of proposals for achieving the purposes of the administration to the High Court and the creditors and members of the partnership. Paragraph 52 of Schedule B1, applies to provides that the statements sent to the creditors have to be accompanied by an invitation to an initial creditors' meeting. However sub-paragraph (1) of modified paragraph 53 in provides that an invitation to an initial creditors' meeting does not have to be sent if any of the facts mentioned in that sub-paragraph apply. These are that the administrator thinks that,

- The partnership has sufficient property to enable all the creditors to be paid in full, or
- The partnership has insufficient property to enable a distribution to be made to unsecured creditors, or
- Neither of the objectives in paragraph 4(1)(a) and (b) of Schedule B1 can be achieved.

537. If the administrator takes advantage of the dispensation under sub-paragraph (1) of modified paragraph 53, so that the statement sent to the creditors is not accompanied by an invitation to an initial creditors' meeting, the creditors can still insist that one is held. Sub-paragraph (2) of modified paragraph 53, as it stands, places an administrator of a partnership under a duty to summon an initial meeting of the creditors if requested to so by creditors with debts

amounting to at least ten percent of the partnership's total debt. The request has to be made in the prescribed manner and in the prescribed period.

538. Amendments made to Schedule B1 by the Bill will result in the administrator no longer being required to invite the creditors to an initial meeting. The administrator will instead be required, within ten weeks of the administration starting, to seek a decision from the creditors as to whether they approve the administrator's proposals. The dispensation under sub-paragraph (1) of modified paragraph 53 will therefore become a dispensation from having to seek a decision if any of the facts stated in that sub-paragraph apply.
539. The amendment made by sub-paragraph (2) of paragraph 21 in Part 2 of Schedule 4 to the Bill to modified paragraph 53(2) of Schedule B1 will result in creditors no longer having the right to insist on an initial creditors' meeting being held. Their right will instead be, if creditors who are owed at least ten percent of the total debt owed request it, to ask for a decision to be sought from the creditors as to whether they approve the proposals set out in the administrator's statement. The requirements for the request to be made in the prescribed manner and in the prescribed period and therefore the power to make provision about these matters in rules, will remain the same. The only change will be to what can be requested, which will be a decision by the creditors, not an initial creditors' meeting.
540. Because the procedure which the creditors can ask to have carried out is changing it does not follow that there should be any alteration to the power to establish in rules the manner in which their request has to be made or the period within which it has to be made. Rules made under the delegated power in modified paragraph 53(2) will continue to be subject to negative resolution in the Assembly. This was considered to be a satisfactory form of control when the creditors' right was to request a meeting to consider whether to approve the administrators' proposals and there is no reason why it should not be a considered a satisfactory form of control now that their right will be to request that a decision be sought for the same purpose. No reason therefore exists to alter the delegated powers in modified paragraph 53(2) of Schedule B1.
541. Modified paragraph 53(2) of Schedule B1 corresponds to modified paragraph 52(2) of Schedule B1 to the Insolvency Act 1986 in paragraph 21 of Schedule 2 to the Insolvent Partnerships Order 1994.

#### **Sub-paragraph (3) of paragraph 21 in Schedule 4 to the Bill**

542. Sub-paragraph (3) of paragraph 21 in Part 2 of Schedule 4 to the Bill replaces sub-paragraph (3) of the modified version of paragraph 53 of Schedule B1 in Schedule 2 to the 1995 Order with a substitute. The substitution is required for the same reason as the amendment made by sub-paragraph (2) of paragraph 21; it is to take account of the policy that creditors should take decisions in ways which do not involve a physical meeting. Sub-paragraph (3) of modified paragraph 53 includes a delegated power to make legislation in the form of rules.

543. Existing sub-paragraph (3) of modified paragraph 53 provides that a meeting requested under sub-paragraph (2), that is a meeting requested by the creditors, must be summoned for a date in the prescribed period.
544. As the Bill will provide that any decision by the creditors as to whether to approve the administrator's proposals is to be made in ways which do not involve a meeting it will no longer be appropriate for the power under sub-paragraph (3) to be to set a time limit for the holding of a meeting. Sub-paragraph (3) of paragraph 21 in Part 2 of Schedule 4 to the Bill replaces sub-paragraph (3) with a substitute, which will instead provide that where a decision is sought by virtue of sub-paragraph (2), that is at the request of the creditors, it is the initial decision date as defined in paragraph 52(3) which has to be within the prescribed period.
545. Paragraph 52(3) defines the initial decision date in two different ways, according to whether the decision is sought using a deemed consent procedure or a qualifying decision procedure.
546. If the decision is sought using a deemed consent procedure, the initial decision date is the date on which the decision will be made, if the creditors approve the proposal. If the decision is sought using a qualifying decision procedure, the initial decision date will be either the date on which the decision is to be treated as made, or the actual date on which the decision is made, if earlier.
547. Providing that the initial decision date has to be within the prescribed period will ensure that power exists to prescribe in rules, subject to negative resolution in the Assembly, a limit to the length of the period which the administrator can allow for the creditors to make their decision as to whether to approve the administrator's proposals. The power is needed for exactly the same reason as the power, under sub-paragraph (3) as it stands, to prescribe in rules the period within which a meeting requested by the creditors for the purpose of deciding whether to approve a voluntary arrangement must be held. It is to ensure that the creditors are afforded the right to decide whether or not to allow the administration to continue, before it has progressed too far. As the reason for the existence of the power is unchanged, there is no need for any alteration to that power, or to the form of Assembly procedure to which its exercise is subject.
548. Modified paragraph 53(3) of Schedule B1 corresponds to modified paragraph 52(3) of Schedule B1 to the Insolvency Act 1986 in paragraph 21 of Schedule 2 to the Insolvent Partnerships Order 1994.

### **Part 3 of Schedule 4**

549. Part 3 of Schedule 4 to the Bill amends modified versions of provisions in the Insolvency Order in Schedule 3 to the Insolvent Partnerships Order (Northern Ireland) 1995 ("the 1995 Order"). These modified versions apply where a partnership is being wound up under Article 7 of the 1995 Order.

## **Paragraph 35 of Schedule 4 to the Bill – insertion of paragraph 8D into Schedule 3 to the 1995 Order**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

550. Paragraph 35 in Part 3 of Schedule 4 to the Bill inserts new paragraphs 8A to 8H into Schedule 3 to the 1995 Order. Paragraph 8D provides a modified version of Article 120 of the Insolvency Order to apply where an insolvent partnership is being wound up as an unregistered company under Article 7 of the 1995 Order. Article 7 enables a partnership to be wound up on a creditor's petition without an insolvency petition being presented against any of the members of the partnership.
551. Modified Article 120 gives the partnership creditors the right to appoint a committee, known as the liquidation committee, to exercise functions conferred on it by or under the Insolvency Order.
552. Paragraphs (2), (4), (6) and (7) of the modified version of Article 120 include delegated powers to make subordinate legislation in the form of rules.

### **Paragraph (2) of modified Article 120**

553. Paragraph (2) of modified Article 120 will provide that if the partnership creditors decide that a liquidation committee should be established, one is to be established in accordance with the rules.
554. A procedure will therefore need to be put in place which creditors can use to establish a liquidation committee. The requirement under paragraph (2) of Article 120 for the committee to be established in accordance with the rules will enable such a procedure to be set out in rules.
555. It is normal practice for insolvency procedures to be legislated for in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.

### **Paragraph (4) of modified Article 120**

556. Paragraph (4), of modified Article 120 places the responsible insolvency practitioner for a partnership being wound up under Article 7 of the 1995 Order under a duty to seek a decision from the partnership creditors as to whether a liquidation committee should be established, if requested to do so by, in accordance with the rules, one tenth in value of the partnership creditors. Paragraph (5) provides that paragraph (4) does not apply if the responsible insolvency practitioner is the official receiver.

557. A procedure will therefore need to be put in place for use by the creditors when making a request to the responsible insolvency practitioner for a decision to be sought as to whether a liquidation committee should be established. The requirement under paragraph (4) of modified Article 120 for the request to be made in accordance with the rules will enable such a procedure to be set out in rules.
558. It is normal practice for insolvency procedures to be legislated for in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.

#### **Paragraph (6) of modified Article 120**

559. Paragraph (6) of modified Article 120 provides that the liquidation committee is not to carry out its functions during any periods when the responsible insolvency practitioner is the official receiver and that during such period the functions of the committee are vested in the Department, except to the extent that the rules otherwise provide.
560. The use of the words “except to the extent that the rules otherwise provide” ensures that power is in place to exempt the Department from having to carry out particular committee functions during periods when the committee is not functioning. This power would be needed if it became apparent that it was no longer appropriate for the Department to carry out any of the functions performed by a liquidation committee. Were this to happen the Department would need to be in a position to divest itself of responsibility for discharging these functions with minimum delay. This can best be achieved if the legislative changes which would be required can be made using subordinate legislation.
561. Prescription of any functions which the Department should not carry out during periods when the operation of the liquidation committee is suspended is a matter of detail which would be appropriately dealt with in rules. The Rules would be subject to negative resolution in the Assembly and this is considered to be an adequate form of control for the same reasons as set out in paragraph 12.

#### **Paragraph (7) of modified Article 120**

562. For paragraph (7) of modified Article 120 to apply two conditions must be satisfied. The first is that the responsible insolvency practitioner is not the official receiver. The second is that there is no liquidation committee. Paragraph (7) provides that in cases where these two conditions are satisfied the functions which would be carried out by a liquidation committee are vested in the Department, except to the extent that the rules otherwise provide.
563. The use of the words “except to the extent that the rules otherwise provide” ensures that power is in place to exempt the Department from having to carry out particular committee functions during periods when the committee is not



functioning. This power would be required, should it become apparent that it was no longer appropriate for the Department to carry out any of the functions performed by a liquidation committee. Were this to happen the Department would need to be in a position to divest itself of responsibility for discharging these functions with minimum delay. This can best be achieved if legislative changes which are required can be made using subordinate legislation.

564. Prescription of any functions which the Department should no longer carry out during periods when there is no liquidation committee would be a matter of detail which would be appropriately dealt with in rules. The Rules would be subject to negative resolution in the Assembly and this is considered to be an adequate form of control for the same reasons as set out in paragraph 12.
565. Article 120 of the Insolvency Order corresponds to section 141 of the Insolvency Act 1986. Section 141 of the Insolvency Act 1986 applies in the case of partnerships being wound up under Article 7 of the Insolvent Partnerships Order 1994; however Schedule 3 to the latter does not contain a modified version of section 141.

#### **Part 4 of Schedule 4**

566. Part 4 of Schedule 4 to the Bill amends modified versions of provisions in the Insolvency Order in Schedule 4 to the Insolvent Partnerships Order (Northern Ireland) 1995 ("the 1995 Order"). These modified versions apply where a partnership is being wound up under Article 8 of the 1995 Order.

#### **Paragraph 43(3) and (4) of Schedule 4 to the Bill**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

567. Paragraph 43 in Part 4 of Schedule 4 to the Bill makes amendments to the modified version of Article 116 of the Insolvency Order which is in paragraph 12 of Schedule 4 to the 1995 Order. This modified version of Article 116 applies where an insolvent partnership is being wound up as an unregistered company under Article 8 of the 1995 Order. A partnership can be wound up under Article 8 if an insolvency petition is presented against at least one of the members of the partnership as well as against the partnership itself.
568. The amendment made by sub-paragraph (3) of paragraph 43 in Part 4 of Schedule 4 to the Bill will result in paragraph (4) of modified Article 116 containing a delegated power to make rules. There will also be a delegated power to make rules in sub-paragraph (c) of new paragraph (5) inserted into modified Article 116 by sub-paragraph (4) of paragraph 43.

### **Sub-paragraph (3) of paragraph 43 of Schedule 4 to the Bill**

569. Sub-paragraph (3) of paragraph 43 amends paragraph (4) of modified Article 116 of the Insolvency Order in paragraph 12 of Schedule 4 to the 1995 Order. Paragraph (4) of modified Article 116 as it stands does not include a delegated power to make legislation.
570. Paragraph (4) of modified Article 116, as it stands, gives the official receiver the right, at any time that he is the responsible insolvency practitioner of an insolvent partnership and any insolvent member of that partnership, to summon a combined meeting of the creditors of the partnership and the creditors of the insolvent member for the purpose of choosing a person to take over from him as responsible insolvency practitioner.
571. The amendment made by sub-paragraph (3) of paragraph 43 will result in the right which the official receiver has under paragraph (4) of modified Article 116 , becoming a right, at any time when he is the responsible insolvency practitioner of an insolvent partnership and any insolvent member of that partnership, to seek nominations from the creditors of the partnership and the creditors of the insolvent member for the purpose of choosing a person to take over from him as responsible insolvency practitioner. The nominations will have to be sought “in accordance with the rules” thereby ensuring that power exists to prescribe in rules the procedure which the official receiver is to use to seek the nominations. The purpose of this delegated power is to enable a procedure to be put in place for the official receiver to use when seeking nominations for a person to take over as responsible insolvency practitioner. It is normal practice for insolvency procedures to be legislated for in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.
572. Paragraph (4) of modified Article 116 corresponds to subsection (4) in modified section 136 of the Insolvency Act 1986, in paragraph 12 of Schedule 4 to the Insolvent Partnerships Order 1994.

### **Sub-paragraph (4) of paragraph 43 of Schedule 4 to the Bill**

573. Paragraph 12 of Schedule 4 to the 1995 Order contains Article 116A of the Insolvency Order to apply in the case of insolvent partnerships being wound up under Article 8 of the 1995 Order. Paragraph (1)(c) in Article 116A places the official receiver under a duty to exercise his or her power under paragraph (4) of modified Article 116 to summon a combined meeting of the creditors of the partnership and the creditors of any insolvent member for the purpose of choosing a person to take over from the official receiver as responsible insolvency practitioner if one quarter by value of the partnership’s creditors or the creditors of any insolvent member against whom an insolvency order has been made request it. The request must be made “in accordance with the rules”.
574. Article 116A is revoked by paragraph 44 in Part 4 of Schedule 4 to the Bill. Provision similar to paragraph (1) of Article 116A is inserted into modified Article

116, as paragraph (5), by sub-paragraph (4) of paragraph 43 in Part 4 of Schedule 4 to the Bill. Paragraph (5)(c) does not contain any reference to meetings. It instead provides simply that the duty which the official receiver is under, if one quarter by value of the partnership's creditors or the creditors of any insolvent member against whom an insolvency order has been made request it, is to exercise his power under paragraph (4). Exercise of that power will, following the amendment to be made to paragraph (4) by paragraph 43(3) in Part 4 of Schedule 4 to the Bill, consist of the seeking by the official receiver of nominations from the creditors of the partnership and the creditors of the insolvent member for the purpose of choosing a person to take over from the official receiver as responsible insolvency practitioner.

575. There will be the same requirement for the request by the creditors of the partnership or an insolvent member to be in accordance with the rules as there is under existing Article 116A when a meeting is being requested for the purpose of choosing a person to take over from the official receiver as responsible insolvency practitioner.

576. As the power to make rules implicit in the words "in the prescribed form" exists for the same purpose as before, that is to enable the procedure which the creditors are to use if making a request to the official receiver to take action to have a person appointed to replace him or her as responsible insolvency practitioner to be prescribed, there is no need for any alteration to that power.

577. Paragraph (5)(c) in modified Article 116 as inserted by paragraph 43(4) in Part 4 of Schedule 4 to the Bill corresponds to subsection (5)(c) of modified section 136 in paragraph 12 of Schedule 4 to the Insolvent Partnerships Order 1994.

**Paragraph 49 of Schedule 4 to the Bill – replacement of modified Article 120 in Schedule 4 to the 1995 Order**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

578. Paragraph 16 of Schedule 4 to the 1995 Order contains a modified version of Article 120 of the Insolvency Order to apply in the case of insolvent partnerships being wound up under Article 8 of the 1995 Order. Paragraph 49 in Part 4 of Schedule 4 to the Bill provides for the replacement of modified Article 120 with a substitute.

579. Paragraph (4) of existing modified Article 120 contains a delegated power to make rules; paragraphs (2) and (4) of the substitute contain delegated powers to make rules.

**Paragraph (2) of modified Article 120, as substituted by paragraph 49 of Schedule 4 to the Bill**

580. Paragraph (2) of existing modified Article 120 provides that a combined meeting of creditors summoned for the purpose of choosing a person to be the responsible insolvency practitioner of the partnership can establish a committee, to be known as the creditors' committee and made up of creditors of the partnership or creditors of any insolvent member of the partnership against whom an insolvency order has been made, or both. Paragraph (2) of the existing modified Article does not contain any delegated powers.
581. Paragraph (2) of modified Article 120, as substituted by paragraph 49 in Part 4 of Schedule 4 to the Bill, will instead provide that if the creditors of the partnership and the creditors of any insolvent members of the partnership, acting together as if they were a single set of creditors, decide that a liquidation committee is to be established, one is to be established in accordance with the rules.
582. The requirement for the committee to be established in accordance with the rules constitutes a delegated power to make rules about how the committee is to be established. The fact that whether there is to be a liquidation committee is no longer to be decided at a meeting of the creditors of the partnership and any insolvent members means that the opportunity for a committee to be established at these meetings no longer exists. An alternative procedure needs to be put in place which the creditors of the partnership and any insolvent members can use to establish a liquidation committee. That is the purpose of the delegated power in substitute paragraph (2). It is to equip the creditors of the partnership and the creditors of any insolvent members, acting together, with a procedure which they can use to establish a liquidation committee, should they wish to do so.
583. It is normal practice for insolvency procedures to be legislated for in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the same reasons as set out in paragraph 12.
584. Paragraph (2) of modified Article 120, as substituted by paragraph 49 in Part 4 of Schedule 4 to the Bill, corresponds to subsection (2) of modified section 141 in paragraph 16 of Schedule 4 to the Insolvent Partnerships Order 1994.

**Paragraph (4) of modified Article 120, as substituted by paragraph 49 of Schedule 4 to the Bill**

585. Paragraph (3) of modified Article 120 as it stands, gives the responsible insolvency practitioner, if other than the official receiver, the right, at any time, to summon a combined general meeting of the creditors of the partnership and the creditors of any insolvent member against whom an insolvency order has been made, for the purpose of deciding if a creditors' committee should be established, and if they decide that it should, of establishing one. Paragraph (4), as it stands, places the responsible insolvency practitioner, if other than the

official receiver, under a duty to summon such a meeting if requested to do so by, in accordance with the rules, one tenth in value of either the partnership's creditors or the creditors of any insolvent member against whom an insolvency order has been made.

586. Paragraph (4) of modified Article 120, as substituted by paragraph 49 in Part 4 of Schedule 4 to the Bill, will instead place the responsible insolvency practitioner, under a duty to seek a decision from the creditors of the partnership and the creditors of any insolvent members acting together as if they were a single set of creditors, as to whether a liquidation committee should be established, if requested to do so by, in accordance with the rules, one tenth in value of the creditors. New paragraph (5) will provide that paragraph (4) does not apply if the responsible insolvency practitioner is the official receiver.
587. The duty which paragraph (4) in the substitute Article places the responsible insolvency practitioner under is fundamentally the same as under existing paragraph (4). It is to take action to find out if the creditors want to have a committee established, if the requisite proportion of creditors request that this be done. The only change will be to the procedure which the responsible insolvency practitioner is required to use to do this. Instead of being required to summon a meeting of the creditors of the partnership and the creditors of any of its members against whom an insolvency order has been made, the responsible insolvency practitioner will now be required to "seek a decision". The fact that the procedure which the responsible insolvency practitioner is to use is changing is not a reason to alter the power to make provision in rules about how the creditors can request the responsible insolvency practitioner to carry out the procedure.
588. Paragraph (4) of modified Article 120, as substituted by paragraph 49 in Part 4 of Schedule 4 to the Bill, corresponds to subsection (4) of modified section 141 in paragraph 16 of Schedule 4 to the Insolvent Partnerships Order 1994.

**Paragraph 50(3) of Schedule 4 to the Bill – minor amendment to paragraph (6) of modified Article 120A in Schedule 4 to the 1995 Order**

589. Sub-paragraph (3) of paragraph 50 in Part 4 of Schedule 4 to the Bill makes a minor amendment to paragraphs (3), (4), (5), (6) and (7) of Article 120A of the Insolvency Order in paragraph 16 of Schedule 4 to the 1995 Order. The amendments made to paragraphs (5), (6) and (7) will have implications for rule-making powers under those paragraphs.
590. Under the existing modified version of Article 120 in paragraph 16 of Schedule 4 to the 1995 Order, a meeting of the creditors of a partnership being wound up under Article 8 of the 1995 Order together with the creditors of its insolvent members, can establish a committee be known as the creditors' committee.
591. Under modified Article 120 as substituted by paragraph 49 in Part 4 of Schedule 4 to the Bill, the committee which the creditors of the partnership and the creditors of its insolvent members can decide to establish will instead be known as the liquidation committee.

592. This necessitates consequential changes to modified Article 120A of the Insolvency Order, also in paragraph 16 of Schedule 4 to the 1995 Order. Modified Article 120A sets out the functions of and makes provision about the membership of any committee established under modified Article 120.
593. Subparagraph (2) of paragraph 50 in Part 4 of Schedule 4 to the Bill provides that the words “creditors’ committee” in paragraphs (3), (4), (5), (6) and (7) of modified Article 120A are to be replaced by “liquidation committee”.
594. Paragraph (5) of modified Article 120A, as it stands, provides that if additional members of the creditors’ committee are appointed under paragraphs (3) or (4) of that Article, the limit on the maximum number of members of the committee specified in the rules is to be increased by the number of additional members appointed.
595. Paragraph (5) as it stands therefore includes a delegated power to specify in rules the maximum number of members which a creditor’s committee can have. The amendment made by sub-paragraph (3) of paragraph 50 in Part 4 of Schedule 4 to the Bill to paragraph (5) will result in the delegated power under that paragraph becoming power to specify in rules the maximum number of members which a liquidation committee can have.
596. Paragraph (6) of modified Article 120A, as it stands, provides that at any time when the official receiver is the responsible insolvency practitioner for the partnership and its insolvent members the creditors’ committee is neither allowed nor required to carry out its functions and its functions are vested in the Department except to the extent that the rules otherwise provide.
597. Paragraph (6) as it stands therefore includes a delegated power to specify in rules functions of the creditors’ committee which do not vest in the Department during periods when the official receiver is the responsible insolvency practitioner. The amendment made by sub-paragraph (3) of paragraph 50 in Part 4 of Schedule 4 to the Bill to paragraph (6) will result in it being functions of the liquidation committee which can be specified as not vesting in the Department.
598. Paragraph (7) of modified Article 120A, as it stands, provides that when there is no creditors’ committee and the responsible insolvency practitioner is not the official receiver, the functions of the creditors’ committee are vested in the Department, except to the extent that the rules otherwise provide.
599. Paragraph (7) as it stands therefore includes a delegated power to specify in rules functions of the creditors’ committee which do not vest in the Department during periods when there is no creditors’ committee and the responsible insolvency practitioner is someone other than the official receiver. The amendment made by sub-paragraph (3) of paragraph 50 in Part 4 of Schedule 4 to the Bill to paragraph (7) will result in it being functions of the liquidation committee which can be specified as not vesting in the Department.

600. The change made by sub-paragraph (3) of paragraph 50 in Part 4 of Schedule 4 to the Bill is to the title of the committee which can be appointed to exercise functions conferred on it by the Insolvency Order. As there is no alteration to the functions to be performed by the committee it is considered that no change is needed to the delegated powers to make rules in paragraphs (5), (6) and (7) of modified Article 120A, nor to the Assembly control to which the exercise of these powers is subject.
601. Paragraphs (4), (5) and (6) of modified Article 120A, as amended by paragraph 50(3) in Part 4 of Schedule 4 to the Bill, correspond to subsections (5), (6) and (7) of modified section 141A in paragraph 16 of Schedule 4 to the Insolvent Partnerships Order 1994.

### **Paragraph 51 of Schedule 4 to the Bill**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

602. Paragraph 51 in Part 4 of Schedule 4 to the Bill replaces the modified version of Article 124 of the Insolvency Order in paragraph 18 of Schedule 4 to the 1995 Order with a substitute.
603. Modified Article 124 applies where an insolvent partnership is being wound up under Article 8 of the 1995 Order and the responsible insolvency practitioner is not the official receiver. Modified Article 124, as it stands, provides that once it appears to the responsible insolvency practitioner that the winding up of the partnership or any corporate member of the partnership or the administration of any individual member's estate is for practical purposes complete, the responsible insolvency practitioner has to summon a final meeting of the creditors of the partnership or the insolvent member, or a combined meeting of both, for the purpose of receiving the practitioner's report and deciding if the practitioner should be released. Modified Article 124 as it stands does not include any power to make delegated legislation.
604. The substitute Article will do away with the requirement for the responsible insolvency practitioner to present a report at a meeting of the creditors. Requirements which the responsible insolvency practitioner will have to comply with will include having to prepare an account of the winding up or the administration and send it to the creditors of the partnership, other than any who have opted out of receiving correspondence. If the account relates to the winding up of the partnership or a corporate member, paragraph (4) of the substitute Article will place the responsible insolvency practitioner, in the capacity of liquidator, under a duty, to send a copy of the account and a statement of whether any of the partnership creditors have objected to his or her release to the High Court and in the case of a corporate member to the registrar. The responsible insolvency practitioner will have to do this during

what is termed the relevant period, which will be defined by paragraph (5) in the substitute Article as the period of 7 days beginning with the day after the last day of the period prescribed by the rules as the period within which the creditors may object to the responsible insolvency practitioner's release.

605. To prevent the responsible insolvency practitioner's release being interminably delayed, it is essential to place a limit on how long the creditors are allowed to object to it. The fact that paragraph (5) of the substitute Article refers to the period within which the creditors may object to the responsible practitioner's release being prescribed by the rules constitutes delegated power to prescribe in rules the maximum length of time the creditors are to be allowed.
606. As prescription of the period is a matter of detail it is best provided for in delegated legislation. Prescription is to be in rules which will be subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.
607. Paragraph (5) of Article 124, as substituted by the Bill, corresponds to subsection (5) of modified section 146 of the Insolvency Act 1986 in paragraph 18 of Schedule 4 to the Insolvent Partnerships Order 1994.

#### **Paragraph 55(3) of Schedule 4 to the Bill**

608. Paragraph 22 of Schedule 4 to the 1995 Order contains a modified version of Article 148 of the Insolvency Order. Modified Article 148 applies where either an insolvent partnership is being wound up under Article 8 of the 1995 Order, or where a petition has been presented to have an insolvent partnership and any corporate member wound up under Article 8 and a provisional liquidator has been appointed. Modified Article 148 makes provision about when, in the first case, the responsible insolvency practitioner is to have their release and in the second case when the provisional liquidator is to have their release. Provision about when a responsible insolvency practitioner other than the official receiver is to have their release is in paragraph (4) of modified Article 148. Sub-paragraph (3) of paragraph 55 in Part 4 of Schedule 4 to the Bill provides for paragraph (4) to be replaced by a set of paragraphs numbered (4) to (4E). Substitute paragraphs (4A) and 4E(a) provide for the responsible insolvency practitioner's release to be in accordance with rules, thereby constituting delegated powers.

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

#### **Paragraph (4A)**

609. Substitute paragraph (4A) will apply where the responsible insolvency practitioner has died. The substitute paragraph provides for the responsible



insolvency practitioner to have their release, posthumously, with effect from the time at which notice is given to the High Court, in accordance with the rules, that they have ceased to hold office. The requirement for the notice be given to the High Court in accordance with the rules constitutes power to prescribe in rules the procedure which is to be used to give the notice to the High Court that the responsible insolvency practitioner has ceased to hold office. Substitute paragraph (4A) re-states provision in sub-paragraph (a) of paragraph (4) of modified Article 148 as it stands, including that the notice has to be given to the High Court in accordance with the rules.

610. Paragraph (4A), as substituted by sub-paragraph (3) of paragraph 55 in Part 4 Schedule 4 to the Bill, corresponds to sub-section (4)(a) in modified section 174 of the Insolvency Act 1986 in paragraph 22 of Schedule 4 of the Insolvent Partnerships Order 1994.

### **Paragraph (4E)(a)**

611. Substitute paragraph (4E) will apply where the responsible insolvency practitioner has vacated office under modified Article 146(6), a substitute for which is present in paragraph 54 in Part 4 of Schedule 4 to the Bill. Paragraph (6) of modified Article 146, as substituted, provides that the responsible insolvency practitioner of an insolvent partnership being wound up under Article 8 of the 1995 Order, together with any of its insolvent members against whom insolvency orders have been made, vacates office once they have sent their final account of the winding up of the partnership or a corporate member or the administration of an individual member's estate to the High Court and in the case of a corporate member, the registrar. Paragraph (4E)(a) of modified Article 148 provides that if any of the creditors of the partnership or an insolvent member of the partnership have objected to the responsible insolvency practitioner's release before the end of the period for so objecting prescribed by the rules, the responsible insolvency practitioner has to apply to the Department for their release and their release does not take effect until such time as the Department determines. Substitute paragraph (4E)(a) is similar to the provision made for the responsible insolvency practitioner's release by sub-paragraph (d)(i) of paragraph (4) of modified Article 148 as it stands, except that there is no reference in the latter to a prescribed time period.
612. The power in paragraph (4E)(a) of modified Article 148, as substituted, to prescribe in rules the period within which the creditors may object to the liquidator's release enables a limit to be set on the time allowed for them to object, thereby enabling the responsible insolvency practitioner to get their release. As prescription of the period is a matter of detail it is best provided for in delegated legislation. Prescription is to be in rules which will be subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.
613. Paragraph (4E)(a) of modified Article 148, as substituted by sub-paragraph (3) of paragraph 55 in Part 4 of Schedule 4 to the Bill, corresponds to sub-section (4)(d)(i) of modified section 174 of the Insolvency Act 1986 in paragraph 22 of Schedule 4 to the Insolvent Partnerships Order 1994.

## **Paragraph 61 of Schedule 4 to the Bill**

614. Paragraph 61 in Part 4 of Schedule 4 to the Bill inserts two new paragraphs into Schedule 4 to the 1995 Order. Each paragraph sets out an Article which is to be treated as included in the Insolvency Order when that Order is being applied in the case of insolvent partnerships and their corporate and individual members which are being dealt with under Article 8 of the 1995 Order. The Article inserted by the first paragraph, Article 208ZE, includes two delegated powers to make rules subject to negative resolution in the Assembly. The Article inserted by the second paragraph, Article 208ZF, includes one delegated power to make rules subject to negative resolution in the Assembly.

### **Article 208ZE(11) : Decisions by creditors: general**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

615. The first of the two new paragraphs inserted into Schedule 4 to the 1995 Order by paragraph 61 in Part 4 of Schedule 4 to the Bill is paragraph 27ZA.

Paragraph 27ZA sets out Article 208ZE, which is a modified and conflated version of Articles 208ZE and 345A of the Insolvency Order.

616. The version of Article 208ZE set out in paragraph 27ZA makes provision about the method to be used by the creditors of a partnership and the creditors of its corporate or individual members against whom insolvency orders have been made, when making decisions for the purposes of the Insolvency Order. Paragraph (2) in this version provides that such decisions are to be made using what is termed a relevant decision procedure. Paragraph (2), together with paragraph (3) also provide that decisions are not to be made by meetings unless, what is termed the minimum number of creditors request it.

617. The use of the term “relevant decision procedure” in paragraph (2) of modified Article 208ZE makes it necessary to define that term. It is defined by paragraph (11) of Article 208ZE as meaning,

- in the case of a decision sought only from the creditors of an individual member of a partnership against whom an insolvency order has been made as a creditors’ decision procedure, and
- in the case of a decision sought from the creditors of a partnership, the creditors of a corporate member of a partnership against which an insolvency order has been made, or the creditors of a partnership and of any insolvent members together as if they were a single set of creditors, as a qualifying decision procedure.

618. The use of the terms “creditors’ decision procedure” and “qualifying decision procedure” in the definition of “relevant decision procedure” makes it necessary to define those terms. Paragraph (11) of modified Article 208ZE provides that a “qualifying decision procedure” means “a procedure prescribed or authorized under paragraph 8A of Schedule 5” to the Insolvency Order and that a “creditors’ decision procedure” means “a procedure prescribed or authorized under paragraph 9A of Schedule 6” Schedule 5 lists matters which can be included in company insolvency rules, made under Article 359 of the Insolvency Order and paragraph 8A is inserted into that Schedule by subsection (2) of clause 7. Schedule 6 lists matters which can be included in individual insolvency rules, made under Article 359 of the Insolvency Order and paragraph 9A is inserted into that Schedule by subsection (2) of clause 8.
619. The definitions of “qualifying decision procedure” and “creditors’ decision procedure” are best dealt with in delegated legislation for two reasons. The first is that the definitions include detailed lists of procedures. The second is that the lists may require updating as other procedures which could appropriately be used by creditors to make decisions are identified or emerge due to technological change, and it will be easier to amend the lists if they are in delegated legislation.
620. The definitions relate to the procedure to be used by creditors of insolvent partnerships and their members to make decisions and it is normal practice for any matters relating to insolvency procedures to be legislated for in Rules which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the same reasons as set out in paragraph 12,
621. Article 208ZE of the Insolvency Order corresponds to section 246ZE of the Insolvency Act, Article 345A corresponds to section 379ZA. Schedule 4 to the Insolvent Partnerships Order 1994 does not include modified versions of either section 246ZE or 379ZA.

### **Article 208ZF(3): Deemed consent procedure**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

622. The second of the two new paragraphs inserted into Schedule 4 to the 1995 Order by paragraph 61 in Part 4 of Schedule 4 to the Bill is paragraph 27ZB.

Paragraph 27ZB sets out Article 208ZF, which is a modified and conflated version of Articles 208ZF and 345B of the Insolvency Order.

623. The version, of Article 208ZF set out in paragraph 27ZB sets out an alternative to the relevant decision procedure, known as the deemed consent procedure, which can be used by the creditors of a partnership and the creditors of its corporate or individual members against whom insolvency orders have been made, when making decisions for the purposes of the Insolvency Order. The creditors are given notice of the matter about which they are to make a decision and the proposed decision. If less than 10% by value of the creditors object to the proposed decision, it is treated as having been made.
624. Paragraph (3) of modified Article 208ZF creates an exception to the right to use the deemed consent procedure. Paragraph (3) provides that rules which give any of the following the right to make a decision about any person's remuneration must provide that the decision has to be made using a relevant decision procedure,
- the creditors of a partnership
  - the creditors of a corporate member against which an insolvency order has been made
  - the creditors of an individual member against whom an insolvency order has been made, or
  - the creditors of a partnership and of any insolvent members
625. The purpose of paragraph (2) is to prevent individuals, generally insolvency practitioners, using the deemed consent procedure to seek approval for a decision which they have made as to what their remuneration should be or how it should be calculated. Forcing them to use a relevant decision procedure gives those making the decision maximum opportunity to freely decide what the remuneration should be, instead of being limited to either agreeing or disagreeing with a pre-determined proposal as to what it should be. Paragraph (3) does not directly forbid the use of the deemed consent procedure. Neither does it create any right to make delegated legislation. Schedules 5 and 6 to the Insolvency Order already include power to make rules which make provision as to the amount, or manner of determining the amount payable to insolvency office-holders by way of remuneration and any rules made for this purpose will, like any other rules, be subject to negative resolution in the Assembly. Paragraph (3) in modified Article 208ZF simply puts in place a limit on what rules made under these existing powers can do. They cannot provide for decisions about remuneration to be made using the deemed consent procedure; they can only provide for them to be made using a relevant decision procedure.

626. Article 208ZF corresponds to section 246ZF of the Insolvency Act. 1986. Article 345B corresponds to section 379ZB. Schedule 4 to the Insolvent Partnerships Order 1994 does not include modified versions of either section 246ZE or 379ZB.

#### **Part 7 of Schedule 4 to the Bill**

627. Part 7 of Schedule 4 to the Bill amends modified versions of provisions in the Insolvency Order in Schedule 7 to the Insolvent Partnerships Order (Northern Ireland) 1995 (“the 1995 Order”). These modified versions apply for the purposes of Article 11 of the 1995 Order, where the individual members of an insolvent partnership have jointly petitioned to be made bankrupt and to have the partnership business wound up and its property administered without the partnership being wound up as an unregistered company under Part VI of the Insolvency Order.

#### **Paragraph 76(2) and (3) of Schedule 4 to the Bill**

628. Paragraph 76 in Part 7 of Schedule 4 to the Bill makes amendments to the modified version of Article 271 of the Insolvency Order which is in paragraph 15 of Schedule 7 to the 1995 Order.

629. Modified Article 271 of the Insolvency Order in Schedule 7 to the 1995 Order applies in cases where the insolvency of a partnership and the bankruptcy of its members is being dealt with under Article 11 of the 1995 Order. Modified Article 271 makes provision as to how the trustee of the estates of the partnership and its members can be removed from office, resign, or vacate office. Sub-paragraph (2) of paragraph 76 in Part 7 of Schedule 4 amends paragraph (1) of modified Article 271, and sub-paragraph (3) inserts new paragraphs (1A) to (1C). Paragraph (1) of modified Article 271 as it stands does not include a delegated power to make legislation; the amendment made by sub-paragraph (2) will result in it including a delegated power to make rules. New paragraph (1B) inserted into the modified Article also contains a delegated power to make rules.

#### **The amendment made by sub-paragraph (2) of paragraph 76 in Schedule 4 to the Bill**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

630. Paragraph (1) of modified Article 271 as it stands, provides that the trustee of the estates of a partnership and its members can only be removed by High Court order.
631. The amendment made to paragraph (1) of modified Article 271 by sub-paragraph (2) of paragraph 76 in Part 7 of Schedule 4 to the Bill will make it possible for the trustee to also be removed by a decision of the creditors of the members and of the partnership made by a creditors' decision procedure instigated specially for that purpose in accordance with the rules.
632. If there are creditors who would like to have the trustee of the estates of a partnership and its members removed from office because they are dissatisfied with the trustee's performance or for any other reason, they will likely want the question of whether the trustee should be removed from office to be put to the creditors as a whole. A procedure therefore needs to be put in place which dissatisfied creditors can use for the purpose of ensuring that this happens. That is the reason for the amendment to paragraph (1) of modified Article 271 stating that a creditors' decision procedure to remove the trustee has to be "instigated specially for that purpose in accordance with the rules" Those words constitute power to prescribe in rules a procedure which dissatisfied creditors can use to instigate the taking by the creditors of the partnership and its members collectively of a decision as to whether the trustee should be removed from office. It is normal practice for insolvency procedures to be legislated for in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.
633. Paragraph (1) in modified Article 271 corresponds to subsection (1) of modified section 298 of the Insolvency Act 1986 in paragraph 15 of Schedule 7 to the Insolvent Partnerships Order 1994.

**Insertion of new paragraph (1B) into modified Article 271 of the Insolvency Order by sub-paragraph (3) of paragraph 76 in Schedule 4 to the Bill**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

634. Sub-paragraph (3) of paragraph 76 in Part 7 of Schedule 4 to the Bill inserts new paragraphs (1A) to (1C) into modified Article 271 of the Insolvency Order. New paragraph (1B) includes a delegated power to make rules.

635. New paragraph (1B) provides that where the creditors of the partnership and its members decide to remove a trustee, they may in accordance with the rules appoint another person to take over from them as trustee.
636. The amendment made to paragraph (1) of modified Article 271 by sub-paragraph (2) of paragraph 76 will result in it becoming possible for the creditors of a partnership being dealt with under Article 11 of the 1995 Order and the creditors of its members to decide to remove the trustee. New paragraph (1B) will give the creditors, if they do decide to remove the trustee, the right to appoint a new one. A procedure will need to be put in place to enable them to do so. The fact that new paragraph (1B) provides that the appointment is to be made in accordance with the rules will enable a procedure which the creditors can use to appoint a replacement trustee to be set down in rules. It is normal practice for insolvency procedures to be legislated for in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.
637. Paragraph (1B) inserted into modified Article 271 by sub-paragraph (3) of paragraph 76 in Part 7 of Schedule 4 to the Bill corresponds to subsection (1B) of modified section 298 of the Insolvency Act 1986 in paragraph 15 of Schedule 7 to the Insolvent Partnerships Order 1994.

### **Paragraph 77(3) of Schedule 4 to the Bill**

638. Paragraph 16 of Schedule 7 to the 1995 Order sets out a modified version of Article 272 of the Insolvency Order to apply in cases where the insolvency of a partnership and the bankruptcy of its members is being dealt with under Article 11 of the 1995 Order. Paragraph (3) of modified Article 272, as it stands, makes provision about when a person other than the official receiver, who has ceased to be the trustee of the partnership or any member of the partnership, is to have their release. Sub-paragraph (3) of paragraph 77 in Part 7 of Schedule 4 to the Bill provides for paragraph (3) of modified Article 272 to be replaced by a set of paragraphs numbered (3) to (3E). Substitute paragraphs (3A) and (3E)(a) provide for the trustee's release to be in accordance with rules, thereby constituting delegated powers.

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

### **Paragraph (3A)**

639. Substitute paragraph (3A) will apply where the trustee has died. The substitute paragraph provides for the trustee to have their release, posthumously, with effect from the time at which notice is given to the High Court, in accordance with the rules, that they have ceased to hold office. The requirement for the notice be given to the High Court in accordance with the rules constitutes power to prescribe in rules the procedure which is to be used to give the notice to the High Court that the trustee has ceased to hold office. Substitute paragraph (3A) re-states provision in sub-paragraph (a) of paragraph (3) of modified Article 272 as it stands, including that the notice has to be given to the High Court in accordance with the rules.
640. Paragraph (3A), as substituted by sub-paragraph (3) of paragraph 77 in Part 7 Schedule 4 to the Bill, corresponds to sub-section (3)(a) in modified section 299 of the Insolvency Act 1986 in paragraph 16 of Schedule 7 of the Insolvent Partnerships Order 1994.

### **Paragraph (3E)(a)**

641. Substitute paragraph (3E) will apply where the trustee has vacated office under modified Article 271(6), a substitute for which is present in paragraph 76 in Part 7 of Schedule 4 to the Bill. Paragraph (6) of modified Article 271, as substituted, provides that a trustee of the estates of a partnership and its members being dealt with under Article 11 of the 1995 Order, vacates office by complying with the requirements of Article 304(3). The requirements under paragraph (3) in a modified version of Article 304 in paragraph 83 of Schedule 4 to the Bill are that, in the case of the partnership or an individual member of the partnership, the trustee has to send their final account to the High Court and in the case of a corporate member, to the High Court and the registrar. The account has to be accompanied by a statement of whether any of the creditors of the partnership and its members objected to the trustee's release.
642. Substitute paragraph (3E)(a) of modified Article 272 provides that if any of the creditors of the partnership and its members have objected to the trustee's release before the end of the period for so objecting prescribed by the rules, the trustee has to apply to the Department for their release and their release does not take effect until such time as the Department determines. Substitute paragraph (3E)(a) is similar to the provision made for the trustee's release by sub-paragraph (d)(i) of paragraph (3) of modified Article 272 as it stands, except that there is no reference in the latter to a prescribed time period and it is the passing of a resolution against the trustee's release at the final meetings of the partnership and its creditors which take place under the existing legislation which triggers the requirement for the trustee to apply to the Department for release.



643. The power in paragraph (3E)(a) of modified Article 272, as substituted, to prescribe in rules the period within which the creditors may object to the trustee's release enables a limit to be set on the time allowed for them to object, thereby enabling the trustee to get their release. As prescription of the period is a matter of detail it is best provided for in delegated legislation. Prescription is to be in rules which will be subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.
644. Paragraph (3E)(a) of modified Article 272, as substituted by sub-paragraph (3) of paragraph 77 in Part 7 of Schedule 4 to the Bill, corresponds to sub-section (3)(d)(i) of modified section 299 of the Insolvency Act 1986 in paragraph 16 of Schedule 7 to the Insolvent Partnerships Order 1994.

### **Paragraph 79(2) of Schedule 4 to the Bill**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

645. Paragraph 18 of Schedule 7 to the 1995 Order sets out a modified version of Article 274 of the Insolvency Order to apply in cases where the insolvency of a partnership and its members is being dealt with under Article 11 of the 1995 Order. Sub-paragraph (2) of paragraph 79 in Schedule 7 to the Bill amends paragraph (1) of that version of Article 274.
646. Paragraph (1) of modified Article 274, as it stands, provides that, subject to paragraph (2) any combined general meeting of the creditors of a partnership and its members can establish a committee, known as the creditors' committee, to exercise functions conferred on it by or under the Insolvency Order. Paragraph (2) forbids the establishment of a creditors' committee at any time that the official receiver is trustee.
647. Modified Article 274 as it stands, does not include any power to make delegated legislation.
648. The amendment made by sub-paragraph (2) of paragraph 79 in Part 7 of Schedule 4 to the Bill does away with the requirement for a combined general meeting of the creditors of the partnership and its members. Paragraph (1) of modified Article 274 will simply provide that the creditors of the partnership and its members "may, in accordance with the rules, establish a committee (known as "the creditors committee") to exercise the functions conferred on it by or under this order."

649. The fact that amendments to be made by the Bill will result in general meetings of creditors being largely done away with makes it necessary to put in place an alternative procedure which the creditors of a partnership and its members being dealt with under Article 11 of the 1995 Order can use, should they wish to establish a committee. That is the purpose of the delegated power to make rules which is inherent in the words “in accordance with the rules”. This power will enable it to be set out in rules what procedure the creditors of the partnership and its members are to follow if they wish to establish a creditors’ committee.

650. It is normal practice for insolvency procedures to be legislated for in rules, which are subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.

651. Paragraph (1) of modified Article 274 corresponds to subsection (1) of modified section 301 of the Insolvency Act 1986 in paragraph 18 of Schedule 7 to the Insolvent Partnerships Order 1994.

#### **Paragraph 83 of Schedule 4 to the Bill**

*Power conferred on: The Department of Justice with the concurrence of the Department for the Economy*

*Power exercisable by: Rules*

*Assembly procedure: Negative resolution*

652. Paragraph 83 in Part 7 of Schedule 7 to the Bill replaces the modified version of Article 304 of the Insolvency Order in paragraph 22 of Schedule 7 to the 1995 Order with a substitute. Modified Article 304 in paragraph 22 of Schedule 7 to the 1995 Order applies in cases where the insolvency of a partnership and its members is being dealt with under Article 11 of the 1995 Order and the trustee is not the official receiver.

653. Modified Article 304 as it stands provides that once it appears that the winding up of the partnership business and the administration of its property or the administration of the estate of any of its members is for practical purposes complete, the trustee has to summon a final meeting of the creditors for the purpose of receiving the trustee’s report and determining if the trustee should have their. Modified Article 304 stands does not include any power to make delegated legislation.

654. The substitute Article will do away with the requirement for the trustee to present a report at a meeting of the creditors. Requirements which the trustee

will have to comply with will include having to prepare an account of the winding up or the administration and send it to the creditors of the partnership and its members, other than any who have opted out of receiving correspondence. Paragraph (3) of the substitute Article will place the trustee under a duty, to send a copy of the account and a statement of whether any of the creditors of the members and of the partnership have objected to the trustee's release to the High Court and in the case of a corporate member to the registrar, The trustee will have to do this during what is termed the relevant period, which will be defined by paragraph (4) in the substitute Article as the period of 7 days beginning with the day after the last day of the period prescribed by the rules as the period within which the creditors may object to the trustee's release.

655. To prevent the trustee's release being interminably delayed, it is essential to place a limit on how long the creditors are allowed to object to it. The fact that paragraph (4) of the substitute Article refers to the period within which the creditors may object to the trustee's release being prescribed by the rules constitutes delegated power to prescribe in rules the maximum length of time the creditors are to be allowed.
656. As prescription of the period is a matter of detail it is best provided for in delegated legislation. Prescription is to be in rules which will be subject to negative resolution in the Assembly. It is considered that negative resolution offers an adequate form of control for the reasons set out in paragraph 12.
657. Paragraph (4) of Article 304, as substituted by the Bill, corresponds to subsection (4) of modified section 331 of the Insolvency Act 1986 in paragraph 22 of Schedule 7 to the Insolvent Partnerships Order 1994.

#### **Part 8 of Schedule 4 to the Bill**

658. Part 8 of Schedule 4 to the Bill amends modified versions of provisions in the Company Directors Disqualification (Northern Ireland) Order 2002 (the Disqualification Order") in Schedule 8 to the Insolvent Partnerships Order (Northern Ireland) 1995 ("the 1995 Order"). Following the substitution of Article 16 of the Disqualification Order by clause 115 of the Bill, these modified versions will apply where,

- an insolvent partnership is being wound up as an unregistered company under Part 6 of the Insolvency Order
- an insolvent partnership has entered administration, or
- the business of an insolvent partnership is being wound up as mentioned in Article 11 of the 1995 Order.

659. Paragraph 93 in Part 8 of Schedule 4 to the Bill inserts modified versions of Articles 22 and 23 of the Disqualification Order into Schedule 8 to the 1995

Order, to apply in the case of insolvent partnerships. Paragraphs (1)(b) and (7) of modified Article 22 contain delegated powers to make rules and regulations. Paragraph (3) of modified Article 23 contains delegated powers to make rules and regulations.

### **Paragraph 1(b) of Modified Article 22**

660. Paragraph (1) of modified Article 22 to be inserted into Schedule 8 to the 1995 Order by paragraph 93 in Part 8 of Schedule 4 to the Bill will apply in the case of insolvent partnerships in the same way that paragraph (1) of the original version of Article 22 in the Disqualification Order applies in the case of companies.

661. Paragraph (1) in both the original version and in the modified version inserted into Schedule 8 to the 1995 Order apply where the High Court has,

- made a disqualification order,
- taken action to vary a disqualification order or undertaking or to cause it to cease to be in force, or
- has granted leave for a person to do something which a disqualification order or undertaking would otherwise prohibit

662. Where the High Court has done any of these three things, paragraph (1) in both the original and modified versions of modified Article 22 place the clerk of the court under a duty to furnish the Department and the Secretary of State with such particulars as may be prescribed and regulations may prescribe the time within which and the form and manner in which such particulars are to be furnished.”

663. “The delegated powers inherent in these words are to prescribe in regulations,

- what information the clerk of the court is required to furnish to the Department and the Secretary of State
- the time period within which the information has to be furnished
- in what way the information has to be furnished

664. Regulations made under the powers in paragraph (1) in both the original and modified versions of Article 22 will be subject to negative resolution in the Assembly.

665. The only difference between paragraph (1) in the original version of Article 22 and paragraph (1) in the modified version is that the former is applies in the case of companies and the latter is to apply in the case of insolvent partnerships. The purposes for which the powers will be required are the same in the case of the modified Article. There is therefore no reason for the powers

under the modified Article to be different, or for the Assembly control to which their exercise is subject to be different.

666. Paragraph (1) of Article 22 of the Disqualification Order corresponds to subsection (1) of section 18 of the Company Directors Disqualification Act 1986. Schedule 8 to the Insolvent Partnerships Order 1994 does not contain a modified version of section 18.

### **Paragraph (7) of Modified Article 22**

667. As well as the notification requirements under paragraph (1) of both the original and modified versions of Article 22 of the Disqualification Order, there are requirements under,

- paragraph (2) in both for, the Department to keep a register of disqualification orders
- paragraph (3) in both for the Department to include in the register particulars of undertakings it has accepted and leave granted by the High Court for persons subject to disqualification orders or undertakings to do things which the order or undertaking would otherwise prohibit
- paragraph (4) in both for the entry relating to a disqualification order or undertaking to be deleted once the order or undertaking ceases to be in force.

668. Paragraph (7) in both the original and modified versions of Article 22 constitutes a delegated power to make regulations under Article 22 to provide for the preceding provisions in the Article to be extended to disqualification orders made and disqualification undertakings accepted under the corresponding legislation applying in Great Britain, which is the Company Directors Disqualification Act 1986, as applied in the case of partnerships by Article 16 of the Insolvent Partnerships Order 1994. Paragraph (7) is not a Henry VIII power; its use is limited to extending provisions in Article 22, not emending or repealing them. Regulations under paragraph (7) in both the original and modified versions of Article 22 are subject to negative resolution in the Assembly.

669. Paragraph (7) in the modified version of Article 22 simply makes available to the Department the same power to make delegated legislation to extend the operation of that Article in the case of insolvent partnerships as is currently available to the Department in the case of companies under paragraph (7) of the original Article. There is no reason why the type of subordinate legislation to make the extension or the Assembly control to which such legislation is subject should be different in the case of insolvent partnerships.

670. Paragraph (7) of Article 22 of the Disqualification Order corresponds to subsection (4A) of section 18 of the Company Directors Disqualification Act

1986. Schedule 8 to the Insolvent Partnerships Order 1994 does not contain a modified version of section 18.

### **Paragraph (3) of Modified Article 23**

671. Paragraph 93 in Part 8 of Schedule 4 to the Bill also inserts a modified version of Article 23 of the Disqualification Order to apply in the case of insolvent partnership. Both the original and modified versions of Article 23 place restrictions on the use which can be made in any subsequent criminal proceedings of statements made pursuant to requirements under specified provisions in the Disqualification Order.
672. Paragraph (3) in both the original and modified versions of Article 23 makes provision for there to be exceptions to this bar on the use in subsequent criminal proceedings of answers given pursuant to requirements under the Disqualification Order. Sub-paragraph (a) of paragraph (3) in both the original and modified versions makes it possible for there to be exceptions in the case of offences created by rules made under the Insolvency Order for the purposes of the Disqualification Order. Head (ii) of sub-paragraph (a) is a power to make rules or regulations designating such offences for the purposes of paragraph (3). The effect of such designation would be to allow answers given pursuant to requirements under the Disqualification Order to be used as evidence in a trial for those offences. Rules made under the power would be subject to negative resolution in the Assembly. Regulations made under the paragraph (3)(a)(ii) power would have to be laid in the Assembly. Sub-paragraph (b) of paragraph (3) in both the original and modified versions applies where offences are created by regulations which have been made under rules made under the Insolvency Order for the purposes of the Disqualification Order which themselves create offences. Head (ii) of sub-paragraph (b) is a power enabling such offences to be designated by the regulations for the purposes of paragraph (3).
673. Paragraph (3) of modified Article 23 simply makes available to the Department in the case of insolvent partnerships the same powers to make rules and regulations designating offences as exempt from the restriction on the use which can be made of answers given pursuant to requirements under the Disqualification Order as the Department already has in the case of companies. There is no reason why the type of subordinate legislation to be used to make the designation or the type of Assembly control to which it is subject should be different in the case of insolvent partnerships.
674. Paragraph (3) of Article 23 of the Disqualification Order corresponds to subsection (4) of section 20 of the Company Directors Disqualification Act 1986. Schedule 8 to the Insolvent Partnerships Order 1994 does not contain a modified version of section 20.



## Equality Screening Template – Section 75 of Northern Ireland Act 1998

**Please complete the coversheet details below:**

**Policy title:** The Insolvency (Amendment) (Northern Ireland) Bill

**Decision (delete as appropriate)**

Policy screened out **without** mitigation or an alternative policy adopted

**Contact:** Eileen Glenn

**Date of completion:** 10 June 2022

**For Equality Unit Completion:**

**Amendments requested?** Yes / No

**Date returned to Business Area:**

**Date final version received:**

### Content

**Part 1. Policy scoping** – asks public authorities to provide details about the policy, procedure, practice and/or decision being screened and what available evidence you have gathered to help make an assessment of the likely impact on equality of opportunity and good relations.

**Part 2. Screening questions** – asks about the extent of the likely impact of the policy on groups of people within each of the Section 75 categories. Details of the groups consulted and the level of assessment of the likely impact. This includes consideration of multiple identity and good relations issues.

**Part 3. Screening decision** – guides the public authority to reach a screening decision as to whether or not there is a need to carry out an

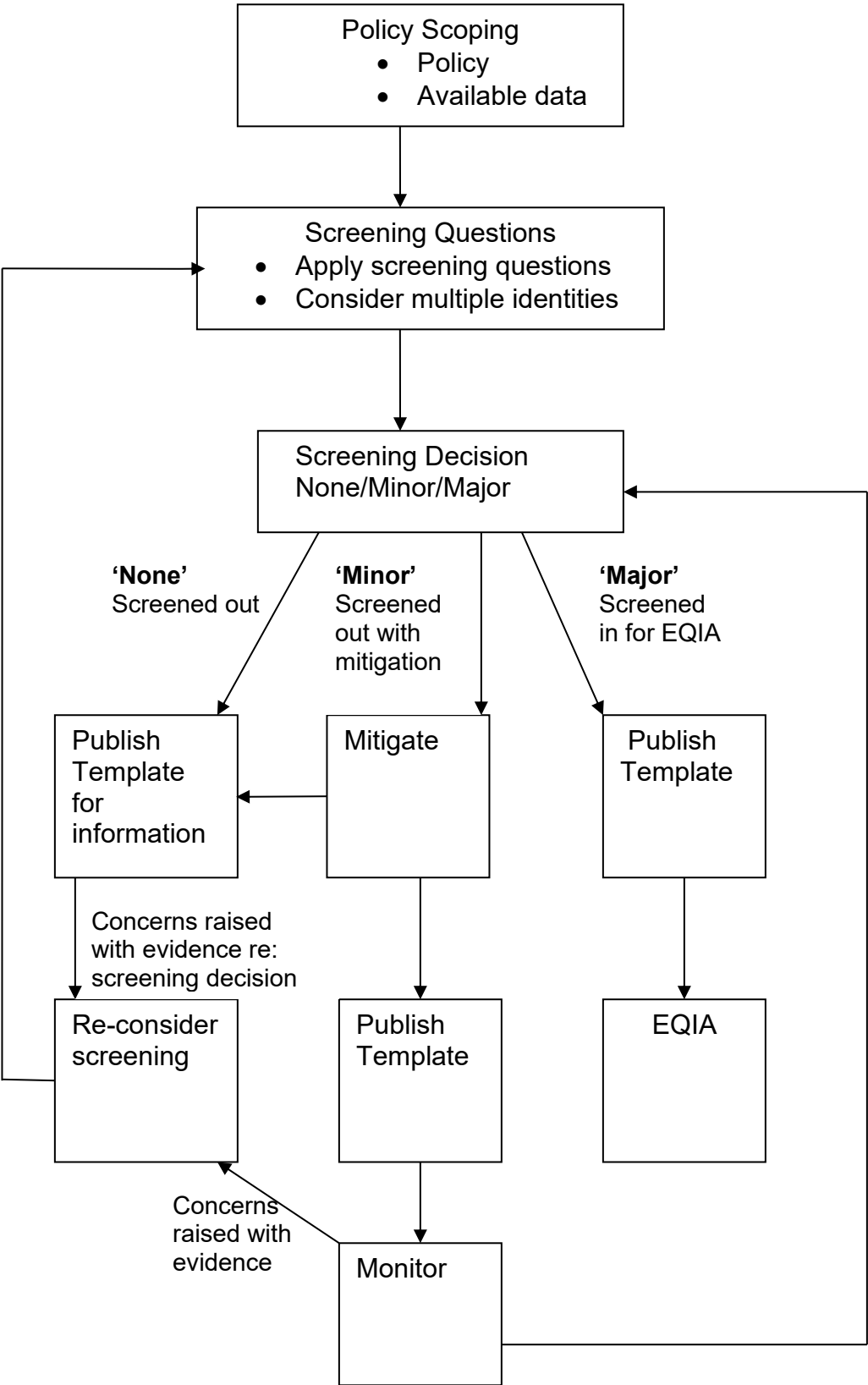
equality impact assessment (EQIA), or to introduce measures to mitigate the likely impact, or the introduction of an alternative policy to better promote equality of opportunity and/or good relations.

**Part 4. Monitoring** – provides guidance to public authorities on monitoring for adverse impact and broader monitoring.

**Part 5. Approval and authorisation** – verifies the public authority's approval of a screening decision by a senior manager responsible for the policy.



Flowchart for the equality screening process and decision.



## **Part 1. Policy scoping**

The first stage of the screening process involves scoping the policy under consideration. The purpose of policy scoping is to help prepare the background and context and set out the aims and objectives for the policy, being screened. At this stage, scoping the policy will help identify potential constraints as well as opportunities and will help the policy maker work through the screening process on a step by step basis.

Public authorities should remember that the Section 75 statutory duties apply to internal policies (relating to people who work for the authority), as well as external policies (relating to those who are, or could be, served by the authority).

### **Information about the policy**

#### **Name of the policy**

The Insolvency (Amendment) (Northern Ireland) Bill.

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#### **Is this an existing, revised or a new policy?**

A new policy.

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#### **What is it trying to achieve? (intended aims/outcomes)**

It is policy to maintain Northern Ireland legislation dealing with insolvency and director disqualification in parity with that applying in England and Wales.

Amendments have been made to insolvency legislation in England and Wales by the Enterprise and Regulatory Reform Act 2013, the Deregulation Act 2015 and the Small Business, Enterprise and Employment Act 2015 and in keeping with our policy of maintaining parity an Assembly Bill to make corresponding changes to Northern Ireland insolvency legislation is needed. The Bill will also replicate an amendment to company director disqualification legislation made by the Deregulation Act 2015 and make amendments to update a piece of subordinate legislation, the Insolvent Partnerships (Northern Ireland) Order 1995.

Salient amendments to insolvency legislation include,

- Provision aimed at ensuring continuity of supply of essential goods and services to businesses which are being kept open post-insolvency to facilitate rescue.

- Doing away with the requirement for a statement of affairs to be provided in all bankruptcies.
- Provision to enable administrators to take action for fraudulent or wrongful trading.
- Removing the need for trustees and liquidators to obtain sanction from creditors or the Department to undertake certain actions.
- Doing away with physical meetings as a way of making decisions unless a specified percentage of creditors insist on a meeting.
- Enabling creditors to opt out of receiving correspondence.
- Allowing dividends to be paid in respect of debts under a certain figure without the creditor having to submit a claim.

The amendment to company director disqualification legislation will,

- Allow the Department for the Economy to obtain information about a person's conduct as director of an insolvent company directly from anyone capable of providing the information, including the directors themselves, without having to go through the insolvency office-holder.

The amendments to the Insolvent Partnerships Order (Northern Ireland) 1995 will include providing for creditors to make decisions using procedures which do not involve having to attend a physical meeting.

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**Are there any Section 75 categories which might be expected to benefit from the intended policy? Yes.**

**If so, explain how.**

The legislation to implement the policy will be of a technical nature and will apply equally to everyone using it or affected by it, irrespective of which of the section 75 categories they fall into. The emphasis on decision-taking by creditors, in ways which do not involve physical meetings, could potentially benefit any creditor who happens to be elderly (age), has a disability, or who has dependants.

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**Who initiated or wrote the policy?**

The Department for the Economy

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**Who owns and who implements the policy?**

The policy is owned and is being implemented by the Insolvency Service which is a branch of the Department for the Economy. However the policy is based on similar measures which have already been implemented by the Insolvency Service for England and Wales; it is policy to maintain parity of legislation with that applying in England and Wales.

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### Implementation factors

**Are there any factors which could contribute to/detract from the intended aim/outcome of the policy/decision?** No.

### Main stakeholders affected

**Who are the internal and external stakeholders (actual or potential) that the policy will impact upon? (please delete as appropriate)**

**staff-** the proposals will affect the Official Receiver and his staff and other staff in the Insolvency Service, especially those in the Director Disqualification Unit.

**service users** – some of the proposals will have an impact on bankrupts and directors of companies which have been wound up by the High Court.

**other public sector organisations** – one of the proposals will make a slight alteration to the High Court's jurisdiction to make bankruptcy orders.

#### **other, please specify**

The policy will impact on private sector insolvency practitioners by altering some of the procedures they are required to follow and by changing the way in which they interact with creditors and company shareholders in the course of insolvency proceedings. It will affect anyone owed money by individuals who, or companies which have, entered insolvency proceedings. It could potentially also affect electricity, gas, water, sewerage and electronic and IT service providers in that it obliges them to maintain supplies to businesses which are being kept open post-insolvency.

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### Other policies with a bearing on this policy

- **what are they?** None.
- **who owns them?** N/A

## Available evidence

Evidence to help inform the screening process may take many forms. Public authorities should ensure that their screening decision is informed by relevant data. The Commission has produced this guide to [signpost to S75 data](#).

What evidence/information (both qualitative and quantitative) have you gathered to inform this policy? Specify details for each of the Section 75 categories.

\*No evidence has been gathered and it would not be possible, or meaningful to attempt to gather any. The policy consists of a multiplicity of disparate changes to existing insolvency procedures, each of which is minor and technical in nature. The sole criterion determining their applicability is whether or not insolvency proceedings are to be taken or are in progress. Entry into insolvency proceedings is on the basis of insolvency, not membership of any section 75 category. Nearly half of the proposed changes will be to corporate insolvency procedures. The changes to individual insolvency procedures will not alter the make-up, in terms of section 75 characteristics, of those subject to such procedures.

Some of the changes are to the way in which meetings of creditors and company members take place during insolvency proceedings. The fact that virtual meetings will be the default position should benefit section 75 groups such as the elderly, those with a disability and those with dependants. However, there is no way of knowing who is going to be a creditor, or member of a company subject to insolvency proceedings in the future, so that it would not be possible to gather data on which section 75 groups they will fall into.

**Religious belief** evidence / information: N/A – See above \*

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**Political Opinion** evidence / information: N/A – See above \*

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**Racial Group** evidence / information: N/A – See above \*

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**Age** evidence / information: N/A – See above \*

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**Marital Status** evidence / information: N/A – See above \*

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**Sexual Orientation** evidence / information: N/A – See above \*

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**Men & Women generally** evidence / information: N/A – See above \*

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**Disability** evidence / information: N/A – See above \*

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**Dependants** evidence / information: N/A – See above \*

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### **Needs, experiences and priorities**

**Taking into account the information referred to above, what are the different needs, experiences and priorities of each of the following categories, in relation to the particular policy/decision?**

**Specify details of the needs, experiences and priorities for each of the Section 75 categories below:**

**Religious belief** The planned changes to insolvency and director disqualification legislation are not of a nature which could be expected to give rise to differing needs, experiences and priorities for this category.

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**Political Opinion** The planned changes to insolvency and director disqualification legislation are not of a nature which could be expected to give rise to differing needs, experiences and priorities for this category.

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**Racial Group** The planned changes to insolvency and director disqualification legislation are not of a nature which could be expected to give rise to differing needs, experiences and priorities for this category.

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**Age** The fact that meetings will now take place virtually will assist older people who may be less able to travel to a physical meeting. It will allow them to take part without having to incur the cost of travelling to a physical meeting. Older people, as a group, are less likely to have access to computers or similar devices. However, insolvency practitioners convening meetings will be expected to deal with this by providing alternative means of taking part, such as telephone conferencing.

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**Marital status** The planned changes to insolvency and director disqualification legislation are not of a nature which could be expected to give rise to differing needs, experiences and priorities for this category.

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**Sexual orientation** The planned changes to insolvency and director disqualification legislation are not of a nature which could be expected to give rise to differing needs, experiences and priorities for this category.

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**Men and Women Generally** The planned changes to insolvency and director disqualification legislation are not of a nature which could be expected to give rise to differing needs, experiences and priorities for men and women.

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**Disability** The fact that meetings will now take place virtually should assist people with disabilities who may be less able to travel to a physical meeting.

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**Dependants** The fact that meetings will now take place virtually should assist people with dependants who would need to make arrangements to have those dependants looked after if they were to attend a physical meeting.

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## **Part 2. Screening questions**

### **Introduction**

In making a decision as to whether or not there is a need to carry out an equality impact assessment, the public authority should consider its answers to the Screening Questions 1-4, which follow.

If the public authority's conclusion is **none** in respect of all of the Section 75 equality of opportunity and/or good relations categories, then the public authority may decide to screen the policy out. If a policy is 'screened out' as having no relevance to equality of opportunity or good relations, a public authority should give details of the reasons for the decision taken.

If the public authority's conclusion is **major** in respect of one or more of the Section 75 equality of opportunity and/or good relations categories, then consideration should be given to subjecting the policy to the equality impact assessment procedure.

If the public authority's conclusion is **minor** in respect of one or more of the Section 75 equality categories and/or good relations categories, then consideration should still be given to proceeding with an equality impact assessment, or to:

- measures to mitigate the adverse impact; or
- the introduction of an alternative policy to better promote equality of opportunity and/or good relations.

### **In favour of a 'major' impact**

- a) The policy is significant in terms of its strategic importance;
- b) Potential equality impacts are unknown, because, for example, there is insufficient data upon which to make an assessment or because they are complex, and it would be appropriate to conduct an equality impact assessment in order to better assess them;
- c) Potential equality and/or good relations impacts are likely to be adverse or are likely to be experienced disproportionately by groups of people including those who are marginalised or disadvantaged;
- d) Further assessment offers a valuable way to examine the evidence and develop recommendations in respect of a policy about which there are



concerns amongst affected individuals and representative groups, for example in respect of multiple identities;

- e) The policy is likely to be challenged by way of judicial review;
- f) The policy is significant in terms of expenditure.

### **In favour of 'minor' impact**

- a) The policy is not unlawfully discriminatory and any residual potential impacts on people are judged to be negligible;
- b) The policy, or certain proposals within it, are potentially unlawfully discriminatory, but this possibility can readily and easily be eliminated by making appropriate changes to the policy or by adopting appropriate mitigating measures;
- c) Any asymmetrical equality impacts caused by the policy are intentional because they are specifically designed to promote equality of opportunity for particular groups of disadvantaged people;
- d) By amending the policy there are better opportunities to better promote equality of opportunity and/or good relations.

### **In favour of none**

- a) The policy has no relevance to equality of opportunity or good relations.
- b) The policy is purely technical in nature and will have no bearing in terms of its likely impact on equality of opportunity or good relations for people within the equality and good relations categories.

Taking into account the evidence presented above, consider and comment on the likely impact on equality of opportunity and good relations for those affected by this policy, in any way, for each of the equality and good relations categories, by applying the screening questions given overleaf and indicate the level of impact on the group i.e. minor, major or none.

## Screening questions

### 1. What is the likely impact on equality of opportunity for those affected by this policy, for each of the Section 75 equality categories?

Please provide details of the likely policy impacts and determine the level of impact for each S75 categories below i.e. either minor, major or none.

Details of the likely policy impacts on **Religious belief**:

None.

What is the level of impact? None

Details of the likely policy impacts on **Political Opinion**:

None.

What is the level of impact? None

Details of the likely policy impacts on **Racial Group**:

None.

What is the level of impact? None

Details of the likely policy impacts on **Age**:

Being able to participate in meetings, without having to travel to them, should benefit older people.

What is the level of impact? Minor positive.

Details of the likely policy impacts on **Marital Status**:

None.

What is the level of impact? None

Details of the likely policy impacts on **Sexual Orientation**:

None.

What is the level of impact? None

Details of the likely policy impacts on **Men and Women**:

None.

What is the level of impact? None

Details of the likely policy impacts on **Disability**:

No longer having to travel to attend meetings should make it easier for individuals with disabilities to participate in meetings.

What is the level of impact? Minor positive.

Details of the likely policy impacts on **Dependants**:

No longer having to travel to attend meetings should make it easier for individuals with caring responsibilities to participate in meetings.

What is the level of impact? Minor positive.

**2. Are there opportunities to better promote equality of opportunity for people within the Section 75 equalities categories? No**

Detail opportunities of how this policy could promote equality of opportunity for people within each of the Section 75 Categories below:

**Religious Belief –**

No, the policy is purely technical in nature and does not lend itself to promoting equality of opportunity for this category.

**Political Opinion –**

No, the policy is purely technical in nature and does not lend itself to promoting equality of opportunity for this category.

**Racial Group –**

No, the policy is purely technical in nature and does not lend itself to promoting equality of opportunity for this category.

**Age –**

No, the policy is purely technical in nature and does not lend itself to promoting equality of opportunity for this category.

**Marital Status –**

No, the policy is purely technical in nature and does not lend itself to promoting equality of opportunity for this category.

**Sexual Orientation –**

No, the policy is purely technical in nature and does not lend itself to promoting equality of opportunity for this category.

**Men and Women generally –**

No, the policy is purely technical in nature and does not lend itself to promoting equality of opportunity for this category.

**Disability –**

No, the policy is purely technical in nature and does not lend itself to promoting equality of opportunity for this category.

**Dependants –**

No, the policy is purely technical in nature and does not lend itself to promoting equality of opportunity for this category.

**3. To what extent is the policy likely to impact on good relations between people of different religious belief, political opinion or racial group?**

Please provide details of the likely policy impact and determine the level of impact for each of the categories below i.e. either minor, major or none.

Details of the likely policy impacts on **Religious belief**:

The policy is for companies which are, or individuals who are, insolvent. The policy will have no impact whatsoever on relations between people with different religious beliefs.

What is the level of impact? None.

Details of the likely policy impacts on **Political Opinion**:

The policy is for companies which are, or individuals who are, insolvent. The policy will have no impact whatsoever on relations between people with different political opinions.

What is the level of impact? None

Details of the likely policy impacts on **Racial Group**:

The policy is for companies which are, or individuals who are, insolvent. The policy will have no impact whatsoever on relations between different racial groups.

What is the level of impact? None

**4. Are there opportunities to better promote good relations between people of different religious belief, political opinion or racial group?**

Detail opportunities of how this policy could better promote good relations for people within each of the Section 75 Categories below:

**Religious Belief –**

No, the policy relates solely to administration of corporate and individual insolvency. It is objective and impersonal, it does not involve any interaction between people with different religious beliefs and it would not lend itself to any adjustment to promote better relations between them.

**Political Opinion –**

No, the policy relates solely to administration of corporate and individual insolvency. It is objective and impersonal. It does not involve any interaction between people with different political opinions and it would not lend itself to any adjustment to promote better relations between them.

**Racial Group –**

No, the policy relates solely to administration of corporate and individual insolvency. It is objective and impersonal. It does not involve any interaction between different races and it would not lend itself to any adjustment to promote better relations between them.

## Additional considerations

### ***Multiple identity***

Generally speaking, people can fall into more than one Section 75 category. Taking this into consideration, are there any potential impacts of the policy/decision on people with multiple identities?

*(For example; disabled minority ethnic people; disabled women; young Protestant men; and young lesbians, gay and bisexual people).*

No. The policy deals with proposals to make amendments to insolvency and director disqualification legislation. These amendments will be of a technical nature and will comprise laws which will apply equally and without bias to all those responsible for the conduct of insolvency proceedings or who are affected by such proceedings. The amendments will have a neutral effect on people with multiple identities.

Provide details of data on the impact of the policy on people with multiple identities. Specify relevant Section 75 categories concerned.

No such data is available and the impact on such people will be neutral.

### Part 3. Screening decision

If the decision is not to conduct an equality impact assessment, please provide details of the reasons.

The decision is not to carry out an equality impact assessment as the planned legislation will not have a negative impact on any of the section 75 groups.

The policy is purely technical in nature. By its nature it will apply impartially and without bias. Only one aspect of the policy will have any impact on people in terms of the equality and good relations categories. It is that enacting legislation obliging insolvency practitioners not to use physical meetings when complying with legislative requirements to seek decisions from creditors can be expected to benefit anyone who happens to be elderly (age), has a disability or who has dependants by saving them having to travel to a central venue. The impact is expected to be both positive, and minor in terms of the numbers involved.

If the decision is not to conduct an equality impact assessment the public authority should consider if the policy should be mitigated or an alternative policy be introduced - please provide details.

The policy does not adversely affect any of the section 75 groups so that mitigation is not necessary or appropriate.

If the decision is to subject the policy to an equality impact assessment, please provide details of the reasons.

N/A

All public authorities' equality schemes must state the authority's arrangements for assessing and consulting on the likely impact of policies adopted or proposed to be adopted by the authority on the promotion of equality of opportunity. The Commission recommends screening and equality impact assessment as the tools to be utilised for such assessments. Further advice on equality impact assessment may be found in a separate Commission publication: Practical Guidance on Equality Impact Assessment.

**This document will be made available for comment as part of a public policy consultation. Any feedback will be considered as part of the review of the consultation responses.**

## Mitigation

When the public authority concludes that the likely impact is 'minor' and an equality impact assessment is not to be conducted, the public authority may consider mitigation to lessen the severity of any equality impact, or the introduction of an alternative policy to better promote equality of opportunity or good relations.

Can the policy/decision be amended or changed or an alternative policy introduced to better promote equality of opportunity and/or good relations? N/A.

If so, **give the reasons** to support your decision, together with the proposed changes/amendments or alternative policy.



## Timetabling and prioritising

Factors to be considered in timetabling and prioritising policies for equality impact assessment.

If the policy has been ‘**screened in**’ for equality impact assessment, then please answer the following questions to determine its priority for timetabling the equality impact assessment.

On a scale of 1-3, with 1 being the lowest priority and 3 being the highest, assess the policy in terms of its priority for equality impact assessment.

### Priority criterion – Rating (1-3)

Effect on equality of opportunity and good relations -  
Social need -

Effect on people’s daily lives -

Relevance to a public authority’s functions –

Note: The Total Rating Score should be used to prioritise the policy in rank order with other policies screened in for equality impact assessment. This list of priorities will assist the public authority in timetabling. Details of the Public Authority’s Equality Impact Assessment Timetable should be included in the quarterly Screening Report.

Is the policy affected by timetables established by other relevant public authorities?

No.

## Part 4. Monitoring

Public authorities should consider the guidance contained in the Commission’s Monitoring Guidance for Use by Public Authorities (July 2007).

The Commission recommends that where the policy has been amended or an alternative policy introduced, the public authority should monitor more broadly than for adverse impact (See Benefits, P.9-10, paras 2.13 – 2.20 of the Monitoring Guidance).

Effective monitoring will help the public authority identify any future adverse impact arising from the policy which may lead the public authority to conduct an

equality impact assessment, as well as help with future planning and policy development.

This screening will be issued as part of a public consultation on the policy and any feedback will be taken into account.

The changes to legislation resulting from the policy will be in parity with changes already made to the legislation applying in England and Wales.

Given that the policy deals with a range of disparate measures, and that none of them will have a major impact, Post Project Appraisal would not be appropriate.

However if further changes are made to the legislation applying in England and Wales consideration will be given to making similar changes to that applying in Northern Ireland.

## **Part 5 - Approval and authorisation**

Screened by: Jack Reid

Position/Job Title: Deputy Principal

Business Area/ Branch: Management Services and Regulatory Group

Date: 22/3/2023

Approved by: Richard Monds

Position/Job Title: Director of Insolvency

Business Area/Branch: Insolvency Service

Date: 22/3/2023

Note: A copy of the Screening Template, for each policy screened should be 'signed off' and approved by a senior manager responsible for the policy, made easily accessible on the public authority's website as soon as possible following completion and made available on request.

**KEELING SCHEDULE FOR THE INSOLVENCY (NORTHERN IRELAND) ORDER 1989 AS  
AMENDED BY THE INSOLVENCY (AMENDMENT) BILL**

**1989 No. 2405**

# **The Insolvency (Northern Ireland) Order 1989**

*Made 19th December 1989*

*Coming into operation in accordance with Article 1(2)*

At the Court at Buckingham Palace, the 19th day of December 1989

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule

1 to the Northern Ireland Act 1974 and of all other powers enabling Her in that behalf, is

pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

## **PART I INTRODUCTORY**

### **1.— Title and commencement**

(1) This Order may be cited as the Insolvency (Northern Ireland) Order 1989.

(2) This Order shall come into operation on such day or days as the Head of the Department may by order appoint.

(3) An order under paragraph (2) may contain such transitional and supplementary provisions as appear to the Head of the Department to be necessary or expedient.

### **2.— General interpretation**

(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

"the Bankruptcy Acts" means the Bankruptcy Acts (Northern Ireland) 1857 to 1980;

"body corporate" includes a body incorporated outside Northern Ireland, but does not include—

(a) a corporation sole, or

(b) a partnership that, whether or not a legal person, is not regarded as a body corporate under the law by which it is governed;

"business" includes a trade or profession;

"the Companies Acts" means the Companies Acts (as defined in section 2 of the Companies Act 2006) as they have effect in Northern Ireland;

"conditional sale agreement" and "hire-purchase agreement" have the same meanings as in the Consumer Credit Act 1974 ;

"corporate member" means an insolvent member which is a company;

"the Department" means the Department of Economic Development;

"the EU Regulation" means Regulation (EU) 2015/848 of the European Parliament and of the Council as it forms part of domestic law on and after exit day;

"EEA State" means a state that is a Contracting Party to the Agreement on the European

Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;

“employees' share scheme” means a scheme for encouraging or facilitating the holding of shares in or debentures of a company by or for the benefit of—

(a) the bona fide employees or former employees of—

(i) the company,

(ii) any subsidiary of the company, or

(iii) the company's holding company or any subsidiary of the company's holding company, or

(b) the spouses, civil partners, surviving spouses, surviving civil partners, or minor children or step-children of such employees or former employees;

"individual member" means an insolvent member who is an individual;

"insolvent member" means a member of an insolvent partnership, against whom an insolvency petition is being or has been presented;

"insolvency order" means—

(a) in the case of an insolvent partnership or a corporate member, a winding-up order; and

(b) in the case of an individual member, a bankruptcy order;

"insolvency petition" means—

(a) in the case of a petition presented against a corporate member, a petition for its winding up by the High Court; and

(b) in the case of a petition presented against an individual member, a petition to the Court for a bankruptcy order to be made against the individual, where the petition is presented in conjunction with a petition for the winding up of the partnership by the Court as an unregistered company under the Order;

"liability" means (subject to paragraph (4)) a liability to pay money or money's worth, including any liability under a statutory provision, any liability for breach of trust, any liability in contract, tort or bailment and any liability arising out of an obligation to make restitution;

"modifications" includes additions, alterations and omissions;

"the official receiver" means, in relation to any bankruptcy, winding up, individual voluntary arrangement, debt relief order or application for such an order, any officer of the Department who by virtue of Article 355 or 357 is authorised to act as the official receiver in relation to that bankruptcy, winding up, individual voluntary arrangement, debt relief order or application for such an order;

"prescribed"

(a) in Articles 48(3), 95(1) and in Part XII, means prescribed by regulations; and

(b) except as provided in sub-paragraph (a) in Article 150A(9) and in paragraph 3 of Schedule 4, means prescribed by rules;

"property" includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

"records" includes computer records and other non-documentary records;

"regulations" means regulations made by the Department subject ~~(except in Part 1A,~~

~~Article 148A(6), Article 197C and Article 359(5) and paragraph 61A of~~

~~Schedule B1)~~ **(except in the provisions mentioned in paragraph (2B))** to negative resolution;

"responsible insolvency practitioner" means—

(a) in winding up, the liquidator; and

(b) in bankruptcy, the trustee,

and in either case includes the official receiver when so acting.

"rules", except in Article 350, means rules made under Article 359;

"statutory provision" has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

"transaction" includes a gift, agreement or arrangement, and references to entering into a transaction shall be construed accordingly.

(2A) The following expressions have the same meaning in this Order as in the Companies Acts—

“articles”, in relation to a company (see section 18 of the Companies Act 2006);

“debenture” (see section 738 of that Act);

“holding company” (see sections 1159 and 1160 of, and Schedule 6 to, that Act);

“the Joint Stock Companies Acts” (see section 1171 of that Act);

“overseas company” (see section 1044 of that Act);

“paid up” (see section 583 of that Act);

“private company” and “public company” (see section 4 of that Act);

“share” (see section 540 of that Act);

“subsidiary” (see sections 1159 and 1160 of, and Schedule 6 to, that Act).

(2B) The provisions referred to in the definition of “regulations” in paragraph (2) (which confer power to make regulations that are not subject to negative resolution) are—

Part 1A;

Article 148A(6);

Article 197C;

Article 208ZG;

Article 345C;

Article 359(5);

Article 375(3)(b)(ii);

paragraph 61A of Schedule B1.

(3) In determining for the purposes of any provision of this Order whether any liability in tort is a bankruptcy debt, the bankrupt is deemed to become subject to that liability by reason of an obligation incurred at the time when the cause of action accrued.

(3A) In determining for the purposes of any provision in this Order whether any liability in tort is a debt provable in the winding up of a company or where a company is in administration, that liability is provable if either—

(a) the cause of action has accrued—

(i) in the case of a winding up which was not immediately preceded by an administration, at the date on which the company went into liquidation;

(ii) in the case of a winding up which was immediately preceded by an administration, at the date on which the company entered administration;

(iii) in the case of an administration which was not immediately preceded by a winding up, at the date on which the company entered administration;

(iv) in the case of an administration which was immediately preceded by a winding up, at the date on which the company went into liquidation; or

(b) all the elements necessary to establish the cause of action exist at that date except for actionable damage.

(4) For the purposes of references in any provision of this Order to a debt or liability, it is immaterial whether the debt or liability is present or future, whether it is certain or contingent or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed

criteria or as a matter of opinion; and references in any such provision to owing a debt are to be read accordingly.

(5) In this Order (except Article 355(1)) references to the official receiver include an officer of the Department appointed under Article 357(1) as deputy official receiver.

(6) For the purposes of any provision in this Order whereby an officer of a company who is in default shall be guilty of an offence, "officer who is in default" means an officer of the company who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the provision.

## **2A.**

Repealed

## **2B.— References to things in writing**

(1) A reference in this Order to a thing in writing includes that thing in electronic form.

(2) Paragraph (1) does not apply to the following provisions—

- (a) Article 97(2) (dissent from arrangement under Article 96);
  - (b) Article 103(1) (definition of inability to pay debts; the statutory demand);
  - (c) Article 186(1) (inability to pay debts: unpaid creditor for £750 or more);
  - (d) Article 187 (inability to pay debts: debt remaining unsatisfied after action brought);
- and
- (e) Article 242(1) and (2) (definition of "inability to pay", etc.; the statutory demand).

## **3.— "Act as insolvency practitioner"**

(1) A person acts as an insolvency practitioner in relation to a company by acting—

(a) as its liquidator, provisional liquidator, administrator, administrative receiver or monitor, or

[(b) where a voluntary arrangement in relation to the company is proposed or approved under Part II, as nominee or supervisor.

(2) A person acts as an insolvency practitioner in relation to an individual by acting—

(a) as his trustee in bankruptcy or interim receiver of his property; or

(c) where a voluntary arrangement in relation to the individual is proposed or approved under Part VIII, as nominee or supervisor;

(d) in the case of a deceased individual to the administration of whose estate this Article applies by virtue of an order under Article 365 (application of provisions of this Order to insolvent estates of deceased persons), as administrator of that estate.

(3) A person acts as an insolvency practitioner in relation to an insolvent partnership by acting—

(a) as its liquidator, provisional liquidator or administrator, or

(b) as trustee of the partnership under Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995, or

(c) where a voluntary arrangement in relation to the insolvent partnership is proposed or approved under Part II, as nominee or supervisor.

(3A) In relation to a voluntary arrangement proposed under Part II or VIII, a person acts as nominee if he performs any of the functions conferred on nominees under the Part in question.

(4) In this Article—

"administrative receiver" has the meaning given by Article 5(1);

"company" means—

(a) a company registered under the Companies Act 2006 in Northern Ireland, or

(b) a company that may be wound up under Part 6 of this Order (unregistered

companies);

"monitor" has the same meaning as in Part 1A (moratorium).

(5) Nothing in this Article applies to anything done by the official receiver.

(6)

#### **4.— "Associate"**

(1) For the purposes of this Order any question whether a person is an associate of another person is to be determined in accordance with the following provisions of this Article (any provision that a person is an associate of another person being taken to mean that they are associates of each other).

(2) A person is an associate of an individual if that person is—

(a) the individual's husband or wife or civil partner,

(b) a relative of—

(i) the individual, or

(ii) the individual's husband or wife or civil partner, or

(c) the husband or wife or civil partner of a relative of—

(i) the individual, or

(ii) the individual's husband or wife or civil partner.

(3) A person is an associate of any person with whom he is in partnership, and of the husband or wife or civil partner or a relative of any individual with whom he is in partnership; and a Scottish firm is an associate of any person who is a member of the firm.

(4) A person is an associate of any person whom he employs or by whom he is employed.

(5) A person in his capacity as trustee of a trust other than—

(a) a trust arising under Parts VIII to X of this Order, Parts VIII to IX of the Insolvency Act 1986 or the Bankruptcy (Scotland) Act 2016, or

(b) a pension scheme or an employees' share scheme ,

is an associate of another person if the beneficiaries of the trust include, or the terms of the trust confer a power that may be exercised for the benefit of, that other person or an associate of that other person.

(6) A company is an associate of another company—

(a) if the same person has control of both, or a person has control of one and persons who are his associates, or he and persons who are his associates, have control of the other, or

(b) if a group of 2 or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.

(7) A company is an associate of another person if that person has control of it or if that person and persons who are his associates together have control of it.

(8) For the purposes of this Article a person is a relative of an individual if he is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, treating—

(a) any relationship of the half blood as a relationship of the whole blood and the stepchild or adopted child of any person as his child, and

(b) an illegitimate child as the legitimate child of his mother and reputed father;

and references in this Article to a husband and wife include a former husband or wife and reputed husband or wife and references to a civil partner include a former civil partner and a reputed civil partner.

(9) For the purposes of this Article any director or other officer of a company is to be treated as employed by that company.

(10) For the purposes of this Article a person is to be taken as having control of a company if—

(a) the directors of the company or of another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions, or

(b) he is entitled to exercise, or control the exercise of, one-third or more of the voting power at any general meeting of the company or of another company which has control of it;

and where 2 or more persons together satisfy either of the conditions mentioned in subparagraph

(a) or (b), they are to be taken as having control of the company.

(11) In this Article "company" includes any body corporate (whether incorporated in Northern Ireland or elsewhere); and references to directors and other officers of a company and to voting power at any general meeting of a company have effect with any necessary modifications.

### *Interpretation for Parts 1A to 7*

#### **5.— Interpretation**

(1) In Parts 1A to 7 —

"administrative receiver" means—

(a) a receiver or manager of the whole (or substantially the whole) of a company's property appointed by or on behalf of the holders of any debentures of the company secured by a charge which, as created, was a floating charge, or by such a charge and one or more other securities; or

(b) a person who would be such a receiver or manager but for the appointment of some other person as the receiver of part of the company's property;

"agent" does not include a person's counsel acting as such;

"books and papers" and "books or papers" includes accounts, deeds, writing and documents;

"business day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971;

"chattel leasing agreement" means an agreement for the bailment of goods which is capable of subsisting for more than 3 months;

"debt", in relation to the winding up of a company or where a company is in administration, means (subject to Article 2(3A)) any of the following—

(a) any debt or liability to which the company is subject at the relevant date;

(b) any debt or liability to which the company may become subject after the relevant date by reason of any obligation incurred before that date; and

(c) any interest on a debt proved in the liquidation or in the administration which bears interest, except in so far as it is payable in respect of any period after the relevant date;

"deemed consent procedure" means the deemed consent procedure provided for by Article 208ZF;

"director" includes any person occupying the position of director, by whatever name called;

"document" includes summons, notice, order and other legal process, and registers;

"floating charge" means a charge which, as created, was a floating charge;

"officer", in relation to a body corporate, includes a director, manager or secretary;

"the official rate", in relation to interest, means the rate payable under Article 160(4);

"qualifying decision procedure" has the meaning given by Article 208ZE(11);



“the registrar” means the registrar of companies for Northern Ireland;

"a resolution for voluntary winding up" means a resolution passed under either of the sub-paragraphs of Article 70(1);

"retention of title agreement" means an agreement for the sale of goods to a company being an agreement—

(a) which does not constitute a charge on the goods, but

(b) under which, if the seller is not paid and the company is wound up, the seller will have priority over all other creditors of the company as respects the goods or any property representing the goods;

"secured creditor", in relation to a company, means a creditor of the company who holds in respect of his debt a security over property of the company, and "unsecured creditor" is to be read accordingly;

"security" means any mortgage, charge, lien or other security;

"shadow director", in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act, but so that a person is not deemed a shadow director by reason only that the directors act—

(a) on advice given by that person in a professional capacity;

(b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under a statutory provision;

(c) in accordance with guidance or advice given by that person in that person's capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975);

"supervisor" means a person acting as defined in Article 20(2);

"voluntary arrangement" means an arrangement as defined in Article 14(1).

(1A) For the purposes of the definition of “debt” in paragraph (1), “the relevant date” means—

(a) in the case of a winding up which was not immediately preceded by an administration, the date on which the company went into liquidation;

(b) in the case of a winding up which was immediately preceded by an administration, the date on which the company entered administration;

(c) in the case of an administration which was not immediately preceded by a winding up, the date on which the company entered administration;

(d) in the case of an administration which was immediately preceded by a winding up, the date on which the company went into liquidation.

## **6.— "Insolvency" and "go into liquidation"**

(1) In Parts 1A to 7, "insolvency", in relation to a company, includes the coming into force of a moratorium for the company under Part 1A, the approval of a voluntary arrangement under Part II, or the appointment of an administrator or administrative receiver.

(2) For the purposes of any provision in Parts 1A to 7, a company goes into liquidation if it passes a resolution for voluntary winding up or an order for its winding up is made by the High Court at a time when it has not already gone into liquidation by passing such a resolution.

(3) The reference to a resolution for voluntary winding up in paragraph (2) includes a reference to a resolution which is deemed to occur by virtue of—

(a) paragraph 84(5)(b) of Schedule B1

## **7. "Connected with a company"**

For the purposes of any provision in Parts 1A to 7, a person is connected with a company if—

(a) he is a director or shadow director of the company or an associate of such a director or

shadow director, or  
(b) he is an associate of the company.

## **8. "Member of a company"**

For the purposes of any provision in Parts 1A to 7, a person who is not a member of a company but to whom shares in the company have been transferred, or transmitted by operation of law, is to be regarded as a member of the company, and references to a member or members are to be read accordingly.

## **“Opted-out creditor”**

8A.—(1) For the purposes of Parts 2 to 7 “opted-out creditor”, in relation to an office-holder of a company, means a person who—

(a) is a creditor of the company, and  
(b) in accordance with the rules has elected (or is deemed to have elected) to be (and not to cease to be) an opted-out creditor in relation to the office-holder.

(2) In this Article, “office-holder”, in relation to a company, means—

(a) a liquidator, provisional liquidator, administrator or administrative receiver of the company, or  
(b) the supervisor of a voluntary arrangement which has taken effect under Part 2 in relation to the company.

## *Interpretation for Parts 7A to 10*

## **9.— Interpretation**

(1) In Parts 7A to 10 —

"bankrupt" means an individual who has been adjudged bankrupt and, in relation to a bankruptcy order, it means the individual adjudged bankrupt by that order;

"bankruptcy debt", in relation to a bankrupt, means (subject to Article 2(3)) any of the following—

(a) any debt or liability to which he is subject at the commencement of the bankruptcy,  
(b) any debt or liability to which he may become subject after the commencement of the bankruptcy (including after his discharge from bankruptcy) by reason of any obligation incurred before the commencement of the bankruptcy, and  
(c) any interest provable as mentioned in Article 295(2);

And "debt" shall be construed accordingly;

"bankruptcy order" means an order adjudging an individual bankrupt;

"bankruptcy petition" means a petition to the High Court for a bankruptcy order;

"creditor"

(a) in relation to a bankrupt, means a person to whom any of the bankruptcy debts is owed, and

(b) in relation to an individual to whom a bankruptcy petition relates, means a person who would be a creditor in the bankruptcy if a bankruptcy order were made on that petition;

**“creditors’ decision procedure” has the meaning given by Article 345A(11);**

"creditor's petition" means a bankruptcy petition under Article 238(1)(a);

"the debtor"

(za) in relation to a debt relief order or an application for such an order, has the same meaning as in Part 7A,

(a) in relation to a proposal for the purposes of Part VIII, means the individual

making or intending to make that proposal, and

(b) in relation to a bankruptcy petition, means the individual to whom the petition relates;

"debtor's petition" means a bankruptcy petition presented by the debtor himself under Article 238(1)(b);

"debt relief order" means an order made by the official receiver under Part 7A;

**"deemed consent procedure" means the deemed consent procedure provided for by Article 345B;**

"dwelling house" includes any building or part of a building which is occupied as a dwelling and any yard, garden, garage or outhouse belonging to the dwelling house and occupied with it;

"family" in relation to a bankrupt, means the persons (if any) who are living with him and are dependent on him;

"insolvency administration" means the administration in bankruptcy of the insolvent estate of a deceased person;

"insolvency administration order" means an order for the administration in bankruptcy of the insolvent estate of a deceased debtor (being an individual at the date of his death);

"insolvency administration petition" means a petition for an insolvency administration order;

"interim order" means an order under Article 226;

"the Judgments Enforcement Order" means the Judgments Enforcement (Northern Ireland) Order 1981;

"the Land Registration Act" means the Land Registration Act (Northern Ireland) 1970;]

"the Registration of Deeds Act" means the Registration of Deeds Act (Northern Ireland) 1970; and

"the Rules" means the Insolvency Rules (Northern Ireland) 1999;

"the trustee" in relation to a bankruptcy and the bankrupt, means the trustee of the bankrupt's estate;

"voluntary arrangement" means an arrangement as defined in Article 227(1).

(2) References in Parts 7A to 10 to a person's affairs include his business, if any.

(3)

(5) Liability under the Child Support (Northern Ireland) Order 1991 to pay child support maintenance to any person is not a debt or liability for the purposes of Part 8.

## **10.— "Security", etc.**

(1) Subject to paragraphs (2) and (3) and any provision of the rules requiring a creditor to give up his security for the purposes of proving a debt, a debt is secured for the purposes of Parts 7A to 10 to the extent that the person to whom the debt is owed holds any security for the debt (whether a mortgage, charge, lien or other security) over any property of the person by whom the debt is owed.

(2) Where a statement such as is mentioned in Article 243(1)(a) has been made by a secured creditor for the purposes of any bankruptcy petition and a bankruptcy order is subsequently made on that petition, the creditor is deemed for the purposes of Parts VIII to X to have given up the security specified in the statement.

(3) In paragraph (1) the reference to a security does not include a lien on books, papers or other records, except to the extent that they consist of documents which give a title to property and are held as such.

## **11.— "Bankrupt's estate"**

(1) Subject to the following provisions of this Article, a bankrupt's estate for the purposes of any of Parts VIII to X comprises—

(a) all property belonging to or vested in the bankrupt at the commencement of the bankruptcy, and

(b) any property which by virtue of any of the provisions of Part IX of this Order or Article 88(3) or 90(3) of the Judgments Enforcement (Northern Ireland) Order 1981 (effect of bankruptcy or winding up on enforcement of judgments and proceeds of such enforcement) is comprised in that estate or is treated as falling within sub-paragraph (a).

(2) Subject to Article 281 (certain excluded property reclaimable by trustee), paragraph (1) does not apply to—

(a) such tools, books, vehicles and other items of equipment as are necessary to the bankrupt for use personally by him in his employment, business or vocation;

(b) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his family.

(3) Paragraph (1) does not apply to property held by the bankrupt on trust for any other person.

(4) References in any of Parts VIII to X to property, in relation to a bankrupt, include references to any power exercisable by him over or in respect of property except in so far as the power is exercisable over or in respect of property not for the time being comprised in the bankrupt's estate and—

(a) is so exercisable at a time after either the official receiver has had his release in respect of that estate under Article 272(2) or ~~a meeting summoned by the trustee of that estate under Article 304 has been held~~ **the trustee of that estate has vacated office under Article 271(7)**, or

(b) cannot be so exercised for the benefit of the bankrupt;

and a power exercisable over or in respect of property is deemed for the purposes of any of Parts VIII to X to vest in the person entitled to exercise it at the time of the transaction or event by virtue of which it is exercisable by that person (whether or not it becomes so exercisable at that time).

(5) For the purposes of any such provision in Parts VIII to X, property comprised in a bankrupt's estate is so comprised subject to the rights of any person other than the bankrupt (whether as a secured creditor of the bankrupt or otherwise) in relation thereto, but disregarding—

(a) any rights in relation to which a statement such as is required by Article 243(1)(a) was made in the petition on which the bankrupt was adjudged bankrupt, and

(b) any rights which have been otherwise given up in accordance with the rules.

(5A) This Article has effect subject to Article 256A.

(6) This Article has effect subject to the provisions of any statutory provision not contained in this Order under which any property is to be excluded from a bankrupt's estate.

### **“Opted-out creditor”**

11A.—(1) For the purposes of Parts 7A to 10 “opted-out creditor” in relation to an office-holder for an individual means a person who—

(a) is a creditor of the individual, and

(b) in accordance with the rules has elected (or is deemed to have elected) to be (and not to cease to be) an opted-out creditor in relation to the office-holder.

(2) In this Article, “office-holder”, in relation to an individual, means—

(a) where a bankruptcy order is made against the individual, the official receiver or the trustee in bankruptcy;

(b) where an interim receiver of the individual's property is

appointed, the interim receiver;  
(c) the supervisor of a voluntary arrangement approved under Chapter 2 of Part 8 in relation to the individual.

### *Interpretation for this Order*

## **12. "Receiver or manager"**

In this Order —

- (a) any reference to a receiver or manager of the property of a company, or to a receiver of it, includes a receiver or manager, or (as the case may be) a receiver of part only of that property and a receiver only of the income arising from the property or from part of it; and
- (b) any reference to the appointment of a receiver or manager under powers contained in an instrument includes an appointment made under powers which, by virtue of any statutory provision are implied in and have effect as if contained in an instrument.

## **13.— "Contributory"**

- (1) In this Order "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.
- (2) The reference in paragraph (1) to persons liable to contribute to the assets does not include a person so liable by virtue of a declaration by the High Court under Article 177 (imputed responsibility for company's fraudulent trading) or Article 178 (wrongful trading).
- (3) A reference in a company's articles to a contributory does not (unless the context requires) include a person who is a contributory only by virtue of Article 63 (liability of past directors and shareholders).

## **PART 1A**

### **MORATORIUM**

#### **CHAPTER 1**

#### **INTRODUCTORY**

### **13A Overview**

- (1) This Part contains provision that enables an eligible company, in certain circumstances, to obtain a moratorium, giving it various protections from creditors set out in this Part.
- (2) In this Chapter Article 13AA introduces Schedule ZA1 (which defines what is meant by an "eligible" company).
- (3) Chapter 2 sets out how an eligible company may obtain a moratorium.
- (4) Chapter 3 sets out for how long a moratorium has effect.
- (5) Chapter 4 sets out the effects of a moratorium on the company and its creditors.
- (6) Chapter 5 contains provision about the monitor.
- (7) Chapter 6 contains provision about challenges.
- (8) Chapter 7 contains provision about certain offences.
- (9) Chapter 8 contains miscellaneous and general provision, including—
  - (a) special provision for certain kinds of company;
  - (b) definitions for the purposes of this Part;
  - (c) provision about regulations under this Part.

### **13AA Eligible companies**

Schedule ZA1 contains provision for determining whether a company is an eligible company for the purposes of this Part.

## **CHAPTER 2**

### **OBTAINING A MORATORIUM**

#### **13B Obtaining a moratorium by filing documents at High Court**

- (1) This Article applies to an eligible company that—
  - (a) is not subject to an outstanding winding-up petition, and
  - (b) is not an overseas company.
- (2) The directors of the company may obtain a moratorium for the company by filing the relevant documents with the High Court (for the relevant documents, see Article 13BC).
- (3) For the purposes of this Chapter a company is "subject to an outstanding winding-up petition" if—
  - (a) a petition for the winding up of the company has been presented, and
  - (b) the petition has not been withdrawn or determined.

#### **13BA Obtaining a moratorium for company subject to winding-up petition**

- (1) This Article applies to an eligible company that is subject to an outstanding winding-up petition.
- (2) The directors of the company may apply to the High Court for a moratorium for the company.
- (3) The application must be accompanied by the relevant documents (for the relevant documents, see Article 13BC).
- (4) On hearing the application the Court may—
  - (a) make an order that the company should be subject to a moratorium, or
  - (b) make any other order which the Court thinks appropriate.
- (5) The Court may make an order under paragraph (4)(a) only if it is satisfied that a moratorium for the company would achieve a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being subject to a moratorium).

#### **13BB Obtaining a moratorium for other overseas companies**

- (1) This Article applies to an eligible company that—
  - (a) is not subject to an outstanding winding-up petition, and
  - (b) is an overseas company.
- (2) The directors of the company may apply to the High Court for a moratorium for the company.
- (3) The application must be accompanied by the relevant documents (for the relevant documents, see Article 13BC).
- (4) On hearing the application the Court may—
  - (a) make an order that the company should be subject to a moratorium, or
  - (b) make any other order which the Court thinks appropriate.

#### **13BC The relevant documents**

- (1) For the purposes of this Chapter, "the relevant documents" are—
  - (a) a notice that the directors wish to obtain a moratorium,
  - (b) a statement from a qualified person ("the proposed monitor") that the person—

- (i) is a qualified person, and
  - (ii) consents to act as the monitor in relation to the proposed moratorium,
  - (c) a statement from the proposed monitor that the company is an eligible company,
  - (d) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its debts, and
  - (e) a statement from the proposed monitor that, in the proposed monitor's view, it is likely that a moratorium for the company would result in the rescue of the company as a going concern.
- (2) Where it is proposed that more than one person should act as the monitor in relation to the proposed moratorium—
- (a) each of them must make a statement under paragraph (1)(b), (c) and (e), and
  - (b) the statement under paragraph (1)(b) must specify—
    - (i) which functions (if any) are to be exercised by the persons acting jointly, and
    - (ii) which functions (if any) are to be exercised by any or all of the persons.
- (3) The rules may make provision about the date on which a statement comprised in the relevant documents must be made.
- (4) Regulations may amend this Article for the purposes of adding to the list of documents in paragraph (1).
- (5) Regulations may not be made under paragraph (4) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

### **13BD Beginning of moratorium and appointment of monitor**

- (1) A moratorium for a company comes into force at the time at which—
- (a) in the case of a company to which Article 13B applies, the relevant documents are filed with the High Court under paragraph (2) of that Article;
  - (b) in the case of a company to which Article 13BA applies, an order is made under Article 13BA(4)(a);
  - (c) in the case of a company to which Article 13BB applies, an order is made under Article 13BB(4)(a).
- (2) On the coming into force of a moratorium, the person or persons who made the statement mentioned in Article 13BC(1)(b) become the monitor in relation to the moratorium.

### **13BE Obligations to notify where moratorium comes into force**

- (1) As soon as reasonably practicable after a moratorium for a company comes into force, the directors must notify the monitor of that fact.
- (2) As soon as reasonably practicable after receiving a notice under paragraph (1), the monitor must notify the following that a moratorium for the company has come into force—
- (a) the registrar,
  - (b) every creditor of the company of whose claim the monitor is aware,
  - (c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and
  - (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005, the Board of the Pension Protection Fund.
- (3) A notice under paragraph (2) must specify—
- (a) when the moratorium came into force, and
  - (b) when, subject to any alteration under or by virtue of any of the provisions mentioned in Article 13C(3) or (4), the moratorium will come to an end.
- (4) If the directors fail to comply with paragraph (1), any director who did not have a reasonable excuse for the failure commits an offence.

(5) If the monitor without reasonable excuse fails to comply with paragraph (2), the monitor commits an offence.

## **CHAPTER 3**

### **LENGTH OF MORATORIUM**

#### **Initial period**

##### **13C End of the moratorium**

(1) A moratorium ends at the end of the initial period unless it is extended, or comes to an end sooner, under or by virtue of a provision mentioned in paragraph (3) or (4).

(2) In this Chapter "the initial period", in relation to a moratorium, means the period of 20 business days beginning with the business day after the day on which the moratorium comes into force.

(3) For provision under or by virtue of which a moratorium is or may be extended, see—

Article 13CA (extension by directors without creditor consent);

Article 13CB (extension by directors with creditor consent);

Article 13CD (extension by High Court on application of directors);

Article 13CE (extension while proposal for CVA pending);

Article 13CF (extension by High Court in course of other proceedings).

(4) For provision under or by virtue of which the moratorium is or may be terminated, see—

Article 13CG (termination on entry into insolvency procedure etc);

Article 13ED (termination by monitor);

Article 13F or 13FB (termination by High Court).

(5) A moratorium may not be extended under a provision mentioned in paragraph (3) once it has come to an end.

(6) Where the application of two or more of the provisions mentioned in paragraphs (3) and (4) would produce a different length of moratorium, the provision that applies last is to prevail (irrespective of whether that results in a shorter or longer moratorium).

#### **Extension of moratorium**

##### **13CA Extension by directors without creditor consent**

(1) During the initial period, but after the first 15 business days of that period, the directors may extend the moratorium by filing with the High Court—

(a) a notice that the directors wish to extend the moratorium,

(b) a statement from the directors that all of the following that have fallen due have been paid or otherwise discharged—

(i) moratorium debts, and

(ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see Article 13D),

(c) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its pre-moratorium debts, and

(d) a statement from the monitor that, in the monitor's view, it is likely that the moratorium will result in the rescue of the company as a going concern.

(2) The rules may make provision about the date on which a statement mentioned in paragraph (1) must be made.

(3) On the filing with the Court of the documents mentioned in paragraph (1), the moratorium is extended so that it ends at the end of the period—



- (a) beginning immediately after the initial period ends, and
- (b) ending with the 20th business day after the initial period ends.

### **13CB Extension by directors with creditor consent**

- (1) At any time after the first 15 business days of the initial period the directors may, if they have obtained creditor consent, extend the moratorium by filing with the High Court—
  - (a) a notice that the directors wish to extend the moratorium,
  - (b) a statement from the directors that all of the following that have fallen due have been paid or otherwise discharged—
    - (i) moratorium debts, and
    - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see Article 13D),
  - (c) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its pre-moratorium debts,
  - (d) a statement from the monitor that, in the monitor's view, it is likely that the moratorium will result in the rescue of the company as a going concern, and
  - (e) a statement from the directors that creditor consent has been obtained, and of the revised end date for which that consent was obtained.
- (2) The rules may make provision about the date on which a statement mentioned in paragraph (1) must be made.
- (3) On the filing with the Court of the documents mentioned in paragraph (1), the moratorium is extended so that it ends with the revised end date mentioned in the statement under paragraph (1)(e).
- (4) A moratorium may be extended under this Article more than once.

### **13CC Creditor consent for the purposes of Article 13CB**

- (1) References in Article 13CB to creditor consent are to the consent of pre- moratorium creditors to a revised end date for the moratorium.
- (2) The decision as to consent is to be made ~~at a meeting of pre-moratorium creditors~~ **using a qualifying decision procedure.**
- ~~(3) A meeting under paragraph (2) —~~
  - ~~(a) is to be held at such time, date and place as the directors think fit, and~~
  - ~~(b) is to be conducted in accordance with the rules.~~
- (4) The revised end date must be a date before the end of the period of one year beginning with the first day of the initial period.
- (5) In this Article "pre-moratorium creditor" means a creditor in respect of a pre-moratorium debt—
  - (a) for which the company has a payment holiday during the moratorium (see Article 13D), and
  - (b) which has not been paid or otherwise discharged.
- (6) In determining for the purposes of paragraph (5) what counts as a pre-moratorium debt for which the company has a payment holiday during the moratorium, Articles 13D(3) and 13HD(1)(b) apply as if the references to the moratorium were to the moratorium as proposed to be extended.
- (7) Regulations may amend this Article for the purposes of changing the definition of "pre-moratorium creditor".
- (8) Regulations may not be made under paragraph (7) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

### **13CD Extension by High Court on application of directors**

- (1) At any time after the first 15 business days of the initial period, the directors may apply to the High Court for an order that the moratorium be extended.
- (2) The application must be accompanied by—
  - (a) a statement from the directors that all of the following that have fallen due have been paid or otherwise discharged—
    - (i) moratorium debts, and
    - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see Article 13D),
  - (b) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its pre-moratorium debts,
  - (c) a statement from the directors as to whether pre-moratorium creditors (as defined by Article 13CC(5) and (6)) have been consulted about the application and if not why not, and
  - (d) a statement from the monitor that, in the monitor's view, it is likely that the moratorium will result in the rescue of the company as a going concern.
- (3) The rules may make provision about the date on which a statement mentioned in paragraph (2) must be made.
- (4) On hearing the application the Court may—
  - (a) make an order that the moratorium be extended to such date as is specified in the order, or
  - (b) make any other order which the Court thinks appropriate.
- (5) In deciding whether to make an order under paragraph (4)(a) the Court must, in particular, consider the following—
  - (a) the interests of pre-moratorium creditors, as defined by Article 13CC(5) and (6), and
  - (b) the likelihood that the extension of the moratorium will result in the rescue of the company as a going concern.
- (6) Paragraph (7) applies where—
  - (a) an application under this Article is made, and
  - (b) apart from that paragraph, the moratorium would end at a time before the application has been disposed of.
- (7) The moratorium—
  - (a) does not end at the time mentioned in paragraph (6)(b), and
  - (b) instead, ends—
    - (i) in a case in which the Court makes an order under paragraph (4)(a), in accordance with the order;
    - (ii) otherwise, when the application is withdrawn or disposed of.
- (8) A moratorium may be extended under this Article more than once.

### **13CE Extension while proposal for CVA pending**

- (1) Paragraph (2) applies where—
  - (a) at any time, the directors make a proposal under Part 2 (company voluntary arrangements), and
  - (b) apart from that paragraph, the moratorium would end at a time before the proposal is disposed of.
- (2) The moratorium—
  - (a) does not end at the time mentioned in paragraph (1)(b), and
  - (b) instead, ends when the proposal is disposed of.
- (3) For the purposes of this Article a proposal under Part 2 is "disposed of" when any of the following takes place—
  - (a) the company and its creditors both decide under Article 17 not to approve the voluntary arrangement contained in the proposal;

- (b) the decisions taken by the company and its creditors under Article 17 differ, and—
- (i) the period for making an application under Article 17A(3) expires and either no application has been made within that period or any application made within that period has been withdrawn, or
- (ii) an application is made under Article 17A(3) and that application is disposed of, or it is withdrawn after the expiry of the period for making an application under Article 17A(3);
- (c) the voluntary arrangement contained in the proposal takes effect under Article 18;
- (d) the proposal is withdrawn.

### **13CF Extension by High Court in the course of other proceedings**

- (1) Paragraph (2) applies where—
  - (a) an application is made under section 896 or 901C(1) of the Companies Act 2006 (arrangements and reconstructions: court order for holding of meeting) in respect of a company, and
  - (b) during proceedings before the High Court in connection with the application, a moratorium for the company is in force.
- (2) The High Court may make an order that the moratorium be extended to such date as is specified in the order.

### **Early termination on certain grounds**

#### **13CG Company enters into insolvency procedure etc**

- (1) A moratorium comes to an end at any time at which the company—
  - (a) enters into a compromise or arrangement (see paragraph (2)), or
  - (b) enters into a relevant insolvency procedure (see paragraph (3)).
- (2) For the purposes of this Article a company enters into a compromise or arrangement if an order under section 899 or 901F of the Companies Act 2006 (court sanction for compromise or arrangement) comes into effect in relation to the company.
- (3) For the purposes of this Article a company enters into a relevant insolvency procedure if—
  - (a) a voluntary arrangement takes effect under Article 18 in relation to the company,
  - (b) the company enters administration (within the meaning of Schedule B1 (see paragraph 2(2)(b) of that Schedule)),
  - (c) paragraph 45 of Schedule B1 (administration: interim moratorium) begins to apply in relation to the company, or
  - (d) the company goes into liquidation (see Article 6).

### **Obligations to notify change in end of moratorium**

#### **13CH Obligations to notify change in end of moratorium**

- (1) The table imposes obligations on the directors of a company to notify the monitor where a moratorium for the company is extended or comes to an end.

	<i>Where a moratorium is extended or comes to an end under or by virtue of the following provision</i>	<i>the directors must</i>
1	Article 13CA	Notify the monitor of the extension.
2	Article 13CB	Notify the monitor of the extension

		and of the revised end date.
3	Article 13CD(4)	Notify the monitor of the extension and provide the monitor with the court order under Article 13CD(4)
4	Article 13CD(7)(a)	Notify the monitor of the extension.
5	Article 13CD(7)(b)(ii)	Notify the monitor that the moratorium has come to an end and of the date that it ended.
6	Article 13CE(2)(a)	Notify the monitor of the extension.
7	Article 13CE(2)(b)	Notify the monitor that the moratorium has come to an end and of the date that it ended.
8	Article 13CF	Notify the monitor of the extension and provide the monitor with any court order under Article 13CF.
9	Article 13CG	Notify the monitor that the moratorium has come to an end.
10	Article 13F	Notify the monitor that the moratorium has come to an end and provide the monitor with the court order under Article 13F.
11	Article 13FB	Notify the monitor that the moratorium has come to an end and provide the monitor with the court order under Article 13FB.

(2) After receiving a notice under paragraph (1), other than a notice under entry 4 or 6 of the table, the monitor must notify the relevant persons of when the moratorium ended or, subject to any alteration under or by virtue of any of the provisions mentioned in Article 13C(3) or (4), the moratorium will come to an end.

(3) After receiving a notice under entry 4 or 6 of the table, the monitor must notify the relevant persons.

(4) If a moratorium comes to an end under Article 13ED (termination by monitor), the monitor must notify the company and the relevant persons of when the moratorium ended.

(5) The rules may—

(a) make further provision about the timing of a notice required to be given under this Article;

(b) require a notice to be accompanied by other documents.

(6) If the directors fail to comply with paragraph (1), any director who did not have a reasonable excuse for the failure commits an offence.

(7) If the monitor without reasonable excuse fails to comply with any of paragraphs (2) to (4), the monitor commits an offence.

(8) In this Article "the relevant persons" means—

(a) the registrar,

(b) every creditor of the company of whose claim the monitor is aware,

(c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and

(d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005, the Board of the Pension Protection Fund.

## **CHAPTER 4**

### **EFFECTS OF MORATORIUM**

#### **Introductory**

##### **13D Overview and construction of references to payment holidays**

- (1) This Chapter makes provision about the main effects of a moratorium for a company.
- (2) The provision made by this Chapter includes restrictions on the enforcement or payment of the debts that are defined by paragraph (3) as pre-moratorium debts for which a company has a payment holiday during a moratorium.
- (3) In this Part a reference to pre-moratorium debts for which a company has a payment holiday during a moratorium is to its pre-moratorium debts that have fallen due before the moratorium, or that fall due during the moratorium, except in so far as they consist of amounts payable in respect of—
- (a) the monitor's remuneration or expenses,
  - (b) goods or services supplied during the moratorium,
  - (c) rent in respect of a period during the moratorium,
  - (d) wages or salary arising under a contract of employment,
  - (e) redundancy payments, or
  - (f) debts or other liabilities arising under a contract or other instrument involving financial services.
- (4) The rules may make provision as to what is, or is not, to count as the supply of goods or services for the purposes of paragraph (3)(b).
- (5) Regulations may amend this Article for the purposes of changing the list in paragraph (3).
- (6) Regulations may not be made under paragraph (5) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
- (7) In this Article—
- "contract or other instrument involving financial services" has the meaning given by Schedule ZA2;
- "monitor's remuneration or expenses" does not include remuneration in respect of anything done by a proposed monitor before the moratorium begins;
- "redundancy payment" means—
- (a) a redundancy payment under Part 11 of the Employment Rights Act 1996 or Part 12 of the Employment Rights (Northern Ireland) Order 1996, or
  - (b) a payment made to a person who agrees to the termination of their employment in circumstances where they would have been entitled to a redundancy payment under that Part if dismissed;
- "wages or salary" includes—
- (a) a sum payable in respect of a period of holiday (for which purpose the sum is to 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, and
  - (d) a contribution to an occupational pension scheme.

#### **Publicity about moratorium**

### **13DA Publicity about moratorium**

- (1) During a moratorium, the company must, in any premises—
  - (a) where business of the company is carried on, and
  - (b) to which customers of the company or suppliers of goods or services to the company have access, display, in a prominent position so that it may easily be read by such customers or suppliers, a notice containing the required information.
- (2) During a moratorium, any websites of the company must state the required information.
- (3) During a moratorium, every business document issued by or on behalf of the company must state the required information.
- (4) For the purposes of paragraphs (1), (2) and (3), "the required information" is—
  - (a) that a moratorium is in force in relation to the company, and
  - (b) the name of the monitor.
- (5) If paragraph (1), (2) or (3) is contravened—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the contravention commits an offence.
- (6) In this Article "business document" means—
  - (a) an invoice,
  - (b) an order for goods or services,
  - (c) a business letter, and
  - (d) an order form,whether in hard copy, electronic or any other form.

### **Effect on creditors etc**

### **13DB Restrictions on insolvency proceedings etc**

- (1) During a moratorium—
  - (a) no petition may be presented for the winding up of the company, except by the directors,
  - (b) no resolution may be passed for the voluntary winding up of the company under Article 70(1)(a),
  - (c) a resolution for the voluntary winding up of the company under Article 70(1)(b) may be passed only if the resolution is recommended by the directors,
  - (d) no order may be made for the winding up of the company, except on a petition by the directors,
  - (e) no administration application may be made in respect of the company, except by the directors,
  - (f) no notice of intention to appoint an administrator of the company under paragraph 15 or 23(1) of Schedule B1 may be filed with the High Court,
  - (g) no administrator of the company may be appointed under paragraph 15 or 23(1) of Schedule B1, and
  - (h) no administrative receiver of the company may be appointed.
- (2) Paragraph (1)(a) does not apply to an excepted petition; and paragraph (1)(d) does not apply to an order on an excepted petition.
- (3) For these purposes, "excepted petition" means a petition under—
  - (a) Article 104A, 104B or 104C, or
  - (b) section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in subsection (3)(b) of that section.

### **13DC Restrictions on enforcement and legal proceedings**

- (1) During a moratorium—

(a) a landlord or other person to whom rent is payable may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company, except with the permission of the High Court,

(b) no steps may be taken to enforce any security over the company's property except—

(i) steps to enforce a collateral security charge (within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979)),

(ii) steps to enforce security created or otherwise arising under a financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/ 3226)), or

(iii) steps taken with the permission of the High Court,

(c) no steps may be taken to repossess goods in the company's possession under any hire-purchase agreement, except with the permission of the High Court, and

(d) no legal process (including legal proceedings, enforcement and distress) may be instituted, carried out or continued against the company or its property except—

(i) employment tribunal proceedings or any legal process arising out of such proceedings,

(ii) proceedings, not within paragraph (i), involving a claim between an employer and a worker, or

(iii) a legal process instituted, carried out or continued with the permission of the High Court.

(2) An application may not be made for permission under paragraph (1) for the purposes of enforcing a pre-moratorium debt for which the company has a payment holiday during the moratorium.

(3) An application may not be made for permission under paragraph (1)(b), (c) or (d) with a view to obtaining—

(a) the crystallisation of a floating charge, or

(b) the imposition, by virtue of provision in an instrument creating a floating charge, of any restriction on the disposal of any property of the company.

(4) Permission of the High Court under paragraph (1) may be given subject to conditions.

(5) Paragraph (1)(b)(iii) is subject to Article 13DE(1).

(6) In this Article—

"agency worker" has the meaning given by Article 15(2) of the Employment Relations (Northern Ireland) Order 1999;

"employer" —

(a) in relation to an agency worker, has the meaning given by Article 15(2) of the Employment Relations (Northern Ireland) Order 1999;

(b) otherwise, has the meaning given by Article 3(4) of the Employment Rights (Northern Ireland) Order 1996;

"worker" means an individual who is—

(a) a worker within the meaning of Article 3(3) of the Employment Rights (Northern Ireland) Order 1996, or

(b) an agency worker.

### **13DD Floating charges**

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

(2) During the moratorium, the holder of the floating charge may not give any notice which would have the effect of—

(a) causing the floating charge to crystallise, or

(b) causing the imposition, by virtue of provision in the instrument creating the charge, of

any restriction on the disposal of property of the company.

(3) No other event occurring during the moratorium is to have the effect mentioned in paragraph (2)(a) or (b).

(4) Paragraph (5) applies where—

(a) the holder of a floating charge ("the chargee") is prevented by paragraph (2) from giving a notice mentioned there during the moratorium, and

(b) under the terms of the floating charge, the time for giving such a notice ends during the moratorium or before the chargee is given notice of the end of the moratorium under Article 13CH.

(5) The chargee may give notice later than is required under the terms of the floating charge, but only if the chargee does so as soon as is practicable after—

(a) the end of the moratorium, or

(b) if later, the day on which the chargee is notified of the end of the moratorium.

(6) Where—

(a) paragraph (3) prevents an event which occurs during the moratorium from having the effect mentioned there, and

(b) the holder of the floating charge gives notice of the event to the company as soon as is practicable after—

(i) the end of the moratorium, or

(ii) if later, the day on which the chargee is notified of the end of the moratorium, the event is to be treated as if it had occurred when the notice was given.

(7) This Article does not apply in relation to a floating charge that is—

(a) a collateral security (as defined by Article 13DI);

(b) a market charge (as defined by Article 13DI);

(c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));

(e) a system-charge (as defined by Article 13DI).

### **13DE Enforcement of security granted during moratorium**

(1) Security granted by a company during a moratorium in relation to the company may be enforced only if the monitor consented to the grant of security under Article 13DH.

(2) See also Article 13DC(1)(b), which restricts enforcement during a moratorium.

## **Notification of insolvency proceedings**

### **13DF Duty of directors to notify monitor of insolvency proceedings etc**

(1) The directors of a company must notify the monitor before taking any of the following steps during a moratorium—

(a) presenting a petition for the winding up of the company;

(b) making an administration application in respect of the company;

(c) appointing an administrator under paragraph 23(2) of Schedule B1.

(2) The directors of a company must notify the monitor if, during a moratorium for the company, they recommend that the company passes a resolution for voluntary winding up under Article 70(1)(b).

(3) The rules may make provision about the timing of a notice required to be given under paragraph (1) or (2).

(4) If the directors fail to comply with paragraph (1) or (2), any director who did not have a reasonable excuse for the failure commits an offence.

## **Restrictions on transactions**



### **13DG Restrictions on obtaining credit**

(1) During a moratorium, the company may not obtain credit to the extent of £500 or more from a person unless the person has been informed that a moratorium is in force in relation to the company.

(2) The reference to the company obtaining credit includes—

(a) the company entering into a conditional sale agreement in accordance with which goods are to be sold to the company,

(b) the company entering into any other form of hire-purchase agreement under which goods are to be bailed to the company, and

(c) the company being paid in advance (whether in money or otherwise) for the supply of goods or services.

(3) If a company contravenes paragraph (1)—

(a) the company commits an offence, and

(b) any officer of the company who without reasonable excuse authorised or permitted the obtaining of the credit commits an offence.

### **13DH Restrictions on grant of security etc**

(1) During a moratorium, the company may grant security over its property only if the monitor consents.

(2) The monitor may give consent under paragraph (1) only if the monitor thinks that the grant of security will support the rescue of the company as a going concern.

(3) In deciding whether to give consent under paragraph (1), the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.

(4) If the company grants security over its property during the moratorium otherwise than as authorised by paragraph (1)—

(a) the company commits an offence, and

(b) any officer of the company who without reasonable excuse authorised or permitted the grant of the security commits an offence.

(5) For the consequences of a company granting security over its property in contravention of paragraph (1), see also Article 13DE.

(6) The monitor may not give consent under this Article if the granting of security is an offence under Article 13DI.

### **13DI Prohibition on entering into market contracts etc**

(1) If a company enters into a transaction to which this Article applies during a moratorium for the company—

(a) the company commits an offence, and

(b) any officer of the company who without reasonable excuse authorised or permitted the company to enter into the transaction commits an offence.

(2) A company enters into a transaction to which this Article applies if it—

(a) enters into a market contract,

(b) enters into a financial collateral arrangement,

(c) gives a transfer order,

(d) grants a market charge or a system-charge, or

(e) provides any collateral security.

(3) Where during the moratorium a company enters into a transaction to which this Article applies, nothing done by or in pursuance of the transaction is to be treated as done in contravention of any of Articles 13DA, 13DC, 13DG, 13DH and 13DJ to 13DN.

(4) In this Article—

"collateral security" has the same meaning as in the Financial Markets and Insolvency

(Settlement Finality) Regulations 1999 (S.I. 1999/2979);  
"financial collateral arrangement" has the same meaning as in the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226);  
"market charge" has the same meaning as in Part 5 of the Companies (No. 2) (Northern Ireland) Order 1990;  
"market contract" has the same meaning as in Part 5 of the Companies (No. 2) (Northern Ireland) Order 1990;  
"system-charge" has the meaning given by the Financial Markets and Insolvency Regulations (Northern Ireland) 1996 (S.R. 1996/ 252);  
"transfer order" has the same meaning as in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979).

### **Restrictions on payments and disposal of property**

#### **13DJ Restrictions on payment of certain pre-moratorium debts**

(1) During a moratorium, the company may make one or more relevant payments to a person that (in total) exceed the specified maximum amount only if—

- (a) the monitor consents,
- (b) the payment is in pursuance of a court order, or
- (c) the payment is required by Article 13DM(3) or 13DN(3).

(2) In paragraph (1)—

"relevant payments" means payments in respect of pre- moratorium debts for which the company has a payment holiday during the moratorium (see Article 13D);

"specified maximum amount" means an amount equal to the greater of—

- (a) £5000, and
- (b) 1% of the value of the debts and other liabilities owed by the company to its unsecured creditors when the moratorium began, to the extent that the amount of such debts and liabilities can be ascertained at that time.

(3) The monitor may give consent under paragraph (1)(a) only if the monitor thinks that it will support the rescue of the company as a going concern.

(4) In deciding whether to give consent under paragraph (1)(a), the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.

(5) If the company makes a payment to which paragraph (1) applies otherwise than as authorised by that paragraph—

- (a) the company commits an offence, and
- (b) any officer of the company who without reasonable excuse authorised or permitted the payment commits an offence.

#### **13DK Restrictions on disposal of property**

(1) During a moratorium, the company may dispose of its property only if authorised by paragraph (2) or (5).

(2) In the case of property that is not subject to a security interest, the company may dispose of the property if—

- (a) the disposal is made in the ordinary way of the company's business,
- (b) the monitor consents, or
- (c) the disposal is in pursuance of a court order.

(3) The monitor may give consent under paragraph (2)(b) only if the monitor thinks that it will support the rescue of the company as a going concern.

(4) In deciding whether to give consent under paragraph (2)(b), the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.

(5) In the case of property that is subject to a security interest, the company may dispose of the property if the disposal is in accordance with—

- (a) Article 13DM(1), or
- (b) the terms of the security.

(6) If the company disposes of its property during the moratorium otherwise than as authorised by this Article—

- (a) the company commits an offence, and
- (b) any officer of the company who without reasonable excuse authorised or permitted the disposal commits an offence.

### **13DL Restrictions on disposal of hire-purchase property**

(1) During a moratorium, the company may dispose of any goods in the possession of the company under a hire-purchase agreement only if the disposal is in accordance with —

- (a) Article 13DN(1), or
- (b) the terms of the agreement.

(2) If the company disposes of goods in the possession of the company under a hire-purchase agreement otherwise than as authorised by paragraph (1)—

- (a) the company commits an offence, and
- (b) any officer of the company who without reasonable excuse authorised or permitted the disposal commits an offence.

### **Disposals of property free from charges etc**

#### **13DM Disposal of charged property free from charge**

(1) During a moratorium, the company may, with the permission of the High Court, dispose of property which is subject to a security interest as if it were not subject to the security interest.

(2) The Court may give permission under paragraph (1) only if the Court thinks that it will support the rescue of the company as a going concern.

(3) Where the Court gives permission under paragraph (1) other than in relation to a floating charge, the company must apply the following towards discharging the sums secured—

- (a) the net proceeds of disposal of the property, and
- (b) any 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 in the open market by a willing vendor.

(4) Where the permission relates to two or more security interests, the condition in paragraph (3) requires the application of money in the order of the priorities of the security interests.

(5) Where property subject to a floating charge is disposed of under paragraph (1), the holder of the floating charge has the same priority in respect of acquired property as they had in respect of the property disposed of.

(6) In paragraph (5) "acquired property" means property of the company which directly or indirectly represents the property disposed of.

(7) Where the Court makes an order giving permission under paragraph (1), the directors must, within the period of 14 days beginning with the date of the order, send a copy of it to the registrar.

(8) If the directors fail to comply with paragraph (7), any director who did not have a reasonable excuse for the failure commits an offence.

(9) If a company fails to comply with paragraph (3)—

- (a) the company commits an offence, and
- (b) any officer of the company who without reasonable excuse authorised or permitted the

failure commits an offence.

(10) Paragraph (1) does not apply in relation to any property which is subject to a financial collateral arrangement, a market charge, a system-charge or a collateral security (as defined by Article 13DI).

### **13DN Disposal of hire-purchase property**

(1) During a moratorium, the company may, with the permission of the High Court, dispose of goods which are in the possession of the company under a hire-purchase agreement as if all of the rights of the owner under the agreement were vested in the company.

(2) The Court may give permission under paragraph (1) only if the Court thinks that it will support the rescue of the company as a going concern.

(3) Where the Court gives permission under paragraph (1), the company must apply the following 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 in the open market by a willing vendor.

(4) If a company fails to comply with paragraph (3)—

(a) the company commits an offence, and

(b) any officer of the company who without reasonable excuse authorised or permitted the failure commits an offence.

(5) Where the Court makes an order giving permission under paragraph (1), the directors must, within the period of 14 days beginning with the date of the order, send a copy of it to the registrar.

(6) If the directors fail to comply with paragraph (5), any director who did not have a reasonable excuse for the failure commits an offence.

## **Effect of contravention of certain provisions of Chapter**

### **13DO Contravention of certain requirements imposed under this Chapter**

The fact that a company contravenes Article 13DA or any of Articles 13DG to 13DN does not—

(a) make any transaction void or unenforceable, or

(b) affect the validity of any other thing.

## **CHAPTER 5**

### **THE MONITOR**

#### **13E Status of monitor**

The monitor in relation to a moratorium is an officer of the High Court.

#### **13EA Monitoring**

(1) During a moratorium, the monitor must monitor the company's affairs for the purpose of forming a view as to whether it remains likely that the moratorium will result in the rescue of the company as a going concern.

(2) In forming the view mentioned in paragraph (1), the monitor is entitled to rely on information provided by the company, unless the monitor has reason to doubt its accuracy.

#### **13EB Provision of information to monitor**

- (1) The monitor may require the directors of the company to provide any information required by the monitor for the purpose of carrying out the monitor's functions.
- (2) The directors must comply with a requirement to provide information as soon as practicable.
- (3) For the potential consequences of failing to comply with a requirement to provide information, see Article 13ED.

### **13EC Application by monitor for directions**

The monitor in relation to a moratorium may apply to the High Court for directions about the carrying out of the monitor's functions.

### **13ED Termination of moratorium by monitor**

- (1) The monitor must bring a moratorium to an end by filing a notice with the High Court if—
  - (a) the monitor thinks that the moratorium is no longer likely to result in the rescue of the company as a going concern,
  - (b) the monitor thinks that the objective of rescuing the company as a going concern has been achieved,
  - (c) the monitor thinks that, by reason of a failure by the directors to comply with a requirement under Article 13EB, the monitor is unable properly to carry out the monitor's functions, or
  - (d) the monitor thinks that the company is unable to pay any of the following that have fallen due—
    - (i) moratorium debts;
    - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see Article 13D).
- (2) The rules may provide for debts that are to be disregarded for the purposes of paragraph (1)(d).
- (3) On the filing with the Court of a notice under paragraph (1), the moratorium comes to an end.
- (4) The rules may make provision about the timing of a notice required to be given under paragraph (1).
- (5) Regulations may amend this Article for the purposes of changing the circumstances in which the monitor must bring a moratorium to an end under paragraph (1).
- (6) Regulations may not be made under paragraph (5) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
- (7) See also Article 13CH (obligations to notify change in end of moratorium).

### **13EE Replacement of monitor or appointment of additional monitor**

- (1) The High Court may make an order authorising the appointment of a qualified person to act as the monitor in relation to a moratorium instead of, or in addition to, a person who already acts as the monitor.
- (2) The High Court may make an order providing that a person ceases to act as the monitor in relation to a moratorium.
- (3) An order under paragraph (1) or (2) may be made on only an application by the directors or the monitor.
- (4) The Court may make an order authorising the appointment of a monitor under paragraph (1) only if the person has provided the Court with a statement that the person—
  - (a) is a qualified person, and
  - (b) consents to act as the monitor in relation to the moratorium.

(5) Where it is proposed that more than one person should act as the monitor in relation to the moratorium, the statement under paragraph (4) must specify—

(a) which functions (if any) are to be exercised by the persons acting jointly, and

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

(6) The rules may make provision about the date on which the statement under paragraph (4) must be made.

(7) Where the Court makes an order under paragraph (1) or (2) the person begins to act as the monitor, or ceases to act as the monitor, in relation to the moratorium at the time specified in, or determined in accordance with, the order ("the relevant time").

(8) As soon as reasonably practicable after the relevant time, the monitor must notify the following of the effect of the order—

(a) the registrar,

(b) every creditor of the company of whose claim the monitor is aware,

(c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and

(d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005, the Board of the Pension Protection Fund.

(9) If the monitor without reasonable excuse fails to comply with paragraph (8), the monitor commits an offence.

### **13EF Application of Part where two or more persons act as monitor**

(1) Where two or more persons act jointly as the monitor—

(a) a reference in this Order to the monitor is a reference to those persons acting jointly;

(b) where an offence of omission is committed by the monitor, each of the persons appointed to act jointly—

(i) commits the offence, and

(ii) may be proceeded against and punished individually.

(2) Where persons act jointly in respect of only some of the functions of the monitor, paragraph

(1) applies only in relation to those functions.

(3) Where two or more persons act concurrently as the monitor a reference in this Order to the monitor is a reference to any of the persons appointed (or any combination of them).

### **13EG Presumption of validity**

An act of the monitor is valid in spite of a defect in the monitor's appointment or qualification.

## **CHAPTER 6**

### **CHALLENGES**

#### **13F Challenge to monitor's actions**

(1) Any of the persons specified below may apply to the High Court on the ground that an act, omission or decision of the monitor during a moratorium has unfairly harmed the interests of the applicant.

(2) The persons who may apply are—

(a) a creditor, director or member of the company, or

(b) any other person affected by the moratorium.

- (3) An application under paragraph (1) may be made during the moratorium or after it has ended.
- (4) On an application under paragraph (1) the Court may—
- (a) confirm, reverse or modify any act or decision of the monitor,
  - (b) give the monitor directions, or
  - (c) make such other order as it thinks fit (but may not, under this sub-paragraph, order the monitor to pay any compensation).
- (5) Where an application under paragraph (1) relates to a failure by the monitor to bring the moratorium to an end under Article 13ED(1), an order under paragraph (4) may, in particular, bring the moratorium to an end and make such consequential provision as the Court thinks fit.
- (6) Where an application under paragraph (1) relates to the monitor bringing a moratorium to an end under Article 13ED(1), an order under paragraph (4) may, in particular, provide that the moratorium is not to be taken into account for the purposes of paragraph 2(1)(b) of Schedule ZA1 (company not eligible for moratorium if moratorium in force within previous 12 months).
- (7) In making an order under paragraph (4) the Court must have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.
- (8) See also Article 13CH (obligations to notify change in end of moratorium).

### **13FA Challenges to monitor remuneration in insolvency proceedings**

- (1) The rules may confer on an administrator or liquidator of a company the right to apply to the High Court on the ground that remuneration charged by the monitor in relation to a prior moratorium for the company was excessive.
- (2) Rules under paragraph (1) may (among other things) make provision as to—
- (a) time limits;
  - (b) disposals available to the Court;
  - (c) the treatment of costs of the application in the administration or winding up.

### **13FB Challenge to directors' actions**

- (1) A creditor or member of a company may apply to the High Court for an order under this Article on the ground that—
- (a) during a moratorium, the company's affairs, business and property are being or have been managed by the directors in a manner which has unfairly harmed the interests of its creditors or members generally or of some part of its creditors or members (including at least the applicant), or
  - (b) any actual or proposed act or omission of the directors during a moratorium causes or would cause such harm.
- (2) An application under paragraph (1) may be made during the moratorium or after it has ended.
- (3) On an application under paragraph (1) the Court may make such order as it thinks fit.
- (4) An order under paragraph (3) 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 applicant or to do an act which the applicant has complained they have omitted to do,
  - ~~(c) require the summoning of a meeting of the company's creditors for the purpose of considering such matters as the Court may direct, or~~
  - (c) require a decision of the company's creditors to be sought (using a qualifying decision procedure) on such matters as the Court may

direct, or

(d) bring the moratorium to an end and make such consequential provision as the Court thinks fit.

(5) In making an order under paragraph (3) the Court must have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.

(6) See also Article 13CH (obligations to notify change in end of moratorium).

### **13FC Challenge brought by Board of the Pension Protection Fund**

(1) This Article applies where—

(a) a moratorium—

(i) is in force in relation to a company that is an employer in respect of an eligible scheme, or

(ii) is or has been in force in relation to a company that has been an employer in respect of an eligible scheme at any time during the moratorium, and

(b) the trustees or managers of the scheme are a creditor of the company.

(2) The Board of the Pension Protection Fund may make any application under Article 13F(1) or 13FB(1) that could be made by the trustees or managers as a creditor.

(3) For the purposes of such an application, any reference in Article 13F(1) or 13FB(1) to the interests of the applicant is to be read as a reference to the interests of the trustees or managers as a creditor.

(4) In this Article "eligible scheme" has the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005.

## **CHAPTER 7**

### **OFFENCES: GENERAL**

#### **13G Offence of fraud etc during or in anticipation of moratorium**

(1) An officer of a company commits an offence if, during a moratorium for the company or at any time within the period of 12 months ending with the day on which a moratorium for the company comes into force, the officer—

(a) does any of the things mentioned in paragraph (2), or

(b) was privy to the doing by others of any of the things mentioned in paragraph (2)(c), (d) and (e).

(2) 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,

(b) fraudulently removing any part of the company's property to the value of £500 or more,

(c) concealing, destroying, mutilating or falsifying any document affecting or relating to the company's property or affairs,

(d) making any false entry in any document affecting or relating to the company's property or affairs,

(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).

(3) It is a defence—

(a) for a person charged with an offence under paragraph (1) in respect of any of the things



mentioned in paragraph (2)(a) or (f) to prove that the person had no intent to defraud, and (b) for a person charged with an offence under paragraph (1) in respect of any of the things mentioned in paragraph (2)(c) or (d) to prove that the person had no intent to conceal the state of affairs of the company or to defeat the law.

(4) Where a person pawns, pledges or disposes of any property of a company in circumstances which amount to an offence under paragraph (1), every person who takes in pawn or pledge, or otherwise receives, the property commits an offence if the person knows it to be pawned, pledged or disposed of in circumstances which—

(a) amount to an offence under paragraph (1), or

(b) 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 paragraph (1).

(5) In this Article, "officer" includes a shadow director.

### **13GA Offence of false representation etc to obtain a moratorium**

(1) An officer of a company commits an offence if, for the purpose of obtaining a moratorium for the company or an extension of a moratorium for the company, the officer—

(a) makes any false representation, or

(b) fraudulently does, or omits to do, anything.

(2) Paragraph (1) applies even if no moratorium or extension is obtained.

(3) In this Article, "officer" includes a shadow director.

### **13GB Prosecution of delinquent officers of company**

(1) This Article applies where a moratorium has been obtained for a company.

(2) If it appears to the monitor that any past or present officer of the company has committed an offence in connection with the moratorium, the monitor must forthwith—

(a) report the matter to the Department, and

(b) provide the Department with such information and give it such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the monitor and relating to the matter in question) as it requires.

(3) Where a matter is reported to the Department under paragraph (2), the Department may, for the purpose of investigating the matter and such other matters relating to the affairs of the company as appear to the Department to require investigation, exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 of the Companies Act 1985.

(4) For the purpose of such an investigation any obligation imposed on a person by any provision of the Companies Acts to produce documents or give information to, or otherwise to assist, inspectors so appointed is to be regarded as an obligation similarly to assist the Department in its investigation.

(5) Where a question is put to a person in exercise of the powers conferred by paragraph (3), the person's answer may be used in evidence against them.

(6) However, in criminal proceedings in which the person is charged with an offence other than a false statement offence—

(a) no evidence relating to the answer may be adduced, and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of the person.

(7) In paragraph (6) "false statement offence" means an offence under Article 7 or 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/ 1714 (N.I. 19)) (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).

(8) Where the Director of Public Prosecutions for Northern Ireland institutes criminal proceedings following any report under paragraph (2), the monitor, and every officer and agent of the company past and present (other than the defendant), must give the Director all assistance in connection with the prosecution which they are reasonably able to give.

(9) For this purpose "agent" includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(10) The High Court may, on the application of the Director of Public Prosecutions for Northern Ireland, direct a person who has failed to comply with paragraph (8) to comply with it.

## CHAPTER 8

### MISCELLANEOUS AND GENERAL

#### Special rules for certain kinds of company etc

##### **13H Regulated companies: modifications to this Part**

(1) For the purposes of Articles 13B and 13BA as they apply in relation to a regulated company, Article 13BC(1) has effect as if the documents listed there included a reference to the written consent of the appropriate regulator to the appointment of the proposed monitor.

(2) The remaining provisions of this Article apply in relation to a moratorium for a regulated company.

(3) Any notice under Article 13BE(2), 13CH(2) to (4) or 13EE(8) must also be sent by the monitor to the appropriate regulator.

(4) The directors must give the appropriate regulator notice of ~~any meeting of the company's creditors that is to be held~~ **any qualifying decision procedure by which a decision of the company's creditors is sought** for the purposes of Article 13CC(2) or 13FB(4)(c).

(5) If the directors fail to comply with paragraph (4), any director who did not have a reasonable excuse for the failure commits an offence.

(6) The appropriate regulator, or a person appointed by the appropriate regulator, may in the way provided for by the rules, participate (but not vote) in ~~any meeting of the company's creditors that is held~~ **any qualifying decision procedure by which a decision of the company's creditors is sought** for the purposes of this Part.

(7) The appropriate regulator is entitled to be heard on any application to the High Court for permission under Article 13DM(1) or 13DN(1) (disposal of charged property, etc.).

(8) The High Court may make an order under Article 13EE(1) only if the appropriate regulator has given its written consent to the appointment of the proposed monitor.

(9) The persons who may apply to the High Court under Article 13EE(3), 13F(1) or 13FB(1) include the appropriate regulator.

(10) If a person other than a regulator applies to the High Court under Article 13EE(3), 13F(1) or 13FB(1) the appropriate regulator is entitled to be heard on the application.

(11) If either regulator makes an application to the High Court under Article 13EE(3), 13F(1) or 13FB(1) in relation to a PRA-regulated company, the other regulator is entitled to be heard on the application.

(12) This Article does not affect any right that the appropriate regulator has (apart from this Article) as a creditor of a regulated company.

(13) In this Article—

"the appropriate regulator" means—

(a) where the regulated company is a PRA-regulated company, each of the Financial Conduct Authority and the Prudential Regulation Authority, and

(b) where the regulated company is not a PRA-regulated company, the Financial Conduct Authority;

"PRA-authorised person" has the meaning given by section 2B(5) of the Financial Services and Markets Act 2000;

"PRA-regulated company" means a regulated company which—

(a) is, or has been, a PRA-authorised person,

(b) is, or has been, an appointed representative within the meaning given by section 39 of the Financial Services and Markets Act 2000, whose principal (or one of whose principals) is, or was, a PRA-authorised person, or

(c) is carrying on, or has carried on, a PRA-regulated activity (within the meaning of section 22A of that Act) in contravention of the general prohibition;

"regulated activity" has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section;

"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 in contravention of the general prohibition within the meaning given by section 19 of that Act;

"regulator" means the Financial Conduct Authority or the Prudential Regulation Authority.

(14) Regulations may amend this Article for the purposes of changing the definition of "regulated company" in paragraph (13).

(15) Regulations may not be made under paragraph (14) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

### **13HA Power to modify this Part etc in relation to certain companies**

(1) Regulations may—

(a) modify this Part as it applies in relation to a company for which there is a special administration regime, or

(b) make provision in connection with the interaction between this Part and any other insolvency procedure in relation to such a company.

(2) The power in paragraph (1) may, in particular, be used to amend, repeal, revoke or otherwise modify any statutory provision.

(3) In this Article—

"ordinary administration" means the insolvency procedure provided for by Schedule B1;

"special administration regime" means provision made by any statutory provision for an insolvency procedure that—

(a) is similar or corresponds to ordinary administration, and

(b) provides for the administrator to have one or more special objectives instead of or in addition to the objectives of ordinary administration.

(4) Regulations may not be made under paragraph (1) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

### **13HB Power to make provision in connection with pension schemes**

(1) A Northern Ireland department may by regulations provide that, in a case where—

- (a) a moratorium—
    - (i) is in force in relation to a company that is an employer in respect of an eligible scheme, or
    - (ii) is or has been in force in relation to a company that has been an employer in respect of an eligible scheme at any time during the moratorium, and
  - (b) the trustees or managers of the scheme are a creditor of the company,
- the Board of the Pension Protection Fund may exercise any of the following rights.
- (2) The rights are those which are exercisable by the trustees or managers as a creditor of the company under or by virtue of—
- (a) Article 13CC, or
  - (b) a court order under Article 13FB(4)(c).
- (3) Regulations under paragraph (1) may provide that the Board may exercise any such rights—
- (a) to the exclusion of the trustees or managers of the scheme, or
  - (b) in addition to the exercise of those rights by the trustees or managers of the scheme.
- (4) Regulations under paragraph (1)—
- (a) may specify conditions that must be met before the Board may exercise any such rights;
  - (b) may provide for any such rights to be exercisable by the Board for a specified period;
  - (c) may make provision in connection with any such rights ceasing to be so exercisable at the end of such a period.
- (5) Regulations may not be made under paragraph (1) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
- (6) In this Article "eligible scheme" has the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005.

## **Floating charges**

### **13HC Void provisions in floating charge documents**

- (1) A provision in an instrument creating a floating charge is void if it provides for the obtaining of a moratorium, or anything done with a view to obtaining a moratorium, to be—
  - (a) an event causing the floating charge to crystallise,
  - (b) an event causing restrictions which would not otherwise apply to be imposed on the disposal of property by the company, or
  - (c) a ground for the appointment of a receiver.
- (2) The reference in paragraph (1) to anything done with a view to obtaining a moratorium includes any preliminary decision or investigation.
- (3) In paragraph (1) "receiver" includes a manager and a person who is appointed both receiver and manager.
- (4) Paragraph (1) does not apply to a provision in an instrument creating a floating charge that is—
  - (a) a collateral security (as defined by Article 13DI);
  - (b) a market charge (as defined by Article 13DI);
  - (c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));
  - (d) a system-charge (as defined by Article 13DI).

## **Interpretation of this Part**

### **13HD Meaning of "pre-moratorium debt" and "moratorium debt"**

(1) In this Part "pre-moratorium debt", in relation to a company for which a moratorium is or has been in force, means—

(a) any debt or other liability to which the company becomes subject before the moratorium comes into force, or

(b) any debt or other liability to which the company has become or may become subject during the moratorium by reason of any obligation incurred before the moratorium comes into force,

but this is subject to paragraph (3).

(2) In this Part "moratorium debt", in relation to a company for which a moratorium is or has been in force, means—

(a) any debt or other liability to which the company becomes subject during the moratorium, other than by reason of an obligation incurred before the moratorium came into force, or

(b) any debt or other liability to which the company has become or may become subject after the end of the moratorium by reason of an obligation incurred during the moratorium, but this is subject to paragraph (3).

(3) For the purposes of this Part—

(a) a liability in tort is a "pre-moratorium debt" if either—

(i) the cause of action has accrued before the moratorium comes into force, or

(ii) all the elements necessary to establish the cause of action exist before the moratorium comes into force except for actionable damage;

(b) a liability in tort is a "moratorium debt" if it does not fall within sub-paragraph (a) and either—

(i) the cause of action has accrued during the moratorium, or

(ii) all the elements necessary to establish the cause of action exist before the moratorium comes to an end except for actionable damage.

(4) Regulations may amend this Article for the purposes of changing the definition of "pre-moratorium debt" and "moratorium debt" in this Part.

(5) Regulations may not be made under paragraph (4) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

### **13HE Interpretation of this Part: general**

(1) In this Part—

"company" means—

(a) a company registered under the Companies Act 2006 in Northern Ireland, or

(b) an unregistered company that may be wound up under Part 6 of this Order;

"eligible", in relation to a company, has the meaning given by Schedule ZA1;

"employer", in relation to a pension scheme—

(a) in Articles 13BE(2)(c), 13CH(8)(c) and 13EE(8)(c), means an employer within the meaning of Article 2(2) of the Pensions (Northern Ireland) Order 2005;

(b) elsewhere in this Part, has the same meaning that it has for the purposes of Part 3 of the Pensions (Northern Ireland) Order 2005 (see Article 2(2) and (5) of that Order);

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

"money purchase scheme" has the meaning given by section 176(1) of the Pension Schemes (Northern Ireland) Act 1993;

"the monitor", in relation to a moratorium, means the person who has the functions of the monitor in relation to the moratorium (see also Article 13EF for cases where two or more persons act as the monitor);

"moratorium" means a moratorium under this Part;

"moratorium debt" has the meaning given by Article 13HD;  
"occupational pension scheme" has the meaning given by section 1 of the Pension Schemes (Northern Ireland) Act 1993;  
"pension scheme" has the meaning given by section 1 of the Pension Schemes (Northern Ireland) Act 1993;  
"pre-moratorium debt" has the meaning given by Article 13HD;  
"qualified person" means a person qualified to act as an insolvency practitioner;  
"unable to pay its debts" —  
(a) in relation to a registered company, has the same meaning as in Part 5 (see Article 103);  
(b) in relation to an unregistered company, has the same meaning as in Part 6 (see Articles 186 to 188).  
(2) Regulations may amend this Article for the purposes of changing the definition of "qualified person" in paragraph (1).  
(3) Regulations may not be made under paragraph (2) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

## **Regulations**

### **13HF Regulations**

Regulations made in the exercise of any power conferred by this Part may make consequential, supplementary, incidental or transitional provision or savings.

## **PART II**

### **COMPANY VOLUNTARY ARRANGEMENTS**

#### *The proposal*

#### **14.— Those who may propose an arrangement**

- (1) The directors of a company [ (other than one which is in administration or being wound up) may make a proposal under this Part to the company and to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs (referred to, in either case, as a "voluntary arrangement").
- (2) A proposal under this Part is one which provides for some person ("the nominee") to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation; and the nominee must be a person who is qualified to act as an insolvency practitioner in relation to the voluntary arrangement.
- (3) Such a proposal may also be made—
- (a) where the company is in administration, by the administrator, and
- (b) where the company is being wound up, by the liquidator.
- (4) In this Part "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; or
- (c) a company not incorporated in an EEA State but having its centre of main interests either in a member State other than Denmark or in the United Kingdom.
- (5) In paragraph (4) in relation to a company, "centre of main interests" has the same meaning as in Article 3 of the EU Regulation.
- (6) If a company incorporated ~~outside Northern Ireland~~ **outside the United**

**Kingdom** has a principal place of business in England and Wales or Scotland (or both in England and Wales and in Scotland), no proposal under this Part shall be made in relation to it unless it also has a principal place of business in Northern Ireland.

#### 14A.

#### 15.— Procedure where nominee is not the liquidator or administrator

(1) This Article applies where the nominee under Article 14 is not the liquidator or administrator of the company.

(2) The nominee shall, within 28 days (or such longer period as the High Court may allow) after he is given notice of the proposal for a voluntary arrangement, submit a report to the Court stating—

(a) whether, in his opinion, the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,

~~[(aa)] whether, in his opinion, meetings of the company and of its creditors should be summoned to consider the proposal, and~~

~~(b) if in his opinion such meetings should be summoned, the date on which, and time and place at which, he proposes the meetings should be held.~~

**(b) whether, in his opinion, the proposal should be considered by a meeting of the company and by the company's creditors, and**

**(c) if in his opinion it should, the date on which, and time and place at which, he proposes a meeting of the company should be held.**

(3) For the purposes of enabling the nominee to prepare his report, the person intending to make the proposal shall submit to the nominee—

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

(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.

(4) The High Court may—

(a) on an application made by the person intending to make the proposal, in a case where the nominee has failed to submit the report required by this Article or has died, or

(b) on an application made by that person 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 in relation to the voluntary arrangement.

#### 16.— ~~Summoning of meetings~~ Consideration of proposal

(1) Where the nominee under Article 14 is not the liquidator or administrator, and it has been reported to the High Court ~~that such meetings as are mentioned in Article 15(2) should be summoned~~

**under Article 15(2) that the proposal should be considered by a meeting of the company and by the company's creditors,** the person making the report shall (unless the Court otherwise ~~directs~~) ~~summon those meetings for the time, date and place proposed in the report~~ “directs)—

**(a) summon a meeting of the company, for the time, date and place**

**proposed in the report, for the purpose of considering the proposal, and**

**(b) seek a decision from the company's creditors as to whether they approve the proposal.**

(2) Where the nominee is the liquidator or administrator, he ~~shall summon meetings of the company and of its creditors to consider the proposal for such a time, date and place as he thinks fit must—~~

(a) summon a meeting of the company, for such time, date and place as he thinks fit, for the purpose of considering the proposal, and

(b) seek a decision from the company's creditors as to whether they approve the proposal.

~~(3) The persons to be summoned to a creditors' meeting under this Article are every creditor of the company of whose claim and address the person summoning the meeting is aware.~~

(3) A decision of the company's creditors as to whether they approve the proposal is to be made by a qualifying decision procedure.

(4) Notice of the qualifying decision procedure must be given to every creditor of the company of whose claim and address the person seeking the decision is aware.

### *Consideration and implementation of proposal*

## **17.— Decisions of ~~meetings~~ the company and its creditors**

~~(1) The meetings summoned under Article 16 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).~~

(1) This Article applies where, under Article 16—

(a) a meeting of the company is summoned to consider the proposed voluntary arrangement, and

(b) the company's creditors are asked to decide whether to approve the proposed voluntary arrangement.

(1A) The company and its creditors may 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 in relation to the voluntary arrangement]; but shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in Article 14.

~~(3) A meeting so summoned shall not~~ Neither the company nor its creditors may 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.

~~(4) A meeting so summoned shall not~~ Neither the company nor its creditors may, except with the concurrence of the creditor concerned, 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,

(aa) any ordinary preferential debt of the company is to be paid otherwise than in priority to any secondary preferential debts that it may have,

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

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

(d) in the case of a company which is a relevant financial institution (see Article 347A), any non-preferential debt is to be paid otherwise than in accordance with the rules in Article 150ZZA(2) or (3).

(4A) Where the nominee's report under Article 15(2) is submitted to the Court before the end of the period of 12 weeks beginning with the day after the end of any moratorium for the



company under Part 1A, ~~a meeting so summoned may not~~ **neither the company nor its creditors may**, approve any proposal or modification under which the following are to be paid otherwise than in full—

(a) moratorium debts (within the meaning given by Article 148A);

(b) priority pre-moratorium debts (within the meaning given by Article 148A);

but this is subject to paragraph (4B).

(4B) Paragraph (4A) does not prevent the approval of such a proposal or modification with the concurrence of the creditor concerned.

(5) Subject to paragraphs (3) to (4B), ~~each of the meetings~~ **the meeting of the company and the qualifying decision procedure** shall be conducted in accordance with the rules.

(6) After the conclusion of ~~either~~ **the company** 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.

**(6A) After the company's creditors have decided whether to approve the proposed voluntary arrangement the person who sought the decision must—**

**(a) report the creditors' decision to the High Court, and**

**(b) immediately after reporting to the Court, give notice of the creditors' decision to such persons as may be prescribed.**

(7) In this Article "preferential debts", "ordinary preferential debt" and "secondary preferential debt" each has the meaning given by Article 346; and "preferential creditor" is to be construed accordingly.

### **17A.— Approval of arrangement**

(1) This Article applies to a decision, under Article 17, with respect to the approval of a proposed voluntary arrangement.

(2) The decision has effect if, in accordance with the rules—

(a) it has been taken by ~~both meetings summoned under Article 16~~ **the meeting of the company summoned under Article 16 and by the company's creditors pursuant to that Article**, or

(b) (subject to any order made under paragraph (6)) it has been taken by the ~~creditors' meeting summoned under~~ **company's creditors pursuant to** that Article.

(3) If the decision taken by the ~~creditors' meeting~~ **company's creditors** differs from that taken by the company meeting, a member of the company may apply to the High Court.

(4) An application under 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~~ **company's creditors**, or

(b) where the decision of the company meeting was taken on a later day, that day.

(5) Where a member of a regulated company, as defined by Article 13H(13), applies to the High Court under paragraph (3), the Financial Conduct Authority and, where the regulated company is a PRA-regulated company as defined by Article 13H(13), the Prudential Regulation Authority is entitled to be heard on the application.

(6) On an application under 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~~ **company's creditors**, or

(b) make such other order as it thinks fit.

### **18.— Effect of approval**

(1) This Article applies where a decision approving a voluntary arrangement has effect under

Article 17A.

(2) The . . . voluntary arrangement—

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

(i) ~~at the time the creditors decided to approve the voluntary arrangement, or~~

(ii) ~~where the decision has effect as a result of an order of the High~~

~~Court under Article 17A(6)(a), at the time the meeting of the~~

~~company decided to approve the voluntary arrangement, 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) in the qualifying decision procedure by which the creditors decided on~~

~~whether to approve the arrangement, or~~

(ii) ~~would have been so entitled if he had had notice of # that procedure,~~

~~as if he were a party to the voluntary arrangement.~~

(2A) If—

(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of 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.

(3) Subject to paragraphs (3A) and (4), if the company is being wound up or is in administration, the High Court may do one or both of the following, namely—

(a) by order stay all proceedings in the winding up or provide for the appointment of the administrator to cease to have effect;

(b) give such directions with respect to the conduct of the winding up or the administration as it thinks appropriate for facilitating the implementation of the . . . voluntary arrangement.

(3A) Where immediately before the voluntary arrangement took effect a moratorium for the company was in force under Part 1A and a petition for the winding up of the company, other than an excepted petition within the meaning of Article 13DB, was presented before the beginning of the moratorium, the High Court must dismiss the petition.

(4) The High Court shall not make an order under paragraph (3)(a) or dismiss a petition under paragraph (3A) —

~~(a) at any time before the expiration of 28 days from the day on which each of the reports required by Article 17(6) has been made to the Court, or~~

(a) ~~at any time before the end of the period of 28 days beginning with the day on which the reporting requirement in Article 17 is met,~~

~~or~~

(b) at any time when an application under Article 19 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.

(5) ~~For the purposes of paragraph (4)(a), the day on which the reporting requirement is met is—~~

(a) ~~if the reports required by Article 17(6) and (6A) are made to the High Court on the same day, that day;~~

(b) ~~if those reports are made on different days, the later of them.~~

## **19.— Challenge of decisions**

(1) Subject to this Article, an application to the High Court may be made, by any of the persons specified in paragraph (2), on one or both of the following grounds, namely—

(a) that a voluntary arrangement[1 which has effect under Article 17A unfairly prejudices the interests of a creditor, member or contributory of the company;

(b) that there has been some material irregularity at or in relation to ~~either of the meetings~~ the meeting of the company, or in relation to the relevant qualifying decision procedure.

(1A) In this Article—

(a) the “relevant qualifying decision procedure” means the qualifying decision procedure in which the company’s creditors decide whether to approve a voluntary arrangement;

(b) references to a decision made in the relevant qualifying decision procedure include any other decision made in that qualifying decision procedure.

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

(a) a person entitled, in accordance with the rules, to vote at ~~either of the meetings~~ the meeting of the company or in the relevant qualifying decision procedure;

(aa) a person who would have been entitled, in accordance with the rules, to vote ~~at the creditors’ meeting~~ in the relevant qualifying decision procedure if he had had notice of it;

(b) the nominee or any person who has replaced him under Article 15(4) or 17(2); and

(c) if the company is being wound up or is in administration, the liquidator or administrator.

(3) An application under this Article shall not be made

~~(a) after the expiration of 28 days from the day on which each of the reports required by Article 17(6) has been made to the High Court~~

(a) after the end of the period of 28 days beginning with the day on which the reporting requirement in Article 17 is met, or

(b) in the case of a person who was not given notice of the ~~creditors’ meeting~~ relevant qualifying decision procedure, after the end of the period of 28 days beginning with the day on which he became aware that ~~the meeting~~ the relevant qualifying decision procedure had taken place, but (subject to that) an application made by a person within paragraph (2)(aa) on the ground that the voluntary arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.

(3A) For the purposes of paragraph (3)(a), the day on which the reporting requirement is met is—

(a) if the reports required by Article 17(6) and (6A) are made to the High Court on the same day, that day;

(b) if those reports are made on different days, the later of them.

(4) Where on such an application the High Court is satisfied as to either of the grounds mentioned in paragraph (1), it may do ~~one or both~~ any of the following, namely—

(a) revoke or suspend any decision approving the voluntary arrangement which has effect under Article 17A or, in a case falling within paragraph (1)(b), any decision taken by the meeting ~~in question~~ of the company, or in the relevant qualifying decision procedure, which has effect under that Article;

(b) give a direction to any person for the summoning of ~~further meetings~~ a further company meeting to consider any revised proposal the person who made the original proposal may make or, in a case falling within paragraph (1)(b), ~~a further company or (as the case may be) creditors’~~ and relating to the company meeting, a further company meeting to reconsider the original proposal.

(c) direct any person—

(i) to seek a decision from the company’s creditors (using a qualifying decision procedure) as to whether they approve any revised proposal the person who made the original proposal may make, or

(ii) in a case falling within paragraph (1)(b) and relating to the relevant qualifying decision procedure, to seek a decision from the company’s creditors (using a qualifying decision procedure) as to whether they approve the original proposal.

(5) Where at any time after giving a direction under paragraph (4)(b) ~~for the summoning of meetings to consider~~ or (c) in relation to a revised proposal the High Court is satisfied that the person who made the original proposal does 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 Article 17A.

(6) In a case where the High Court, on an application under this Article with respect to any meeting or relevant qualifying decision procedure—

(a) gives a direction under paragraph (4)(b) or (c), or

(b) revokes or suspends an approval under paragraph (4)(a) or (5), the Court may give such supplemental directions as it thinks fit and, in particular, directions with respect to things done under the voluntary arrangement since it took effect.

~~(7) Except in pursuance of the preceding provisions of this Article, a decision taken at a meeting summoned under Article 16 is not invalidated by any irregularity at or in relation to the meeting.~~

(7) Except in pursuance of the preceding provisions of this Article—

(a) a decision taken at a company meeting summoned under Article 16 is not invalidated by any irregularity at or in relation to the meeting, and

(b) a decision of the company's creditors made in the relevant qualifying decision procedure is not invalidated by any irregularity in relation to the relevant qualifying decision procedure.

#### **19A.— False representations, etc.**

(1) If, for the purpose of obtaining the approval of the members or creditors of a company to a proposal for a voluntary arrangement, 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) Paragraph (1) applies even if the proposal is not approved.

(3) For purposes of this Article "officer" includes a shadow director.

#### **20.— Implementation of proposal**

(1) This Article applies where a voluntary arrangement has effect under Article 17A.

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

(a) on the nominee by virtue of the approval ~~given at one or both of the meetings summoned under~~ of the voluntary arrangement by the company or its creditors (or both) pursuant to Article 16

(b) by virtue of Article 15(4) or 17(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; and on the application the 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.

(4) 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 High Court for the winding up of

the company or for an administration order to be made in relation to it.

(5) 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 in relation to the voluntary arrangement], either in substitution for the existing supervisor or to fill a vacancy.

(6) The power conferred by paragraph (5) 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.

## **20A.— Prosecution of delinquent officers of company**

(1) This Article applies where the approval of a voluntary arrangement in relation to a company has taken effect under Article 17A.

(2) If it appears to the supervisor that any past or present officer of the company has committed an offence in connection with the voluntary arrangement, the supervisor must forthwith—

(a) report the matter to the Department, and

(b) provide the Department with such information and give the Department such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the supervisor and relating to the matter in question) as the Department requires.

(3) Where a report is made to the Department under paragraph (2), the Department may, for the purpose of investigating the matter reported to it and such other matters relating to the affairs of the company as appear to it to require investigation, exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 of the Companies Act 1985 to investigate a company's affairs.

(4) For the purpose of such an investigation any obligation imposed on a person by any provision of the Companies Acts to produce documents or give information to, or otherwise to assist, inspectors so appointed is to be regarded as an obligation similarly to assist the Department in its investigation.

(5) An answer given by a person to a question put to him in exercise of the powers conferred by paragraph (3) may be used in evidence against him.

(6) However, in criminal proceedings in which that person is charged with an offence to which this paragraph applies—

(a) no evidence relating to the answer may be adduced, and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(7) Paragraph (6) applies to any offence other than an offence under Article 7 or 10 of the Perjury (Northern Ireland) Order 1979 (NI 19) (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).

(8) Where the Director of Public Prosecutions for Northern Ireland institutes criminal proceedings following any report under paragraph (2), the supervisor, and every officer and agent of the company past and present (other than the defendant), shall give the Director all assistance in connection with the prosecution which he is reasonably able to give.

For this purpose "agent" includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(9) The High Court may, on the application of the Director of Public Prosecutions for Northern Ireland, direct any person referred to in paragraph (8) to comply with that paragraph if he has failed to do so.

### **20B. Arrangements coming to an end prematurely**

For the purposes of this Part, a voluntary arrangement the approval of which has taken effect under Article 17A comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement by virtue of Article 18(2)(b)(i).

## **PART III**

### **ADMINISTRATION**

#### **21. Administration**

Schedule B1 (which makes provision about the administration of companies) shall have effect.

*Making, etc., of administration order*

#### **21.— Power of High Court to make order**

(1) Subject to this Article, if the High Court—

(a) is satisfied that a company is or is likely to become unable to pay its debts (within the meaning of Article 103), and

(b) considers that the making of an order under this Article would be likely to achieve one or more of the purposes mentioned in paragraph (3),  
the Court may make an administration order in relation to the company.

[(1A) For the purposes of a petition presented by the Financial Services Authority alone or together with any other party, an authorised deposit taker who defaults in an obligation to pay any sum due and payable in respect of a relevant deposit is deemed to be unable to pay its debts as mentioned in paragraph (1).

(1B) In paragraph (1A)—

(a) "authorised deposit taker" means a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits, but excludes a person who has such permission only for the purpose of carrying on another regulated activity in accordance with that permission; and

(b) "relevant deposit" must be read with—

(i) section 22 of the Financial Services and Markets Act 2000,

(ii) any relevant order under that section, and

(iii) Schedule 2 to that Act,

but any restriction on the meaning of deposit which arises from the identity of the person making it is to be disregarded.

(2) An administration order is an order directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed by a person ("the administrator") appointed for the purpose by the High Court.

(3) The purposes for whose achievement an administration order may be made are—

(a) the survival of the company, and the whole or any part of its undertaking, as a going concern;

(b) the approval of a voluntary arrangement under Part II;

(c) the sanctioning under Article 418 of the Companies Order of a compromise or

arrangement between the company and any such persons as are mentioned in that Article; and

(d) a more advantageous realisation of the company's assets than would be effected on a winding up;

and the order shall specify the purpose or purposes for which it is made.

(4) An administration order shall not be made in relation to a company after it has gone into liquidation.

(5) An administration order shall not be made against a company if—

(a) it effects or carries out contracts of insurance, but is not—

(i) exempt from the general prohibition, within the meaning of section 19 of the Financial Services and Markets Act 2000, in relation to effecting or carrying out contracts of insurance, or

(ii) an authorised deposit taker within the meaning given by paragraph (1B), and effecting or carrying out contracts of insurance in the course of a banking business;

(b) it continues to have a liability in respect of a deposit which was held by it in accordance with the Banking Act 1979 or the Banking Act 1987, but is not an authorised deposit taker, within the meaning given by paragraph (1B).

(6) Paragraph (5)(a) 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.]

(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.

## **22.— Application for order**

(1) An application to the High Court for an administration order shall be by petition presented either by the company or the directors, or by a creditor or creditors (including any contingent or prospective creditor or creditors),<sup>3</sup> or by the chief clerk in exercise of the power conferred by section 35(4A) of the Criminal Justice Act (Northern Ireland) 1945 (enforcement of fines imposed on companies) or a clerk of petty sessions in exercise of the power conferred by Article 92A of the Magistrates' Courts (Northern Ireland) Order 1981 (enforcement of fines imposed on companies) or by all or any of those parties, together or separately.

(2) Where a petition is presented to the High Court—

(a) notice of the petition shall be given forthwith to any person who has appointed, or is or may be entitled to appoint, an administrative receiver of the company, and to such other persons as may be prescribed, and

(b) the petition shall not be withdrawn except with the leave of the Court.

(3) Where the High Court is satisfied that there is an administrative receiver of the company, the Court shall dismiss the petition unless it is also satisfied either—

(a) that the person by whom or on whose behalf the receiver was appointed has consented to the making of the order, or

(b) that, if an administration order were made, any security by virtue of which the receiver was appointed would—

(i) be liable to be released or discharged under Articles 202 to 204 (transactions at an undervalue and preferences), or

(ii) be avoided under Article 207 (avoidance of floating charges).

(4) Subject to paragraph (3), on hearing a petition the High Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.

(5) Without prejudice to the generality of paragraph (4), an interim order under that paragraph may restrict the exercise of any powers of the directors or of the company (whether by reference to the consent of the High Court or of a person qualified to act as an insolvency practitioner in relation to the company, or otherwise).

### **23.— Effect of application**

(1) During the period beginning with the presentation of a petition for an administration order and ending with the making of such an order or the dismissal of the petition—

- (a) no resolution may be passed or order made for the winding up of the company;
- (aa) 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
- (b) no 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;
- (c) no other proceedings and no 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 Court and subject to such terms as aforesaid.

(2) Nothing in paragraph (1) requires the leave of the High Court—

- (a) for the presentation of a petition for the winding up of the company,
- (b) for the appointment of an administrative receiver of the company, or
- (c) for the carrying out by such a receiver (whenever appointed) of any of his functions.

(3) Where—

(a) a petition for an administration order is presented at a time when there is an administrative receiver of the company, and

(b) the person by or on whose behalf the receiver was appointed has not consented to the making of the order,

the period mentioned in paragraph (1) is deemed not to begin unless and until that person so consents.

(4) References in this Article and Article 24 to hire-purchase agreements include conditional sale agreements, chattel leasing agreements and retention of title agreements.

### **24.— Effect of order**

(1) On the making of an administration order—

- (a) any petition for the winding up of the company shall be dismissed, and
- (b) any administrative receiver of the company shall vacate office.

(2) Where an administration order has been made, any receiver of part of the company's property shall vacate office on being required to do so by the administrator.

(3) During the period for which an administration order is in force—

- (a) no resolution may be passed or order made for the winding up of the company;
- (b) no administrative receiver of the company may be appointed;
- (ba) 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 consent of the administrator or the leave of the High Court and subject (where the Court gives leave) to such terms as the Court may impose;
- (c) 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 consent of the administrator or the leave of the High Court and subject (where the



Court gives leave) to such terms as the Court may impose; and

(d) no other proceedings and no legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the consent of the administrator or the leave of the High Court and subject (where the Court gives leave) to such terms as aforesaid.

(4) Where at any time an administrative receiver of the company has vacated office under paragraph (1)(b), or a receiver of part of the company's property has vacated office under paragraph (2)—

(a) his remuneration and any expenses properly incurred by him, and

(b) any indemnity to which he is entitled out of the assets of the company,

shall be charged on and (subject to paragraph (3)) paid out of any property of the company which was in his custody or under his control at that time in priority to any security held by the person by or on whose behalf he was appointed.

(5) Neither an administrative receiver who vacates office under paragraph (1)(b) nor a receiver who vacates office under paragraph (2) is required on or after so vacating office to take any steps for the purpose of complying with any duty imposed on him by Article 50 (duty to pay preferential creditors).

## **25.— Notification of order**

(1) Every invoice, order for goods or business letter which, at a time when an administration order is in force in relation to a company, is issued by or on behalf of the company or the administrator, being a document on or in which the company's name appears, shall also contain the administrator's name and a statement that the affairs, business and property of the company are being managed by the administrator.

(2) If default is made in complying with this Article, the company and any of the following persons who without reasonable excuse authorises or permits the default, namely, the administrator and any officer of the company, shall be guilty of an offence.

### *Administrators*

## **26.— Appointment of administrator**

(1) The administrator of a company shall be appointed either by the administration order or by an order under paragraph (2).

(2) If a vacancy occurs by death, resignation or otherwise in the office of the administrator, the High Court may by order fill the vacancy.

(3) An application for an order under paragraph (2) may be made—

(a) by any continuing administrator of the company; or

(b) where there is no such administrator, by a creditors' committee established under Article 38; or

(c) where there is no such administrator and no such committee, by the company or the directors or by any creditor or creditors of the company.

## **27.— General powers**

(1) The administrator of a company—

(a) may do all such things as may be necessary for the management of the affairs, business and property of the company, and

(b) without prejudice to the generality of sub-paragraph (a), has the powers specified in Schedule 1;

and in the application of that Schedule to the administrator of a company the words "he" and "him" refer to the administrator.

(2) The administrator also has power—

(a) to remove any director of the company and to appoint any person to be a director of it, whether to fill a vacancy or otherwise, and

(b) to call any meeting of the members or creditors of the company.

(3) The administrator may apply to the High Court for directions in relation to any particular matter arising in connection with the carrying out of his functions.

(4) Any power conferred on the company or its officers, whether by this Order or the Companies Acts or by the memorandum or articles of association, which could be exercised in such a way as to interfere with the exercise by the administrator of his powers is not exercisable except with the consent of the administrator, which may be given either generally or in relation to particular cases.

(5) In exercising his powers the administrator is deemed to act as the company's agent.

(6) A person dealing with the administrator in good faith and for value is not concerned to inquire whether the administrator is acting within his powers.

## **28.— Power to deal with charged property, etc.**

(1) The administrator of a company may dispose of or otherwise exercise his powers in relation to any property of the company which is subject to a security to which this paragraph applies as if the property were not subject to the security.

(2) Where, on an application by the administrator, the High Court is satisfied that the disposal (with or without other assets) of—

(a) any property of the company subject to a security to which this paragraph applies, or

(b) any goods in the possession of the company under a hire-purchase agreement, would be likely to promote the purpose or one or more of the purposes specified in the administration order, the Court may by order authorise the administrator to dispose of the property as if it were not subject to the security or to dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.

(3) Paragraph (1) applies to any security which, as created, was a floating charge; and paragraph (2) applies to any other security.

(4) Where property is disposed of under paragraph (1), 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) It shall be a condition of an order under paragraph (2) that—

(a) the net proceeds of the disposal, and

(b) where those proceeds are less than such amount as may be 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.

(6) Where a condition imposed in pursuance of paragraph (5) relates to 2 or more securities, that condition requires the net proceeds of the disposal and, where sub-paragraph (b) of that paragraph applies, the sums mentioned in that sub-paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.

(7) An office copy of an order under paragraph (2) shall, within 14 days from the making of the order, be sent by the administrator to the registrar.

(8) If the administrator without reasonable excuse contravenes paragraph (7), he shall be guilty of an offence and for continued contravention, he shall be guilty of a continuing offence.

(9) References in this Article to hire-purchase agreements include conditional sale agreements, chattel leasing agreements and retention of title agreements.

### **29.— General duties**

(1) The administrator of a company shall, on his appointment, take into his custody or under his control all the property to which the company is or appears to be entitled.

(2) The administrator shall manage the affairs, business and property of the company—

(a) at any time before proposals have been approved (with or without modifications) under Article 36, in accordance with any directions given by the High Court, and

(b) at any time after proposals have been so approved, in accordance with those proposals as revised, whether by him or a predecessor of his.

(3) The administrator shall summon a meeting of the company's creditors if—

(a) he is requested, in accordance with the rules, to do so by one-tenth, in value, of the company's creditors, or

(b) he is directed to do so by the High Court.

### **30.— Discharge or variation of administration order**

(1) The administrator of a company may at any time apply to the High Court for the administration order to be discharged, or to be varied so as to specify an additional purpose.

(2) The administrator shall make an application under this Article if—

(a) it appears to him that the purpose or each of the purposes specified in the order either has been achieved or is incapable of achievement, or

(b) he is required to do so by a meeting of the company's creditors summoned for the purpose in accordance with the rules.

(3) On the hearing of an application under this Article, the High Court may by order discharge or vary the administration order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order it thinks fit.

(4) Where the administration order is discharged or varied the administrator shall, within 14 days from the making of the order effecting the discharge or variation, send an office copy of that order to the registrar.

(5) If the administrator without reasonable excuse contravenes paragraph (4), he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

### **31.— Vacation of office**

(1) The administrator of a company may at any time be removed from office by order of the High Court and may, in the prescribed circumstances, resign his office by giving notice of his resignation to the Court.

(2) The administrator shall vacate office if—

(a) he ceases to be qualified to act as an insolvency practitioner in relation to the company, or

(b) the administration order is discharged.

(3) Where at any time a person ceases to be administrator, the following paragraphs apply.

(4) His remuneration and any expenses properly incurred by him shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any security to which Article 28(1) then applies.

(5) Any sums payable in respect of debts or liabilities incurred, while he was administrator, under contracts entered into . . . by him or a predecessor of his in the carrying out of his or

the predecessor's functions shall be charged on and paid out of any such property as is mentioned in paragraph (4) in priority to any charge arising under that paragraph; . . .

(6) Any sums payable in respect of liabilities incurred, while he was administrator, under contracts of employment adopted by him or a predecessor of his in the carrying out of his or the predecessor's functions shall, to the extent that the liabilities are qualifying liabilities, be charged on and paid out of any such property as is mentioned in paragraph (4) and enjoy the same priority as any sums to which paragraph (5) applies; and for the purpose of this paragraph the administrator is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days from his appointment.

(7) For the purposes of paragraph (6), a liability under a contract of employment is a qualifying liability if—

(a) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme, and

(b) it is in respect of services rendered wholly or partly after the adoption of the contract.

(8) There shall be disregarded for the purposes of paragraph (6) so much of any qualifying liability as represents payment in respect of services rendered before the adoption of the contract.

(9) For the purposes of paragraphs (7) and (8)—

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

(b) a sum payable in lieu of holiday is deemed to be wages or (as the case may be) salary in respect of services rendered in the period by reference to which the holiday entitlement arose.

(10)

### **32.— Release of administrator**

(1) A person who has ceased to be the administrator of a company has his release with effect from the following time, that is to say—

(a) in the case of a person who has died, the time at which notice is given to the High Court in accordance with the rules that he has ceased to hold office;

(b) in any other case, such time as the High Court may determine.

(2) Where a person has his release under this Article, he is, with effect from the time specified in paragraph (1), discharged from all liability both in respect of acts or omissions of his in the administration and otherwise in relation to his conduct as administrator.

(3) However, nothing in this Article prevents the exercise, in relation to a person who has had his release under this Article, of the High Court's powers under Article 176 (summary remedy against delinquent directors, liquidators, etc.).

### *Ascertainment and investigation of company's affairs*

### **33.— Information to be given by administrator**

(1) Where an administration order has been made, the administrator shall—

(a) forthwith send to the company and publish in the prescribed manner a notice of the order, and

(b) within 28 days from the making of the order, unless the High Court otherwise directs, send such a notice to all creditors of the company (so far as he is aware of their addresses).

(2) Where an administration order has been made, the administrator shall also, within 14 days from the making of the order, send an office copy of the order to the registrar and to such other persons as may be prescribed.

(3) If the administrator without reasonable excuse contravenes this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

### **34.— Statement of affairs to be submitted to administrator**

(1) Where an administration order has been made, the administrator shall forthwith require some or all of the persons mentioned in paragraph (3) to make out and submit to him a statement in the prescribed form as to the affairs of the company.

(2) The statement shall be verified by affidavit by the persons required to submit it and shall show—

- (a) particulars of the company's assets, debts and liabilities;
- (b) the names and addresses of its creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed.

(3) The persons referred to in paragraph (1) are—

- (a) those who are or have been officers of the company;
- (b) those who have taken part in the company's formation at any time within one year before the date of the administration order;
- (c) those who are in the company's employment or have been in its employment within that year, and are in the administrator's opinion capable of giving the information required;
- (d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company;

and in this paragraph "employment" includes employment under a contract for services.

(4) Where any persons are required under this Article to submit a statement of affairs to the administrator, they shall do so (subject to paragraph (5)) before the expiration of 21 days from the day after that on which the prescribed notice of the requirement is given to them by the administrator.

(5) The administrator, if he thinks fit, may—

- (a) at any time release a person from an obligation imposed on him under paragraph (1) or (2), or
- (b) either when giving notice under paragraph (4) or subsequently, extend the period so mentioned;

and where the administrator has refused to exercise a power conferred by this paragraph, the High Court, if it thinks fit, may exercise it.

(6) If a person without reasonable excuse contravenes any obligation imposed under this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

### *Administrator's proposals*

### **35.— Statement of proposals**

(1) Where an administration order has been made, the administrator shall, within 3 months (or such longer period as the High Court may allow) after the making of the order—

- (a) send to the registrar and (so far as he is aware of their addresses) to all creditors a statement of his proposals for achieving the purpose or purposes specified in the order, and
- (b) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose on not less than 14 days' notice.

(2) The administrator shall also, within 3 months (or such longer period as the High Court may allow) from the making of the order, either—

- (a) send a copy of the statement (so far as he is aware of their addresses) to all members

of the company, or

(b) publish in the prescribed manner a notice stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.

(3) If the administrator without reasonable excuse contravenes this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

### **36.— Consideration of proposals by creditors' meeting**

(1) A meeting of creditors summoned under Article 35 shall decide whether to approve the administrator's proposals.

(2) The meeting may approve the proposals with modifications, but shall not do so unless the administrator consents to each modification.

(3) Subject to paragraph (2), the meeting shall be conducted in accordance with the rules.

(4) After the conclusion of the meeting in accordance with the rules, the administrator shall report the result of the meeting to the High Court and shall give notice of that result to the registrar and to such persons as may be prescribed.

(5) If a report is given to the High Court under paragraph (4) that the meeting has declined to approve the administrator's proposals (with or without modifications), the Court may by order discharge the administration order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.

(6) Where the administration order is discharged, the administrator shall, within 14 days from the making of the order effecting the discharge, send an office copy of that order to the registrar.

(7) If the administrator without reasonable excuse contravenes paragraph (6), he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

### **37.— Approval of substantial revisions**

(1) This Article applies where—

(a) proposals have been approved (with or without modifications) under Article 36, and

(b) the administrator proposes to make revisions of those proposals which appear to him substantial.

(2) The administrator shall—

(a) send to all creditors of the company (so far as he is aware of their addresses) a statement in the prescribed form of his proposed revisions, and

(b) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose on not less than 14 days' notice;

and he shall not make the proposed revisions unless they are approved by the meeting.

(3) The administrator shall also either—

(a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company, or

(b) publish in the prescribed manner a notice stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.

(4) The meeting of creditors may approve the proposed revisions with modifications, but shall not do so unless the administrator consents to each modification.

(5) Subject to paragraphs (2) and (4), the meeting shall be conducted in accordance with the rules.

(6) After the conclusion of the meeting in accordance with the rules, the administrator shall give notice of the result of the meeting to the registrar and to such persons as may be prescribed.

## *Miscellaneous*

### **38.— Creditors' committee**

- (1) Where a meeting of creditors summoned under Article 35 has approved the administrator's proposals (with or without modifications), the meeting may, if it thinks fit, establish a committee ("the creditors' committee") to exercise the functions conferred on it by or under this Order.
- (2) If such a committee is established, the committee may, on giving not less than 7 days' notice, require the administrator to attend before it at any reasonable time and furnish it with such information relating to the carrying out of his functions as it may reasonably require.

### **39.— Protection of interests of creditors and members**

- (1) At any time when an administration order is in force, a creditor or member of the company may apply to the High Court for an order under this Article on the ground—
- (a) that the company's affairs, business and property are being or have been managed by the administrator 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 himself), or
  - (b) that any actual or proposed act or omission of the administrator is or would be so prejudicial.
- (2) On an application for an order under this Article the High Court may, subject to paragraphs (3) and (4), make such order as it thinks fit for giving relief in respect of the matters complained of, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.
- (3) An order under this Article shall not prejudice or prevent—
- (a) the implementation of a voluntary arrangement approved under Part II, or any compromise or arrangement sanctioned under Article 418 of the Companies Order; or
  - (b) where the application for the order was made more than 28 days from the approval of any proposals or revised proposals under Article 36 or 37, the implementation of those proposals or revised proposals.
- (4) Subject to paragraph (3), an order under this Article may in particular—
- (a) regulate the future management by the administrator of the company's affairs, business and property;
  - (b) require the administrator to refrain from doing or continuing an act complained of by the petitioner, or to do an act which the petitioner has complained he has 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) discharge the administration order and make such consequential provision as the Court thinks fit.
- (5) Nothing in Article 28 is to be taken as prejudicing applications to the High Court under this Article.
- (6) Where the administration order is discharged, the administrator shall, within 14 days from the making of the order effecting the discharge, send an office copy of that order to the registrar; and if without reasonable excuse he contravenes this paragraph, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

## **PART IV**

### **RECEIVERSHIP RECEIVERS AND MANAGERS**

## *General Provisions*

### **39A. Meaning of “company”**

In this Part “company” means a company registered under the Companies Act 2006 in Northern Ireland.

### **40. Disqualification of body corporate from acting as receiver**

A body corporate is not qualified for appointment as receiver of the property of a company, and any body corporate which acts as such a receiver shall be guilty of an offence.

### **41.— Disqualification of bankrupt or person in respect of whom a debt relief order is made**

(1) A person shall be guilty of an offence if he acts as receiver or manager of the property of a company on behalf of debenture holders while—

(a) he is an undischarged bankrupt,

(aa) a moratorium period under a debt relief order applies in relation to him, or

(b) a bankruptcy restrictions order or a debt relief restrictions order is in force in respect of him.

(2) This Article does not apply to a receiver or manager acting under an appointment made by the High Court.

### **42. Power of High Court to appoint official receiver**

Where application is made to the High Court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the Court, the official receiver may be so appointed.

## *Receivers and managers appointed out of court*

### **43.— Time from which appointment is effective**

(1) The appointment of a person as a receiver or manager of a company's property under powers contained in an instrument—

(a) is of no effect unless it is accepted by that person before the end of the business day next following that on which the instrument of appointment is received by him or on his behalf, and

(b) subject to this, is deemed to be made at the time at which the instrument of appointment is so received.

(2) This Article applies to the appointment of 2 or more persons as joint receivers or managers of a company's property under powers contained in an instrument, subject to such modifications as may be prescribed.

### **44. Liability for invalid appointment**

Where the appointment of a person as the receiver or manager of a company's property under powers contained in an instrument is discovered to be invalid (whether by virtue of the invalidity of the instrument or otherwise), the High Court may order the person by whom or on whose behalf the appointment was made to indemnify the person appointed against any liability which arises solely by reason of the invalidity of the appointment.

### **45.— Application to High Court for directions**



- (1) A receiver or manager of the property of a company appointed under powers contained in an instrument or the persons by whom or on whose behalf a receiver or manager has been so appointed, may apply to the High Court for directions in relation to any particular matter arising in connection with the performance of the functions of the receiver or manager.
- (2) On such an application, the High Court may give such directions, or may make such order declaring the rights of persons before the Court or otherwise, as it thinks just.

#### **46.— Power of High Court to fix remuneration**

- (1) The High Court may, on an application made by the liquidator of a company, by order fix the amount to be paid by way of remuneration to a person who, under powers contained in an instrument, has been appointed receiver or manager of the company's property.
- (2) The High Court's power under paragraph (1), where no previous order has been made with respect thereto under that paragraph—
  - (a) extends to fixing the remuneration for any period before the making of the order or the application for it,
  - (b) is exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application, and
  - (c) subject to paragraph (3), where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extends to requiring him or his personal representatives to account for the excess or such part of it as may be specified in the order.
- (3) The power conferred by sub-paragraph (2)(c) shall not be exercised as respects any period before the making of the application for the order under this Article, unless in the opinion of the High Court there are special circumstances making it proper for the power to be exercised.
- (4) The High Court may on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under paragraph (1).

#### **47.— Liability for contracts, etc.**

- (1) A receiver or manager appointed under powers contained in an instrument (other than an administrative receiver) is, to the same extent as if he had been appointed by order of the High Court—
  - (a) personally liable on any contract entered into by him in the performance of his functions (except in so far as the contract otherwise provides) and on any contract of employment adopted by him in the performance of those functions, and
  - (b) entitled in respect of that liability to indemnity out of the assets.
- (2) For the purposes of paragraph (1)(a), the receiver or manager is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days from his appointment.
- (3) Paragraph (1) does not limit any right to indemnity which the receiver or manager would have apart from it, nor limit his liability on contracts entered into without authority, nor confer any right to indemnity in respect of that liability.
- (4) Where at any time a receiver or manager so appointed vacates office—
  - (a) his remuneration and any expenses properly incurred by him, and
  - (b) any indemnity to which he is entitled out of the assets of the company,shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any charge or other security held by the person by or on whose behalf he was appointed.

#### **48.— Receivership accounts to be delivered to registrar**

(1) Except in the case of an administrative receiver, every receiver or manager of a company's property who has been appointed under powers contained in an instrument shall deliver to the registrar for registration the requisite accounts of his receipts and payments.

(2) The accounts shall be delivered within one month (or such longer period as the registrar may allow) after the expiration of 12 months from the date of his appointment and of every subsequent period of 6 months, and also within one month after he ceases to act as receiver or manager.

(3) The requisite accounts shall be an abstract in the prescribed form showing—

(a) receipts and payments during the relevant period of 12 or 6 months, or

(b) where the receiver or manager ceases to act, receipts and payments during the period from the end of the period of 12 or 6 months to which the last preceding abstract related (or, if no preceding abstract has been delivered under this Article, from the date of his appointment) up to the date of his so ceasing, and the aggregate amount of receipts and payments during all preceding periods since his appointment.

(4) A receiver or manager who contravenes this Article shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

#### *Provisions applicable to every receivership*

#### **49.— Notification that receiver or manager appointed**

(1) Where a receiver or manager of the property of a company has been appointed—

(a) every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company or the receiver or manager or the liquidator of the company; and

(b) all the company's websites,

must contain a statement that a receiver or manager has been appointed.

(2) If this Article is contravened, the company and any of the following persons, who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be guilty of an offence.

#### **50.— Payment of debts out of assets subject to floating charge**

(1) This Article applies, in the case of a company, where a receiver is appointed on behalf of the holders of any debentures of the company secured by a charge which, as created, was a floating charge.

(2) If the company is not at the time in course of being wound up, its preferential debts (within the meaning of Article 346) shall be paid out of the assets coming to the hands of the receiver in priority to any claims for principal or interest in respect of the debentures.

(3) Payments made under this Article shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

#### **51.— Enforcement of duty to make returns**

(1) If a receiver or manager of a company's property—

(a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver or manager is by law required to file, deliver, make or give, fails to make good the default within 14 days from the service on him of a notice requiring him to do so, or

(b) having been appointed under powers contained in an instrument, has, after being required at any time by the liquidator of the company to do so, failed to render proper accounts of his receipts and payments and to vouch them and pay over to the liquidator the amount properly payable to him,

the High Court may, on an application made for the purpose, make an order directing the receiver or manager (as the case may be) to make good the default within such time as may be specified in the order.

(2) In the case of the default mentioned in paragraph (1)(a), application to the High Court may be made by any member or creditor of the company or by the registrar; and in the case of the default mentioned in paragraph (1)(b), the application shall be made by the liquidator.

(3) An order of the High Court under paragraph (1), may provide that all costs of and incidental to an application under that paragraph shall be borne by the receiver or manager, as the case may be.

(4) Nothing in this Article prejudices the operation of any statutory provision imposing penalties on receivers in respect of any such default as is mentioned in paragraph (1).

#### *Administrative receivers: general*

### **52.— General powers**

(1) The powers conferred on the administrative receiver of a company by the debentures by virtue of which he was appointed are deemed to include (except in so far as they are inconsistent with any of the provisions of those debentures) the powers specified in Schedule 1.

(2) In the application of Schedule 1 to the administrative receiver of a company—

(a) the words "he" and "him" refer to the administrative receiver, and

(b) references to the property of the company are to the property of which he is or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager.

(3) A person dealing with the administrative receiver in good faith and for value is not concerned to inquire whether the receiver is acting within his powers.

### **53.— Power to dispose of charged property, etc.**

(1) Where, on an application by the administrative receiver, the High Court is satisfied that the disposal (with or without other assets) of any relevant property which is subject to a security would be likely to promote a more advantageous realisation of the company's assets than would otherwise be effected, the Court may by order authorise the administrative receiver to dispose of the property as if it were not subject to the security.

(2) Paragraph (1) does not apply in the case of any security held by the person by or on whose behalf the administrative receiver was appointed, or of any security to which a security so held has priority.

(3) It shall be a condition of an order under this Article that—

(a) the net proceeds of the disposal, and

(b) where those proceeds are less than such amount as may be determined by the High Court to be the net amount which would be realised on a sale of the property 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.

(4) Where a condition imposed in pursuance of paragraph (3) relates to 2 or more securities, that condition shall require the net proceeds of the disposal and, where sub-paragraph (b) of that paragraph applies, the sums mentioned in that sub-paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.

(5) A copy of an order under this Article shall, within 14 days of the making of the order, be sent by the administrative receiver to the registrar.

(6) If the administrative receiver without reasonable excuse contravenes paragraph (5), he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

(7) In this Article "relevant property", in relation to the administrative receiver, means the property of which he is or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager.

#### **54.— Agency and liability for contracts**

(1) The administrative receiver of a company—

(a) is deemed to be the company's agent, unless and until the company goes into liquidation; (b) is personally liable on any contract entered into by him in the carrying out of his functions (except in so far as the contract otherwise provides) and, to the extent of any qualifying liability, on any contract of employment adopted by him in the carrying out of those functions; and

(c) is entitled in respect of that liability to an indemnity out of the assets of the company.

(2) For the purposes of paragraph (1)(b) the administrative receiver is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days from his appointment.

(2A) For the purposes of paragraph (1)(b), a liability under a contract of employment is a qualifying liability if—

(a) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme,

(b) it is incurred while the administrative receiver is in office, and

(c) it is in respect of services rendered wholly or partly after the adoption of the contract.

(2B) Where a sum payable in respect of a liability which is a qualifying liability for the purposes of paragraph (1)(b) is payable in respect of services rendered partly before and partly after the adoption of the contract, liability under paragraph (1)(b) shall only extend to so much of the sum as is payable in respect of services rendered after the adoption of the contract.

(2C) For the purposes of paragraphs (2A) and (2B)—

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

(b) a sum payable in lieu of holiday is deemed to be wages or (as the case may be) salary in respect of services rendered in the period by reference to which the holiday entitlement arose.

(2D)

(3) This Article does not limit any right to indemnity which the administrative receiver would have apart from it, nor limit his liability on contracts entered into or adopted without authority, nor confer any right to indemnity in respect of that liability.

#### **55.— Vacation of office**

(1) An administrative receiver of a company may at any time be removed from office by order of the High Court (but not otherwise) and may resign his office by giving notice of his resignation in the prescribed manner to such persons as may be prescribed.

(2) An administrative receiver shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.

(3) Where at any time an administrative receiver vacates office—

(a) his remuneration and any expenses properly incurred by him, and

(b) any indemnity to which he is entitled out of the assets of the company,

shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any security held by the person by or on whose behalf he was appointed.

(4) Where an administrative receiver vacates office otherwise than by death, he shall, within 14 days from his vacation of office, send a notice to that effect to the registrar.

(5) If an administrative receiver without reasonable excuse contravenes paragraph (4), he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

*Administrative receivers: ascertainment and investigation of company's affairs*

**56.— Information to be given by administrative receiver**

(1) Where an administrative receiver is appointed, he shall—

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

(b) within 28 days from his appointment, unless the High Court otherwise directs, send such a notice to all the creditors of the company (so far as he is aware of their addresses).

(2) This Article and Article 57 do not apply in relation to the appointment of an administrative receiver to act—

(a) with an existing administrative receiver, or

(b) in place of an administrative receiver dying or ceasing to act,

except that, where they apply to an administrative receiver who dies or ceases to act before they have been fully complied with, the references in this Article and Article 57 to the administrative receiver include (subject to paragraph (3)) his successor and any continuing administrative receiver.

(3) If the company is being wound up, this Article and Article 57 apply notwithstanding that the administrative receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

(4) If the administrative receiver without reasonable excuse contravenes this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

**57.— Statement of affairs to be submitted**

(1) Where an administrative receiver is appointed, he shall forthwith require some or all of the persons mentioned in paragraph (3) to make out and submit to him a statement in the prescribed form as to the affairs of the company.

(2) A statement submitted under this Article shall be verified by affidavit by the persons required to submit it and shall show—

(a) particulars of the company's assets, debts and liabilities;

(b) the names and addresses of its creditors;

(c) the securities held by them respectively;

(d) the dates when the securities were respectively given; and

(e) such further or other information as may be prescribed.

(3) The persons referred to in paragraph (1) are—

(a) those who are or have been officers of the company;

(b) those who have taken part in the company's formation at any time within one year before the date of the appointment of the administrative receiver;

(c) those who are in the company's employment, or have been in its employment within that year, and are in the administrative receiver's opinion capable of giving the information required;

- (d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company;  
and in this paragraph "employment" includes employment under a contract for services.
- (4) Where any persons are required under this Article to submit a statement of affairs to the administrative receiver, they shall do so (subject to paragraph (5)) before the expiration of 21 days from the day on which the prescribed notice of the requirement is given to them by the administrative receiver.
- (5) The administrative receiver, if he thinks fit, may—
- (a) at any time release a person from an obligation imposed on him under paragraph (1) or (2), or
- (b) either when giving notice under paragraph (4) or subsequently, extend the period so mentioned;
- and where the administrative receiver has refused to exercise a power conferred by this paragraph, the High Court, if it thinks fit, may exercise it.
- (6) If a person without reasonable excuse contravenes any obligation imposed under this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

## **58.— Report by administrative receiver**

- (1) Where an administrative receiver is appointed, he shall, within 3 months (or such longer period as the High Court may allow) from his appointment, send to the registrar, to any trustees for secured creditors of the company and (so far as he is aware of their addresses) to all such creditors, **other than opted-out creditors**, a report as to the following matters, namely—
- (a) the events leading up to his appointment, so far as he is aware of them;
- (b) the disposal or proposed disposal by him of any property of the company and the carrying on or proposed carrying on by him of any business of the company;
- (c) the amounts of principal and interest payable to the debenture holders by whom or on whose behalf he was appointed and the amounts payable to preferential creditors; and
- (d) the amount (if any) likely to be available for the payment of other creditors.
- (2) The administrative receiver shall also, within 3 months (or such longer period as the High Court may allow) from his appointment, either—
- (a) send a copy of the report (so far as he is aware of their addresses) to all unsecured creditors of the company **other than opted-out creditors**; or
- (b) publish in the prescribed manner a notice stating an address to which unsecured creditors of the company should write for copies of the report to be sent to them free of charge, ~~and (in either case), unless the Court otherwise directs, lay a copy of the report before a meeting of the company's unsecured creditors summoned for the purpose on not less than 14 days' notice.~~
- ~~(3) The High Court shall not give a direction under paragraph (2) unless—~~
- ~~(a) the report states the intention of the administrative receiver to apply for the direction, and~~
- ~~(b) a copy of the report is sent to the persons mentioned in sub-paragraph (a) of that paragraph, or a notice is published as mentioned in sub-paragraph (b) of that paragraph, not less than 14 days before the hearing of the application.~~
- (4) Where the company has gone or goes into liquidation, the administrative receiver—
- (a) shall, within 7 days from his compliance with paragraph (1) or, if later, the nomination or appointment of the liquidator, send a copy of the report to the liquidator, and
- (b) where he does so within the time limited for compliance with paragraph (2), is not required to comply with that paragraph.

(5) A report under this Article shall include a summary of the statement of affairs made out and submitted to the administrative receiver under Article 57 and of his comments (if any) upon it.

(6) Nothing in this Article is to be taken as requiring any such report to include any information the disclosure of which would seriously prejudice the carrying out by the administrative receiver of his functions.

(7) Article 56(2) applies for the purposes of this Article also.

(8) If the administrative receiver without reasonable excuse contravenes this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

### **59.— Committee of creditors**

~~(1) Where a meeting of creditors is summoned under Article 58, the meeting may, if it thinks fit,~~ **Where an administrative receiver has sent or published a report as mentioned in Article 58(2) the company's unsecured creditors may, in accordance with the rules** establish a committee ("the creditors' committee") to exercise the functions conferred on it by or under this Order.

(2) If such a committee is established, the committee may, on giving not less than 7 days' notice, require the administrative receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

### **Prohibition of appointment of administrative receiver**

#### **59A.— Floating charge holder not to appoint administrative receiver**

(1) The holder of a qualifying floating charge in respect of a company's property may not appoint an administrative receiver of the company.

(2) In paragraph (1) "holder of a qualifying floating charge in respect of a company's property" has the same meaning as in paragraph 15 of Schedule B1.

(3) This Article applies—

(a) to a floating charge created on or after a date appointed by the Department by order, and

(b) in spite of any provision of an agreement or instrument which purports to empower a person to appoint an administrative receiver (by whatever name).

(4) An order under paragraph (3)(a) may—

(a) make provision which applies generally or only for a specified purpose;

(b) make different provision for different purposes;

(c) make transitional provision.

(5) This Article is subject to the exceptions specified in Articles 59B to 59I.

#### **59B.— First exception: capital market**

(1) Article 59A does not prevent the appointment of an administrative receiver in pursuance of an agreement which is or forms part of a capital market arrangement if—

(a) a party incurs or, when the agreement was entered into was expected to incur, a debt of at least £50 million under the arrangement, and

(b) the arrangement involves the issue of a capital market investment.

(2) In paragraph (1)—

"capital market arrangement" means an arrangement of a kind described in paragraph 1 of Schedule 1A, and

"capital market investment" means an investment of a kind described in paragraph 2 or 3

of that Schedule.

**59C.— Second exception: public-private partnership**

(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

- (a) is a public-private partnership project, and
- (b) includes step-in rights.

(2) In this Article “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.

(3) In this Article—

“step-in rights” has the meaning given by paragraph 6 of Schedule 1A, and

“project company” has the meaning given by paragraph 7 of that Schedule.

**59D.— Third exception: utilities**

(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

- (a) is a utility project, and
- (b) includes step-in rights.

(2) In this Article—

- (a) “utility project” means a project designed wholly or mainly for the purpose of a regulated business,
- (b) “regulated business” means a business of a kind listed in paragraph 10 of Schedule 1A,
- (c) “step-in rights” has the meaning given by paragraph 6 of that Schedule, and
- (d) “project company” has the meaning given by paragraph 7 of that Schedule.

**59E.— Fourth exception: urban regeneration projects**

(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

- (a) is designed wholly or mainly to develop land which at the commencement of the project is wholly or partly in a designated disadvantaged area in Northern Ireland, and
- (b) includes step-in rights.

(2) In paragraph (1) “develop” means to carry out—

- (a) building operations,
- (b) any operation for the removal of substances or waste from land and the levelling of the surface of the land, or
- (c) engineering operations in connection with the activities mentioned in sub-paragraph (a) or (b).

(3) In this Article—

“building” includes any structure or erection, and any part of a building as so defined, but does not include plant and machinery comprised in a building,

“building operations” includes—

- (a) demolition of buildings,
- (b) filling in of trenches,
- (c) rebuilding,
- (d) structural alterations of, or additions to, buildings and
- (e) other operations normally undertaken by a person carrying on business as a builder,



“designated disadvantaged area” means an area designated as a disadvantaged area under section 92 of the Finance Act 2001 (c. 9),  
“engineering operations” includes the formation and laying out of means of access to highways,  
“project company” has the meaning given by paragraph 7 of Schedule 1A,  
“step-in rights” has the meaning given by paragraph 6 of that Schedule,  
“substance” means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour, and  
“waste” includes any waste materials, spoil, refuse or other matter deposited on land.

**59F.— Fifth exception: project finance**

(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

- (a) is a financed project, and
- (b) includes step-in rights.

(2) In this Article—

- (a) a project is “financed” if under an agreement relating to the project a project company incurs, or when the agreement is entered into is expected to incur, a debt of at least £50 million for the purposes of carrying out the project,
- (b) “project company” has the meaning given by paragraph 7 of Schedule 1A, and
- (c) “step-in rights” has the meaning given by paragraph 6 of that Schedule.

**59G. Sixth exception: financial market**

Article 59A does not prevent the appointment of an administrative receiver of a company by virtue of—

- (a) a market charge within the meaning of Article 95 of the Companies (No. 2) (Northern Ireland) Order 1990 (NI 10),
- (b) a system-charge within the meaning of the Financial Markets and Insolvency Regulations (Northern Ireland) 1996 (SR 1996 No. 252).

**59H. Seventh exception: registered housing association**

Article 59A does not prevent the appointment of an administrative receiver of a housing association which is registered as such under Chapter II of Part II of the Housing (Northern Ireland) Order 1992 (NI 15).

**59I. Eighth exception: licence companies**

Article 59A does not prevent the appointment of an administrative receiver of a licence company within the meaning of section 26 of the Transport Act 2000 (c. 38). ] 1

**59J.— Articles 59A to 59I: supplementary**

(1) Schedule 1A (which supplements Articles 59A to 59I) shall have effect.

(2) The Department may by order—

- (a) insert into this Order provision creating an additional exception to Article 59A(1);
- (b) provide for a provision of this Order which creates an exception to Article 59A(1) to cease to have effect;
- (c) amend Article 59A in consequence of provision made under sub-paragraph (a) or (b);
- (d) amend any of Articles 59B to 59I;
- (e) amend Schedule 1A.

(3) An order under paragraph (2) may make—

- (a) provision which applies generally or only for a specified purpose;
- (b) different provision for different purposes;
- (c) consequential or supplementary provision;
- (d) transitional provision.
- (4) An order under paragraph (2)—
  - (a) in the case of an order under paragraph (2)(e), shall be subject to negative resolution,
  - (b) in the case of an order under paragraph (2)(d) varying the sum specified in Article 59B(1)(a) or 59F(2)(a) (whether or not the order also makes consequential or transitional provision), shall be subject to negative resolution, and
  - (c) in the case of any other order under paragraph (2)(a) to (d), shall be subject to affirmative resolution.

## **PART V**

### **WINDING UP OF COMPANIES REGISTERED UNDER THE COMPANIES ACT 2006**

#### **CHAPTER I**

##### **PRELIMINARY**

##### **Introductory**

#### **60.— Scheme of this Part**

- (1) This Part applies to the winding up of a company registered under the Companies Act 2006 in Northern Ireland.
- (2) The winding up may be either—
  - (a) voluntary (see Chapters 2 to 5), or
  - (b) by the High Court (see Chapter 6).
- (3) This Chapter and Chapters 7 to 10 relate to winding up generally, except where otherwise stated.

##### *Contributories*

#### **61.— Liability as contributories of present and past members**

- (1) When a company is wound up, every present and past member is liable to contribute to its assets to any amount sufficient for payment of its debts and liabilities, and the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.
- (2) This is subject as follows—
  - (a) a past member is not liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding up;
  - (b) a past member is not liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
  - (c) a past member is not liable to contribute, unless it appears to the High Court that the existing members are unable to satisfy the contributions required to be made by them;
  - (d) in the case of a company limited by shares, no contribution is required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member;
  - (e) nothing in the Companies Acts or this Order invalidates any provision contained in a policy of insurance or other contract whereby the liability of individual members on

the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;

(f) a sum due to any member of the company (in his character of a member) by way of dividends, profits or otherwise is not deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(3) In the case of a company limited by guarantee, no contribution is required from any member exceeding the amount undertaken to be contributed by him to the company's assets in the event of its being wound up; but if it is a company with a share capital, every member of it is liable (in addition to the amount so undertaken to be contributed to the assets), to contribute to the extent of any sums unpaid on shares held by him.

## **62.—**

### **63.— Liability of past directors and shareholders**

(1) This Article applies where a company is being wound up and—

(a) it has under [ Chapter 5 of Part 18 of the Companies Act 2006 (acquisition by limited company of its own shares: redemption or purchase by private company out of capital) made a payment out of capital in respect of the redemption or purchase of any of its own shares (the payment being referred to in this Article as "the relevant payment"), and

(b) the aggregate amount of the company's assets and the amounts paid by way of contribution to its assets (apart from this Article) is not sufficient for payment of its debts and liabilities, and the expenses of the winding up.

(2) If the winding up commenced within one year from the date on which the relevant payment was made, then—

(a) the person from whom the shares were redeemed or purchased, and

(b) the directors who signed the statement made in accordance with section 714(1) to (3) of the Companies Act 2006 for the purposes of the redemption or purchase (except a director who shows that he had reasonable grounds for forming the opinion set out in the statement),

are, so as to enable that insufficiency to be met, liable to contribute to the following extent to the company's assets.

(3) A person from whom any of the shares were redeemed or purchased is liable to contribute an amount not exceeding so much of the relevant payment as was made by the company in respect of his shares; and the directors are jointly and severally liable with that person to contribute that amount.

(4) A person who has contributed any amount to the assets in pursuance of this Article may apply to the High Court for an order directing any other person jointly and severally liable in respect of that amount to pay him such amount as the Court thinks just and equitable.

(5) Article 61 does not apply in relation to liability accruing by virtue of this Article.

(6)

### **64.— Limited company formerly unlimited**

(1) This Article applies in the case of a company being wound up which was at some former time registered as unlimited but has re-registered as a limited company.

(a)-(b)

(2) Notwithstanding Article 61(2)(a), a past member of the company who was a member of it at the time of re-registration, if the winding up commences within 3 years from the day on

which the company was re-registered, is liable to contribute to the assets of the company in respect of debts and liabilities contracted before that time.

(3) Subject to Article 61(2)(a) and to paragraph (2), but notwithstanding Article 61(2)(c) , if no persons who were members of the company at that time are existing members of it, a person who at that time was a present or past member is liable to contribute as mentioned in paragraph (2) notwithstanding that the existing members have satisfied the contributions required to be made by them.

(4) Notwithstanding Article 61(2)(d) and (3), there is no limit on the amount which a person who, at that time, was a past or present member of the company is liable to contribute as mentioned in paragraph (2).

#### **65.— Unlimited company formerly limited**

(1) This Article applies in the case of a company being wound up which was at some former time registered as limited but has been re-registered as unlimited.

(2) A person who, at the time when the application for the company to be re-registered was lodged, was a past member of the company and did not after that again become a member of it is not liable to contribute to the assets of the company more than he would have been liable to contribute had the company not been re-registered.

#### **66. Nature of contributory's liability**

The liability of a contributory creates a debt accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

#### **67.— Contributories in case of death of a member**

(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives are liable in a due course of administration to contribute to the assets of the company in discharge of his liability and are contributories accordingly.

(2) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment out of it of the money due.

#### **68.— Effect of contributory's bankruptcy**

(1) This Article applies if a contributory becomes bankrupt, either before or after he has been placed on the list of contributories.

(2) His trustee in bankruptcy represents him for all purposes of the winding up, and is a contributory accordingly.

(3) The trustee may be called on to admit to proof against the bankrupt's estate, or otherwise allow to be paid out of the bankrupt's assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the company's assets.

(4) There may be proved against the bankrupt's estate the estimated value of his liability to future calls as well as calls already made.

#### **69.— Companies registered but not formed under the Companies Act 2006**

(1) This Article applies in the event of a company being wound up which is registered but not formed under the Companies Act 2006.

(2) Every person is a contributory, in respect of the company's debts and liabilities contracted before registration, who is liable—

(a) to pay, or contribute to the payment of, any debt or liability so contracted, or

(b) to pay, or contribute to the payment of, any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or

(c) to pay, or contribute to the amount of, the expenses of winding up the company, so far as relates to such debts or liabilities.

(3) Every contributory is liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as is mentioned in paragraph (2).

(4) In the event of the death, bankruptcy or insolvency of any contributory, provisions of this Order, with respect to the personal representatives of deceased contributories and to the trustees of bankrupt or insolvent contributories respectively, apply.

## CHAPTER II

### VOLUNTARY WINDING UP (INTRODUCTORY AND GENERAL)

#### *Resolutions for, and commencement of, voluntary winding up*

#### **70.— Circumstances in which company may be wound up voluntarily**

(1) A company may be wound up voluntarily—

(a) when the period (if any) fixed for the duration of the company by its articles expires, or the event (if any) occurs, on the occurrence of which its articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring it to be wound up voluntarily;

(b) if the company resolves by special resolution that it be wound up voluntarily;

(c)

~~(1A) Before a company passes a resolution for voluntary winding up it must give written notice of the resolution to the holder of any qualifying floating charge to which Article 59A applies.~~

(1ZA) Before a company passes a resolution for voluntary winding up, it must comply with paragraphs (1ZB) to (1A).

(1ZB) Where the company is required by section 291 or 293 of the Companies Act 2006 to send or submit a copy of the resolution to members of the company, the company must at the same time give written notice of the resolution to the Enforcement of Judgments Office.

(1ZC) Where the company is required by Chapter 3 of Part 13 of the Companies Act 2006 to give notice of a meeting at which the resolution is intended to be moved, the company must at the same time give written notice of the resolution to the Enforcement of Judgments Office.

(1A) The company must also give written notice of the resolution to the holder of any qualifying floating charge to which Article 59A applies.

(1B) Where notice is given under paragraph (1A) a resolution for voluntary winding up may be passed only—

(a) after the end of the period of 5 business days beginning with the day on which the notice was given, or

(b) if the person to whom the notice was given has consented in writing to the passing of the resolution.

(2) Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company's constitution) applies to a resolution under sub-paragraph (a) of paragraph (1) as well as a special resolution under sub-paragraph (b).

(3) If a company fails to comply with paragraph (1ZB) or (1ZC), the company and every officer of it who is in default are guilty of an offence.

#### **71.— Notice of **result of** resolution to wind up voluntarily**

(1) When a company has passed a resolution for voluntary winding up, it shall, within 14 days from the passing of the resolution, ~~give notice of the resolution by advertisement in the Belfast Gazette~~ give notice that the resolution has been passed—

- (a) by advertisement in the Belfast Gazette, and
- (b) in writing to the Enforcement of Judgments Office.

(1A) Where a company has given notice under Article 70(1ZB) or (1ZC) of a resolution for voluntary winding up and—

- (a) in a case within Article 70(1ZB), the resolution lapses, or
- (b) in a case within Article 70(1ZC), the resolution is not passed at the proposed meeting or it becomes apparent that the resolution will not be passed,

the company must, within 14 days of that event, give written notice of it to the Enforcement of Judgments Office.

(2) If default is made in complying with this Article, the company and every officer of it who is in default shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

(3) For the purposes of paragraph (2) the liquidator is deemed an officer of the company.

## **72. Commencement of voluntary winding up**

A voluntary winding up is deemed to commence at the time of the passing of the resolution for voluntary winding up.

### *Consequences of resolution to wind up*

## **73.— Effect on business and status of company**

(1) In the case of a voluntary winding up, the company shall from the commencement of the winding up cease to carry on its business, except so far as may be required for its beneficial winding up.

(2) However, the corporate state and corporate powers of the company, notwithstanding anything to the contrary in its articles, continue until the company is dissolved.

## **74. Avoidance of share transfers, etc., after winding-up resolution**

Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the company's members, made after the commencement of a voluntary winding up is void.

### *Declaration of solvency*

## **75.— Statutory declaration of solvency**

(1) Where it is proposed to wind up a company voluntarily, the directors (or, in the case of a company having more than 2 directors, the majority of them) may at a directors' meeting make a statutory declaration to the effect that they have made a full inquiry into the company's affairs and that, having done so, they have formed the opinion that the company will be able to pay its debts in full, together with interest at the official rate (as defined in Article 5(1)), within such period, not exceeding 12 months from the commencement of the winding up, as may be specified in the declaration.

(2) Such a declaration by the directors has no effect for the purposes of this Order unless—

- (a) it is made within the 5 weeks immediately preceding the date of the passing of the resolution for winding up, or on that date but before the passing of the resolution, and
- (b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

- (3) A copy of the declaration shall be delivered to the registrar before the expiration of 15 days from the date on which the resolution for winding up is passed.
- (4) A director making a declaration under this Article without having reasonable grounds for the opinion that the company will be able to pay its debts in full, together with interest at the official rate, within the period specified shall be guilty of an offence.
- (5) If the company is wound up in pursuance of a resolution passed within 5 weeks from the making of the declaration, and its debts (together with interest at the official rate) are not paid or provided for in full within the period specified, it is to be presumed (unless the contrary is shown) that the director did not have reasonable grounds for his opinion.
- (6) If a copy of a declaration required by paragraph (3) to be delivered to the registrar is not so delivered within the time specified by that paragraph, the company and every officer of it who is in default shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

#### **76. Distinction between "members'" and "creditors'" voluntary winding up**

A winding up in the case of which a directors' statutory declaration in accordance with Article 75 has been made is a "members' voluntary winding up"; and a winding up in the case of which such a declaration has not been made is a "creditors' voluntary winding up".

### **CHAPTER III**

#### **MEMBERS' VOLUNTARY WINDING UP**

##### **77.— Appointment of liquidator**

- (1) In a members' voluntary winding up, the company in general meeting shall appoint one or more liquidators for the purpose of winding up the company's affairs and distributing its assets.
- (2) On the appointment of a liquidator all the powers of the directors cease, except so far as the company in general meeting or the liquidator sanctions their continuance.

##### **78.— Power to fill vacancy in office of liquidator**

- (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.
- (2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.
- (3) The meeting shall be held in the manner provided by this Order or by the company's articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the High Court.

##### **79.— General company meeting at each year's end**

- (1) Subject to Articles 82 and 88, in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Department may allow.
- (2) The liquidator shall lay before the meeting an account of his acts and dealings, and of the conduct of the winding up, during the preceding year.
- (3) If the liquidator contravenes this Article, he shall be guilty of an offence.

## **Progress report to company**

79—(1) Subject to ~~Articles 82 and 88~~ **Article 82**, the liquidator must—

- (a) for each prescribed period produce a progress report relating to the prescribed matters; and
- (b) within such period commencing with the end of the period referred to in sub-paragraph (a) as may be prescribed send a copy of the progress report to—
  - (i) the members of the company; and
  - (ii) such other persons as may be prescribed.

(2) A liquidator who fails to comply with this Article shall be guilty of an offence.”.

## **~~80. Final meeting prior to dissolution~~**

~~(1) As soon as the company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving an explanation of it.~~

~~(2) The meeting shall be called by advertisement in the Belfast Gazette, specifying its time, place and object and published at least one month before the meeting.~~

~~(3) Within one week from the meeting, the liquidator shall send to the registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date.~~

~~(3A)~~

~~(3B)~~

~~(4) If the copy is not sent or the return is not made in accordance with paragraph (3), the liquidator shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.~~

~~(5) If a quorum is not present at the meeting, the liquidator shall, in lieu of the return mentioned in paragraph (3), make a return that the meeting was duly summoned and that no quorum was present; and upon such a return being made, the provisions of paragraph (3) as to the making of the return are deemed complied with.~~

~~(6) If the liquidator fails to call a general meeting of the company as required by paragraph (1), he shall be guilty of an offence.~~

## **Final account prior to dissolution**

80.—(1) As soon as the company's affairs are fully wound up, the liquidator must make up an account of the winding up, showing how it has been conducted and how the company's property has been disposed of.

(2) The liquidator must send a copy of the account to the members of the company before the end of the period of 14 days beginning with the day on which the account is made up.

(3) The liquidator must send a copy of the account to the registrar before the end of that period (but not before sending it to the members of the company).

(4) If the liquidator does not comply with paragraph (2), the liquidator is guilty of an offence.

(5) If the liquidator does not comply with paragraph (3), the liquidator is guilty of an offence and, for a continued contravention, is guilty of a continuing offence.



## 81.— Effect of company's insolvency

(1) This Article applies where the liquidator is of the opinion that the company will be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors' declaration under Article 75.

(1A) The liquidator must before the end of the period of 7 days beginning with the day after the day on which the liquidator formed that opinion—

(a) make out a statement in the prescribed form as to the affairs of the company, and

(b) send it to the company's creditors.

~~(2) The liquidator shall—~~

~~(a) summon a meeting of creditors not later than 28 days from the day on which he formed that opinion;~~

~~(b) not less than 7 days before the day on which the creditors' meeting is to be held—~~

~~(i) send notices of that meeting to the creditors by post; and~~

~~(ii) cause notice of that meeting to be advertised once in the Belfast Gazette and once at least in 2 newspapers circulating in each district in which the company's principal place of business in the United Kingdom was situated during the relevant period; and~~

~~(c) during the period before the day on which the creditors' meeting is to be held, furnish creditors free of charge with such information concerning the affairs of the company as they may reasonably require;~~

~~and the notice of the creditors' meeting shall state the duty imposed by sub-paragraph (c).~~

~~(3) The liquidator shall also—~~

~~(a) make out a statement in the prescribed form as to the affairs of the company;~~

~~(b) lay that statement before the creditors' meeting; and~~

~~(c) attend and preside at that meeting.~~

(4) The statement as to the affairs of the company shall be verified by affidavit by the liquidator and shall show—

(a) particulars of the company's assets, debts and liabilities;

(b) the names and addresses of the company's creditors;

(c) the securities held by them respectively;

(d) the dates when the securities were respectively given; and

(e) such further or other information as may be prescribed.

(4A) The company's creditors may in accordance with the rules nominate a person to be the liquidator in a creditors' voluntary winding up of the company (see Article 82).

(4B) The liquidator in the members' voluntary winding up must in accordance with the rules seek such a nomination from the company's creditors.

~~(5) Where the company had no place of business in the United Kingdom during the relevant period, the reference in paragraph (2)(b)(ii) to the company's principal place of business in the United Kingdom is replaced by a reference to its registered office.~~

~~(6) In this Article "the relevant period" means the period of 6 months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.~~

~~(7) If the liquidator without reasonable excuse contravenes this Article, he shall be guilty of an offence fails to—~~

(a) make out and send the statement required by paragraphs (1A) and

(4), or

(b) verify the statement by affidavit as required by paragraph (4),  
the liquidator is guilty of an offence.

## **~~82. Conversion to creditors' voluntary winding up~~**

~~As from the day on which the creditors' meeting is held under Article 81, this Order has effect as if—~~

~~(a) the directors' declaration under Article 75 had not been made; and  
(b) the creditors' meeting and the company meeting at which it was resolved that the company be wound up voluntarily were the meetings mentioned in Article 84;  
and accordingly the winding up becomes a creditors' voluntary winding up.~~

## **Conversion to creditors' voluntary winding up**

82.—(1) The winding up becomes a creditors' voluntary winding up as from the day on which—

(a) the company's creditors under Article 81 nominate a person to be liquidator, or

(b) the procedure by which the company's creditors were to have made such a nomination concludes without a nomination having been made.

(2) As from that day, this Order has effect as if the directors' declaration under Article 75 had not been made.

(3) The liquidator in the creditors' voluntary winding up is to be the person nominated by the company's creditors under Article 81 or, where no person has been so nominated, the existing liquidator.

(4) In the case of the creditors nominating a person other than the existing liquidator, any director, member or creditor of the company may, within 7 days after the date on which the nomination was made by the creditors, apply to the High Court for an order either—

(a) directing that the existing liquidator is to be liquidator instead of or jointly with the person nominated by the creditors, or

(b) appointing some other person to be liquidator instead of the person nominated by the creditors.

(5) Where the holder of a qualifying floating charge in respect of the company's property (within the meaning of paragraph 15 of Schedule B1) makes an application under paragraph (4), the High Court must grant the application unless the Court thinks it right to refuse it because of the particular circumstances of the case.

(6) The "existing liquidator" is the person who is liquidator immediately before the winding up becomes a creditors' voluntary winding up.

## **CHAPTER IV**

### **CREDITORS' VOLUNTARY WINDING UP**

## **83.— Application of this Chapter**

(1) Subject to paragraph (2), this Chapter applies in relation to a creditors' voluntary winding up.

(2) Articles ~~84 and 85~~ **85 and 86** do not apply where, under Article 82, a members' voluntary winding up has become a creditors' voluntary winding up.

## **~~84.— Meeting of creditors~~**

~~(1) The company shall—~~

~~(a) cause a meeting of its creditors to be summoned not later than 14 days from the day on which there is to be held the company meeting at which the resolution for voluntary winding up is to be proposed;~~

~~(b) not less than 7 days before the day on which the creditors' meeting is to be held—~~

~~(i) cause the notices of that meeting to be sent by post; and~~

~~(ii) cause notice of that meeting to be advertised once in the Belfast Gazette and once at least in 2 newspapers circulating in each district in which the company's principal place of business in the United Kingdom was situated during the relevant period.~~

~~(2) The notice of the creditors' meeting shall state either—~~

~~(a) the name and address of a person qualified to act as an insolvency practitioner in relation to the company who, during the period before the day on which that meeting is to be held, will furnish creditors free of charge with such information concerning the company's affairs as they may reasonably require; or~~

~~(b) a place in each district mentioned in paragraph (1)(b)(ii) where, on the 2 business days falling next before the day on which that meeting is to be held, a list of the names and addresses of the company's creditors will be available for inspection free of charge.~~

~~(3) Where the company had no place of business in the United Kingdom during the relevant period, the reference in paragraph (1)(b)(ii) to the company's principal place of business in the United Kingdom is replaced by a reference to its registered office.~~

~~(4) In this Article "the relevant period" means the period of 6 months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.~~

~~(5) If the company without reasonable excuse contravenes paragraph (1) or (2), it shall be guilty of an offence.~~

## **85.— Directors to lay statement of affairs before creditors**

~~(1) The directors of the company shall—~~

~~(a) make out a statement in the prescribed form as to the affairs of the company;~~

~~(b) cause that statement to be laid before the creditors' meeting under Article 84; and~~

~~(c) appoint one of their number to preside at that meeting;~~

~~and it is the duty of the director so appointed to attend the meeting and preside over it.~~

**(1) The directors of the company must, before the end of the period of 7 days beginning with the day after the day on which the company passes a resolution for voluntary winding up—**

**(a) make out a statement in the prescribed form as to the affairs of the company, and**

**(b) send the statement to the company's creditors.**

**(2) The statement as to the affairs of the company shall be verified by affidavit by some or all of the directors and shall show—**

**(a) particulars of the company's assets, debts and liabilities;**

**(b) the names and addresses of the company's creditors;**

**(c) the securities held by them respectively;**

**(d) the dates when the securities were respectively given; and**

**(e) such further or other information as may be prescribed.**

~~(3) If—~~

~~(a) the directors without reasonable excuse contravene paragraph (1) or (2); or~~

~~(b) any director without reasonable excuse contravenes paragraph (1), so far as requiring him to attend and preside at the creditors' meeting;~~

~~the directors or (as the case may be) the director shall be guilty of an offence.~~

(3) If the directors without reasonable excuse contravene paragraph (1) or (2), they are guilty of an offence.

## **86.— Appointment of liquidator**

~~(1) The creditors and the company at their respective meetings mentioned in Article 84 may nominate a person to be liquidator for the purpose of winding up the company's affairs and distributing its assets.~~

(1) The company may nominate a person to be liquidator at the company meeting at which the resolution for voluntary winding up is passed.

(1A) The company's creditors may in accordance with the rules nominate a person to be liquidator.

(1B) The directors of the company must in accordance with the rules seek such a nomination from the company's creditors.

(2) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the company.

(3) In the case of different persons being nominated, any director, member or creditor of the company may, within 7 days from the date on which the nomination was made by the creditors, apply to the High Court for an order either—

(a) directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or

(b) appointing some other person to be liquidator instead of the person nominated by the creditors.

(4) The Court shall grant an application under paragraph (3) made by the holder of a qualifying floating charge in respect of the company's property (within the meaning of paragraph 15 of Schedule B1) unless the Court thinks it right to refuse the application because of the particular circumstances of the case.

## **87.— Appointment of liquidation committee**

~~(1) The creditors at the meeting to be held under Article 84 or at any subsequent meeting may, if they think fit,~~ The creditors may in accordance with the rules appoint a committee ("the liquidation committee") of not more than 5 persons to exercise the functions conferred on it by or under this Order.

(2) If such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee, not exceeding 5.

(3) However, the creditors may, if they think fit, ~~resolve~~ decide that all or any of the persons so appointed by the company ought not to be members of the liquidation committee; and if the creditors so ~~resolve~~ decide—

(a) ~~the persons mentioned in the resolution~~ those persons are not then, unless the High Court otherwise directs, qualified to act as members of the committee; and

(b) on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of ~~the persons mentioned in the resolution~~ those persons.

## **~~88.— Creditors' meeting where winding up converted under Article 82~~**

~~Where, in the case of a winding up which was, under Article 82, converted to a creditors' voluntary winding up, a creditors' meeting is held in accordance with Article 81, any~~

~~appointment made or committee established by that meeting is deemed to have been made or established by a meeting held in accordance with Article 84.~~

### **89. Cesser of directors' powers**

On the appointment of a liquidator, all the powers of the directors cease, except so far as the liquidation committee (or, if there is no such committee, the creditors) sanction their continuance.

### **90. Vacancy in office of liquidator**

If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by, or by the direction of, the High Court), the creditors may fill the vacancy.

### **91.— Meetings of company and creditors at each year's end**

(1) If the winding up continues for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Department may allow.

(2) The liquidator shall lay before each of the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(3) If the liquidator contravenes this Article, he shall be guilty of an offence.

(4) Where under Article 82 a members' voluntary winding up has become a creditors' voluntary winding up, and the creditors' meeting under Article 81 is held 3 months or less before the end of the first year from the commencement of the winding up, the liquidator is not required by this Article to summon a meeting of creditors at the end of that year.

*Article 91 as substituted by section 3(2) of the of the Insolvency (Amendment) Act (Northern Ireland) 2016 (not yet commenced)*

### **Progress report to company and creditors**

**91—**(1) The liquidator must—

- (a) for each prescribed period produce a progress report relating to the prescribed matters; and
- (b) within such period commencing with the end of the period referred to in sub-paragraph (a) as may be prescribed send a copy of the progress report to—
  - (i) the members and creditors of the company, **other than opted-out creditors**, and
  - (ii) such other persons as may be prescribed.

(2) A liquidator who fails to comply with this Article shall be guilty of an offence.

### ~~**92.— Final meeting prior to dissolution**~~

~~(1) As soon as the company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property~~

~~has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for~~

~~the purpose of laying the account before the meetings and giving an explanation of it.~~

~~(2) Each such meeting shall be called by advertisement in the Belfast Gazette specifying the time, place and object of the meeting, and published at least one month before it.~~

~~(3) Within one week from the date of the meetings (or, if they are not held on the same date, from the date of the later one) the liquidator shall send to the registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates.~~

~~(4) If the copy is not sent or the return is not made in accordance with paragraph (3), the liquidator shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.~~

~~(5) However, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return required by paragraph (3), make a return that the meeting was duly summoned and that no quorum was present; and upon such return being made the provisions of that paragraph as to the making of the return are, in respect of that meeting, deemed complied with.~~

~~(6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this Article, he shall be guilty of an offence.~~

### **Final account prior to dissolution**

92.—(1) As soon as the company's affairs are fully wound up, the liquidator must make up an account of the winding up, showing how it has been conducted and how the company's property has been disposed of.

(2) The liquidator must, before the end of the period of 14 days beginning with the day on which the account is made up—

- (a) send a copy of the account to the company's members,
- (b) send a copy of the account to the company's creditors, other than opted-out creditors, and
- (c) give the company's creditors, other than opted-out creditors, a notice explaining the effect of Article 147(2H) and how they may object to the liquidator's release.

(3) The liquidator must during the relevant period send to the registrar—

- (a) a copy of the account, and
- (b) a statement of whether any of the company's creditors objected to the liquidator's release.

(4) The relevant period is the period of 7 days beginning with the day after the last day of the period prescribed by the rules as the period within which the creditors may object to the liquidator's release.

(5) If the liquidator does not comply with paragraph (2) the liquidator is guilty of an offence.

(6) If the liquidator does not comply with paragraph (3) the liquidator is guilty of an offence and, for a continued contravention, is guilty of a continuing offence.

## **CHAPTER V**

### **PROVISIONS APPLYING TO BOTH KINDS OF VOLUNTARY WINDING UP**

#### **93. Distribution of company's property**

Subject to the provisions of this Order as to preferential payments, the company's property in a voluntary winding up shall on the winding up be applied in satisfaction of the company's liabilities *pari passu* and, subject to that application, shall (unless the company's articles otherwise provide) be distributed among the members according to their rights and interests in the company.

**94.— Appointment or removal of liquidator by the High Court**

- (1) If from any cause whatever there is no liquidator acting, the High Court may appoint a liquidator.
- (2) The High Court may, on cause shown, remove a liquidator and appoint another.

**95.— Notice by liquidator of his appointment**

- (1) The liquidator shall, within 14 days from his appointment, publish in the Belfast Gazette and deliver to the registrar for registration a notice of his appointment in the form prescribed.
- (2) If the liquidator contravenes this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

**96.— Acceptance of shares, etc., as consideration for sale of company's property**

- (1) This Article applies, in the case of a company proposed to be, or being, wound up voluntarily, where the whole or part of the company's business or property is proposed to be transferred or sold
  - (a) to another company ( "the transferee company"), whether or not the latter is a company registered under the Companies Act 2006, or
  - (b) to a limited liability partnership (the transferee limited liability partnership).
- (2) With the requisite sanction, the liquidator of the company being, or proposed to be, wound up ("the transferor company") may receive, in compensation or part compensation for the transfer or sale-
  - (a) in the case of the transferee company, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company, or
  - (b) in the case of the transferee limited liability partnership, membership in the transferee limited liability partnership for distribution among the members of the transferor company.
- (3) The sanction requisite under paragraph (2) is—
  - (a) in the case of a members' voluntary winding up, that of a special resolution of the company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, and
  - (b) in the case of a creditors' voluntary winding up, that of either the High Court or the liquidation committee.
- (4) Alternatively to paragraph (2), the liquidator may (with that sanction) enter into any other arrangement whereby the members of the transferor<sup>1</sup> company may-
  - (a) in the case of the transferee company, in lieu of receiving cash, shares, policies or other like interests (or in addition thereto) participate in the profits of, or receive any other benefit from, the transferee company, or
  - (b) in the case of the transferee limited liability partnership, in lieu of receiving cash or membership (or in addition thereto), participate in some other way in the profits of, or receive any other benefit from, the transferee limited liability partnership.
- (5) A sale or arrangement in pursuance of this Article is binding on members of the transferor company.
- (6) A special resolution is not invalid for the purposes of this Article by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing



liquidators; but, if an order is made within a year for winding up the company by the High Court, the special resolution is not valid unless sanctioned by the Court.

#### **97.— Dissent from arrangement under Article 96**

(1) This Article applies in the case of a voluntary winding up where, for the purposes of Article 96(2) or (4), there has been passed a special resolution of the transferor company providing the sanction requisite for the liquidator under that Article.

(2) If a member of the transferor company who did not vote in favour of the special resolution expresses his dissent from it in writing, addressed to the liquidator and left at the company's registered office within 7 days from the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration under this Article.

(3) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution.

(4) For the purposes of an arbitration under this Article, the provisions of the Companies Clauses Consolidation Act 1845 with respect to the settlement of disputes by arbitration are incorporated with this Order, and—

(a) in the construction of those provisions this Order is deemed the special Act and "the company" means the transferor company, and

(b) any appointment by the incorporated provisions directed to be made under the hand of the secretary or any 2 of the directors may be made in writing by the liquidator (or, if there is more than one liquidator, then any 2 or more of them).

#### **98.— Reference of questions to the High Court**

(1) The liquidator or any contributory or creditor may apply to the High Court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) The High Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

(3) A copy of an order made by virtue of this Article staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar for registration.

#### **99.— No liquidator appointed or nominated by company**

(1) This Article applies where, in the case of a voluntary winding up, no liquidator has been appointed or nominated by the company.

(2) The powers of the directors shall not be exercised, except with the sanction of the High Court or (in the case of a creditors' voluntary winding up) so far as may be necessary to secure compliance with ~~Article 84 (creditors' meeting) and~~ Article 85 (statement of affairs) **and Article 86(1B) (nomination of liquidator by creditors)**, during the period before the appointment or nomination of a liquidator of the company.

(3) Paragraph (2) does not apply in relation to the powers of the directors—

(a) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of, and

(b) to do all such other things as may be necessary for the protection of the company's assets.



(4) If the directors of the company without reasonable excuse contravene this Article, they shall be guilty of an offence.

#### **100. Expenses of voluntary winding up**

After the payment of any liabilities to which Article 148A applies, all expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims.

#### **101. Saving for certain rights**

The voluntary winding up of a company does not bar the right of any creditor or contributory to have it wound up by the High Court; but in the case of an application by a contributory the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

## **CHAPTER VI**

### **WINDING UP BY THE HIGH COURT**

#### *Grounds and effect of winding up petition*

#### **102. Circumstances in which company may be wound up by the High Court**

A company may be wound up by the High Court if—

- (a) the company has by special resolution resolved that the company be wound up by the Court,
- (b) being a public company which was registered as such on its original incorporation, the company has not been issued with a trading certificate under section 761 of the Companies Act 2006 (requirement as to minimum share capital) and more than a year has expired since it was so registered,
- (c) it is an old public company, within the meaning of Schedule 3 to the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009,
- (d) the company does not commence its business within one year from its incorporation or suspends its business for a year,
- (e)
- (f) the company is unable to pay its debts,
- [(fa)
- (g) the Court is of the opinion that it is just and equitable that the company should be wound up.

#### **103.— Definition of inability to pay debts; the statutory demand**

(1) A company is deemed unable to pay its debts—

- (a) if a creditor (by assignment or otherwise) to whom the company is indebted in a sum exceeding £750 then due has served on the company, by leaving it at the company's registered office, a written demand (known as "the statutory demand") in the prescribed form requiring the company to pay the sum due and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor, or
- (b) if, in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the company under Article 19 of the Judgments Enforcement (Northern Ireland) Order 1981, or
- (c) if, in England and Wales, execution or other process issued on a judgment, decree or

order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part, or

(d) if, in Scotland, the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made, or

(e) if it is otherwise proved to the satisfaction of the High Court that the company is unable to pay its debts as they fall due.

(2) A company is also deemed unable to pay its debts if it is proved to the satisfaction of the High Court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

(3) The money sum for the time being specified in paragraph (1)(a) is subject to increase or reduction by order under Article 362(1)(a).

#### **104.— Application for winding up**

~~(1) Subject to the provisions of this Article, an application to the High Court for the winding up of a company shall be by petition presented either by the company, or the directors, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by the chief clerk in exercise of the power conferred by section 35(4A) of the Criminal Justice Act (Northern Ireland) 1945 (enforcement of fines imposed on companies) or a clerk of petty sessions in exercise of the power conferred by Article 92A of the Magistrates' Courts (Northern Ireland) Order 1981 (enforcement of fines imposed on companies) or by all of any of those parties, together or separately.~~

(1) An application to the High Court for the winding up of a company may only be made by petition presented by any or all of the persons mentioned in paragraph (1A), together or separately; but this is subject to the following provisions of this Article.

(1A) The persons are—

(a) the company;

(b) the directors;

(c) any creditor or creditors (including any contingent or prospective creditor or creditors);

(d) any contributory or contributories;

(e) the chief clerk or a collection officer in the exercise of the power mentioned in section 35(4A) and (4B) of the Criminal Justice Act (Northern Ireland) 1945 (enforcement of fines imposed on companies);

(f) a clerk of petty sessions or a collection officer in the exercise of the power mentioned in Article 92A(1) and (1A) of the Magistrates' Courts (Northern Ireland) Order 1981 (enforcement of fines imposed on companies).

(2) Except as mentioned in paragraph (3), a contributory is not entitled to present a winding-up petition unless either—

(a) the number of members is reduced below 2, or

(b) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for at least 6 months during the 18 months before the commencement of the winding up, or have devolved on him through the death of a former holder.

(3) A person who is liable under Article 63 to contribute to a company's assets in the event of its being wound up may petition on either of the grounds set out in Article 102(f) and (g), and paragraph (2) does not then apply; but unless the person is a contributory otherwise than under Article 63, he may not in his character as contributory petition on any other ground.

(4)

(4AA) A winding up petition may be presented by the Financial Conduct Authority in a case falling within Article 104C(1) or (2).

(4A)

(5) A winding-up petition may be presented by the Department—

(a) if the ground of the petition is that in Article 102(b) or (c), or

[(b) in a case falling within Article 104A or 104B.

(5A) A winding-up petition may be presented by the Regulator of Community Interest Companies in a case falling within section 50 of the Companies (Audit, Investigations and Community Enterprise) Act 2004.

(6) Where a company is being wound up voluntarily, a winding-up petition may be presented by the official receiver as well as by any other person authorised in that behalf under the other provisions of this Article; but the High Court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

#### **104A.— Petition for winding up on grounds of public interest**

(1) Where it appears to the Department from—

(a) any report made or information obtained under Part 14 of the Companies Act 1985 (company investigations, &c.),

(b) Sub-para.(b) rep. by 1993 c. 36

[(c) any report made by inspectors under—

(i) section 167, 168, 169 or 284 of the Financial Services and Markets Act 2000,  
or

(ii) where the company is an open-ended investment company (within the meaning of that Act), regulations made as a result of section 262(2)(k) of that Act;

(cc) any information or documents obtained under section 165, 171, 172, 173 or 175 of that Act;

(d) any information obtained under section 2 of the Criminal Justice Act 1987 or section 52 of the Criminal Justice (Scotland) Act 1987 (fraud investigations), or

(e) any information obtained under section 83 of the Companies Act 1989 (powers exercisable for purpose of assisting overseas regulatory authorities),

that it is expedient in the public interest that a company should be wound up, it may present a petition for it to be wound up if the court thinks it just and equitable for it to be so.

(2) This Article does not apply if the company is already being wound up by the court.

#### **104B.— Petition for winding up of SE**

(1) Where—

(a) an SE whose registered office is in Northern Ireland is not in compliance with Article 7 of Council Regulation (EC) No 2157/2001 on the Statute for a European Company (the “EC Regulation”) (location of head office and registered office), and

(b) it appears to the Department that the SE should be wound up,  
the Department may present a petition for it to be wound up if the court thinks it is just and equitable for it to be so.

(2) This Article does not apply if the SE is already being wound up by the court.

(3) In this Article “SE” has the same meaning as in the EC Regulation.

#### **104C Petition for winding up of SCE**

(1) Where, in the case of an SCE whose registered office is in Northern Ireland—

(a) there has been such a breach as is mentioned in Article 73(1) of Council Regulation

(EC) No 1435/2003 on the Statute for a European Cooperative (SCE) (the “European Cooperative Society Regulation”) (winding up by the court or other competent authority), and

(b) it appears to the Financial Conduct Authority that the SCE should be wound up, the Authority may present a petition for the SCE to be wound up if the court thinks it is just and equitable for it to be so.

(2) Where, in the case of an SCE whose registered office is in Northern Ireland—

(a) the SCE is not in compliance with Article 6 of the European Cooperative Society Regulation (location of head office and registered office), and

(b) it appears to the Financial Conduct Authority that the SCE should be wound up, the Authority may present a petition for the SCE to be wound up if the court thinks it is just and equitable for it to be so.

(3) This Article does not apply if the SCE is already being wound up by the court.

(4) In this Article “SCE” has the same meaning as in the European Cooperative Society Regulation.

### **105.— Powers of High Court on hearing of petition**

(1) On hearing a winding-up petition the High Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order, or any other order that it thinks fit; but the Court shall not refuse to make a winding-up order on the ground only that the company's assets have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) If the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the High Court, if it is of the opinion—

(a) that the petitioners are entitled to relief either by winding up the company or by some other means, and

(b) that in the absence of any other remedy it would be just and equitable that the company should be wound up,

shall make a winding-up order; but this does not apply if the Court is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

### **106.— Power to stay or restrain proceedings against company**

(1) At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may—

(a) where any action or proceeding against the company is pending in the High Court or Court of Appeal, apply to the Court in which the action or proceeding is pending for a stay of proceedings therein, and

(b) where any other action or proceeding is pending against the company, apply to the High Court to restrain further proceedings in the action or proceeding;

and the Court to which application is so made may (as the case may be) stay or restrain the proceedings accordingly on such terms as it thinks fit.

(2) In the case of a company registered but not formed under the Companies Act 2006, where the application to stay or restrain is by a creditor, this Article extends to actions and proceedings against any contributory of the company.

(3) Paragraph (1) applies in relation to any action being taken in respect of the company under Part 1 of Schedule 8 to the Finance (No. 2) Act 2015 (enforcement by deduction from accounts) as it applies in relation to any action or proceeding mentioned in sub-paragraph (b) of that paragraph.

**107. Avoidance of property dispositions, etc.**

(1) In a winding up by the High Court, any disposition of the company's property, and any transfer of shares, or alteration in the status of the company's members, made after the commencement of the winding up is, unless the Court otherwise orders, void.

(2) This Article has no effect in respect of anything done by an administrator of a company while a winding-up petition is suspended under paragraph 41 of Schedule B1.

(3) This Article has no effect in respect of anything done during a moratorium under Part 1A, or during a period mentioned in Article 18(4)(a) following the end of a moratorium, where the winding-up order was made on a petition presented before the moratorium begins, unless the petition was presented under section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in section 367(3)(b) of that Act.

**108. Avoidance of sequestration or distress**

(1) Where a company is being wound up by the High Court, any sequestration or distress put in force against the estate or effects of the company after the commencement of the winding up is void.

(2) In paragraph (1) the reference to “sequestration or distress” includes a hold notice or a deduction notice under Part 1 of Schedule 8 to the Finance (No. 2) Act 2015 (enforcement by deduction from accounts) and, if paragraph (1) has effect in relation to a deduction notice, it also has effect in relation to the hold notice to which it relates (whenever the hold notice was given).

*Commencement of winding up*

**109.— Commencement of winding up by the High Court**

(1) If, before the presentation of a petition for the winding up of a company by the High Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company is deemed to have commenced at the time of the passing of the resolution; and unless the Court, on proof of fraud or mistake, directs otherwise, all proceedings taken in the voluntary winding up are deemed to have been validly taken.

(1A) Where the Court makes a winding-up order by virtue of paragraph 14(1)(e) of Schedule B1, the winding up is deemed to commence on the making of the order.

(2) In any other case, the winding up of a company by the High Court is deemed to commence at the time of the presentation of the petition for winding up.

**110.— Consequences of winding-up order**

(1) On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company (or otherwise as may be prescribed) to the registrar for registration.

(2) When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company or its property, except by leave of the High Court and subject to such terms as the Court may impose.

(3) When an order has been made for winding up a company registered but not formed under the Companies Act 2006, no action or proceeding shall be commenced or proceeded with against the company or its property or any contributory of the company, in respect of any debt of the company, except by leave of the High Court, and subject to such terms as the Court may impose.

(3A) In paragraphs (2) and (3), the reference to an action or proceeding includes action in respect of the company under Part 1 of Schedule 8 to the Finance (No. 2) Act 2015 (enforcement by deduction from accounts).

(4) An order for winding up a company operates in favour of all the creditors and of all contributories of the company as if made on the joint petition of a creditor and of a contributory.

### *Investigation procedures*

#### **111.— Company's statement of affairs**

(1) Where the High Court has made a winding-up order or appointed a provisional liquidator, the official receiver may require some or all of the persons mentioned in paragraph (3) to make out and submit to him a statement in the prescribed form as to the affairs of the company.

(2) The statement shall be verified by affidavit by the persons required to submit it and shall show—

- (a) particulars of the company's assets, debts and liabilities;
- (b) the names and addresses of the company's creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed or as the official receiver may require.

(3) The persons referred to in paragraph (1) are—

- (a) those who are or have been officers of the company;
- (b) those who have taken part in the formation of the company at any time within one year before the relevant date;
- (c) those who are in the company's employment, or have been in its employment within that year, and are in the official receiver's opinion capable of giving the information required;
- (d) those who are or have been within that year officers of, or in the employment of, a company which is, or within that year was, an officer of the company.

(4) Where any persons are required under this Article to submit a statement of affairs to the official receiver, they shall do so (subject to paragraph (5)) before the expiration of 21 days from the day on which the prescribed notice of the requirement is given to them by the official receiver.

(5) The official receiver, if he thinks fit, may—

- (a) at any time release a person from an obligation imposed on him under paragraph (1) or (2); or
- (b) either when giving the notice mentioned in paragraph (4) or subsequently, extend the period so mentioned;

and where the official receiver has refused to exercise a power conferred by this paragraph, the High Court, if it thinks fit, may exercise it.

(6) In this Article—

"employment" includes employment under a contract for services; and

"the relevant date" means—

- (a) in a case where a provisional liquidator is appointed, the date of his appointment; and

- (b) in a case where no such appointment is made, the date of the winding-up order.

(7) If a person without reasonable excuse contravenes any obligation imposed under this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

**112.— Investigation by official receiver**

(1) Where a winding-up order is made by the High Court, it is the duty of the official receiver to investigate—

- (a) if the company has failed, the causes of the failure; and
- (b) generally, the promotion, formation, business, dealings and affairs of the company, and to make such report (if any) to the Court as he thinks fit.

(2) The report is, in any proceedings, prima facie evidence of the facts stated in it.

**113.— Public examination of officers**

(1) Where a company is being wound up by the High Court, the official receiver may at any time before the dissolution of the company apply to the Court for the public examination of any person who—

- (a) is or has been an officer of the company; or
- (b) has acted as liquidator or administrator of the company or as receiver or manager; or
- (c) not being a person falling within sub-paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company.

(2) Unless the High Court otherwise orders, the official receiver shall make an application under paragraph (1) if he is requested in accordance with the rules to do so by—

- (a) one-half, in value, of the company's creditors; or
- (b) three-quarters, in value, of the company's contributories.

(3) On an application under paragraph (1), the High Court shall direct that a public examination of the person to whom the application relates shall be held on a day appointed by the Court; and that person shall attend on that day and be publicly examined as to the promotion, formation or management of the company or as to the conduct of its business and affairs, or his conduct or dealings in relation to the company.

(4) The following may take part in the public examination of a person under this Article and may question that person concerning the matters mentioned in paragraph (3), namely—

- (a) the official receiver;
- (b) the liquidator of the company;
- (c) any person who has been appointed as special manager of the company's property or business;
- (d) any creditor of the company who has tendered a proof;
- (e) any contributory of the company.

**114.— Enforcement of Article 113**

(1) If a person without reasonable excuse fails at any time to attend his public examination under Article 113, he is guilty of a contempt of court and liable to be punished accordingly.

(2) In a case where a person without reasonable excuse fails at any time to attend his examination under Article 113 or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his examination under that Article, the High Court may cause a warrant to be issued to a constable—

- (a) for the arrest of that person; and
- (b) for the seizure of any books, papers, records, money or goods in that person's possession.

(3) In such a case the High Court may authorise the person arrested under the warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the Court may order.

*Appointment of liquidator*

### **115.— Appointment and powers of provisional liquidator**

- (1) Subject to the provisions of this Article, the High Court may, at any time after the presentation of a winding-up petition, appoint a liquidator provisionally.
- (2) The appointment of a provisional liquidator may be made at any time before the making of a winding-up order; and either the official receiver or any other fit person may be appointed.
- (3) The provisional liquidator shall carry out such functions as the High Court may confer on him.
- (4) When a liquidator is provisionally appointed by the High Court, his powers may be limited by the order appointing him.

### **116.— Functions of official receiver in relation to office of liquidator**

- (1) The following provisions of this Article have effect, subject to Article 119, on a winding-up order being made by the High Court.
- (2) The official receiver, by virtue of his office, becomes the liquidator of the company and continues in office until another person becomes liquidator under the provisions of this Part.
- (3) The official receiver is, by virtue of his office, the liquidator during any vacancy.
- (4) At any time when he is the liquidator of the company, the official receiver may ~~summon~~ **in accordance with the rules seek nominations from** the company's creditors and contributories for the purpose of choosing a person to be liquidator of the company in place of the official receiver.
- ~~(5) It is the duty of the official receiver—~~
  - ~~(a) as soon as practicable within the period of 12 weeks from the day on which the winding-up order was made, to decide whether to exercise his power under paragraph (4) to summon meetings, and~~
  - ~~(b) if in pursuance of sub-paragraph (a) he decides not to exercise that power, to give notice of his decision, before the end of that period, to the High Court and to the company's creditors and contributories, and~~
  - ~~(c) (whether or not he has decided to exercise that power) to exercise his power to summon meetings under paragraph (4) if he is at any time requested, in accordance with the rules, to do so by one-quarter, in value, of the company's creditors; and accordingly, where the duty imposed by sub-paragraph (c) arises before the official receiver has performed a duty imposed by sub-paragraph (a) or (b), he is not required to perform the latter duty.~~
- ~~(6) A notice given under paragraph (5)(b) to the company's creditors shall contain an explanation of the creditors' power under paragraph (5)(c) to require the official receiver to summon meetings of the company's creditors and contributories.~~
- (5) It is the duty of the official receiver—**
  - (a) as soon as practicable within the period of 12 weeks from the day on which the winding-up order was made, to decide whether to exercise his power under paragraph (4),**
  - (b) if in pursuance of sub-paragraph (a) he decides not to exercise that power, to give notice of his decision, before the end of that period, to the High Court and to the company's creditors and contributories, and**
  - (c) (whether or not he has decided to exercise that power) to exercise his power under paragraph (4) if he is at any time requested, in accordance with the rules, to do so by one-quarter, in value, of the company's creditors.**
- (6) A notice under paragraph (5)(b) to the company's creditors must contain an explanation of the creditors' power under paragraph (5)(c) to require the official receiver to seek nominations from the company's**



creditors and contributories.

(7) Where the creditors exercise their power under paragraph (5)(c) before the official receiver has performed the duty under paragraph (5)(a), the duties under paragraph (5)(a) and (b) no longer apply.

(8) Where the creditors exercise their power under paragraph (5)(c) after the official receiver has performed the duty under paragraph (5)(a) but before he has performed the duty under paragraph (5)(b), the duty under paragraph (5)(b) no longer applies.

### **117.— Appointment by Department**

(1) In a winding up by the High Court the official receiver may, at any time when he is liquidator of the company, apply to the Department for the appointment of a person as liquidator in his place.

(2) If ~~meetings are held~~ **nominations are sought from the company's creditors and contributories** in pursuance of a decision under Article 116(5)(a), but no person is chosen to be liquidator as a result ~~of those meetings~~, it is the duty of the official receiver to decide whether to refer the need for an appointment to the Department.

(3) On an application under paragraph (1), or a reference made in pursuance of a decision under paragraph (2), the Department shall either make an appointment or decline to make one.

(4) Where a liquidator has been appointed by the Department under paragraph (3), the liquidator shall give notice of his appointment to the company's creditors or, if the High Court so allows, shall advertise his appointment in accordance with the directions of the Court.

(5) In that notice or advertisement the liquidator ~~shall—~~

~~(a) state whether he proposes to summon a general meeting of the company's creditors under Article 120 for the purpose of determining (together with any meeting of contributories) whether a liquidation committee should be established under that Article, and~~  
~~(b) if he does not propose to summon such a meeting, set out the power of the company's creditors under that Article to require him to summon one—~~ **must explain the procedure for establishing a liquidation committee under Article 120.**

### **118.— Choice of liquidator ~~at meetings of~~ **by** creditors and contributories**

(1) This Article applies where a company is being wound up by the High Court and ~~separate meetings of the company's creditors and contributories are summoned~~ **nominations are sought from the company's creditors and contributories** for the purpose of choosing a person to be liquidator of the company.

(2) The creditors and the contributories ~~at their respective meetings may~~ **may in accordance with the rules** nominate a person to be liquidator.

(3) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the contributories.

(4) In the case of different persons being nominated, any contributory or creditor may, within 7 days from the date on which the nomination was made by the creditors, apply to the High Court for an order either—

(a) appointing the person nominated as liquidator by the contributories to be a liquidator instead of, or jointly with, the person nominated by the creditors; or

(b) appointing some other person to be liquidator instead of the person nominated by the creditors.

### **119.— Appointment by the High Court following administration or voluntary arrangement**

(1) Where a winding-up order is made immediately upon the appointment of an administrator ceasing to have effect, the High Court may appoint as liquidator of the company the person whose appointment as administrator has ceased to have effect.

(2) Where a winding-up order is made at a time when there is a supervisor of a voluntary arrangement approved in relation to the company under Part II, the High Court may appoint as liquidator of the company the person who is the supervisor at the time when the winding-up order is made.

(3) Where the High Court makes an appointment under this Article, the official receiver does not become the liquidator as otherwise provided by Article 116(2), and ~~he has no duty under Article 116(5)(a) or (b) in respect of the summoning of creditors' or contributories' meetings~~ **Article 116(5)(a) and (b) do not apply.**

### *Liquidation committees*

### **120.— Liquidation committee**

~~(1) Where a winding-up order has been made and separate meetings of creditors and contributories have been summoned for the purpose of choosing a person to be liquidator, those meetings may establish a committee ("the liquidation committee") to exercise the functions conferred on it by or under this Order.~~

~~(2) The liquidator (not being the official receiver) may at any time, if he thinks fit, summon separate general meetings of the company's creditors and contributories for the purpose of determining whether such a committee should be established and, if it is so determined, of establishing it.~~

~~The liquidator (not being the official receiver) shall summon such a meeting if he is requested, in accordance with the rules, to do so by one-tenth, in value, of the company's creditors.~~

~~(3) Where meetings are summoned under this Article, or for the purpose of choosing a person to be liquidator, and either the meeting of creditors or the meeting of contributories decides that a liquidation committee should be established, but the other meeting does not so decide or decides that a committee should not be established, the committee shall be established in accordance with the rules, unless the High Court otherwise orders.~~

**(1) This Article applies where a winding up order has been made.**

**(2) If—**

**(a) the company's creditors decide that a liquidation committee should be established, and**

**(b) the company's contributories also so decide,**  
**a liquidation committee is to be established in accordance with the rules.**

**(3) If only the company's creditors, or only the company's contributories, decide that a liquidation committee should be established, a liquidation committee is to be established in accordance with the rules unless the court decides otherwise.**

**(3A) A "liquidation committee" is a committee having such functions as are conferred on it by or under this Order.**

**(3B) The liquidator must seek a decision from the company's creditors and contributories as to whether a liquidation committee should be established if requested, in accordance with the rules, to do so by one-tenth in value of the company's creditors.**

**(3C) Paragraph (3B) does not apply where the liquidator is the official receiver.**

- (4) The liquidation committee is not to be able or required to carry out its functions at any time when the official receiver is liquidator; but at any such time its functions are vested in the Department except to the extent that the rules otherwise provide.
- (5) Where there is for the time being no liquidation committee, and the liquidator is a person other than the official receiver, the functions of such a committee are vested in the Department except to the extent that the rules otherwise provide.

### *The liquidator's functions*

#### **121.— General functions in winding up by the High Court**

- (1) The functions of the liquidator of a company which is being wound up by the High Court are to secure that the assets of the company are got in, realised and distributed to the company's creditors and, if there is a surplus, to the persons entitled to it.
- (2) It is the duty of the liquidator of a company which is being wound up by the High Court, if he is not the official receiver—
- (a) to furnish the official receiver with such information,
  - (b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records, and
  - (c) to give the official receiver such other assistance,
- as the official receiver may reasonably require for the purposes of carrying out his functions in relation to the winding up.

#### **122. Custody of company's property**

When a winding-up order has been made, or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator (as the case may be) shall take into his custody or under his control all the property to which the company is or appears to be entitled.

#### **123.— Vesting of company property in liquidator**

- (1) When a company is being wound up by the High Court, the Court may on the application of the liquidator by order direct that all or any part of the property belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name; and thereupon the property to which the order relates vests accordingly.
- (2) The liquidator may, after giving such indemnity (if any) as the High Court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

#### **~~124.— Duty to summon final meeting~~**

- ~~(1) Subject to paragraph (2), if it appears to the liquidator of a company which is being wound up by the High Court that the winding up of the company is for practical purposes complete and the liquidator is not the official receiver, the liquidator shall summon a final general meeting of the company's creditors which—~~
- ~~(a) shall receive the liquidator's report of the winding up, and~~
  - ~~(b) shall determine whether the liquidator should have his release under Article 148.~~
- ~~(2) The liquidator may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice of any final distribution of the company's property but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further~~

~~adjourned) until a date on which the liquidator is able to report to the meeting that the winding up of the company is for practical purposes complete.~~

~~(3) In the carrying out of his functions in the winding up it is the duty of the liquidator to retain sufficient sums from the company's property to cover the expenses of summoning and holding the meeting required by this Article.~~

~~(4) The liquidator shall during the relevant period send to the High court and the registrar—~~

~~(a) a copy of the report, and~~

~~(b) a statement of whether any of the company's creditors objected to the liquidator's release.~~

~~(5) The relevant period is the period of 7 days beginning with the day after the last day of the period prescribed by the rules as the period within which the creditors may object to the liquidator's release.~~

~~(6)~~

~~(7)~~

### **Final account**

124.—(1) This Article applies where a company is being wound up by the High Court and the liquidator is not the official receiver.

(2) If it appears to the liquidator that the winding up of the company is for practical purposes complete, the liquidator must make up an account of the winding up, showing how it has been conducted and how the company's property has been disposed of.

(3) The liquidator must—

(a) send a copy of the account to the company's creditors, other than opted-out creditors, and

(b) give the company's creditors, other than opted-out creditors, a notice explaining the effect of Article 148(4F) and how they may object to the liquidator's release.

(4) The liquidator must during the relevant period send to the High Court and the registrar—

(a) a copy of the account, and

(b) a statement of whether any of the company's creditors objected to the liquidator's release.

(5) The relevant period is the period of 7 days beginning with the day after the last day of the period prescribed by the rules as the period within which the creditors may object to the liquidator's release.

**124A.—**

### *General powers of High Court*

### **125.— Power to stay winding up**

(1) The High Court may at any time after an order for winding up, on the application either of the liquidator or the official receiver or any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

(2) The High Court may, before making an order, require the official receiver to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under this Article shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar for registration.

### **126.— Settlement of list of contributories and application of assets**

(1) As soon as may be after making a winding-up order, the High Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required, and shall cause the company's assets to be collected, and applied in discharge of its liabilities.

(2) If it appears to the High Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

(3) In settling the list, the High Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

### **127.— Debts due from contributory to company**

(1) The High Court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due from him (or from the estate of the person whom he represents) to the company, exclusive of any money payable by him or the estate by virtue of any call.

(2) The High Court in making such an order may—

(a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit, and

(b) in the case of a limited company, make to any director whose liability is unlimited or to his estate the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full (together with interest at the official rate), any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

### **128.— Power to make calls**

(1) The High Court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the company's assets, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the company's debts and liabilities, and the expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the High Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay it.

### **~~129.— Payment into bank of money due to company~~**

~~(1) The High Court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into such bank as the Court may appoint for the purpose to the account of the liquidator instead of to the liquidator, and such an order may be enforced in the same manner as if it had directed payment to the liquidator.~~

~~(2) All money and securities paid or delivered into any such bank as is mentioned in paragraph (1) in the event of a winding up by the High Court are subject in all respects to the orders of the Court.~~

### **130.— Order on contributory to be conclusive evidence**

(1) An order made by the High Court on a contributory is conclusive evidence that the money (if any) thereby appearing to be due or ordered to be paid is due, but subject to any right of appeal.

(2) All other pertinent matters stated in the order are to be taken as truly stated as against all persons and in all proceedings.

### **131. Power to exclude creditors not proving in time**

The High Court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

### **132. Adjustment of rights of contributories**

The High Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it.

### **133.— Inspection of books by creditors, etc.**

(1) The High Court may, at any time after making a winding-up order, make such order for inspection of the company's books and papers by creditors and contributories as the Court thinks just; and any books and papers in the company's possession may be inspected by creditors and contributories accordingly, but not further or otherwise.

(2) Nothing in this Article excludes or restricts any statutory rights of—

- (a) a Northern Ireland department; or
- (b) a department of the Government of the United Kingdom; or
- (c) a person acting under the authority of either such department.

### **134. Payment of expenses of winding up**

The High Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the winding up in such order of priority as the Court thinks just.

### **135. Power to arrest absconding contributory**

The High Court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls, may cause the contributory to be arrested and his books and papers and movable personal property to be seized and him and them to be kept safely until such time as the Court may order.

### **136. Powers of High Court to be cumulative**

Powers conferred on the High Court by this Order are in addition to, and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sum.

### **137.— Delegation of powers to liquidator**

(1) Provision may be made by rules for enabling or requiring all or any of the powers and duties conferred and imposed on the High Court in respect of the following matters—

~~(a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories,~~

(a) the seeking of decisions on any matter from creditors and

contributories,

(b) the settling of lists of contributories and the rectifying of the register of members where required, and the collection and application of the assets,

(c) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator,

(d) the making of calls,

(e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the Court, and subject to the Court's control.

(2) But the liquidator shall not, without the special leave of the High Court, rectify the register of members, and shall not make any call without either that special leave or the sanction of the liquidation committee.

## CHAPTER VII

### LIQUIDATORS

#### *Preliminary*

#### **138. Style and title of liquidators**

The liquidator of a company shall be described—

(a) where a person other than the official receiver is liquidator, by the style of "the liquidator" of the particular company, or

(b) where the official receiver is liquidator, by the style of "the official receiver and liquidator" of the particular company;

and in neither case shall he be described by an individual name.

#### **139. Corrupt inducement affecting appointment**

A person who gives, or agrees or offers to give, to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator shall be guilty of an offence.

#### *Liquidator's powers and duties*

#### **140.— Voluntary winding up**

(1) This Article has effect where a company is being wound up voluntarily, but subject to Article 141 in the case of a creditors' voluntary winding up.

~~(2) The liquidator may—~~

~~(a) in the case of a members' voluntary winding up, with the sanction of an special resolution of the company, and~~

~~(b) in the case of a creditor's voluntary winding up, with the sanction of the High Court or the liquidation committee (or, if there is no such committee, a meeting of the company's creditors), exercise any of the powers specified in Part I of Schedule 2 (payment of debts, compromise of claims, etc.).~~

~~(3) The liquidator may, without sanction, exercise either of the powers specified in Part II of Schedule 2 (institution and defence of proceedings; carrying on the business of the company) and any of the general powers specified in Part III of Schedule 2.~~

(2) The liquidator may exercise any of the powers specified in Parts 1 to 3 of Schedule 2.

(4) The liquidator may—

(a) exercise the High Court's power of settling a list of contributories (which list is prima facie evidence of the liability of the persons named in it to be contributories),

(b) exercise the Court's power of making calls,

(c) summon general meetings of the company for the purpose of obtaining its sanction by special resolution or for any other purpose he may think fit.

(5) The liquidator shall pay the company's debts and adjust the rights of the contributories among themselves.

(6) Where the liquidator in exercise of the powers conferred on him by this Order disposes of any property of the company to a person who is connected with the company (within the meaning given by Article 7), he shall, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers.

#### **141.— Creditors' voluntary winding up**

(1) This Article applies where, in the case of a creditors' voluntary winding up, a liquidator has been nominated by the company.

(2) The powers conferred on the liquidator by Article 140 shall not be exercised, except with the sanction of the High Court, ~~during the period before the holding of the creditors' meeting under Article 84~~ before—

(a) the company's creditors nominate a person under Article 86 to be liquidator, or

(b) the procedure by which the company's creditors were to have made such a nomination concludes without a nomination having been made.

(3) Paragraph (2) does not apply in relation to the power of the liquidator—

(a) to take into his custody or under his control all the property to which the company is or appears to be entitled;

(b) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; and

(c) to do all such other things as may be necessary for the protection of the company's assets.

~~(4) The liquidator shall attend the creditors' meeting held under Article 84 and shall report to the meeting on any exercise by him of his powers (whether or not under this Article or under Article 98 or 140).~~

~~(5) If default is made—~~

~~(a) by the company in complying with paragraph (1) or (2) of Article 84, or~~

~~(b) by the directors in complying with paragraph (1) or (2) of Article 85;~~

If the directors fail to comply with—

(a) Article 85(1) or (2), or

(b) Article 86(1B),

the liquidator shall, within 7 days from the relevant day, apply to the High Court for directions as to the manner in which that default is to be remedied.

(6) "The relevant day" means the day on which the liquidator was nominated by the company or the day on which he first became aware of the default, whichever is the later.

(7) If the liquidator without reasonable excuse contravenes this Article, he shall be guilty of an offence.

#### **142.— Winding up by the High Court**

~~(1) Where a company is being wound up by the High Court, the liquidator may—~~

~~(a) with the sanction of the Court or the liquidation committee, exercise any of the powers specified in Parts I and II of Schedule 2 (payment of debts; compromise of claims, etc.);~~



~~institution and defence of proceedings; carrying on of the business of the company), and (b) with or without that sanction, exercise any of the general powers specified in Part III of Schedule 2.~~

(1) Where a company is being wound up by the High Court, the liquidator may exercise any of the powers specified in Parts 1 to 3 of Schedule 2.

(2) Where the liquidator (not being the official receiver), in exercise of the powers conferred on him by this Order—

(a) disposes of any property of the company to a person who is connected with the company (within the meaning given by Article 7), or

(b) employs a solicitor to assist him in the carrying out of his functions, he shall, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers.

(3) The exercise by the liquidator in a winding up by the High Court of the powers conferred by this Article is subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

### **143.— Supplementary powers**

(1) This Article applies in the case of a company which is being wound up by the High Court.

~~(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes; and it is his duty to summon meetings at such times as the creditors or contributories by resolution (either at the meeting appointing the liquidator or otherwise) may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories (as the case may be).~~

(2) The liquidator may seek a decision on any matter from the company's creditors or contributories; and must seek a decision on a matter—

(a) from the company's creditors, if requested to do so by one-tenth in value of the creditors;

(b) from the company's contributories, if requested to do so by one-tenth in value of the contributories.

(3) The liquidator may apply to the High Court (in the prescribed manner) for directions in relation to any particular matter arising in the winding up.

(4) Subject to the provisions of this Order, the liquidator shall use his own discretion in the management of the assets and their distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the High Court; and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just.

[(5A) Where at any time after a winding-up petition has been presented to the High Court against any person (including an insolvent partnership or other body which may be wound up under Part VI of the Order as an unregistered company), whether by virtue of the provisions of the Insolvent Partnerships Order (Northern Ireland) 1995 or not, the attention of the Court is drawn to the fact that the person in question is a member of an insolvent partnership, the Court may make an order as to the future conduct of the insolvency proceedings and any such order may apply any provisions of that Order with any necessary modifications.

(5B) Any order or directions under paragraph (5A) may be made or given on the application of the official receiver, any responsible insolvency practitioner, the trustee of the partnership or any other interested person and may include provisions as to the administration of the joint estate of the partnership, and in particular how it and the separate estate of any member are to be administered.

(5C) Where the High Court makes an order<sup>[2]</sup> under section 367(3)(a) of the Financial Services and Markets Act 2000] for the winding up of an insolvent partnership, the Court may make an order as to the future conduct of the winding-up proceedings, and any such order may apply any provisions of the Insolvent Partnerships Order (Northern Ireland) 1995 with any necessary modifications.

#### **144.— Enforcement of liquidator's duty to make returns, etc.**

(1) If a liquidator who has made any default—

(a) in filing, delivering or making any return, account or other document, or  
(b) in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within 14 days from the service on him of a notice requiring him to do so, the High Court has the following powers.

(2) On an application made by any creditor or contributory of the company, or by the registrar, the High Court may make an order directing the liquidator to make good the default within such time as may be specified in the order.

(3) The High Court's order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(4) Nothing in this Article prejudices the operation of any statutory provision imposing penalties on a liquidator in respect of any such default as is mentioned in paragraph (1).

#### *Removal: vacation of office*

#### **145.— Removal, etc. (voluntary winding up)**

(1) This Article applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up voluntarily.

(2) Subject to paragraph (3), the liquidator may be removed from office only by an order of the High Court or—

(a) in the case of a members' voluntary winding up, by a general meeting of the company summoned specially for that purpose, or

(b) in the case of a creditors' voluntary winding up, by a ~~general meeting of the company's creditors summoned~~ **decision of the company's creditors made by a qualifying decision procedure instigated** specially for that purpose in accordance with the rules.

~~(3) Where the liquidator was appointed by the High Court under Article 94, a meeting such as is mentioned in paragraph (2) shall be summoned for the purpose of replacing him only if he thinks fit or the Court so directs or the meeting is requested, in accordance with the rules—~~

~~(a) in the case of a members' voluntary winding up, by members representing not less than one half of the total voting rights of all the members having at the date of the request a right to vote at the meeting, or~~

~~(b) in the case of a creditors' voluntary winding up, by not less than one half, in value, of the company's creditors.~~

**(3) Where the liquidator in a members' voluntary winding up was appointed by the High Court under Article 94, a meeting such as is mentioned in paragraph (2)(a) shall be summoned only if—**

**(a) the liquidator thinks fit,**

**(b) the High Court so directs, or**

**(c) the meeting is requested in accordance with the rules by members representing not less than one-half of the total voting rights of all the members having at the date of the request a right to vote at the meeting.**

**(3A) Where the liquidator in a creditors' voluntary winding up was appointed by the High Court under Article 94, a qualifying decision**

procedure such as is mentioned in paragraph (2)(b) is to be instigated only if—

- (a) the liquidator thinks fit,
- (b) the High Court so directs, or
- (c) it is requested in accordance with the rules by not less than one-half in value of the company's creditors.

(4) A liquidator shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.

(5) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the registrar.

~~(6) Where—~~

~~(a) in the case of a members' voluntary winding up, a final meeting of the company has been held under Article 80, or~~

~~(b) in the case of a creditors' voluntary winding up, final meetings of the company and of the creditors have been held under Article 92, the liquidator whose report was considered at the meeting or meetings shall vacate office as soon as he has complied with paragraph (3) of that Article and has given notice to the registrar that the meeting or meetings have been held and of the decisions (if any) of the meeting or meetings.~~

(6) In the case of a members' voluntary winding up where the liquidator has produced an account of the winding up under Article 80 (final account), the liquidator vacates office as soon as the liquidator has complied with Article 80(3) (requirement to send final account to registrar).

(7) In the case of a creditors' voluntary winding up where the liquidator has produced an account of the winding up under Article 92 (final account), the liquidator vacates office as soon as the liquidator has complied with Article 92(3) (requirement to send final account etc to registrar).

#### **146.— Removal, etc. (winding up by the High Court)**

(1) This Article applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up by the High Court, or of a provisional liquidator.

(2) Subject to paragraphs (3) and (4), the liquidator may be removed from office only by an order of the High Court or by a ~~general meeting of the company's creditors summoned~~ **decision of the company's creditors made by a qualifying decision procedure instigated** specially for that purpose in accordance with the rules; and a provisional liquidator may be removed from office only by an order of the Court.

(3) Where—

(a) the official receiver is liquidator otherwise than in succession under Article 116(3) to a person who held office as a result of a nomination by ~~a meeting of~~ the company's creditors or contributories, or

(b) the liquidator was appointed by the High Court otherwise than under Article 118(4)(a) or 119(1), or was appointed by the Department,

~~a general meeting of the company's creditors shall be summoned for the purpose of replacing him only if he thinks fit, or the Court so directs, or the meeting~~ **a qualifying decision procedure such as is mentioned in paragraph (2) is to be instigated only if the liquidator thinks fit, the High Court so directs, or it is requested, in accordance with the rules, by not less than one-quarter, in value, of the creditors.**

(4) If appointed by the Department, the liquidator may be removed from office by a direction of the Department.

(5) A liquidator or provisional liquidator, not being the official receiver, shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.

(6) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the High Court.

~~(7) Where a final meeting has been held under Article 124 (liquidator's report on completion of winding up), the liquidator whose report was considered at the meeting shall vacate office as soon as he has given notice to the High Court and the registrar that the meeting has been held and of the decisions (if any) of the meeting.~~

(7) Where the liquidator has produced an account of the winding up under Article 124 (final account), the liquidator vacates office as soon as the liquidator has complied with Article 124(4) (requirement to send account etc to registrar and the High Court).

### *Release of liquidator*

#### **147.— Release (voluntary winding up)**

(1) This Article applies with respect to the release of the liquidator of a company which is being wound up voluntarily.

~~(2) A person who has ceased to be a liquidator shall have his release with effect from the following time, that is to say—~~

~~(a) in the case of a person who has been removed from office by a general meeting of the company or by a general meeting of the company's creditors that has not resolved against his release or who has died, the time at which notice is given to the registrar in accordance with the rules that that person has ceased to hold office;~~

~~(b) in the case of a person who has been removed from office by a general meeting of the company's creditors that has resolved against his release, or by the High Court, or who has vacated office under Article 145(4), such time as the Department may, on the application of that person, determine;~~

~~(c) in the case of a person who has resigned, such time as may be prescribed;~~

~~(d) in the case of a person who has vacated office under Article 145(6)(a), the time at which he vacated office;~~

~~(e) in the case of a person who has vacated office under sub-paragraph (b) of Article 145(6)—~~

~~(i) if the final meeting of the creditors referred to in that sub-paragraph has resolved against that person's release, such time as the Department may, on an application by that person, determine, and~~

~~(ii) if that meeting has not resolved against that person's release, the time at which he vacated office.~~

(2) A person who has ceased to be a liquidator has his release in accordance with paragraphs (2A) to (2H).

(2A) Where the person has been removed from office by a general meeting of the company, the person has his release with effect from the time at which notice is given to the registrar in accordance with the rules that the person has ceased to hold office.

(2B) Where the person has been removed from office by a decision of the company's creditors—

(a) if the company's creditors have decided against his release, the person has his release with effect from such time as the

Department may, on the application of the person, determine, or  
(b) if the company's creditors have not decided against his release, the person has his release with effect from the time at which notice is given to the registrar in accordance with the rules that the person has ceased to hold office.

(2C) Where the person has died, the person has his release with effect from the time at which notice is given to the registrar in accordance with the rules that the person has ceased to hold office.

(2D) Where the person has been removed from office by the High Court, the person has his release with effect from such time as the Department may, on the application of the person, determine.

(2E) Where the person has vacated office under Article 145(4), the person has his release with effect from such time as the Department may, on the application of the person, determine.

(2F) Where the person has resigned, the person has his release with effect from such time as may be prescribed.

(2G) Where the person has vacated office under Article 145(6), the person has his release with effect from the time at which he vacated office.

(2H) Where the person has vacated office under Article 145(7)—

(a) if any of the company's creditors objected to the person's release before the end of the period for so objecting prescribed by the rules, the person has his release with effect from such time as the Department may, on an application by the person, determine;

(b) otherwise, the person has his release with effect from the time at which the person vacated office.

(2I) Where the person is removed from office by a decision of the company's creditors, any decision of the company's creditors as to whether the person should have his release must be made by a qualifying decision procedure.

(3) Where a liquidator has his release under paragraph (2), he is, with effect from the time specified in that paragraph, discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator.

(4) Nothing in this Article prevents the exercise, in relation to a person who has had his release under paragraph (2), of the High Court's powers under Article 176 (summary remedy against delinquent directors, liquidators, etc.).

#### **148.— Release (winding up by the High Court)**

(1) This Article applies with respect to the release of the liquidator of a company which is being wound up by the High Court, or of a provisional liquidator.

(2) Where the official receiver has ceased to be liquidator and a person becomes liquidator in his stead, the official receiver has his release with effect from the following time, that is to say—

(a) in a case where that person was nominated by ~~a general meeting of~~ the company's creditors or

contributories, or was appointed by the Department, the time at which the official receiver gives notice to the High Court that he has been replaced;

(b) in a case where that person is appointed by the Court, such time as the Court may determine.

(3) If the official receiver while he is a liquidator gives notice to the Department that the winding up is for practical purposes complete, he has his release with effect from such time as the Department may determine.

~~(4) A person other than the official receiver who has ceased to be a liquidator has his release with effect from the following time, that is to say—~~

~~(a) in the case of a person who has been removed from office by a general meeting of creditors that has not resolved against his release or who has died, the time at which notice is given to the High Court in accordance with the rules that that person has ceased to hold office;~~

~~(b) in the case of a person who has been removed from office by a general meeting of creditors that has resolved against his release, or by the High Court or the Department, or who has vacated office under Article 146(5), such time as the Department may, on an application by that person, determine;~~

~~(c) in the case of a person who has resigned, such time as may be prescribed;~~

~~(d) in the case of a person who has vacated office under Article 146(7)—~~

~~(i) if the final meeting referred to in that paragraph has resolved against that person's release, such time as the Department may, on an application by that person, determine, and~~

~~(ii) if that meeting has not so resolved, the time at which that person vacated office.~~

(4) A person other than the official receiver who has ceased to be a liquidator has his release in accordance with paragraphs (4A) to (4F).

(4A) Where the person has been removed from office by a decision of the company's creditors—

(a) if the company's creditors have decided against his release, the person has his release with effect from such time as the

Department may, on the application of the person, determine, or

(b) if the company's creditors have not decided against his release, the person has his release with effect from the time at which notice is given to the High Court in accordance with the rules that the person has ceased to hold office.

(4B) Where the person has died, the person has his release with effect from the time at which notice is given to the High Court in accordance with the rules that the person has ceased to hold office.

(4C) Where the person has been removed from office by the High Court or by the Department, the person has his release with effect from such time as the Department may, on the application of the person, determine.

(4D) Where the person has vacated office under Article 146(5), the person has his release with effect from such time as the Department may, on the application of the person, determine.

(4E) Where the person has resigned, the person has his release with effect from such time as may be prescribed.

(4F) Where the person has vacated office under Article 146(7)—

(a) if any of the company's creditors objected to the person's release before the end of the period for so objecting prescribed by the rules, the person has his release with effect from such time as the Department may, on the application of the person, determine;

(b) otherwise, the person has his release with effect from the time at which the person vacated office.

(4G) Where the person is removed from office by a decision of the company's creditors, any decision of the company's creditors as to whether the person should have his release must be made by a qualifying decision procedure.



(4H) Where a winding-up order made by the High Court is rescinded, the person (whether the official receiver or another person) who is the liquidator of the company at the time the order is rescinded has his release with effect from such time as the Court may determine.

(5) A person who has ceased to hold office as a provisional liquidator has his release with effect from such time as the High Court may, on an application by him, determine.

(6) Where the official receiver or a liquidator or provisional liquidator has his release under this Article, he is, with effect from the time specified in the preceding provisions of this Article, discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator or provisional liquidator.

(7) Nothing in this Article prevents the exercise, in relation to a person who has had his release under this Article, of the High Court's powers under Article 176 (summary remedy against delinquent directors, liquidators, etc.).

## CHAPTER VIII

### PROVISIONS OF GENERAL APPLICATION IN WINDING UP

#### **Moratorium: order of priority of payment of debts**

##### **148A.— Moratorium debts etc: priority**

(1) This Article applies where proceedings for the winding up of a company are begun before the end of the period of 12 weeks beginning with the day after the end of any moratorium for the company under Part 1A.

(2) In the winding up, the following are payable out of the company's assets (in the order of priority shown) in preference to all other claims—

(a) any prescribed fees or expenses of the official receiver acting in any capacity in relation to the company;

(b) moratorium debts and priority pre-moratorium debts.

(3) In paragraph (2)(b) "priority pre-moratorium debt" means—

(a) any pre-moratorium debt that is payable in respect of—

(i) the monitor's remuneration or expenses,

(ii) goods or services supplied during the moratorium,

(iii) rent in respect of a period during the moratorium, or

(iv) wages or salary arising under a contract of employment, so far as relating to a period of employment before or during the moratorium,

(b) any pre-moratorium debt that—

(i) consists of a liability to make a redundancy payment, and

(ii) fell due before or during the moratorium, and

(c) any pre-moratorium debt that—

(i) arises under a contract or other instrument involving financial services,

(ii) fell due before or during the moratorium, and

(iii) is not relevant accelerated debt (see paragraph (4)).

(4) For the purposes of paragraph (3)(c)—

"relevant accelerated debt" means any pre-moratorium debt that fell due during the relevant period by reason of the operation of, or the exercise of rights under, an acceleration or early termination clause in a contract or other instrument involving financial services;

"the relevant period" means the period—

(a) beginning with the day on which the statement under Article 13BC(1)(e) is made, and

(b) ending with the last day of the moratorium.

(5) The rules may make provision as to the order in which the debts mentioned in paragraph (2)(b) rank among themselves in a case where the assets of the company are insufficient to meet them in full.

(6) Regulations may amend this Article for the purposes of changing the definition of "moratorium debt" or "priority pre-moratorium debt" in this Article.

(7) Regulations under paragraph (6) may make consequential, supplementary, incidental or transitional provision or savings.

(8) Regulations may not be made under paragraph (6) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(9) For the purposes of this Article proceedings for the winding up of a company are begun when—

(a) a winding-up petition is presented, or

(b) a resolution for voluntary winding up is passed.

(10) Any rules made under Article 13D(4) (meaning of supply of goods or services) apply also for the purposes of paragraph (3)(a)(ii) of this Article.

(11) In this Article—

"acceleration or early termination clause", in relation to a contract or other instrument involving financial services, means a provision of the contract or other instrument—

(a) under which, on the happening of an event—

(i) a debt or other liability falls due earlier than it otherwise would, or

(ii) a debt or other liability is terminated and replaced by another debt or liability, or

(b) which confers on a party a right which, if exercised, will result in —

(i) a debt or other liability falling due earlier than it otherwise would, or

(ii) a debt or other liability being terminated and replaced by another debt or liability;

"contract or other instrument involving financial services" has the same meaning as it has for the purposes of Article 13D (see Schedule ZA2);

"monitor's remuneration or expenses" has the meaning given by Article 13D;

"moratorium debt" has the meaning given by Article 13HD;

"pre-moratorium debt" has the meaning given by Article 13HD;

"redundancy payment" has the meaning given by Article 13D;

"wages or salary" has the meaning given by Article 13D.

### *Preferential debts*

#### **149.— Preferential debts (general provision)**

(1) In a winding up the company's preferential debts shall be paid in priority to all other debts after the payment of—

(a) any liabilities to which Article 148A applies, and

(b) expenses of the winding up. ] 2

(1A) Ordinary preferential debts rank equally among themselves and shall be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions.

(1B) Secondary preferential debts rank equally among themselves after the ordinary preferential debts and shall be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions.

(2) Preferential debts—

(a)

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the company, and shall be paid accordingly



out of any property comprised in or subject to that charge.

(3) In this Article “preferential debts”, “ordinary preferential debts” and “secondary preferential debts” each has the meaning given in Article 346.

### **150.— Preferential charge on goods distrained, etc**

(1) This Article applies where a company is being wound up by the High Court, and is without prejudice to Article 108 (avoidance of sequestration or distress).

(2) Paragraph (2A) applies where—

(a) any person has distrained upon the goods or effects of the company, or

(b) Her Majesty's Revenue and Customs has been paid any amount from an account of the company under Part 1 of Schedule 8 to the Finance (No. 2) Act 2015 (enforcement by deduction from accounts), within the 3 months immediately preceding the date of the winding-up order.

(2A) Where this paragraph applies—

(a) in a case within paragraph (2)(a), the goods or effects, or the proceeds of their sale, and

(b) in a case within paragraph (2)(b), the amount in question,

is charged for the benefit of the company with the preferential debts of the company to the extent that the company's property is for the time being insufficient for meeting those debts.

(3) Where by virtue of a charge under paragraph (2A) any person surrenders any goods or effects to a company or makes a payment to a company, that person ranks, in respect of the amount of the proceeds of sale of those goods or effects by the liquidator or (as the case may be) the amount of the payment, as a preferential creditor of the company, except as against so much of the company's property as is available for the payment of preferential creditors by virtue of the surrender or payment.

## **Non-preferential debts**

### **150ZZA.— Non-preferential debts of financial institutions**

(1) This Article applies in the winding up of a company that is a relevant financial institution.

(2) The company's ordinary non-preferential debts are to be paid in priority to its secondary non-preferential debts.

(3) The company's secondary non-preferential debts—

(a) are to be paid in priority to its tertiary non-preferential debts, and

(b) rank equally among themselves after the ordinary non-preferential debts and are to be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions.

(4) See Article 347A for definitions relevant to this Article.

## **Property subject to floating charge**

### **150ZA Payment of expenses of winding up**

(1) The expenses of winding up, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over any claims to property comprised in or subject to any floating charge created by the company and shall be paid out of any such property accordingly.

(2) In paragraph (1)—

(a) the reference to assets of the company available for payment of general creditors does not include any amount made available under Article 150A(2)(a);

(b) the reference to claims to property comprised in or subject to a floating charge is to the claims of—

- (i) the holders of debentures secured by, or holders of, the floating charge, and
- (ii) any preferential creditors entitled to be paid out of that property in priority to them.
- (3) Provision may be made by rules restricting the application of paragraph (1), in such circumstances as may be prescribed, to expenses authorised or approved—
  - (a) by the holders of debentures secured by, or holders of, the floating charge and by any preferential creditors entitled to be paid in priority to them, or
  - (b) by the Court.
- (4) References in this Article to the expenses of the winding up are to all expenses properly incurred in the winding up, including the remuneration of the liquidator.

### **Application of proceeds of office-holder claims**

150ZB.—(1) This Article applies where—

- (a) there is a floating charge (whether created before or after the coming into operation of this Article) which relates to property of a company which—
  - (i) is in administration, or
  - (ii) has gone into liquidation, and
- (b) the administrator or the liquidator (referred to in this Article as “the office-holder”) has—
  - (i) brought a claim under any provision mentioned in paragraph (3), or
  - (ii) made an assignment in relation to a right of action under any such provision under Article 208ZD.
- (2) The proceeds of the claim or assignment are not to be treated as part of the company’s net property, that is to say the amount of its property which would be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company.
- (3) The provisions are—
  - (a) Article 177 or 208ZA (fraudulent trading);
  - (b) Article 178 or 208ZB (wrongful trading);
  - (c) Article 202 (transactions at an undervalue);
  - (d) Article 203 (preferences);
  - (e) Article 206 (extortionate credit transactions).
- (4) Paragraph (2) does not apply to a company if or in so far as it is disapplied by—
  - (a) a voluntary arrangement in respect of the company, or
  - (b) a compromise or arrangement agreed under Part 26 or 26A of the Companies Act 2006 (arrangements and reconstructions).

### **150A.— Share of assets for unsecured creditors**

- (1) This Article applies where a floating charge relates to property of a company—
  - (a) which has gone into liquidation,
  - (b) which is in administration,
  - (c) of which there is a provisional liquidator, or
  - (d) of which there is a receiver.
- (2) The liquidator, administrator or receiver—
  - (a) shall make a prescribed part of the company's net property available for the satisfaction of unsecured debts, and
  - (b) shall not distribute that part to the proprietor of a floating charge except in so far as it exceeds the amount required for the satisfaction of unsecured debts.

- (3) Paragraph (2) shall not apply to a company if—
- (a) the company's net property is less than the prescribed minimum, and
  - (b) the liquidator, administrator or receiver thinks that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.
- (4) Paragraph (2) shall also not apply to a company if or in so far as it is disappplied by—
- (a) a voluntary arrangement in respect of the company, or
  - (b) a compromise or arrangement agreed under Part 26 or 26A of the Companies Act 2006 (arrangements and reconstructions).
- (5) Paragraph (2) shall also not apply to a company if—
- (a) the liquidator, administrator or receiver applies to the High Court for an order under this paragraph on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits, and
  - (b) the Court orders that paragraph (2) shall not apply.
- (6) In paragraphs (2) and (3) a company's net property is the amount of its property which would, but for this Article, be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company.
- (7) An order under paragraph (2) prescribing part of a company's net property may, in particular, provide for its calculation—
- (a) as a percentage of the company's net property, or
  - (b) as an aggregate of different percentages of different parts of the company's net property.
- (8) An order under this Article shall be subject to negative resolution.
- (9) In this Article—
- “floating charge” means a charge which is a floating charge on its creation and which is created after the first order under paragraph (2)(a) comes into operation, and
- “prescribed” means prescribed by order by the Department.
- (10) An order under this Article may include transitional or incidental provision.

### *Special managers*

#### **151.— Power to appoint special manager**

- (1) Where a company has gone into liquidation or a provisional liquidator has been appointed, the High Court may, on an application under this Article, appoint any person to be the special manager of the business or property of the company.
- (2) The application may be made by the liquidator or provisional liquidator in any case where it appears to him that the nature of the business or property of the company, or the interests of the company's creditors or contributories or members generally, require the appointment of another person to manage the company's business or property.
- (3) The special manager has such powers as may be entrusted to him by the High Court.
- (4) The High Court's power to entrust powers to the special manager includes power to direct that any provision of this Order that has effect in relation to the provisional liquidator or liquidator of a company shall have the like effect in relation to the special manager for the purposes of the carrying out by him of any of the functions of the provisional liquidator or liquidator.
- (5) The special manager shall—
- (a) give such security as may be prescribed;
  - (b) prepare and keep such accounts as may be prescribed; and
  - (c) produce those accounts in accordance with the rules to the Department or to such other persons as may be prescribed.

### *Disclaimer*

### **152.— Power to disclaim onerous property**

(1) Subject to the provisions of this Article and Article 153, where a company is being wound up, the liquidator may, by the giving of the prescribed notice, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it, or otherwise exercised

rights of ownership in relation to it.

(2) The following is onerous property for the purposes of this Article—

(a) any unprofitable contract, and

(b) any other property of the company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this Article—

(a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; but

(b) does not, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.

(4) A notice of disclaimer shall not be given under this Article in respect of any property if—

(a) a person interested in the property has applied in writing to the liquidator or one of this predecessors as liquidator requiring the liquidator or that predecessor to decide whether he will disclaim or not, and

(b) the period of 28 days from the day on which that application was made, or such longer period as the High Court may allow, has expired without a notice of disclaimer having been given under this Article in respect of that property.

(5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this Article is deemed a creditor of the company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

### **153.— Disclaimer of leaseholds**

(1) The disclaimer under Article 152 of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served (so far as the liquidator is aware of their addresses) on every person claiming under the company as underlessee or mortgagee and either—

(a) no application under Article 155 is made with respect to that property before the expiration of 14 days from the day on which the last notice served under this paragraph was served; or

(b) where such an application has been made, the High Court directs that the disclaimer shall take effect.

(2) Where the High Court gives a direction under paragraph (1)(b) it may also, instead of or in addition to any order it makes under Article 155, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

(3) For the purposes of this Article, property held under a fee farm grant creating the relation of landlord and tenant is property of a leasehold nature and a reference to an underlessee includes a person who holds a lease from the fee farm grantee.

### **154.— Land subject to rentcharge**

(1) The following applies where, in consequence of the disclaimer under Article 152 of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person (referred to in paragraph (2) as "the proprietor").

(2) The proprietor and the successors in title of the proprietor are not subject to any personal liability in respect of any sums becoming due under the rentcharge except sums becoming

due after the proprietor, or some person claiming under or through the proprietor, has taken possession or control of the land or has entered into occupation of it.

**155.— Powers of High Court (general)**

(1) Where the liquidator has disclaimed property under Article 152 an application under this Article may be made to the High Court by—

- (a) any person who claims an interest in the disclaimed property, or
- (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.

(2) Subject to paragraph (3) and Article 156, the High Court may on the application make an order, on such terms as it thinks fit, for the vesting of the disclaimed property in, or for its delivery to—

- (a) a person entitled to it or a trustee for such a person, or
- (b) a person subject to such a liability as is mentioned in paragraph (1)(b) or a trustee for such a person.

(3) The High Court shall not make an order under paragraph (2)(b) except where it appears to the Court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(4) The effect of any order under this Article shall be taken into account in assessing for the purpose of Article 152(5) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

(5) An order under this Article vesting property in any person need not be completed by conveyance, assignment or transfer.

**156.— Powers of High Court (leaseholds)**

(1) The High Court shall not make an order under Article 155 vesting property of a leasehold nature in any person claiming under the company as underlessee or mortgagee except on terms making that person—

- (a) subject to the same liabilities and obligations as the company was subject to under the lease at the commencement of the winding up, or
- (b) if the Court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him at the commencement of the winding up.

(2) For the purposes of an order under Article 155 relating to only part of any property comprised in a lease, the requirements of paragraph (1) apply as if the lease comprised only the property to which the order relates.

(3) Where paragraph (1) applies and no person claiming under the company as underlessee or mortgagee is willing to accept an order under Article 155 on the terms required by virtue of that paragraph, the High Court may, by order under that Article, vest the company's estate or interest in the property in any person who is liable (whether personally or in a representative capacity, and whether alone or jointly with the company) to perform the lessee's covenants in the lease.

(4) An order of the High Court under paragraph (3) may vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the company.

(5) Where paragraph (1) applies and a person claiming under the company as underlessee or mortgagee declines to accept an order under Article 155, that person is excluded from all interest in the property.

(6) Paragraph (3) of Article 153 shall apply for the purposes of this Article as it applies for the purposes of that Article.

**157.— Rescission of contracts by the High Court**

- (1) The High Court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just.
- (2) Any damages payable under the order to such a person may be proved by him as a debt in the winding up.

**158.— Power to make over assets to employees**

- (1) On the winding up of a company (whether by the High Court or voluntarily), the liquidator may, subject to the provisions of this Article, make any payment which the company has, before the commencement of the winding up, decided to make under section 247 of the Companies Act 2006 (power to provide for employees or former employees on cessation or transfer of business).
- (2) The liquidator may, after the winding up has commenced, make any such provision as is mentioned in section 247(1) if—
- (a) the company's liabilities have been fully satisfied and provision has been made for the expenses of the winding up,
  - (b) the exercise of the power has been sanctioned by a resolution of the company, and
  - (c) any requirements of the company's articles as to the exercise of the power conferred by section 247(1) are complied with.
- (3) Any payment which may be made by a company under this Article (that is, a payment after the commencement of its winding up) may be made out of the company's assets which are available to the members on the winding up.
- (4) On a winding up by the High Court, the exercise by the liquidator of his powers under this Article is subject to the Court's control, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of the power.
- (5) Paragraphs (1) and (2) have effect notwithstanding anything in any rule of law or in Article 93 of this Order (property of company after satisfaction of liabilities to be distributed among members).

**159.— Notification that company is in liquidation**

- (1) When a company is being wound up, whether by the High Court or voluntarily—
- (a) every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company, or a liquidator of the company or a receiver or manager of the company's property, and
  - (b) all the company's websites,
- must contain a statement that the company is being wound up.
- (2) If default is made in complying with this Article, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be guilty of an offence.

**160.— Interest on debts**

- (1) In a winding up interest is payable in accordance with this Article on any debt proved in the winding up, including so much of any such debt as represents interest on the remainder.
- (2) Any surplus remaining after the payment of the debts proved in a winding up shall, before being applied for any other purpose, be applied in paying interest on those debts in respect of

the periods during which they have been outstanding since the company went into liquidation.

(3) All interest under this Article ranks equally, whether or not the debts on which it is payable rank equally.

(4) The rate of interest payable under this Article in respect of any debt ("the official rate") is whichever is the greater of—

(a) the rate applicable to a money judgment of the High Court on the day on which the company went into liquidation, and

(b) the rate applicable to that debt apart from the winding up.

#### **161. Company's books to be evidence**

Where a company is being wound up, all books and papers of the company and of the liquidators are, as between the contributories of the company, prima facie evidence of the truth of all matters purporting to be recorded in them.

#### **162.— Information as to pending liquidations**

(1) If the winding up of a company is not concluded within one year from its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in, and position of, the liquidation.

(2) If a liquidator contravenes this Article, he shall be guilty of an offence and for continued contravention, he shall be guilty of a continuing offence.

#### **~~163. Resolutions passed at adjourned meetings~~**

~~Where a resolution is passed at an adjourned meeting of a company's creditors or contributories, the resolution is treated for all purposes as having been passed on the date on which it was in fact passed, and not as having been passed on any earlier date.~~

#### **164.— ~~Meeting~~ High Court's powers to ascertain wishes of creditors or contributories**

(1) The High Court may—

(a) as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories (as proved to it by any sufficient evidence), and

(b) if it thinks fit, for the purpose of ascertaining those wishes, ~~direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and appoint a person to act as chairman of any such meeting and report the result of it to the Court~~ **qualifying decision procedures to be instigated or the deemed consent procedure to be used in accordance with any directions given by the Court, and appoint a person to report the result to the Court.**

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory.

#### **165.— Affidavits, etc., in United Kingdom and elsewhere**

(1) An affidavit required to be sworn under or for the purposes of this Part may be sworn in Northern Ireland before any court, judge or person lawfully authorised to take and receive affidavits, and shall, if sworn in Great Britain or elsewhere in Her Majesty's dominions before any court, judge or person lawfully authorised to take and receive affidavits, or before any of Her Majesty's consuls or vice-consuls in any place outside Her Majesty's dominions, be treated as an affidavit sworn under or for the purposes of this Part.

(2) All courts, judges, lay magistrates], commissioners and persons acting judicially shall take

judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul or vice-consul attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

## CHAPTER IX

### DISSOLUTION OF COMPANIES AFTER WINDING UP

#### **166.— Dissolution (voluntary winding up)**

(1) This Article applies, in the case of a company wound up voluntarily, where the liquidator has sent to the registrar his final account ~~and return~~ under Article 80 (members' voluntary) or **his final account and statement under** Article 92 (creditors' voluntary).

~~(2) The registrar on receiving the account and return shall forthwith register them; and on the expiration of 3 months from the registration of the return the company is deemed to be dissolved~~

**(2) The registrar on receiving—**

**(a) the account under Article 80, or**

**(b) the account and statement under Article 92,**

**must immediately register it or them; and on the expiration of 3 months from the registration of the account the company is deemed to be dissolved.**

(2A)

(2B)

(3) However, the High Court may, on the application of the liquidator or any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(4) The person on whose application an order of the High Court under this Article is made shall within 7 days from the making of the order deliver to the registrar a copy of the order for registration; and if that person contravenes this paragraph he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

#### **167.— Early dissolution**

(1) Where an order for the winding up of a company has been made by the High Court, the official receiver, if—

(a) he is the liquidator of the company, and

(b) it appears to him—

(i) that the realisable assets of the company are insufficient to cover the expenses of the winding up, and

(ii) that the affairs of the company do not require any further investigation, may at any time apply to the registrar for the early dissolution of the company.

(1A)

(1B)

(2) Before making that application, the official receiver shall give not less than 28 days' notice of his intention to do so to the company's creditors, **other than opted-out creditors**, and contributories and, if there is an administrative receiver of the company, to that receiver.

(3) With the giving of that notice the official receiver ceases (subject to any directions under Article 168 ) to be required to perform any duties imposed on him in relation to the company, its creditors or contributories by virtue of any provision of this Order, apart from a duty to make an application under paragraph (1).

(4) On the receipt of the official receiver's application under paragraph (1), the registrar shall forthwith register it and, subject to paragraph (7), at the expiration of 3 months



from the day of the registration of the application, the company shall be dissolved.

(5)

(6)

(7) The Department may, on the application of the official receiver or any other person who appears to the Department to be interested, give directions under Article 168 at any time before the end of that period.

### **168.— Consequence of notice under Article 167**

(1) Where a notice has been given under Article 167(2), the official receiver or any creditor or contributory of the company, or the administrative receiver of the company (if there is one) may apply to the Department for directions under this Article.

(2) The grounds on which that application may be made are—

(a) that the realisable assets of the company are sufficient to cover the expenses of the winding up;

(b) that the affairs of the company do require further investigation; or

(c) that for any other reason the early dissolution of the company is inappropriate.

(3) Directions under this Article—

(a) are directions making such provision as the Department thinks fit for enabling the winding up of the company to proceed as if no notice had been given under Article 167(2), and

(b) may, in the case of an application under Article 167(7), include a direction deferring the date at which the dissolution of the company is to take effect for such period as the Department thinks fit.

(4) An appeal to the High Court lies from any decision of the Department on an application for directions under this Article.

(5) The person on whose application any directions are given under this Article, or in whose favour an appeal with respect to an application for such directions is determined, shall, within 7 days from the giving of the directions or the determination of the appeal, deliver to the registrar for registration such a copy of the directions or determination as is prescribed.

(6) If a person without reasonable excuse contravenes paragraph (5), he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

### **169.— Dissolution otherwise than under Article 167**

~~(1) Where the registrar receives—~~

~~(a) a notice served for the purposes of Article 146(7) (final meeting of creditors and vacation of office by liquidator), or~~

~~(b) a notice from the official receiver that the winding up of a company by the High Court is complete,~~

~~the registrar shall, on receipt of the notice, forthwith register it; and, subject to paragraphs (2) to (4), at the expiration of 3 months from the day of the registration of the notice, the company shall be dissolved.~~

**(A1) This Article applies where the registrar receives—**

**(a) a final account and statement under Article 124(4), or**

**(b) a notice from the official receiver that the winding up of a company by the High Court is complete.**

**(1) The registrar on receiving—**

**(a) the account and statement, or**

**(b) the notice,**

**must immediately register them or it; and, subject to paragraphs (2) to (4), at the expiration of 3 months from the day of the registration of the**

account or notice (as the case may be), the company is dissolved.

(1A)

(1B)

(2) The Department may, on the application of the official receiver or any other person who appears to the Department to be interested, give a direction deferring the date at which the dissolution of the company is to take effect for such period as the Department thinks fit.

(3) An appeal to the High Court lies from any decision of the Department on an application for a direction under paragraph (2).

(4) The person—

(a) on whose application a direction is given under paragraph (2); or

(b) in whose favour an appeal with respect to an application for such a direction is determined;

shall, within 7 days from the giving of the direction, ~~the determination of the appeal or the making of the order~~ or the determination of the appeal, deliver to the registrar for registration such a copy of the direction or determination as is prescribed.

(5) If a person without reasonable excuse contravenes paragraph (4), he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

## CHAPTER X

### MALPRACTICE BEFORE AND DURING LIQUIDATION; PENALISATION OF COMPANIES AND COMPANY OFFICERS; INVESTIGATIONS AND PROSECUTIONS

#### *Offences of fraud, deception, etc.*

#### **170.— Fraud, etc., in anticipation of winding up**

(1) When a company is ordered to be wound up by the High Court, or passes a resolution for voluntary winding up, any person who, being a past or present officer of the company, has, within

the 12 months immediately preceding the commencement of the winding up—

(a) concealed any part of the company's property to the value of £500 or more, or concealed any debt due to or from the company, or

(b) fraudulently removed any part of the company's property to the value of £500 or more, or

(c) concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the company's property or affairs, or

(d) made any false entry in any book or paper affecting or relating to the company's property or affairs, or

(e) fraudulently parted with, altered or made any omission in any document affecting or relating to the company's property or affairs, or

(f) pawned, pledged or disposed 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), shall be guilty of an offence.

(2) Such a person as is mentioned in paragraph (1) shall be guilty of an offence if within the period mentioned in that paragraph he has been privy to the doing by others of any of the things mentioned in sub-paragraphs (c), (d) and (e) of that paragraph; and he shall be guilty of an offence if, at any time after the commencement of the winding up, he does any of the things mentioned in sub-paragraphs (a) to (f) of that paragraph, or is privy to the doing by others of any of the things mentioned in sub-paragraphs (c) to (e) of that paragraph.

- (3) For the purposes of this Article, "officer" includes a shadow director.
- (4) It is a defence—
- (a) for a person charged under sub-paragraph (a) or (f) of paragraph (1) (or under paragraph (2) in respect of the things mentioned in either of those sub-paragraphs) to prove that he had no intent to defraud, and
- (b) for a person charged under sub-paragraph (c) or (d) of paragraph (1) (or under paragraph (2) in respect of the things mentioned in either of those sub-paragraphs) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.
- (5) Where a person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (1)(f), every person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in such circumstances, shall be guilty of an offence and shall, on conviction on indictment, be liable to the same penalty as if he had been convicted of handling stolen goods.
- (6) The money sums specified in sub-paragraphs (a) and (b) of paragraph (1) are subject to increase or reduction by order under Article 362(1)(a).

#### **171.— Transactions in fraud of creditors**

- (1) When a company is ordered to be wound up by the High Court or passes a resolution for voluntary winding up, a person who, being at the time an officer of the company,—
- (a) within the 5 years immediately preceding the commencement of the winding up, has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the enforcement of a judgment against, the company's property, or
- (b) has concealed or removed any part of the company's property since, or within the 2 months immediately preceding, the date of any unsatisfied judgment or order for the payment of money obtained against the company, shall be guilty of an offence.
- (2) It is a defence for a person charged under paragraph (1) to prove that, at the time of the conduct constituting the offence, he had no intent to defraud the company's creditors.

#### **172.— Misconduct in course of winding up**

- (1) When a company is being wound up, whether by the High Court or voluntarily, any person who, being a past or present officer of the company,—
- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the company's property, and how and to whom and for what consideration and when the company disposed of any part of that property (except such part as has been disposed of in the ordinary way of the company's business), or
- (b) does not deliver up to the liquidator (or as he directs) all such part of the company's property as is in his custody or under his control, and which he is required by law to deliver up, or
- (c) does not deliver up to the liquidator (or as he directs) all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up, or
- (d) knowing or believing that a false debt has been proved by any person in the winding up, fails to inform the liquidator as soon as practicable, or
- (e) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the company's property or affairs,
- shall be guilty of an offence.
- (2) Any person mentioned in paragraph (1) who, after the commencement of the winding up, attempts to account for any part of the company's property by fictitious losses or expenses shall be guilty of an offence; and if he so attempts ~~at any meeting~~ **in connection with any qualifying decision procedure or deemed consent procedure** of the company's creditors within

the 12 months immediately preceding the commencement of the winding up he shall be guilty of an offence.

(3) For the purposes of this Article, "officer" includes a shadow director.

(4) It is a defence—

(a) for a person charged under sub-paragraph (a), (b) or (c) of paragraph (1) to prove that he had no intent to defraud, and

(b) for a person charged under sub-paragraph (e) of that paragraph to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

### **173. Falsification of company's books**

When a company is being wound up, an officer or contributory of the company who destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, accounting records or document belonging to the company with intent to defraud or deceive any person shall be guilty of an offence.

### **174.— Material omissions from statement relating to company's affairs**

(1) When a company is being wound up, whether by the High Court or voluntarily, any person who, being a past or present officer of the company, makes any material omission in any statement relating to the company's affairs shall be guilty of an offence.

(2) When a company has been ordered to be wound up by the High Court, or has passed a resolution for voluntary winding up, any person mentioned in paragraph (1) who, prior to the winding up, has made any material omission in any such statement shall be guilty of an offence.

(3) For the purposes of this Article, "officer" includes a shadow director.

(4) It is a defence for a person charged under this Article to prove that he had no intent to defraud.

### **175.— False representations to creditors**

(1) When a company is being wound up, whether by the High Court or voluntarily, any person who, being a past or present officer of the company,—

(a) makes any false representation or commits any other fraud for the purpose of obtaining the consent of the company's creditors or any of them to an agreement with reference to the company's affairs or to the winding up; or

(b) prior to the winding up, has made any false representation, or committed any other fraud, for the purpose mentioned in sub-paragraph (a);  
shall be guilty of an offence.

(2) For the purposes of this Article, "officer" includes a shadow director.

### *Penalisation of directors and officers*

### **176.— Summary remedy against delinquent directors, liquidators, etc.**

(1) This Article applies if in the course of the winding up of a company it appears that a person who—

(a) is or has been an officer of the company,

(b) has acted as liquidator or administrative receiver of the company, or

(c) not being a person falling within sub-paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company, has misapplied or retained, or become accountable for, any money or other property of the company,

or been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company.

(2) The reference in paragraph (1) to any misfeasance or breach of any fiduciary or other duty in relation to the company includes, in the case of a person who has acted as liquidator of the company, any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of his functions as liquidator of the company.

(3) The High Court may, on the application of the official receiver or the liquidator, or of any creditor or contributory, examine into the conduct of the person falling within paragraph (1) and order him—

(a) to repay, restore or account for the money or property, or any part of it, with interest at such rate as the Court thinks just, or

(b) to contribute such sum to the company's assets by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the Court thinks just.

(4) The power to make an application under paragraph (3) in relation to a person who has acted as liquidator of the company is not exercisable, except with the leave of the High Court, after he has had his release.

(5) The power of a contributory to make an application under paragraph (3) is not exercisable except with the leave of the High Court, but is exercisable notwithstanding that he will not benefit from any order the Court may make on the application.

(6)

### **177. Fraudulent trading**

If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the High Court, on the application of the liquidator, may declare that any persons who were knowingly parties to the carrying on of the business in such manner are to be liable to make such contributions (if any) to the company's assets as the Court thinks proper.

### **178.— Wrongful trading**

(1) Without prejudice to Article 177 and subject to paragraph (3), if in the course of the winding up of a company it appears that paragraph (2) applies in relation to a person who is or has been a director of the company, the High Court, on the application of the liquidator, may declare that that person is to be liable to make such contribution (if any) to the company's assets as the Court thinks proper.

(2) This paragraph applies in relation to a person if—

(a) the company has gone into insolvent liquidation,

(b) at some time before the commencement of the winding up of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation or entering insolvent administration, and

(c) that person was a director of the company at that time,

but the High Court shall not make a declaration under this Article in any case where the time mentioned in sub-paragraph (b) was before the coming into operation of this Article.

(3) The High Court shall not make a declaration under this Article with respect to any person if it is satisfied that after the condition specified in paragraph (2)(b) was first satisfied in relation to him that person took every step with a view to minimising the potential loss to the company's creditors as ~~(assuming him to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation~~ on the assumption that he had knowledge of the matter mentioned in paragraph (2)(b)) he ought to have taken.

(4) For the purposes of paragraphs (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company, and

(b) the general knowledge, skill and experience that that director has.

(5) The reference in paragraph (4) to the functions carried out in relation to a company by a director of the company includes any functions which he does not carry out but which have been entrusted to him.

(6) For the purposes of this ~~paragraph~~ **Article** a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

**(6A) For the purposes of this Article a company enters insolvent administration if it enters administration at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the administration.**

(7) In this Article “director” includes a shadow director.

#### **179.— Proceedings under Articles 177 and 178**

(5) On the hearing of an application under Article 177 or 178, the liquidator may himself give evidence or call witnesses.

(2) Where under either Article the High Court makes a declaration, it may give such further directions as it thinks proper for giving effect to the declaration; and in particular, the Court may—

(a) provide for the liability of any person under the declaration to be a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf, and

(b) make such further order as may be necessary for enforcing any charge imposed under this paragraph.

(3) For the purposes of paragraph (2), “assignee”

(a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but

(b) does not include an assignee for valuable consideration (not including consideration by way of marriage<sup>[1]</sup> or the formation of a civil partnership]) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4) Where the High Court makes a declaration under either Article in relation to a person who is a creditor of the company, it may direct that the whole or any part of any debt owed by the company to that person and any interest thereon shall rank in priority after all other debts owed by the company and after any interest on those debts.

(5) Articles 177 and 178 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under the Article is to be made.

(6)

#### **180.— Restriction on re-use of company names**

(1) This Article applies to a person where a company (“the liquidating company”) has gone into insolvent liquidation on or after the coming into operation of this Article and he was a director or shadow director of the company at any time within the period of 12 months immediately preceding the day before it went into liquidation.

(2) For the purposes of this Article, a name is a prohibited name in relation to such a person if—

(a) it is a name by which the liquidating company was known at any time in that period, or

(b) it is a name which is so similar to a name falling within sub-paragraph (a) as to suggest an association with that company.

(3) Except with the leave of the High Court or in such circumstances as may be prescribed, a person to whom this Article applies shall not at any time within 5 years from the day on which the liquidating company went into liquidation—

(a) be a director of any other company that is known by a prohibited name, or

(b) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of any such company, or

© in any way, whether directly or indirectly, be concerned or take part in the carrying on of a business carried on (otherwise than by a company) under a prohibited name.

(4) If a person contravenes this Article he shall be guilty of an offence.

(5) On an application for leave under paragraph (3), the Department or the official receiver may appear and call the attention of the High Court to any matters which seem to be relevant.

(6) References in this Article, in relation to any time, to a name by which a company is known are to the name of the company at that time or to any name under which the company carries on business at that time.

(7) For the purposes of this Article a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(8) In this Article “company” includes a company which may be wound up under Part 6 (unregistered companies).

### **181.— Personal liability for debts, following contravention of Article 180**

(1) A person is personally responsible for all the relevant debts of a company if at any time—

(a) in contravention of Article 180, he is involved in the management of the company, or

(b) as a person who is involved in the management of the company, he acts or is willing to act on instructions given (without the leave of the High Court) by a person whom he knows at that time to be in contravention in relation to the company of Article 180.

(2) Where a person is personally responsible under this Article for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under this Article or otherwise, is so liable.

(3) For the purposes of this Article the relevant debts of a company are—

(a) in relation to a person who is personally responsible under sub-paragraph(a) of paragraph (1), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company, and

(b) in relation to a person who is personally responsible under sub-paragraph (b) of paragraph (1), such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in that sub-paragraph.

(4) For the purposes of this Article, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.



(5) For the purposes of this Article a person who, as a person involved in the management of a company, has at any time acted on instructions given (without the leave of the High Court) by a person whom he knew at that time to be in contravention in relation to the company of Article 180 is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.

(6) In this Article “company” has the same meaning as in Article 180.

*Investigation and prosecution of malpractice*

**182.— Prosecution of delinquent officers and members of company**

(1) If it appears to the High Court in the course of a winding up by the Court that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may (either on the application of a person interested in the winding up or of its own motion) direct the liquidator to refer the matter to the Department].

(2) If in the case of a winding up by the High Court it appears to the liquidator, not being the official receiver, that any past or present officer of the company, or any member of it, has been guilty of any offence in relation to the company for which he is criminally liable, the liquidator shall report the matter to the official receiver.

(3) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer of the company, or any member of it, has been guilty of any offence in relation to the company for which he is criminally liable, he shall—

(a) forthwith report the matter to the Department, and

(b) furnish to the Department such information and give to it such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the liquidator and relating to the matter in question) as the Department requires.

(4) Where a report is made to the Department under paragraph (3), the Department may, for the purpose of investigating the matter reported to it and such other matters relating to the affairs of the company as appear to it to require investigation, exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 of the Companies Act 1985 to investigate a company’s affairs.

(5) If it appears to the High Court in the course of a voluntary winding up that—

(a) any past or present officer of the company, or any member of it, has been guilty of any offence in relation to the company for which he is criminally liable, and

(b) no report with respect to the matter has been made by the liquidator under paragraph

(3), the Court may (on the application of any person interested in the winding up or of its own motion) direct the liquidator to make such a report.

(6) On a report being made under paragraph (5), this Article has effect as though the report had been made in pursuance of paragraph (3).

**183.— Obligations arising under Article 182**

(1) For the purpose of an investigation by the Department<sup>[1]</sup> in consequence of a report made to it under Article 182(3), any obligation imposed on a person by any provision of the Companies Act 1985 to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in Article 182(4) is to be regarded as an obligation similarly to assist the Department in its investigation.

(2) An answer given by a person to a question put to him in exercise of the powers conferred by Article 182(4) may be used in evidence against him.



(2A) However, in criminal proceedings in which that person is charged with an offence to which this paragraph applies—

(a) no evidence relating to the answer may be adduced, and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(2B) Paragraph (2A) applies to any offence other than an offence under Article 7 or 10 of the Perjury (Northern Ireland) Order 1979 (NI 19) (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).

(3) Where criminal proceedings are instituted by the Director of Public Prosecutions for Northern Ireland or the Department following any report or reference under Article 182, the liquidator and every officer and agent of the company past and present (other than the defendant) shall give to the Director of Public Prosecutions for Northern Ireland or the Department (as the case may be) all assistance in connection with the prosecution which he is reasonably able to give.

(4) In paragraph (3), “agent” includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(5) If a person fails or neglects to give assistance in the manner required by paragraph (3), the High Court may, on the application of the Director of Public Prosecutions for Northern Ireland or the Department (as the case may be) direct the person to comply with that paragraph; and if the application is made with respect to a liquidator, the Court may (unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him to do so) direct that the costs shall be borne by the liquidator personally.

## **PART VI**

### **WINDING UP OF UNREGISTERED COMPANIES**

#### **184. Meaning of “unregistered company”**

For the purposes of this Part “unregistered company” includes any association and any company, with the following exceptions—

(a) a railway company incorporated by a statutory provision;

(b) a company registered under the Companies Act 2006 in any part of the United Kingdom.

#### **185.— Winding up of unregistered companies**

(1) Subject to the provisions of this Part, any unregistered company may be wound up under this Order; and all the provisions of Regulation (EC) No 1082/2006 of the European Parliament and of the Council and of this Order about winding up apply to an unregistered company with the exceptions and additions mentioned in paragraphs (2) to (4).

(2) If an unregistered company has a principal place of business situated in England and Wales or Scotland, it shall not be wound up under this Part unless it has a principal place of business situated in Northern Ireland.

(2A) For all purposes of winding up, the principal place of business in Northern Ireland of the unregistered company is deemed to be the registered office of the company.

(3) No unregistered company shall be wound up under this Order voluntarily, except in accordance with the EU Regulation.

(4) The circumstances in which an unregistered company may be wound up are as follows—

(a) if the company is dissolved, or has ceased to carry on business, or is carrying on business

- only for the purpose of winding up its affairs;
- (b) if the company is unable to pay its debts;
- (c) if the High Court is of opinion that it is just and equitable that the company should be wound up.

**186.— Inability to pay debts: unpaid creditor for £750 or more**

(1) An unregistered company is deemed (for the purposes of Article 185) unable to pay its debts if there is a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding £750 then due and—

(a) the creditor has served on the company, by leaving at its principal place of business in Northern Ireland, or by delivering to the secretary or some director or principal officer of the company, or by otherwise serving in such manner as the High Court may approve or direct, a written demand (known as “the statutory demand”) in the prescribed form requiring the company to pay the sum due, and

(b) the company has for 3 weeks from the service of the demand neglected to pay the sum or to secure or compound for it to the creditor's satisfaction.

(2) The money sum for the time being specified in paragraph (1) is subject to increase or reduction by order under Article 362(1)(a); but no increase in the sum so specified affects any case in which the winding-up petition was presented before the coming into operation of the increase.

**187. Inability to pay debts: debt remaining unsatisfied after action brought**

An unregistered company is deemed (for the purposes of Article 185) unable to pay its debts if an action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and—

(a) notice in writing of the institution of the action or proceeding has been served on the company by leaving it at the company's principal place of business in Northern Ireland (or by delivering it to the secretary, or some director or principal officer of the company, or by otherwise serving it in such manner as the High Court may approve or direct), and

(b) the company has not within 3 weeks from service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs and damages to be incurred by him because of it.

**188.— Inability to pay debts: other cases**

(1) An unregistered company is deemed (for the purposes of Article 185) unable to pay its debts—

(a) if, in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the company under Article 19 of the Judgments Enforcement (Northern Ireland) Order 1981;

(b) if, in England and Wales, execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company, or any member of it as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;

(c) if, in Scotland, the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;

(d) it is otherwise proved to the satisfaction of the High Court that the company is unable to pay its debts as they fall due.

(2) An unregistered company is also deemed unable to pay its debts if it is proved to the satisfaction of the High Court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

**189.— Company incorporated outside Northern Ireland may be wound up though dissolved**

(1) Where a company incorporated outside Northern Ireland which has been carrying on business in Northern Ireland ceases to carry on business in Northern Ireland, it may be wound up as an unregistered company under this Order, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

(2) This Article is subject to the EU Regulation.

**190.— Contributories in winding up of unregistered company**

(1) In the event of an unregistered company being wound up, every person is deemed a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of members among themselves, or to pay or contribute to the payment of the costs of winding up the company.

(2) Every contributory is liable to contribute to the company's assets all sums due from him in respect of any such liability as is mentioned in paragraph (1).

(3)

**191. Power of High Court to stay or restrain proceedings**

The provisions of this Part with respect to staying or restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order extend, in the case of an unregistered company, where the application to stay or restrain is presented by a creditor, to actions and proceedings against any contributory of the company.

**192. Actions stayed on winding-up order**

Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the High Court, and subject to such terms as the Court may impose.

**193.— Provisions of this Part to be cumulative**

(1) The provisions of this Part with respect to unregistered companies are in addition to and not in restriction of any provisions in Part V with respect to winding up companies by the High Court; and the Court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies registered under the Companies Act 2006 in Northern Ireland.

(2)

**PART VII**

**MISCELLANEOUS PROVISIONS APPLYING TO COMPANIES WHICH ARE INSOLVENT OR IN LIQUIDATION**

*Office holders*

#### **194.— Holders of office to be qualified insolvency practitioners**

- (1)
- (2) Where an administrative receiver of a company is appointed, he must be a person who is ~~so-qualified~~ **qualified to act as an insolvency practitioner in relation to the company.**
- (3) Where a company goes into liquidation, the liquidator must be a person who is so qualified.
- (4) Where a provisional liquidator is appointed, he must be a person who is so qualified.
- (5) Paragraphs (3) and (4) are without prejudice to any statutory provision under which the official receiver is to be, or may be, liquidator or provisional liquidator.

#### **195.— Appointment to office of two or more persons**

- (1) This Article applies if an appointment or nomination of any person to the office of administrative receiver, liquidator or provisional liquidator—
  - (a) relates to more than one person, or
  - (b) has the effect that the office is to be held by more than one person.
- (2) The appointment or nomination shall declare whether any act required or authorised under any statutory provision to be done by the administrative receiver, liquidator or provisional liquidator is to be done by all or any one or more of the persons for the time being holding the office in question.

#### **196. Validity of office-holder's acts**

The acts of an individual as administrative receiver, liquidator or provisional liquidator of a company are valid notwithstanding any defect in his appointment, nomination or qualifications.

*Management by administrators, liquidators, etc.*

#### **197.— Supplies of **gas** water, electricity, etc.**

- (1) This Article applies in the case of a company where—
  - (a) the company enters administration, or
  - (b) an administrative receiver is appointed, or
  - (ba)
  - (c) a voluntary arrangement approved under Part II], has taken effect, or
  - (d) the company goes into liquidation, or
  - (e) a provisional liquidator is appointed;and "the office-holder" means the administrator, the administrative receiver, the supervisor of the voluntary arrangement, the liquidator or the provisional liquidator, as the case may be.
- (2) If a request is made by or with the concurrence of the office-holder for the giving, after the effective date, of any of the supplies mentioned in paragraph (3), the supplier—
  - (a) may make it a condition of the giving of the supply that the office-holder personally guarantees the payment of any charges in respect of the supply, but
  - (b) shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the company before the effective date are paid.
- (3) The supplies referred to in paragraph (2) are—
  - (a) a supply of electricity by a public electricity supplier within the meaning of Part II of the Electricity (Northern Ireland) Order 1992,
    - (aza) a supply of electricity by a class of person within Class A (small supply) or Class B (resale) of Schedule 3 to the Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 2013 (S.R. 2013/93),
    - (aa) a supply of gas by the holder of a licence under Article 8 of the Gas (Northern

Ireland) Order 1996;

(b) a supply of water or sewerage services by a water or sewerage undertaker,  
(ba) a supply of water by a person who has an interest in the premises to which the supply is given,

(c) ~~10~~ a supply of communications services by a provider of a public electronic communications service,

(d) a supply of communications services by a person who carries on a business which includes giving such supplies,

(e) a supply of goods or services mentioned in paragraph (3A) by a person who carries on a business which includes giving such supplies, where the supply is for the purpose of enabling or facilitating anything to be done by electronic means,  
and in this paragraph "communications services" do not include electronic communications services to the extent that they are used to broadcast or transmit programme services (within the meaning of the Communications Act 2003).

(3A) The goods and services referred to in paragraph (3)(e) are—

(a) point of sale terminals;

(b) computer hardware and software;

(c) information, advice and technical assistance in connection with the use of information technology;

(d) data storage and processing;

(e) website hosting.

(4) "The effective date" for the purposes of this Article is whichever is applicable of the following dates—

(a) the date on which the company entered administration,

(b) the date on which the administrative receiver was appointed (or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed),

(ba)

(c) the date on which the voluntary arrangement took effect,

(d) the date on which the company went into liquidation,

(e) the date on which the provisional liquidator was appointed.

### **197A Further protection of essential supplies**

(1) An insolvency-related term of a contract for the supply of essential goods or services to a company ceases to have effect if—

(a) the company enters administration, or

(b) a voluntary arrangement approved under Part 2 takes effect in relation to the company.

(2) An insolvency-related term of a contract does not cease to have effect by virtue of paragraph (1) to the extent that—

(a) it provides for the contract or the supply to terminate, or any other thing to take place, because the company becomes subject to an insolvency procedure other than administration or a voluntary arrangement;

(b) it entitles a supplier to terminate the contract or the supply, or do any other thing, because the company becomes subject to an insolvency procedure other than administration or a voluntary arrangement; or

(c) it entitles a supplier to terminate the contract or the supply because of an event that occurs, or may occur, after the company enters administration or the voluntary arrangement takes effect.

(3) Where an insolvency-related term of a contract ceases to have effect under this Article the supplier may—

- (a) terminate the contract, if the condition in paragraph (4) is met;
- (b) terminate the supply, if the condition in paragraph (5) is met.
- (4) The condition in this paragraph is that—
  - (a) the insolvency office-holder consents to the termination of the contract,
  - (b) the High Court grants permission for the termination of the contract, or
  - (c) any charges in respect of the supply that are incurred after the company entered administration or the voluntary arrangement took effect are not paid within the period of 28 days beginning with the day on which payment is due.

The High Court may grant permission under sub-paragraph (b) only if satisfied that the continuation of the contract would cause the supplier hardship.
- (5) The condition in this paragraph is that—
  - (a) the supplier gives written notice to the insolvency office-holder that the supply will be terminated unless the office-holder personally guarantees the payment of any charges in respect of the continuation of the supply after the company entered administration or the voluntary arrangement took effect, and
  - (b) the insolvency office-holder does not give that guarantee within the period of 14 days beginning with the day the notice is received.
- (6) For the purposes of securing that the interests of suppliers are protected, where—
  - (a) an insolvency-related term of a contract (the "original term") ceases to have effect by virtue of paragraph (1), and
  - (b) the company subsequently enters administration, or a voluntary arrangement subsequently has effect in relation to it,

the contract is treated for the purposes of paragraphs (1) to (5) as if, immediately before the subsequent administration is entered into or the subsequent voluntary arrangement takes effect, it included an insolvency-related term identical to the original term.
- (7) A contract for the supply of essential goods or services is a contract for a supply mentioned in Article 197(3).
- (8) An insolvency-related term of a contract for the supply of essential goods or services to a company is a provision of the contract under which—
  - (a) the contract or the supply would terminate, or any other thing would take place, because the company enters administration or the voluntary arrangement takes effect,
  - (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the company enters administration or the voluntary arrangement takes effect,

or

  - (c) the supplier would be entitled to terminate the contract or the supply because of an event that occurred before the company enters administration or the voluntary arrangement takes effect.
- (9) In this Article "insolvency office-holder" means—
  - (a) in a case where a company enters administration, the administrator;
  - (b) in a case where a voluntary arrangement under Part 2 takes effect in relation to a company, the supervisor of the voluntary arrangement.

### **197B Protection of supplies of goods and services**

- (1) This Article applies where a company becomes subject to a relevant insolvency procedure.
- (2) A company becomes subject to a relevant insolvency procedure for the purposes of this Article where—
  - (a) a moratorium under Part 1A comes into force for the company,
  - (b) the company enters administration,
  - (c) an administrative receiver of the company is appointed (otherwise than in succession

to another administrative receiver),

(d) a voluntary arrangement approved under Part 2 takes effect in relation to the company,

(e) the company goes into liquidation,

(f) a provisional liquidator of the company is appointed (otherwise than in succession to another provisional liquidator), or

(g) a court order is made under section 901C(1) of the Companies Act 2006 in relation to the company (order summoning meeting relating to compromise or arrangement).

(3) A provision of a contract for the supply of goods or services to the company ceases to have effect when the company becomes subject to the relevant insolvency procedure if and to the extent that, under the provision—

(a) the contract or the supply would terminate, or any other thing would take place, because the company becomes subject to the relevant insolvency procedure, or

(b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the company becomes subject to the relevant insolvency procedure.

(4) Where—

(a) under a provision of a contract for the supply of goods or services to the company the supplier is entitled to terminate the contract or the supply because of an event occurring before the start of the insolvency period, and

(b) the entitlement arises before the start of that period,  
the entitlement may not be exercised during that period.

(5) Where a provision of a contract ceases to have effect under paragraph (3) or an entitlement under a provision of a contract is not exercisable under paragraph (4), the supplier may terminate the contract if—

(a) in a case where the company has become subject to a relevant insolvency procedure as specified in paragraph (2)(b), (c), (e) or (f), the office-holder consents to the termination of the contract,

(b) in any other case, the company consents to the termination of the contract, or

(c) the High Court is satisfied that the continuation of the contract would cause the supplier hardship and grants permission for the termination of the contract.

(6) Where a provision of a contract ceases to have effect under paragraph (3) and the company becomes subject to a further relevant insolvency procedure, the supplier may terminate the contract in accordance with paragraph (5)(a) to (c).

(7) The supplier shall not make it a condition of any supply of goods and services after the time when the company becomes subject to the relevant insolvency procedure, or do anything which has the effect of making it a condition of such a supply, that any outstanding charges in respect of a supply made to the company before that time are paid.

(8) In this Article "the insolvency period", in relation to a relevant insolvency procedure, means the period beginning when the company becomes subject to the relevant insolvency procedure and ending—

(a) in the case of a moratorium under Part 1A, when the moratorium comes to an end,

(b) in the case of the company entering administration, when the appointment of the administrator ceases to have effect under —

(i) paragraphs 77 to 85 of Schedule B1, or

(ii) an order under section 901F of the Companies Act 2006,

(c) in the case of the appointment of an administrative receiver of the company, when the receiver or any successor to the receiver ceases to hold office without a successor being appointed,

(d) in the case of a voluntary arrangement approved under Part 2 taking effect in relation to the company, when the arrangement ceases to have effect,

(e) in the case of the company going into liquidation, ~~when the liquidator has —~~

~~(i) pursuant to Article 80(1), laid the account of the winding up before a general meeting of the company and given an explanation of it,~~  
~~(ii) pursuant to Article 92(1), laid the account of the winding up before a general meeting of the company and a meeting of the creditors and given an explanation of it to each meeting, or~~

~~(iii) pursuant to Article 124(1), given the liquidator's report of the winding up to a general meeting of the company's creditors, or~~

(i) when the liquidator complies with Article 80(2), 92(2) or 124(3) (duties relating to final account), or”;

(ii) when the appointment of the liquidator ceases to have effect under an order under section 901F of the Companies Act 2006,

(f) in the case of the appointment of a provisional liquidator for the company, when the provisional liquidator or any successor to the provisional liquidator ceases to hold office without a successor being appointed, and

(g) in the case of the making of a court order under section 901C(1) of the Companies Act 2006 in relation to the company, when—

(i) an order made by the High Court under section 901F of that Act takes effect, or

(ii) the High Court decides not to make such an order.

(9) In this Article "office-holder", in relation to a company which has entered into an insolvency procedure as specified in paragraph (2)(b), (c), (e) or (f), means the administrator, administrative receiver, liquidator or provisional liquidator respectively.

(10) Schedule 2ZZA provides for exclusions from the operation of this Article.

### **197C Powers to amend Article 197B and Schedule 2ZZA**

(1) Regulations may omit any of sub-paragraphs (a) to (g) of Article 197B(2) (relevant insolvency procedures).

(2) Regulations may amend Schedule 2ZZA so as to—

(a) remove or amend any exclusion from Article 197B for the time being specified there, or

(b) add further exclusions from Article 197B.

(3) In paragraph (2), references to exclusions from Article 197B are to circumstances in which Article 197B, or any provision of that Article, does not apply.

(4) The circumstances referred to in paragraph (3) may be framed by reference to kinds of company, supplier, contract, goods or services or in any other way.

(5) Regulations under this Article may make—

(a) consequential provision;

(b) transitional and supplementary provision.

(6) Regulations under this Article made by virtue of paragraph (5) may in particular make provision amending this Order or any other statutory provision whenever passed or made (including, if paragraph 1(1) or (2) of Schedule 2ZZA is omitted, provision omitting Article 197A or 197 respectively).

(7) Regulations may not be made under this Article unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

### **198.— Getting in the company's property**

(1) This Article applies in the case of a company where—

(a) the company enters administration, or

(b) an administrative receiver is appointed, or

(c) the company goes into liquidation, or

(d) a provisional liquidator is appointed;



and "the office-holder" means the administrator, the administrative receiver, the liquidator or the provisional liquidator, as the case may be.

(2) Where any person has in his possession or control any property, books, papers or records to which the company appears to be entitled, the High Court may require that person forthwith (or within such period as the Court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the office-holder.

(3) Where the office-holder—

(a) seizes or disposes of any property which is not property of the company, and  
(b) at the time of seizure or disposal believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the High Court or otherwise) to seize or dispose of that property, paragraph (4) has effect.

(4) In that case the office-holder—

(a) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the office-holder's own negligence, and  
(b) has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

### **199.— Duty to co-operate with office-holder**

(1) This Article applies as does Article 198; and it also applies, in the case of a company in respect of which a winding-up order has been made by the High Court, as if references to the office-holder included the official receiver, whether or not he is the liquidator.

(2) Each of the persons mentioned in paragraph (3) shall—

(a) give to the office-holder such information concerning the company and its promotion, formation, business, dealings, affairs or property as the office-holder may at any time after the effective date reasonably require, and

(b) attend on the office-holder at such times as the latter may reasonably require.

(3) The persons referred to in paragraph (2) are—

(a) those who are or have at any time been officers of the company,

(b) those who have taken part in the formation of the company at any time within one year before the effective date,

(c) those who are in the employment of the company, or have been in its employment (including employment under a contract for services) within that year, and are in the office-holder's opinion capable of giving information which he requires,

(d) those who are, or have within that year been, officers of, or in the employment (including employment under a contract for services) of, another company which is, or within that year was, an officer of the company in question, and

(e) in the case of a company being wound up by the High Court, any person who has acted as administrator, administrative receiver or liquidator of the company.

(4) For the purposes of paragraphs (2) and (3), "the effective date" is whichever is applicable of the following dates—

(a) the date on which the company entered administration,

(b) the date on which the administrative receiver was appointed or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed,

(c) the date on which the provisional liquidator was appointed, and

(d) the date on which the company went into liquidation.

(5) If a person without reasonable excuse fails to comply with any obligation imposed by this Article, he shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

**200.— Inquiry into company's dealings, etc.**

(1) This Article applies as does Article 198; and it also applies, in the case of a company in respect of which a winding-up order has been made by the High Court, as if references to the office-holder included the official receiver, whether or not he is the liquidator.

(2) The High Court may, on the application of the office-holder, summon to appear before it—

(a) any officer of the company,

(b) any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or

(c) any person whom the Court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company.

(3) The High Court may require any such person as is mentioned in paragraph (2)(a) to (c) to submit an affidavit to the Court containing an account of his dealings with the company or to produce any books, papers or other records in his possession or under his control relating to the company or the matters mentioned in sub-paragraph (c) of that paragraph.

(4) The following applies in a case where—

(a) a person without reasonable excuse fails to appear before the High Court when he is summoned to do so under this Article, or

(b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the Court under this Article.

(5) The High Court may, for the purpose of bringing that person and anything in his possession before the Court, cause a warrant to be issued to a constable—

(a) for the arrest of that person, and

(b) for the seizure of any books, papers, records, money or goods in that person's possession

(6) The High Court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the Court under the warrant or until such other time as the Court may order.

**201.— High Court's enforcement powers under Article 200**

(1) If it appears to the High Court, on consideration of any evidence obtained under Article 200 or this Article, that any person has in his possession any property of the company, the Court may, on the application of the office-holder, order that person to deliver the whole or any part of the property to the office-holder at such time, in such manner and on such terms as the Court thinks fit.

(2) If it appears to the High Court, on consideration of any evidence so obtained, that any person is indebted to the company, the Court may, on the application of the office-holder, order that person to pay to the office-holder, at such time and in such manner as the Court may direct, the whole or any part of the amount due, whether in full discharge of the debt or otherwise, as the Court thinks fit.

(3) The High Court may, if it thinks fit, order that any person liable to be summoned to appear before it under Article 200 or this Article shall be examined on oath, either orally or by interrogatories, concerning the company or the matters mentioned in Article 200(2)(c).

*Adjustment of prior transactions (administration and liquidation)*

**202.— Transactions at an undervalue**

(1) This Article applies in the case of a company where—

(a) the company enters administration, or

- (b) the company goes into liquidation;  
and "the office-holder" means the administrator or the liquidator, as the case may be.
- (2) Where the company has at a relevant time (as defined in Article 204) entered into a transaction with any person at an undervalue, the office-holder may apply to the High Court for an order under this Article.
- (3) Subject to paragraph (5) the High Court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction.
- (4) For the purposes of this Article and Article 205, a company enters into a transaction with a person at an undervalue if—
- (a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration, or
  - (b) the company 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 company.
- (5) The High Court shall not make an order under this Article in respect of a transaction at an undervalue if it is satisfied—
- (a) that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business, and
  - (b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company.

### **203.— Preferences**

- (1) This Article applies as does Article 202.
- (2) Where the company has at a relevant time (as defined in Article 204) given a preference to any person, the office-holder may apply to the High Court for an order under this Article.
- (3) Subject to paragraph (5) and Article 205(2), the High Court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not given that preference.
- (4) For the purposes of this Article and Article 205, a company gives a preference to a person if—
- (a) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities, and
  - (b) the company 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 of the company going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done.
- (5) The High Court shall not make an order under this Article in respect of a preference given to any person unless the company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in paragraph (4)(b).
- (6) A company which has given a preference to a person connected with the company (otherwise than by reason only of being its employee) at the time the preference was given is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in paragraph (5).
- (7) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

### **204.— "Relevant time" under Articles 202, 203**

(1) Subject to paragraph (2), the time at which a company enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into, or the preference given—

(a) in the case of a transaction at an undervalue or of a preference which is given to a person who is connected with the company (otherwise than by reason only of being its employee), at a time in the period of 2 years ending with the onset of insolvency,

(b) in the case of a preference which is not such a transaction and is not so given, at a time in the period of 6 months ending with the onset of insolvency,

(c) in either case, at a time between the making of an administration application in respect of the company and the making of an administration order on that application, and

(d) in either case, at a time between the filing with the Court of a copy of notice of intention to appoint an administrator under paragraph 15 or 23 of Schedule B1 and the making of an appointment under that paragraph.

(2) Where a company enters into a transaction at an undervalue or gives a preference at a time mentioned in paragraph (1)(a) or (b), that time is not a relevant time for the purposes of Article 202 or 203 unless the company—

(a) is at that time unable to pay its debts within the meaning of Article 103, or

(b) becomes unable to pay its debts within the meaning of Article 103 in consequence of the transaction or preference;

but the requirements of this paragraph are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by a company with a person who is connected with the company.

(3) For the purposes of paragraph (1), the onset of insolvency is—

(a) in a case where Article 202 or 203 applies by reason of an administrator of a company being appointed by administration order, the date on which the administration application is made,

(b) in a case where Article 202 or 203 applies by reason of an administrator of a company being appointed under paragraph 15 or 23 of Schedule B1 following filing with the High Court of a copy of a notice of intention to appoint under that paragraph, the date on which the copy of the notice is filed,

(c) in a case where Article 202 or 203 applies by reason of an administrator of a company being appointed otherwise than as mentioned in sub-paragraph (a) or (b), the date on which the appointment takes effect,

(d) in a case where Article 202 or 203 applies by reason of a company going into liquidation at the time when the appointment of an administrator ceases to have effect, the date on which the company entered administration (or, if relevant, the date on which the application for the administration order was made or a copy of the notice of intention to appoint was filed), and

(e) in a case where Article 202 or 203 applies by reason of a company going into liquidation at any other time, the date of the commencement of the winding up.

## **205.— Orders under Articles 202, 203**

(1) Without prejudice to the generality of Articles 202(3) and 203(3), an order under either of those Articles with respect to a transaction or preference entered into or given by a company may (subject to paragraph (2))—

(a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the company,

(b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred,

(c) release or discharge (in whole or in part) any security given by the company,

- (d) require any person to pay, in respect of benefits received by him from the company, such sums to the office-holder as the High Court may direct,
  - (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction, or by the giving of the preference, to be under such new or revived obligations to that person as the Court thinks appropriate,
  - (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference, and
  - (g) provide for the extent to which any person whose property is vested by the order in the company, or on whom obligations are imposed by the order, is to be able to prove in the winding up of the company for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.
- (2) An order under Article 202 or 203 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the company in question entered into the transaction or (as the case may be) the person to whom the preference was given; but such an order—
- (a) shall not prejudice any interest in property which was acquired from a person other than the company and was acquired in good faith and for value, or prejudice any interest deriving from such an interest, and
  - (b) shall not require a person who received a benefit from the transaction or preference in good faith and for value] to pay a sum to the office-holder, except where that person was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of the company.
- (2A) Where a person has acquired an interest in property from a person other than the company in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt—
- (a) he had notice of the relevant surrounding circumstances and of the relevant proceedings, or
  - (b) he was connected with, or was an associate of, either the company in question or the person with whom that company entered into the transaction or to whom that company gave the preference, then, unless the contrary is shown, it shall be presumed for the purposes of sub-paragraph (a) or (as the case may be) sub-paragraph (b) of paragraph (2) that the interest was acquired or the benefit was received otherwise than in good faith.
- (3) For the purposes of paragraph (2A)(a), the relevant surrounding circumstances are (as the case may require)—
- (a) the fact that the company in question entered into the transaction at an undervalue; or
  - (b) the circumstances which amounted to the giving of the preference by the company in question;
- and paragraphs (3A) to (3C) have effect to determine whether, for those purposes, a person has notice of the relevant proceedings.
- (3A) Where Article 202 or 203 applies by reason of a company's entering administration, a person has notice of the relevant proceedings if he has notice that—
- (a) an administration application has been made,
  - (b) an administration order has been made,
  - (c) a copy of a notice of intention to appoint an administrator under paragraph 15 or 23 of Schedule B1 has been filed, or
  - (d) notice of the appointment of an administrator has been filed under paragraph 19 or 30 of that Schedule.

(3B) Where Article 202 or 203 applies by reason of a company's going into liquidation at the time when the appointment of an administrator of the company ceases to have effect, a person has notice of the relevant proceedings if he has notice that—

- (a) an administration application has been made,
- (b) an administration order has been made,
- (c) a copy of a notice of intention to appoint an administrator under paragraph 15 or 23 of Schedule B1 has been filed,
- (d) notice of the appointment of an administrator has been filed under paragraph 19 or 30 of that Schedule, or
- (e) the company has gone into liquidation.

(3C) In a case where Article 202 or 203 applies by reason of the company in question going into liquidation at any other time, a person has notice of the relevant proceedings if he has notice—

- (a) where the company goes into liquidation on the making of a winding-up order, of the fact that the petition on which the winding-up order is made has been presented or of the fact that the company has gone into liquidation;
  - (b) in any other case, of the fact that the company has gone into liquidation.
- (4) The provisions of Articles 202 to 204 and this Article apply without prejudice to the availability of any other remedy, even in relation to a transaction or preference which the company had no power to enter into or give.

## **206.— Extortionate credit transactions**

(1) This Article applies as does Article 202, and where the company is, or has been, a party to a transaction for, or involving, the provision of credit to the company.

(2) The High Court may, on the application of the office-holder, make an order with respect to the transaction if the transaction is or was extortionate and was entered into in the period of 3 years ending with the day on which the company entered administration or went into liquidation.

(3) For the purposes of this Article a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

(a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or

(b) it otherwise grossly contravened ordinary principles of fair dealing;

and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this Article is or, as the case may be, was extortionate.

(4) An order under this Article with respect to any transaction may contain such one or more of the following as the High Court thinks fit, that is to say—

- (a) provision setting aside the whole or part of any obligation created by the transaction,
- (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held,
- (c) provision requiring any person who is or was a party to the transaction to pay to the office-holder any sums paid to that person, by virtue of the transaction, by the company,
- (d) provision requiring any person to surrender to the office-holder any property held by him as security for the purposes of the transaction,
- (e) provision directing accounts to be taken between any persons.

(5) The powers conferred by this Article are exercisable in relation to any transaction concurrently with any powers exercisable in relation to that transaction as a transaction at an undervalue.

## **207.— Avoidance of certain floating charges**

(1) This Article applies as does Article 202.

(2) Subject to the following provisions of this Article, a floating charge on the company's undertaking or property created at a relevant time is invalid except to the extent of the aggregate of—

(a) the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the company at the same time as, or after, the creation of the charge,

(b) the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the company, and

(c) the amount of such interest (if any) as is payable on the amount falling within sub-paragraph (a) or (b) in pursuance of any agreement under which the money was so paid, the goods or services were so supplied or the debt was so discharged or reduced.

(3) Subject to paragraph (4), the time at which a floating charge is created by a company is a relevant time for the purposes of this Article if the charge is created—

(a) in the case of a charge which is created in favour of a person who is connected with the company, at a time in the period of 2 years ending with the onset of insolvency,

(b) in the case of a charge which is created in favour of any other person, at a time in the period of 12 months ending with the onset of insolvency,

(c) in either case, at a time between the making of an administration application in respect of the company and the making of an administration order on that application, or

(d) in either case, at a time between the filing with the High Court of a copy of notice of intention to appoint an administrator under paragraph 15 or 23 of Schedule B1 and the making of an appointment under that paragraph.

(4) Where a company creates a floating charge at a time mentioned in paragraph (3)(b) and the person in favour of whom the charge is created is not connected with the company, that time is not a relevant time for the purposes of this Article unless the company—

(a) is at that time unable to pay its debts within the meaning of Article 103, or

(b) becomes unable to pay its debts within the meaning of Article 103 in consequence of the transaction under which the charge is created.

(5) For the purposes of paragraph (3), the onset of insolvency is—

(a) in a case where this Article applies by reason of an administrator of a company being appointed by administration order, the date on which the administration application is made,

(b) in a case where this Article applies by reason of an administrator of a company being appointed under paragraph 15 or 23 of Schedule B1 following filing with the High Court of a copy of notice of intention to appoint under that paragraph, the date on which the copy of the notice is filed,

(c) in a case where this Article applies by reason of an administrator of a company being appointed otherwise than as mentioned in sub-paragraph (a) or (b), the date on which the appointment takes effect, and

(d) in a case where this Article applies by reason of a company going into liquidation, the date of the commencement of the winding up.

(6) For the purposes of paragraph (2)(a) the value of any goods or services supplied by way of consideration for a floating charge is the amount in money which at the time they were supplied could reasonably have been expected to be obtained for supplying the goods or services in the ordinary course of business and on the same terms (apart from the consideration) as those on which they were supplied to the company.

## **208.— Unenforceability of liens on books, etc.**

(1) This Article applies in the case of a company where-

- (a) the company enters administration, or
  - (b) the company goes into liquidation, or
  - (c) a provisional liquidator is appointed;
- and the office-holder means the administrator, the liquidator or the provisional liquidator, as the case may be.
- (2) Subject to paragraph (3), a lien or other right to retain possession of any of the books, papers or other records of the company is unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the office-holder.
- (3) Paragraph (2) does not apply to a lien on documents which give a title to property and are held as such.

*“Administration: penalisation of directors etc*

**Fraudulent trading: administration**

208ZA.—(1) If while a company is in administration it appears that any business of the company has been carried on—

- (a) with intent to defraud creditors of the company or creditors of any other person, or
  - (b) for any fraudulent purpose,
- paragraph (2) has effect.

(2) The High Court, on the application of the administrator, may declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned in paragraph (1) are to be liable to make such contributions (if any) to the company’s assets as the Court thinks proper.

**Wrongful trading: administration**

208ZB.—(1) If while a company is in administration it appears that paragraph (2) applies in relation to a person who is or has been a director of the company, the High Court, on the application of the administrator, may declare that that person is to be liable to make such contribution (if any) to the company’s assets as the Court thinks proper; but this is subject to paragraph (3).

(2) This paragraph applies in relation to a person if—

- (a) the company has entered insolvent administration,
- (b) at some time before the company entered administration, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid entering insolvent administration or going into insolvent liquidation, and
- (c) the person was a director of the company at that time.

(3) The High Court must not make a declaration under this Article with respect to any person if it is satisfied that, after the condition specified in paragraph (2)(b) was first satisfied in relation to the person, the person took every step with a view to minimising the potential loss to the company’s creditors as (on the assumption that the person had knowledge of the matter mentioned in paragraph (2)(b)) the person ought to have taken.

(4) For the purposes of paragraphs (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which the director ought to reach and the steps which the director ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—



- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company, and
- (b) the general knowledge, skill and experience that that director has.
- (5) The reference in paragraph (4) to the functions carried out in relation to a company by a director of the company includes any functions which the director does not carry out but which have been entrusted to the director.
- (6) For the purposes of this Article—
  - (a) a company enters insolvent administration if it enters administration at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the administration;
  - (b) a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.
- (7) In this Article “director” includes a shadow director.
- (8) This Article is without prejudice to Article 208ZA.

### **Proceedings under Articles 208ZA and 208ZB**

208ZC. Article 179 applies for the purposes of an application under Article 208ZA or 208ZB as it applies for the purposes of an application under Article 177 but as if the reference in Article 179(1) to the liquidator were a reference to the administrator.

### **Power to assign**

- 208ZD.—(1) This Article applies in the case of a company where—
- (a) the company enters administration, or
  - (b) the company goes into liquidation;
- and “the office holder” means the administrator or the liquidator, as the case may be.
- (2) The office-holder may assign a right of action (including the proceeds of an action) arising under or by virtue of any of the following—
- (a) Article 13FA (challenges to monitor remuneration in subsequent insolvency proceedings);
  - (b) Article 177 or 208ZA (fraudulent trading);
  - (c) Article 178 or 208ZB (wrongful trading);
  - (d) Article 202 (transactions at an undervalue);
  - (e) Article 203 (preferences);
  - (f) Article 206 (extortionate credit transactions).

### *Decisions by creditors and contributories*

#### **Decisions by creditors and contributories: general**

- 208ZE.—(1) This Article applies where, for the purposes of Parts 1A to 7, a person (“P”) seeks a decision about any matter from a company’s creditors or contributories.
- (2) The decision may be made by any qualifying decision procedure P thinks fit, except that it may not be made by a creditors’ meeting or (as the case may be) a contributories’ meeting unless paragraph (3) applies.
- (3) This paragraph applies if at least the minimum number of creditors or (as the case may be) contributories make a request to P in writing that

the decision be made by a creditors' meeting or (as the case may be) a contributories' meeting.

(4) If paragraph (3) applies, P must summon a creditors' meeting or (as the case may be) a contributories' meeting.

(5) Paragraph (2) is subject to any provision of this Order, the rules or any other legislation, or any order of the High Court—

(a) requiring a decision to be made, or prohibiting a decision from being made, by a particular qualifying decision procedure (other than a creditors' meeting or a contributories' meeting);

(b) permitting or requiring a decision to be made by a creditors' meeting or a contributories' meeting.

(6) Article 208ZF provides that in certain cases the deemed consent procedure may be used instead of a qualifying decision procedure.

(7) For the purposes of paragraph (3) the "minimum number" of creditors or contributories is any of the following—

(a) 10% in value of the creditors or contributories;

(b) 10% in number of the creditors or contributories;

(c) 10 creditors or contributories.

(8) The references in paragraph (7) to creditors are to creditors of any class, even where a decision is sought only from creditors of a particular class.

(9) In this Article references to a meeting are to a meeting where the creditors or (as the case may be) contributories are invited to be present together at the same place (whether or not it is possible to attend the meeting without being present at that place).

(10) Except as provided by paragraph (8), references in this Article to creditors include creditors of a particular class.

(11) In Parts 1A to 7 "qualifying decision procedure" means a procedure prescribed or authorised under paragraph 8A of Schedule 5.

### **Deemed consent procedure**

208ZF.—(1) The deemed consent procedure may be used instead of a qualifying decision procedure where a company's creditors or contributories are to make a decision about any matter, unless—

(a) a decision about the matter is required by virtue of this Order, the rules or any other legislation to be made by a qualifying decision procedure, or

(b) the High Court orders that a decision about the matter is to be made by a qualifying decision procedure.

(2) If the rules provide for a company's creditors or contributories to make a decision about the remuneration of any person, they must provide that the decision is to be made by a qualifying decision procedure.

(3) The deemed consent procedure is that the relevant creditors other than opted-out creditors or (as the case may be) the relevant contributories are given notice of—

(a) the matter about which they are to make a decision,

(b) the decision that the person giving the notice proposes should be made (the "proposed decision"),

(c) the effect of paragraphs (4) and (5), and

(d) the procedure for objecting to the proposed decision.

(4) If less than the appropriate number of relevant creditors or (as the case may be) relevant contributories object to the proposed decision in

accordance with the procedure set out in the notice, the creditors or (as the case may be) the contributories are to be treated as having made the proposed decision.

(5) Otherwise—

(a) the creditors or (as the case may be) the contributories are to be treated as not having made a decision about the matter in question, and

(b) if a decision about that matter is again sought from the creditors or (as the case may be) the contributories, it must be sought using a qualifying decision procedure.

(6) For the purposes of paragraph (4) the “appropriate number” of relevant creditors or relevant contributories is 10% in value of those creditors or contributories.

(7) “Relevant creditors” means the creditors who, if the decision were to be made by a qualifying decision procedure, would be entitled to vote in the procedure.

(8) “Relevant contributories” means the contributories who, if the decision were to be made by a qualifying decision procedure, would be entitled to vote in the procedure.

(9) In this Article references to creditors include creditors of a particular class.

(10) The rules may make further provision about the deemed consent procedure.

### **Power to amend Articles 208ZE and 208ZF**

208ZG.—(1) Regulations may amend Article 208ZE so as to change the definition of—

(a) the minimum number of creditors;

(b) the minimum number of contributories.

(2) Regulations may amend Article 208ZF so as to change the definition of—

(a) the appropriate number of relevant creditors;

(b) the appropriate number of relevant contributories.

(3) Regulations under this Article may define the minimum number or the appropriate number by reference to any one or more of—

(a) a proportion in value;

(b) a proportion in number;

(c) an absolute number;

and the definition may include alternative, cumulative or relative requirements.

(4) Regulations under paragraph (1) may define the minimum number of creditors or contributories by reference to all creditors or contributories, or by reference to creditors or contributories of a particular description.

(5) Regulations under this Article may make transitional provision.

(6) Regulations may not be made under this Article unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

### *Remote attendance at meetings*

#### **Remote attendance at meetings**

208ZH.—(1) This Article applies to any meeting of the members of a company summoned by the officeholder under this Order or the rules,

other than a meeting of the members of the company in a members' voluntary winding up.

(2) Where the person summoning a meeting ("the convener") considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(3) Where a meeting is conducted and held in the manner referred to in paragraph (2), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(4) For the purposes of this Article—

(a) a person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and

(b) a person is able to exercise the right to vote at a meeting when—

(i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and

(ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(5) The convener of a meeting which is to be conducted and held in the manner referred to in paragraph (2) shall make whatever arrangements the convener considers appropriate to—

(a) enable those attending the meeting to exercise their rights to speak or vote; and

(b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

(6) Where in the reasonable opinion of the convener—

(a) a meeting will be attended by persons who will not be present together at the same place, and

(b) it is unnecessary or inexpedient to specify a place for the meeting, any requirement under this Order or the rules to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak or vote.

(7) In making the arrangements referred to in paragraph (5) and in forming the opinion referred to in paragraph (6)(b), the convener must have regard to the legitimate interests of the members and others attending the meeting in the efficient despatch of the business of the meeting.

(8) If—

(a) the notice of a meeting does not specify a place for the meeting,

(b) the convener is requested in accordance with the rules to specify a place for the meeting, and

(c) that request is made by members representing not less than 10 per cent. of the total voting rights of all the members having at the date of the request a right to vote at the meeting, it shall be the duty of the convener to specify a place for the meeting.

(9) In this Article, "the office-holder", in relation to a company, means—

(a) the monitor in relation to a moratorium under Part 1A;

(b) its liquidator, provisional liquidator, administrator, or administrative receiver; or

(c) where a voluntary arrangement in relation to the company is

proposed or has taken effect under Part 2, the nominee or the supervisor of the voluntary arrangement.

### *Giving of notices etc by office-holders*

#### **Use of websites**

208ZI.—(1) Where any provision of this Order or the rules requires the office-holder to give, deliver, furnish or send a notice or other document or information to any person, that requirement is satisfied by making the notice, document or information available on a website—

- (a) in accordance with the rules; and
- (b) in such circumstances as may be prescribed.

(2) In this Article, “the office-holder” means—

- (a) the monitor in relation to a moratorium under Part 1A;
- (b) the liquidator, provisional liquidator, administrator, or administrative receiver of a company; or
- (c) where a voluntary arrangement in relation to a company is proposed or has taken effect under Part 2, the nominee or the supervisor of the voluntary arrangement.

#### **Creditors’ ability to opt out of receiving certain notices**

208ZJ.—(1) Any provision of the rules which requires an office-holder of a company to give a notice to creditors of the company does not apply, in circumstances prescribed by the rules, in relation to opted-out creditors.

(2) Paragraph (1)—

(a) does not apply in relation to a notice of a distribution or proposed distribution to creditors;

(b) is subject to any order of the High Court requiring a notice to be given to all creditors (or all creditors of a particular category).

(3) Except as provided by the rules, a creditor may participate and vote in a qualifying decision procedure or a deemed consent procedure even though, by virtue of being an opted-out creditor, the creditor does not receive notice of it.

(4) In this Article—

“give” includes deliver, furnish or send;

“notice” includes any document or information in any other form;

“office-holder”, in relation to a company, means—

- (a) a liquidator, provisional liquidator, administrator or administrative receiver of the company, or
- (b) the supervisor of a voluntary arrangement which has taken effect under Part 2 in relation to the company.

### **Remote attendance at meetings**

#### ~~208ZA.— Remote attendance at meetings: company insolvency~~

~~(1) This Article applies to—~~

- ~~(a) any meeting of the creditors of a company summoned under this Order or the rules; or~~
- ~~(b) any meeting of the members or contributories of a company summoned by the office holder under this Order or the rules, other than a meeting of the members of a company in a members' voluntary winding up.~~

~~(2) Where the person summoning a meeting (“the convener”) considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.~~

~~(3) Where a meeting is conducted and held in the manner referred to in paragraph (2), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.~~

~~(4) For the purposes of this Article—~~

~~(a) a person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and~~

~~(b) a person is able to exercise the right to vote at a meeting when—~~

~~(i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and~~

~~(ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.~~

~~(5) The convener of a meeting which is to be conducted and held in the manner referred to in paragraph (2) shall make whatever arrangements the convener considers appropriate to—~~

~~(a) enable those attending the meeting to exercise their rights to speak or vote; and~~

~~(b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.~~

~~(6) Where in the reasonable opinion of the convener—~~

~~(a) a meeting will be attended by persons who will not be present together at the same place; and~~

~~(b) it is unnecessary or inexpedient to specify a place for the meeting;~~

~~any requirement under this Order or the rules to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak or vote.~~

~~(7) In making the arrangements referred to in paragraph (5) and in forming the opinion referred to in paragraph (6)(b), the convener must have regard to the legitimate interests of the creditors, members or contributories and others attending the meeting in the efficient despatch of the business of the meeting.~~

~~(8) If—~~

~~(a) the notice of a meeting does not specify a place for the meeting;~~

~~(b) the convener is requested in accordance with the rules to specify a place for the meeting; and~~

~~(c) that request is made—~~

~~(i) in the case of a meeting of creditors or contributories, by not less than 10 per cent. in value of the creditors or contributories; or~~

~~(ii) in the case of a meeting of members, by members representing not less than 10 per cent. of the total voting rights of all the members having at the date of the request a right to vote at the meeting;~~

~~it shall be the duty of the convener to specify a place for the meeting.~~

~~(9) In this Article, “the office holder”, in relation to a company, means—~~

~~(a) its liquidator, provisional liquidator, administrator, or administrative receiver; or~~

~~(b) where a voluntary arrangement in relation to the company is proposed or has taken effect under Part 2, the nominee or the supervisor of the voluntary arrangement.~~

## Use of websites

**~~208ZB.— Use of websites: company insolvency~~**

~~(1) Where any provision of this Order or the rules requires the office holder to give, deliver, furnish or send a notice or other document or information to any person, that requirement is satisfied by making the notice, document or information available on a website—~~

~~(a) in accordance with the rules; and~~

~~(b) in such circumstances as may be prescribed.~~

~~(2) In this Article, “the office holder” means—~~

~~(a) the liquidator, provisional liquidator, administrator, or administrative receiver of a company; or~~

~~(b) where a voluntary arrangement in relation to a company is proposed or has taken effect under Part 2, the nominee or the supervisor of the voluntary arrangement.~~

## **PART 7A**

### **DEBT RELIEF ORDERS**

#### **Preliminary**

**208A.— Debt relief orders**

(1) An individual who is unable to pay his debts may apply for an order under this Part (“a debt relief order”) to be made in respect of his qualifying debts.

(2) In this Part “qualifying debt” means (subject to paragraph (3)) a debt which—

(a) is for a liquidated sum payable either immediately or at some certain future time; and

(b) is not an excluded debt.

(3) A debt is not a qualifying debt to the extent that it is secured.

(4) In this Part “excluded debt” means a debt of any description prescribed for the purposes of this paragraph.

#### **Applications for a debt relief order**

**208B.— Making of application**

(1) An application for a debt relief order must be made to the official receiver through an approved intermediary.

(2) The application must include—

(a) a list of the debts to which the debtor is subject at the date of the application, specifying the amount of each debt (including any interest, penalty or other sum that has become payable in relation to that debt on or before that date) and the creditor to whom it is owed;

(b) details of any security held in respect of any of those debts; and

(c) such other information about the debtor's affairs (including his creditors, debts and liabilities and his income and assets) as may be prescribed.

(3) The rules may make further provision as to—

(a) the form of an application for a debt relief order;

(b) the manner in which an application is to be made; and

(c) information and documents to be supplied in support of an application.

(4) For the purposes of this Part an application is not to be regarded as having been made until—

(a) the application has been submitted to the official receiver; and

(b) any fee required in connection with the application by an order under Article 361 has been paid to such person as the order may specify.

**208C.— Duty of official receiver to consider and determine application**

- (1) This Article applies where an application for a debt relief order is made.
- (2) The official receiver may stay consideration of the application until he has received answers to any queries raised with the debtor in relation to anything connected with the application.
- (3) The official receiver must determine the application by—
  - (a) deciding whether to refuse the application;
  - (b) if he does not refuse it, by making a debt relief order in relation to the specified debts he is satisfied were qualifying debts of the debtor at the application date; but he may only refuse the application if he is authorised or required to do so by any of the following provisions of this Article.
- (4) The official receiver may refuse the application if he considers that—
  - (a) the application does not meet all the requirements imposed by or under Article 208B;
  - (b) any queries raised with the debtor have not been answered to the satisfaction of the official receiver within such time as he may specify when they are raised;
  - (c) the debtor has made any false representation or omission in making the application or on supplying any information or documents in support of it.
- (5) The official receiver must refuse the application if he is not satisfied that—
  - (a) the debtor is an individual who is unable to pay his debts;
  - (b) at least one of the specified debts was a qualifying debt of the debtor at the application date;
  - (c) each of the conditions set out in Part 1 of Schedule 2ZA is met.
- (6) The official receiver may refuse the application if he is not satisfied that each condition specified in Part 2 of Schedule 2ZA is met.
- (7) If the official receiver refuses an application he must give reasons for his refusal to the debtor in the prescribed manner.
- (8) In this Article “specified debt” means a debt specified in the application.

**208D.— Presumptions applicable to the determination of an application**

- (1) The following presumptions are to apply to the determination of an application for a debt relief order.
- (2) The official receiver must presume that the debtor is an individual who is unable to pay his debts at the determination date if—
  - (a) that appears to the official receiver to be the case at the application date from the information supplied in the application and he has no reason to believe that the information supplied is incomplete or inaccurate; and
  - (b) he has no reason to believe that, by virtue of a change in the debtor's financial circumstances since the application date, the debtor may be able to pay his debts.
- (3) The official receiver must presume that a specified debt (of the amount specified in the application and owed to the creditor so specified) is a qualifying debt at the application date if—
  - (a) that appears to him to be the case from the information supplied in the application; and
  - (b) he has no reason to believe that the information supplied is incomplete or inaccurate.
- (4) The official receiver must presume that the condition specified in paragraph 1 of Schedule 2ZA is met if—
  - (a) that appears to him to be the case from the information supplied in the application;
  - (b) any prescribed verification checks relating to the condition have been made; and
  - (c) he has no reason to believe that the information supplied is incomplete or inaccurate.



- (5) The official receiver must presume that any other condition specified in Part 1 or 2 of Schedule 2ZA is met it—
- (a) that appears to him to have been the case as at the application date from the information supplied in the application and he has no reason to believe that the information supplied is incomplete or inaccurate;
  - (b) any prescribed verification checks relating to the condition have been made; and
  - (c) he has no reason to believe that, by virtue of a change in circumstances since the application date, the condition may no longer be met.
- (6) References in this Article to information supplied in the application include information supplied to the official receiver in support of the application.
- (7) In this Article “specified debt” means a debt specified in the application.

### **Making and effect of debt relief order**

#### **208E.— Making of debt relief orders**

- (1) This Article applies where the official receiver makes a debt relief order on determining an application under Article 208C.
- (2) The order must be made in the prescribed form.
- (3) The order must include a list of the debts which the official receiver is satisfied were qualifying debts of the debtor at the application date, specifying the amount of the debt at that time and the creditor to whom it was then owed.
- (4) The official receiver must—
- (a) give a copy of the order to the debtor; and
  - (b) make an entry for the order in the register containing the prescribed information about the order or the debtor.
- (5) The rules may make provision as to other steps to be taken by the official receiver or the debtor on the making of the order.
- (6) Those steps may include in particular notifying each creditor to whom a qualifying debt specified in the order is owed of—
- (a) the making of the order and its effect,
  - (b) the grounds on which a creditor may object under Article 208K, and
  - (c) any other prescribed information.
- (7) In this Part the date on which an entry relating to the making of a debt relief order is first made in the register is referred to as “the effective date”.

#### **208F. Effect of debt relief order on administration order**

Where—

- (a) a debt relief order is made; and
  - (b) immediately before the order is made, an administration order under Part 6 of the Judgments Enforcement Order is in force in respect of the debtor,
- the administration order ceases to be in force when the debt relief order is made.

#### **208G.— Moratorium from qualifying debts**

- (1) A moratorium commences on the effective date for a debt relief order in relation to each qualifying debt specified in the order (“a specified qualifying debt”).
- (2) During the moratorium, the creditor to whom a specified qualifying debt is owed—
- (a) has no remedy in respect of the debt, and
  - (b) may not—
    - (i) commence a creditor's petition in respect of the debt, or
    - (ii) otherwise commence any action or other legal proceedings against the debtor

for the debt,

except with the permission of the High Court and on such terms as the Court may impose.

(3) If on the effective date a creditor to whom a specified qualifying debt is owed has any such petition, action or other proceeding as mentioned in paragraph (2)(b) pending in any court, that court may—

(a) stay the proceedings on the petition, action or other proceedings (as the case may be), or

(b) allow them to continue on such terms as that court thinks fit.

(4) In paragraph (2)(a) and (b) references to the debt include a reference to any interest, penalty or other sum that becomes payable in relation to that debt after the application date.

(5) Nothing in this Article affects the right of a secured creditor of the debtor to enforce his security.

### **208H.— The moratorium period**

(1) The moratorium relating to the qualifying debts specified in a debt relief order continues for the period of one year beginning with the effective date for the order, unless—

(a) the moratorium terminates early; or

(b) the moratorium period is extended by the official receiver under this Article or by the High Court under Article 208M.

(2) The official receiver may only extend the moratorium period for the purpose of—

(a) carrying out or completing an investigation under Article 208K;

(b) taking any action he considers necessary (whether as a result of an investigation or otherwise) in relation to the order; or

(c) in a case where he has decided to revoke the order, providing the debtor with the opportunity to make arrangements for making payments towards his debts.

(3) The official receiver may not extend the moratorium period for the purpose mentioned in paragraph (2)(a) without the permission of the High Court.

(4) The official receiver may not extend the moratorium period beyond the end of the period of 3 months beginning after the end of the initial period of one year mentioned in paragraph (1).

(5) The moratorium period may be extended more than once, but any extension (whether by the official receiver or by the High Court) must be made before the moratorium would otherwise end.

(6) References in this Part to a moratorium terminating early are to its terminating before the end of what would otherwise be the moratorium period, whether on the revocation of the order or by virtue of any other statutory provision.

### **208I.— Discharge from qualifying debts**

(1) Subject to the following provisions of this Article, at the end of the moratorium applicable to a debt relief order the debtor is discharged from all the qualifying debts specified in the order (including all interest, penalties and other sums which may have become payable in relation to those debts since the application date).

(2) Paragraph (1) does not apply if the moratorium terminates early.

(3) Paragraph (1) does not apply in relation to any qualifying debt which the debtor incurred in respect of any fraud or fraudulent breach of trust to which the debtor was a party.

(4) The discharge of the debtor under paragraph (1) does not release any other person from—

(a) any liability (whether as partner or co-trustee of the debtor or otherwise) from which the debtor is released by the discharge; or

(b) any liability as surety for the debtor or as a person in the nature of such a surety.

(5) If the order is revoked by the High Court under Article 208M after the end of the moratorium period, the qualifying debts specified in the order shall (so far as practicable) be treated as though paragraph (1) had never applied to them.

### **Duties of debtor**

#### **208J.— Providing assistance to official receiver, etc.**

(1) The duties in this Article apply to a debtor at any time after the making of an application by him for a debt relief order.

(2) The debtor must—

(a) give to the official receiver such information as to his affairs,

(b) attend on the official receiver at such times, and

(c) do all such other things,

as the official receiver may reasonably require for the purpose of carrying out his functions in relation to the application or, as the case may be, the debt relief order made as a result of the application.

(3) The debtor must notify the official receiver as soon as reasonably practicable if he becomes aware of—

(a) any error in, or omission from, the information supplied to the official receiver in, or in support of, the application;

(b) any change in his circumstances between the application date and the determination date that would affect (or would have affected) the determination of the application.

(4) The duties under paragraphs (2) and (3) apply after (as well as before) the determination of the application, for as long as the official receiver is able to exercise functions of the kind mentioned in paragraph (2).

(5) If a debt relief order is made as a result of the application, the debtor must notify the official receiver as soon as reasonably practicable if—

(a) there is an increase in his income during the moratorium period applicable to the order;

(b) he acquires any property or any property is devolved upon him during that period;

(c) he becomes aware of any error in or omission from any information supplied by him to the official receiver after the determination date.

(6) A notification under paragraph (3) or (5) must give the prescribed particulars (if any) of the matter being notified.

### **Objections, investigations and revocation**

#### **208K.— Objections and investigations**

(1) Any person specified in a debt relief order as a creditor to whom a specified qualifying debt is owed may object to—

(a) the making of the order;

(b) the inclusion of the debt in the list of the debtor's qualifying debts; or

(c) the details of the debt specified in the order.

(2) An objection under paragraph (1) must be—

(a) made during the moratorium period relating to the order and within the prescribed period for objections;

(b) made to the official receiver in the prescribed manner;

(c) based on a prescribed ground;

(d) supported by any information and documents as may be prescribed;

and the prescribed period mentioned in sub-paragraph (a) must not be less than 28 days after the creditor in question has been notified of the making of the order.

- (3) The official receiver must consider every objection made to him under this Article.
- (4) The official receiver may—
  - (a) as part of his consideration of an objection, or
  - (b) on his own initiative,carry out an investigation of any matter that appears to the official receiver to be relevant to the making of any decision mentioned in paragraph (5) in relation to a debt relief order or the debtor.
- (5) The decisions to which an investigation may be directed are—
  - (a) whether the order should be revoked or amended under Article 208L;
  - (b) whether an application should be made to the High Court under Article 208M; or
  - (c) whether any other steps should be taken in relation to the debtor.
- (6) The power to carry out an investigation under this Article is exercisable after (as well as during) the moratorium relating to the order.
- (7) The official receiver may require any person to give him such information and assistance as he may reasonably require in connection with an investigation under this Article.
- (8) Subject to anything prescribed in the rules as to the procedure to be followed in carrying out an investigation under this Article, an investigation may be carried out by the official receiver in such manner as he thinks fit.

**208L.— Power of official receiver to revoke or amend a debt relief order**

- (1) The official receiver may revoke or amend a debt relief order during the applicable moratorium period in the circumstances provided for by this Article.
- (2) The official receiver may revoke the order on the ground that—
  - (a) any information supplied to him by the debtor—
    - (i) in, or in support of, the application, or
    - (ii) after the determination date,was incomplete, incorrect or otherwise misleading;
  - (b) the debtor has failed to comply with a duty under Article 208J;
  - (c) a bankruptcy order has been made in relation to the debtor; or
  - (d) the debtor has made a proposal under Chapter 2 of Part 8 (or has notified the official receiver of his intention to do so).
- (3) The official receiver may revoke the order on the ground that he should not have been satisfied—
  - (a) that the debts specified in the order were qualifying debts of the debtor as at the application date;
  - (b) that the conditions specified in Part 1 of Schedule 2ZA were met;
  - (c) that the conditions specified in Part 2 of that Schedule were met or that any failure to meet such a condition did not prevent his making the order.
- (4) The official receiver may revoke the order on the ground that either or both of the conditions in paragraphs 7 and 8 of Schedule 2ZA (monthly surplus income and property) are not met at any time after the order was made. For this purpose those paragraphs are to be read as if references to the determination date were references to the time in question.
- (5) Where the official receiver decides to revoke the order, he may revoke it either—
  - (a) with immediate effect, or
  - (b) with effect from such date (not more than 3 months after the date of the decision) as he may specify.
- (6) In considering when the revocation should take effect the official receiver must consider (in the light of the grounds on which the decision to revoke was made and all the other circumstances of the case) whether the debtor ought to be given the opportunity to make arrangements for making payments towards his debts.

- (7) If the order has been revoked with effect from a specified date the official receiver may, if he thinks it appropriate to do so at any time before that date, revoke the order with immediate effect.
- (8) The official receiver may amend a debt relief order for the purpose of correcting an error in or omission from anything specified in the order.
- (9) But paragraph (8) does not permit the official receiver to add any debts that were not specified in the application for the debt relief order to the list of qualifying debts.
- (10) The rules may make further provision as to the procedure to be followed by the official receiver in the exercise of his powers under this Article.

### **Role of the High Court**

#### **208M.— Powers of High Court in relation to debt relief orders**

- (1) Any person may make an application to the High Court if he is dissatisfied by any act, omission or decision of the official receiver in connection with a debt relief order or an application for such an order.
- (2) The official receiver may make an application to the High Court for directions or an order in relation to any matter arising in connection with a debt relief order or an application for such an order.
- (3) The matters referred to in paragraph (2) include, among other things, matters relating to the debtor's compliance with any duty arising under Article 208J.
- (4) An application under this Article may, subject to anything in the rules, be made at any time.
- (5) The High Court may extend the moratorium period applicable to a debt relief order for the purposes of determining an application under this Article.
- (6) On an application under this Article the High Court may dismiss the application or do one or more of the following—
- (a) quash the whole or part of any act or decision of the official receiver;
  - (b) give the official receiver directions (including a direction that he reconsider any matter in relation to which his act or decision has been quashed under sub-paragraph (a));
  - (c) make an order for the enforcement of any obligation on the debtor arising by virtue of a duty under Article 208J;
  - (d) extend the moratorium period applicable to the debt relief order;
  - (e) make an order revoking or amending the debt relief order;
  - (f) make an order under Article 208N; or
  - (g) make such other order as the Court thinks fit.
- (7) An order under paragraph (6)(e) for the revocation of a debt relief order—
- (a) may be made during the moratorium period applicable to the debt relief order or at any time after that period has ended;
  - (b) may be made on the High Court's own motion if the Court has made a bankruptcy order in relation to the debtor during that period;
  - (c) may provide for the revocation of the order to take effect on such terms and at such a time as the Court may specify.
- (8) An order under paragraph (6)(e) for the amendment of a debt relief order may not add any debts that were not specified in the application for the debt relief order to the list of qualifying debts.

#### **208N.— Inquiry into debtor's dealings and property**

- (1) An order under this Article may be made by the High Court on the application of the official receiver.

(2) An order under this Article is an order summoning any of the following persons to appear before the High Court—

- (a) the debtor;
- (b) the debtor's spouse or former spouse or the debtor's civil partner or former civil partner;
- (c) any person appearing to the Court to be able to give information or assistance concerning the debtor or his dealings, affairs and property.

(3) The High Court may require a person falling within paragraph (2)(c)—

- (a) to provide a written account of his dealings with the debtor; or
- (b) to produce any documents in his possession or under his control relating to the debtor or to the debtor's dealings, affairs or property.

(4) Paragraph (5) applies where a person fails without reasonable excuse to appear before the High Court when he is summoned to do so by an order under this Article.

(5) The High Court may cause a warrant to be issued to a constable—

- (a) for the arrest of that person, and
- (b) for the seizure of any records or other documents in that person's possession.

(6) The High Court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the Court under the warrant or until such other time as the Court may order.

## **Offences**

### **208O.— False representations and omissions**

(1) A person who makes an application for a debt relief order shall be guilty of an offence if he knowingly or recklessly makes any false representation or omission in making the application or providing any information or documents to the official receiver in support of the application.

(2) A person who makes an application for a debt relief order shall be guilty of an offence if—

- (a) he intentionally fails to comply with a duty under Article 208J(3) in connection with the application; or
- (b) he knowingly or recklessly makes any false representation or omission in providing any information to the official receiver in connection with such a duty or otherwise in connection with the application.

(3) It is immaterial for the purposes of an offence under paragraph (1) or (2) whether or not a debt relief order is made as a result of the application.

(4) A person in respect of whom a debt relief order is made shall be guilty of an offence if—

- (a) he intentionally fails to comply with a duty under Article 208J(5) in connection with the order; or
- (b) he knowingly or recklessly makes any false representation or omission in providing information to the official receiver in connection with such a duty or otherwise in connection with the performance by the official receiver of functions in relation to the order.

(5) It is immaterial for the purposes of an offence under paragraph (4)—

- (a) whether the offence is committed during or after the moratorium period; and
- (b) whether or not the order is revoked after the conduct constituting the offence takes place.

### **208P.— Concealment or falsification of documents**

(1) A person in respect of whom a debt relief order is made shall be guilty of an offence if, during the moratorium period in relation to that order—

- (a) he does not provide, at the request of the official receiver, all his books, papers and other records of which he has possession or control and which relate to his affairs;
  - (b) he prevents the production to the official receiver of any books, papers or other records relating to his affairs;
  - (c) he conceals, destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any books, papers or other records relating to his affairs;
  - (d) he makes, or causes or permits the making of, any false entries in any book, document or record relating to his affairs; or
  - (e) he disposes of, or alters or makes any omission in, or causes or permits the disposal, altering or making of any omission in, any book, document or record relating to his affairs.
- (2) A person in respect of whom a debt relief order is made shall be guilty of an offence if—
- (a) he did anything falling within sub-paragraphs (c) to (e) of paragraph (1) during the period of 12 months ending with the application date; or
  - (b) he did anything falling within sub-paragraphs (b) to (e) of paragraph (1) after that date but before the effective date.
- (3) It shall be a defence for a person charged with an offence under this Article to prove that, in respect of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.
- (4) In its application to a trading record paragraph (2)(a) has effect as if the reference to 12 months were a reference to 2 years.
- (5) In paragraph (4) “trading record” means a book, document or record which shows or explains the transactions or financial position of a person's business, including—
- (a) a periodic record of cash paid and received,
  - (b) a statement of periodic stock-taking, and
  - (c) except in the case of goods sold by way of retail trade, a record of goods sold and purchased which identifies the buyer and seller or enables them to be identified.
- (6) It is immaterial for the purposes of an offence under this Article whether or not the debt relief order in question is revoked after the conduct constituting the offence takes place (but no offence is committed under this Article by virtue of conduct occurring after the order is revoked).

## **208Q.— Fraudulent disposal of property**

- (1) A person in respect of whom a debt relief order is made shall be guilty of an offence if he made or caused to be made any gift or transfer of his property during the period between—
  - (a) the start of the period of 2 years ending with the application date; and
  - (b) the end of the moratorium period.
- (2) The reference in paragraph (1) to making a transfer of any property includes causing or conniving at the enforcement of a judgment, or the levying of any execution, against that property.
- (3) It shall be a defence for a person charged with an offence under this Article to prove that, in respect of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.
- (4) For the purposes of paragraph (3) a person is to be taken to have proved that he had no such intent if—
  - (a) sufficient evidence is adduced to raise an issue as to whether he had such intent; and
  - (b) the contrary is not proved beyond reasonable doubt.
- (5) It is immaterial for the purposes of this Article whether or not the debt relief order in question is revoked after the conduct constituting an offence takes place (but no offence is committed by virtue of conduct occurring after the order is revoked).

**208R.— Fraudulent dealing with property obtained on credit**

- (1) A person in respect of whom a debt relief order is made shall be guilty of an offence if during the relevant period he disposed of any property which he had obtained on credit and, at the time he disposed of it, had not paid for it.
- (2) Any other person shall be guilty of an offence if during the relevant period he acquired or received property from a person in respect of whom a debt relief order was made (the “debtor”) knowing or believing
- (a) that the debtor owed money in respect of the property, and
- (b) that the debtor did not intend, or was unlikely to be able, to pay the money he so owed.
- (3) In paragraphs (1) and (2) “relevant period” means the period between—
- (a) the start of the period of 2 years ending with the application date; and
- (b) the determination date.
- (4) In the case of an offence under paragraph (1) or (2) it shall be a defence for the person charged to prove that the disposal, acquisition or receipt of the property was in the ordinary course of a business carried on by the debtor at the time of the disposal, acquisition or receipt.
- (5) In determining for the purposes of paragraph (4) whether any property is disposed of, acquired or received in the ordinary course of a business carried on by the debtor, regard may be had, in particular, to the price paid for the property.
- (6) It shall be a defence for a person charged with an offence under paragraph (1) to prove that, in respect of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.
- (7) In this Article references to disposing of property include pawning or pledging it; and references to acquiring or receiving property shall be read accordingly.
- (8) It is immaterial for the purposes of this Article whether or not the debt relief order in question is revoked after the conduct constituting an offence takes place (but no offence is committed by virtue of conduct occurring after the order is revoked).

**208S.— Obtaining credit or engaging in business**

- (1) A person in respect of whom a debt relief order is made shall be guilty of an offence if, during the relevant period—
- (a) he obtains credit (either alone or jointly with any other person) without giving the person from whom he obtains the credit the relevant information about his status; or
- (b) he engages directly or indirectly in any business under a name other than that in which the order was made without disclosing to all persons with whom he enters into any business transaction the name in which the order was made.
- (2) For the purposes of paragraph (1)(a) the relevant information about a person's status is the information that—
- (a) a moratorium is in force in relation to the debt relief order,
- (b) a debt relief restrictions order is in force in respect of him, or
- (c) both a moratorium and a debt relief restrictions order are in force, as the case may be.
- (3) In paragraph (1) “relevant period” means—
- (a) the moratorium period relating to the debt relief order, or
- (b) the period for which a debt relief restrictions order is in force in respect of the person in respect of whom the debt relief order is made, as the case may be.
- (4) Paragraph (1)(a) does not apply if the amount of the credit is less than the amount (if any) specified by order under Article 362(1)(b).
- (5) The reference in paragraph (1)(a) to a person obtaining credit includes the following cases—
- (a) where goods are bailed to him under a hire-purchase agreement, or agreed to be sold



- to him under a conditional sale agreement;
- (b) where he is paid in advance (in money or otherwise) for the supply of goods or services

### **208T.— Offences: supplementary**

- (1) Proceedings for an offence under this Part may only be instituted by the Director of Public Prosecutions for Northern Ireland.
- (2) It is not a defence in proceedings for an offence under this Part that anything relied on, in whole or in part, as constituting the offence was done outside Northern Ireland.
- (3) A person guilty of an offence under this Part is liable to imprisonment or a fine, or both.

## **Supplementary**

### **208U.— Approved intermediaries**

- (1) In this Part “approved intermediary” means an individual for the time being approved by a competent authority to act as an intermediary between a person wishing to make an application for a debt relief order and the official receiver.
- (2) In this Article “competent authority” means a person or body for the time being designated by the Department for the purposes of granting approvals under this Article.
- (3) Designation as a competent authority may be limited so as to permit the authority only to approve persons of a particular description.
- (4) The Department may by regulations make provision as to—
- (a) the procedure for designating persons or bodies as competent authorities;
  - (b) descriptions of individuals who are ineligible to be approved under this Article;
  - (c) the procedure for granting approvals under this Article;
  - (d) the withdrawal of designations or approvals under this Article;
- and provision made under sub-paragraph (a) or (c) may include provision requiring the payment of fees.
- (5) The rules may make provision about the activities to be carried out by an approved intermediary in connection with an application for a debt relief order, which may in particular include—
- (a) assisting the debtor in making the application;
  - (b) checking that the application has been properly completed;
  - (c) sending the application to the official receiver.
- (6) The rules may also make provision about other activities to be carried out by approved intermediaries.
- (7) An approved intermediary may not charge a debtor any fee in connection with an application for a debt relief order.
- (8) An approved intermediary is not liable to any person in damages for anything done or omitted to be done when acting (or purporting to act) as an approved intermediary in connection with a particular application by a debtor for a debt relief order.
- (9) Paragraph (8) does not apply if the act or omission was in bad faith.
- (10) The Department may, out of the proceeds of fees charged under Article 361(1)(za), make payments to competent authorities or approved intermediaries in connection with the exercise of the functions of approved intermediaries under this Part.

### **208V. Debt relief restrictions orders and undertakings**

Schedule 2ZB (which makes provision about debt relief restrictions orders and debt relief restrictions undertakings) has effect.

### **208W. Register of debt relief orders, etc.**

The Department must maintain a register of matters relating to—

- (a) debt relief orders;
- (b) debt relief restrictions orders; and
- (c) debt relief restrictions undertakings.

## **208X.— Interpretation**

(1) In this Part—

“the application date”, in relation to a debt relief order or an application for a debt relief order, means the date on which the application for the order is made to the official receiver;

“approved intermediary” has the meaning given in Article 208U(1);

“debt relief order” means an order made by the official receiver under this Part;

“debtor” means—

(a) in relation to an application for a debt relief order, the applicant; and

(b) in relation to a debt relief order, the person in relation to whom the order is made;

“debt relief restrictions order” and “debt relief restrictions undertaking” means an order made, or an undertaking accepted, under Schedule 2ZB;

“the determination date”, in relation to a debt relief order or an application for a debt relief order, means the date on which the application for the order is determined by the official receiver;

“the effective date” has the meaning given in Article 208E(7);

“excluded debt” is to be construed in accordance with Article 208A;

“moratorium” and “moratorium period” are to be construed in accordance with Articles 208G and 208H;

“qualifying debt”, in relation to a debtor, has the meaning given in Article 208A(2);

“the register” means the register maintained under Article 208W;;

“specified qualifying debt” has the meaning given in Article 208G(1).

(2) In this Part references to a creditor specified in a debt relief order as the person to whom a qualifying debt is owed by the debtor include a reference to any person to whom the right to claim the whole or any part of the debt has passed, by assignment or operation of law, after the date of the application for the order.

## **PART VIII**

### **INDIVIDUAL VOLUNTARY ARRANGEMENTS**

#### **CHAPTER I**

##### **DEEDS OF ARRANGEMENT**

##### **Deeds of arrangement to which this Chapter applies**

**209.—**

##### **Registration of deeds of arrangement**

**210.—**

Repealed

**211.—**

Repealed

**212.**

Repealed  
**213.**  
Repealed

## Avoidance of deeds of arrangement

Repealed  
**214.**  
Repealed  
**215.**  
Repealed  
**216.**  
Repealed

## Provisions as to trustees

Repealed  
**217**  
Repealed  
**218.—**  
Repealed  
**219**  
Repealed  
**220.**  
Repealed  
**221.—**  
Repealed  
**222.—**  
Repealed  
**223.**  
Repealed

## Miscellaneous

**224.**  
Repealed  
**225.—**  
Repealed

## CHAPTER II

### VOLUNTARY ARRANGEMENTS

#### *Moratorium for insolvent debtor*

#### **226.— Interim order of High Court**

(1) In the circumstances specified in Articles 227 and 229, the High Court may in the case of a debtor (being an individual) make an interim order under this Article.

(2) An interim order has the effect that, during the period for which it is in force—

(a) no bankruptcy petition relating to the debtor may be presented or proceeded with,

(aa) 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 debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the High Court, and

(b) no other proceedings, and no execution or other legal process, may be commenced or continued[ and no distress may be levied against the debtor or his property except with

the leave of the High Court.

### **227.— Application for interim order**

(1) Application to the High Court for an interim order may be made where the debtor intends to make a proposal under this Part, that is, a proposal to his creditors for a composition in satisfaction of his debts or a scheme of arrangement of his affairs (referred to, in either case, as a "voluntary arrangement").

(2) The proposal must provide for some person ("the nominee") to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation and the nominee must be a person who is qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement].

(3) Subject to paragraphs (4) and (5), the application may be made—

(a) if the debtor is an undischarged bankrupt, by the debtor, the trustee of his estate, or the official receiver, and

(b) in any other case, by the debtor.

(4) An application shall not be made under paragraph (3)(a) unless the debtor has given notice of

the proposal]to the official receiver and, if there is one, the trustee of his estate.

(5) An application shall not be made while a bankruptcy petition presented by the debtor is pending, if the High Court has, under Article 247, appointed an insolvency practitioner to inquire into the debtor's affairs and report.

### **228.— Effect of application**

(1) At any time when an application under Article 227 for an interim order is pending

(a) 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 debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the High Court, and

(b) the High Court may forbid the levying of any distress on the debtor's property or its subsequent sale, or both, and stay any action, proceedings, execution or other legal process against the property or person of the debtor.

(2) Any court in which proceedings are pending against an individual may, on proof that an application under Article 227 has been made in respect of that individual, either stay the proceedings or allow them to continue on such terms as it thinks fit.

### **229.— Cases in which interim order can be made**

(1) The High Court shall not make an interim order on an application under Article 227 unless it is satisfied—

(a) that the debtor intends to make a proposal under this Part;

(b) that on the day of the making of the application the debtor was an undischarged bankrupt or was able to petition for his own bankruptcy;

(c) that no previous application has been made by the debtor for an interim order within the 12 months immediately preceding that day; and

(d) that the nominee under the debtor's proposal is willing to act in relation to the proposal.

(2) The High Court may make an order if it thinks that it would be appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal.

(3) Where the debtor is an undischarged bankrupt, the interim order may contain provision as to the conduct of the bankruptcy, and the administration of the bankrupt's estate, during the period for which the order is in force.

(4) Subject to paragraph (5), the provision contained in an interim order by virtue of paragraph (3) may include provision staying proceedings in the bankruptcy or modifying any provision in Parts VIII to X, and any provision of the rules in their application to the debtor's bankruptcy.

(5) An interim order shall not, in relation to a bankrupt, make provision relaxing or removing any of the requirements of provisions in Parts VIII to X, or of the rules, unless the High Court is satisfied that that provision is unlikely to result in any significant diminution in, or in the value of, the debtor's estate for the purposes of the bankruptcy.

(6) Subject to Articles 230, 233, 234 and 236, an interim order made on an application under Article 227 ceases to have effect on the expiration of 14 days from the day on which it is made.

### **230.— Nominee's report on debtor's proposal**

(1) Where an interim order has been made on an application under Article 227, the nominee shall, before the order ceases to have effect, submit a report to the High Court stating—

(a) whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented, **and**

(aa) whether, in his opinion, ~~a meeting of the debtor's creditors should be summoned to the debtor's creditors should~~ consider the debtor's proposal, **and**

~~(b) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.~~

(2) For the purpose of enabling the nominee to prepare his report the debtor shall submit to the nominee—

(a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and

(b) a statement of his affairs containing—

(i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed, and

(ii) such other information as may be prescribed.

(3) The High Court may—

(a) on an application made by the debtor in a case where the nominee has failed to submit the report required by this Article or has died, or

(b) on an application made by the debtor 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 shall 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.

(3A) The High Court may, on an application made by the debtor in a case where the nominee has failed to submit the report required by this Article, direct that the interim order shall continue, or (if it has ceased to have effect) be renewed, for such further period as the Court may specify in the direction.

(4) The High Court may, on the application of the nominee, extend the period for which the interim order has effect so as to enable the nominee to have more time to prepare his report.

(5) If the High Court is satisfied on receiving the nominee's report that ~~a meeting of the debtor's creditors should be summoned to~~ **the debtor's creditors should** consider the debtor's proposal, the Court shall direct that the period for which the interim order has effect shall be extended, for such further period as it may specify in the direction, for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with the following provisions of this Chapter.

(6) The High Court may discharge the interim order if it is satisfied, on the application of the

nominee—

- (a) that the debtor has failed to comply with his obligations under paragraph (2), or
- (b) that for any other reason it would be inappropriate for ~~a meeting of the debtor's creditors to be summoned~~ **the debtor's creditors** to consider the debtor's proposal.

*Procedure where no interim order made*

**230A.— Debtor's proposal and nominee's report**

(1) This Article applies where a debtor (being an individual)—

- (a) intends to make a proposal under this Part (but an interim order has not been made in relation to the proposal and no application for such an order is pending), and
  - (b) if he is an undischarged bankrupt, has given notice of the proposal to the official receiver and, if there is one, the trustee of his estate,
- unless a bankruptcy petition presented by the debtor is pending and the High Court has, under Article 247, appointed an insolvency practitioner to inquire into the debtor's affairs and report.

(2) For the purpose of enabling the nominee to prepare a report to the High Court, the debtor shall submit to the nominee—

(a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and

(b) a statement of his affairs containing—

(i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed, and

(ii) such other information as may be prescribed.

(3) If the nominee is of the opinion that the debtor is an undischarged bankrupt, or is able to petition for his own bankruptcy, the nominee shall, within 14 days (or such longer period as the High Court may allow) after receiving the document and statement mentioned in paragraph (2), submit a report to the Court stating—

(a) whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented, **and**

(b) whether, in his opinion, ~~a meeting of the debtor's creditors should be summoned to~~ **the debtor's creditors should** consider the debtor's proposal, ~~and~~

~~(c) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.~~

(4) The High Court may—

(a) on an application made by the debtor in a case where the nominee has failed to submit the report required by this Article or has died, or

(b) on an application made by the debtor 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 shall 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.

(5) The High Court may, on an application made by the nominee, extend the period within which the nominee is to submit his report.

*Creditors' ~~meeting~~ **decisions***

**231.— ~~Summoning of creditors' meeting~~ **Consideration of debtor's proposal by creditors****

~~(1) Where it has been reported to the High Court under Article 230 or 230A that a meeting of~~

~~the debtor's creditors should be summoned, the nominee (or his replacement under Article 230(3) or 230A(4)) shall, unless the Court otherwise directs, summon that meeting for the time, date and place proposed in his report.~~

~~(2) The persons to be summoned to the meeting are every creditor of the debtor of whose claim and address the person summoning the meeting is aware.~~

(1) This Article applies where it has been reported to the High Court under Article 230 or to the debtor's creditors under Article 230A that the debtor's creditors should consider the debtor's proposal.

(2) The nominee (or the nominee's replacement under Article 230(3) or 230A(4)) must seek a decision from the debtor's creditors as to whether they approve the proposed voluntary arrangement, unless in the case of a report to which Article 230 applies the High Court otherwise directs.

(2A) The decision is to be made by a creditors' decision procedure.

(2B) Notice of the creditors' decision procedure must be given to every creditor of the debtor of whose claim and address the nominee (or the nominee's replacement) is aware.

(3) For this purpose the creditors of a debtor who is an undischarged bankrupt include—

(a) every person who is a creditor of the bankrupt in respect of a bankruptcy debt, and

(b) every person who would be such a creditor if the bankruptcy had commenced on the day on which notice of the ~~meeting~~ creditors' decision procedure is given.

### *Consideration and implementation of debtor's proposal*

#### **232.— ~~Decisions of creditors' meeting~~ Approval of debtors proposal**

~~(1) A creditors' meeting summoned under Article 231 shall decide whether to approve the proposed voluntary arrangement.~~

(1) This Article applies where under Article 231 the debtor's creditors are asked to decide whether to approve the proposed voluntary arrangement.

(2) The ~~meeting~~ creditors may approve the proposed voluntary arrangement with or without modifications, but shall not ~~do so~~ approve it with modifications unless the debtor consents to each modification.

(3) Subject to paragraph (4), the modifications subject to which the proposed voluntary arrangement may be approved 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.

(4) The modifications mentioned in paragraph (3) shall not include any modification by virtue of which the proposal ceases to be a proposal under this Part].

(5) The ~~meeting~~ creditors shall not approve any proposal or modification which affects the right of a secured creditor of the debtor to enforce his security, except with the concurrence of the creditor concerned.

(6) Subject to paragraph (7), the ~~meeting~~ creditors shall not approve any proposal or modification under which—

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

(aa) any ordinary preferential debt of the debtor is to be paid otherwise than in priority to any secondary preferential debts that the debtor may have,

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

(c) a preferential creditor of the debtor is to be paid an amount in respect of a secondary

preferential debt that bears to that debt a smaller proportion than is borne to another secondary preferential debt by the amount that is to be paid in respect of that other debt or (d) if the debtor is a relevant financial institution (see Article 347A), any non-preferential debt is to be paid otherwise than in accordance with the rules in Article 300(3A) (reading references to the bankrupt as references to the debtor).

(7) The ~~meeting~~ **creditors** may approve a proposal or modification such as is mentioned in paragraph (6) with the concurrence of the creditor concerned.

~~(8) Subject to paragraphs (2) to (7), the meeting shall be conducted in accordance with the rules.~~

(9) In this Article "preferential debt", "ordinary preferential debt" and "secondary preferential debt" each has the meaning given by Article 346; and "preferential creditor" is to be construed accordingly.

### **233.— Report of decisions to High Court**

~~(1) After the conclusion in accordance with the rules of the meeting summoned under Article 231, the chairman of the meeting shall report the result of it to the High Court and, immediately after so reporting, shall give notice of the result of the meeting to such persons as may be prescribed.~~

**(1) When pursuant to Article 231 the debtor's creditors have decided whether to approve the debtor's proposal (with or without modifications), the nominee (or the nominee's replacement under Article 230(3) or 230A(4)) must—**

**(a) report the creditors' decision to the High Court, and**

**(b) immediately after so reporting, give notice of the creditors' decision to such persons as may be prescribed.**

**(2) If the report is that the ~~meeting has~~ **creditors have** declined (with or without modifications) to approve the debtor's proposal, the High Court may discharge any interim order which is in force in relation to the debtor.**

### **234.— Effect of approval**

**(1) This Article has effect where ~~the meeting summoned under Article 231 approves~~ **pursuant to Article 231 the debtor's creditors decide to approve** the proposed voluntary arrangement (with or without modifications).**

**(2) The approved arrangement—**

**(a) takes effect as if made by the debtor ~~at the meeting~~ **at the time the creditors decided to approve the proposal**, and**

**(b) binds every person who in accordance with the rules—**

**(i) was entitled to vote ~~at the meeting (whether or not he was present or represented at it)~~ **in the creditors' decision procedure by which the decision to approve the proposal was made**, or**

**(ii) would have been so entitled if he had had notice of ~~it~~ **that procedure**, as if he were a party to the arrangement.**

**[(2A) If—**

**(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of paragraph (2)(b)(ii) has not been paid, and**

**(b) the arrangement did not come to an end prematurely, the debtor shall at that time become liable to pay to that person the amount payable under the arrangement.**

**(3)**



(4) Any interim order in force in relation to the debtor immediately ~~preceding the expiration of the period of 28 days from~~ **before the end of the period of 28 days beginning with** the day on which the report with respect to the creditors' ~~meeting~~ **decision** was made to the High Court under Article 233 ceases to have effect at the end of that period.

(5) Paragraph (4) applies except to such extent as the High Court may direct for the purposes of any application under Article 236.

(6) Where proceedings on a bankruptcy petition have been stayed by an interim order which ceases to have effect under paragraph (4), that petition is deemed, unless the High Court otherwise orders, to have been dismissed.

### **235.— Additional effect on undischarged bankrupt**

(1) This Article applies where—

(a) ~~the creditors' meeting summoned under Article 231 approves~~ **pursuant to Article 231 the debtor's creditors decide to approve** the proposed voluntary arrangement (with or without modifications), and

(b) the debtor is an undischarged bankrupt.

(2) Where this Article applies the High Court shall annul the bankruptcy order on an application made—

(a) by the bankrupt, or

(b) where the bankrupt has not made an application within the prescribed period, by the official receiver.

(3) An application under paragraph (2) may not be made—

(a) during the period specified in Article 236(3)(a) during which ~~the decision of the creditors' meeting~~ **the creditors' decision** can be challenged by application under Article 236,

(b) while an application under that Article is pending, or

(c) while an appeal in respect of an application under that Article is pending or may be brought.

(4) Where this Article applies the Court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.

### **236.— Challenge of ~~meeting's~~ creditors decision**

(1) Subject to the following provisions of this Article, an application to the High Court may be made, by any of the persons specified in paragraph (2) on one or both of the following grounds, namely—

(a) that a voluntary arrangement approved by ~~a creditors' meeting summoned under a~~ **decision of the debtor's creditors pursuant to** Article 231 unfairly prejudices the interests of a creditor of the debtor;

(b) that there has been some material irregularity ~~at or in relation to such a meeting~~ **in relation to a creditors' decision procedure instigated under that Article.**

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

(a) the debtor;

(b) a person who—

(i) was entitled, in accordance with the rules, to vote ~~at the creditors' meeting~~ **in the creditors' decision procedure**, or

(ii) would have been so entitled if he had had notice of ~~it~~ **that procedure**,

(c) the nominee (or his replacement under Article[1 230(3), 230A(4)] or 232(3)); and

(d) if the debtor is an undischarged bankrupt, the trustee of his estate or the official receiver.

(3) An application under this Article shall not be made

(a) after ~~the expiration of 28 days from~~ the end of the period of 28 days beginning with the day on which the report of the creditors' ~~meeting~~ decision was made to the High Court under Article 233 or

(b) in the case of a person who was not given notice of the ~~creditor's meeting~~ creditors' decision procedure, after the end of the period of 28 days beginning with the day on which he became aware that ~~the meeting had taken place~~ a decision as to whether to approve the proposed voluntary arrangement had been made,

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

(4) Where on an application under this Article the High Court is satisfied as to either of the grounds mentioned in paragraph (1), it may do one or both of the following, namely—

(a) revoke or suspend any approval given by ~~the meeting~~ a decision of the debtor's creditors;

~~(b) give a direction to any person for the summoning of a further meeting of the debtor's creditors to consider any revised proposal the debtor may make or, in a case falling within paragraph (1)(b), to reconsider his original proposal.~~

(b) direct any person to seek a decision from the debtor's creditors (using a creditors' decision procedure) as to whether they approve—

(i) any revised proposal the debtor may make, or

(ii) in a case falling within paragraph (1)(b), the debtor's original proposal.

(5) Where at any time after giving a direction under paragraph (4)(b) ~~for the summoning of a meeting to consider~~ in relation to a revised proposal the High Court is satisfied that the debtor does not intend to submit such a proposal, the Court shall revoke the direction and revoke or suspend any approval given at the previous meeting previously given by the debtor's creditors.

(6) Where the High Court gives a direction under 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 in relation to the debtor of any interim order.

(7) In any case where the High Court, on an application made under this Article with respect to a creditors' ~~meeting~~ decision, gives a direction under paragraph (4)(b) or revokes or suspends an approval under paragraph (4)(a) or (5), the Court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—

(a) things done since the ~~meeting~~ decision under any voluntary arrangement approved by the ~~meeting~~,

and

(b) such things done since the ~~meeting~~ decision as could not have been done if an interim order had

been in force in relation to the debtor when they were done.

(8) Except in pursuance of the preceding provisions of this Article, ~~an approval given at a creditors' meeting summoned under Article 231 is not invalidated by any irregularity at or in relation to the meeting~~ the approval of a voluntary arrangement by a decision of the debtor's creditors pursuant to Article 231 is not invalidated by any irregularity in relation to the creditors' decision procedure by which the decision was made.

### **236A.— False representations etc.**

(1) If for the purpose of obtaining the approval of his creditors to a proposal for a voluntary arrangement, the debtor—

- (a) makes any false representation, or
  - (b) fraudulently does, or omits to do, anything,
- he shall be guilty of an offence.
- (2) Paragraph (1) applies even if the proposal is not approved.

### **236B.— Prosecution of delinquent debtors**

- (1) This Article applies where a voluntary arrangement approved by a ~~creditors' meeting summoned under~~ **decision of the debtor's creditors pursuant to** Article 231 has taken effect.
- (2) If it appears to the nominee or supervisor that the debtor has been guilty of any offence in connection with the arrangement for which he is criminally liable, he shall forthwith—
- (a) report the matter to the Department, and
  - (b) provide the Department with such information and give the Department such access to and facilities for inspecting and taking copies of documents (being information or documents in his possession or under his control and relating to the matter in question) as the Department requires.
- (3) Where the Director of Public Prosecutions for Northern Ireland institutes criminal proceedings following any report under paragraph (2), the nominee or, as the case may be, supervisor shall give the Director all assistance in connection with the prosecution which he is reasonably able to give.
- (4) The High Court may, on the application of the Director of Public Prosecutions for Northern Ireland, direct a nominee or supervisor to comply with paragraph (3) if he has failed to do so.

### **236C. Arrangements coming to an end prematurely**

For the purposes of this Part, a voluntary arrangement approved by a ~~creditors' meeting summoned~~ **decision of the debtor's creditors pursuant to** under Article 231 comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement by virtue of Article 234(2)(b)(i).

### **237.— Implementation and supervision of approved voluntary arrangement**

- (1) This Article applies where a voluntary arrangement approved by a ~~creditors' meeting summoned under~~ **decision of the debtor's creditors pursuant to** Article 231 has taken effect.
- (2) The person who is for the time being carrying out, in relation to the voluntary arrangement, the functions conferred by virtue of the approval on the nominee (or his replacement under Article 230(3), 230A(4) or 232(3)) shall be known as the supervisor of the voluntary arrangement.
- (3) If the debtor, any of his creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the High Court; and on such an application the 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.
- (4) The supervisor may apply to the High Court for directions in relation to any particular matter arising under the voluntary arrangement.
- (5) Without prejudice to section 40(2) of the Trustee Act (Northern Ireland) 1958 (power of court to appoint trustees), 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.

(6) The power conferred by paragraph (5) is exercisable so as to increase the number of persons exercising the functions of the supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

### ~~**Fast-track voluntary arrangement**~~

#### ~~**237A. Availability**~~

~~Article 237B applies where an individual debtor intends to make a proposal to his creditors for a voluntary arrangement and—~~

~~(a) the debtor is an undischarged bankrupt,~~

~~(b) the official receiver is specified in the proposal as the nominee in relation to the voluntary arrangement, and~~

~~(c) no interim order is applied for under Article 227.~~

#### ~~**237B.—Decision**~~

~~(1) The debtor may submit to the official receiver—~~

~~(a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and~~

~~(b) a statement of his affairs containing such particulars as may be prescribed of his creditors, debts, other liabilities and assets and such other information as may be prescribed.~~

~~(2) If the official receiver thinks that the voluntary arrangement proposed has a reasonable prospect of being approved and implemented, he may make arrangements for inviting creditors to decide whether to approve it.~~

~~(3) For the purposes of paragraph (2) a person is a “creditor” only if—~~

~~(a) he is a creditor of the debtor in respect of a bankruptcy debt, and~~

~~(b) the official receiver is aware of his claim and his address.~~

~~(4) Arrangements made under paragraph (2)—~~

~~(a) must include the provision to each creditor of a copy of the proposed voluntary arrangement,~~

~~(b) must include the provision to each creditor of information about the criteria by reference to which the official receiver will determine whether the creditors approve or reject the proposed voluntary arrangement, and~~

~~(c) may not include an opportunity for modifications to the proposed voluntary arrangement to be suggested or made.~~

~~(5) Where a debtor submits documents to the official receiver under paragraph (1) no application under Article 227 for an interim order may be made in respect of the debtor until the official receiver has—~~

~~(a) made arrangements as described in paragraph (2), or~~

~~(b) informed the debtor that he does not intend to make arrangements (whether because he does not think the voluntary arrangement has a reasonable prospect of being approved and implemented or because he declines to act).~~

#### ~~**237C. Result**~~

~~As soon as is reasonably practicable after the implementation of arrangements under Article 237B(2) the official receiver shall report to the High Court, and notify the Department, whether the proposed voluntary arrangement has been approved or rejected.~~

### ~~237D. Approval of voluntary arrangement~~

~~(1) This Article applies where the official receiver reports to the High Court under Article 237C that a proposed voluntary arrangement has been approved.~~

~~(2) The voluntary arrangement—~~

~~(a) takes effect,~~

~~(b) binds the debtor, and~~

~~(c) binds every person who was entitled to participate in the arrangements made under Article 237B(2).~~

~~(3) The High Court shall annul the bankruptcy order in respect of the debtor on an application made by the official receiver.~~

~~(4) An application under paragraph (3) may not be made—~~

~~(a) during the period specified in Article 237F(3) during which the voluntary arrangement can be challenged by application under Article 237F(2),~~

~~(b) while an application under that Article is pending, or~~

~~(c) while an appeal in respect of an application under that Article is pending or may be brought.~~

~~(5) The High Court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.~~

~~(6)~~

~~(7) A reference in this Order or another statutory provision to a voluntary arrangement approved under this Part includes a reference to a voluntary arrangement which has effect by virtue of this Article.~~

### ~~237E. Implementation~~

~~Article 237 shall apply to a voluntary arrangement which has effect by virtue of Article 237D(2) as it applies to a voluntary arrangement approved by a creditors' meeting.~~

### ~~237F. Revocation~~

~~(1) The High Court may make an order revoking a voluntary arrangement which has effect by virtue of Article 237D(2) on the ground—~~

~~(a) that it unfairly prejudices the interests of a creditor of the debtor, or~~

~~(b) that a material irregularity occurred in relation to the arrangements made under Article 237B(2).~~

~~(2) An order under paragraph (1) may be made only on the application of—~~

~~(a) the debtor,~~

~~(b) a person who was entitled to participate in the arrangements made under Article 237B(2),~~

~~(c) the trustee of the bankrupt's estate, or~~

~~(d) the official receiver.~~

~~(3) An application under paragraph (2) may not be made after the end of the period of 28 days beginning with the date on which the official receiver makes his report to the High Court under Article 237C.~~

~~(4) But a creditor who was not made aware of the arrangements under Article 237B(2) at the time when they were made may make an application under paragraph (2) during the period of 28 days beginning with the date on which he becomes aware of the voluntary arrangement.~~

### ~~237G. Offences~~

~~(1) Article 236A shall have effect in relation to obtaining approval to a proposal for a voluntary arrangement under Article 237D.~~

~~(2) Article 236B shall have effect in relation to a voluntary arrangement which has effect by virtue of Article 237D(2) (for which purposes the words “by a creditors’ meeting summoned under Article 231” shall be disregarded).~~

## PART IX

### BANKRUPTCY

#### CHAPTER I

##### BANKRUPTCY PETITIONS; BANKRUPTCY ORDERS

###### *Preliminary*

#### **238.— Who may present a bankruptcy petition**

(1) A petition for a bankruptcy order (a bankruptcy petition) to be made against an individual may be presented to the High Court in accordance with the following provisions of this Part—

- (a) by one of the individual's creditors or jointly by more than one of them,
- (b) by the individual himself,

[(ba)

(bb)

- (c) by the supervisor of, or any person (other than the individual) who is for the time being bound by, a voluntary arrangement proposed by the individual and approved under Part VIII

(d)

(2) Subject to those provisions, the High Court may make a bankruptcy order on any such petition.

#### **239.— Conditions to be satisfied in respect of debtor**

(1) A bankruptcy petition may be presented to the High Court under Article 238(1)(a) or (b) only if—

- (a) the centre of the debtor's main interests is in Northern Ireland,
- (b) the centre of the debtor's main interests is in a member State of the European Union other than Denmark and the debtor has an establishment in Northern Ireland, or
- (c) the test in paragraph (2) is met.

(2) The test is that—

- (a) the debtor is domiciled in Northern Ireland, or

~~(b) the debtor is personally present in Northern Ireland on the day on which the petition is presented, or~~

(c) at any time in the period of three years ending with the day on which the petition is presented, the debtor—

- (i) has been ordinarily resident, or has had a place of residence, in Northern Ireland,
- or

(ii) has carried on business in Northern Ireland.

(3) The reference in paragraph (2) to the debtor carrying on business includes—

- (a) the carrying on of business by a firm or partnership of which the debtor is a member,
- and

(b) the carrying on of business by an agent or manager for the debtor or for such a firm or partnership.

(4) In this Article—

- (a) references to the centre of the debtor's main interests have the same meaning as in Article 3 of the EU Regulation, and
- (b) “establishment” has the same meaning as in Article 2(10) of the EU Regulation.

#### **240.— Other preliminary conditions**

- (1) Where a bankruptcy petition relating to an individual is presented by a person who is entitled to present a petition under 2 or more sub paragraphs of Article 238(1), the petition is to be treated for the purposes of this Part as a petition under such one of those sub paragraphs as may be specified in the petition.
- (2) A bankruptcy petition shall not be withdrawn without the leave of the High Court.
- (3) The High Court may, if it appears to it appropriate to do so on the grounds that there has been a contravention of the rules or for any other reason, dismiss a bankruptcy petition or stay proceedings on such a petition; and, where it stays proceedings on a petition, it may do so on such terms and conditions as it thinks fit.

#### *Creditor's petition*

#### **241.— Grounds of creditor's petition**

- (1) A creditor's petition must be in respect of one or more debts owed by the debtor, and the petitioning creditor or each of the petitioning creditors must be a person to whom the debt or (as the case may be) at least one of the debts is owed.
- (2) Subject to Articles 242 to 244, a creditor's petition may be presented to the High Court in respect of a debt or debts only if, at the time the petition is presented—
  - (a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the bankruptcy level,
  - (b) the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain, future time, and is unsecured,
  - (c) the debt, or each of the debts, is a debt which the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay, and
  - (d) there is no outstanding application to set aside a statutory demand served (under Article 242) in respect of the debt or any of the debts.
- (3) "The bankruptcy level" is £5,000; but the Department may by order subject to affirmative resolution substitute any amount specified in the order for that amount or (as the case may be) for the amount which by virtue of such an order is for the time being the amount of the bankruptcy level.

#### **242.— Definition of "inability to pay", etc.; the statutory demand**

- (1) For the purposes of Article 241(2)(c), the debtor appears to be unable to pay a debt if, but only if, the debt is payable immediately and either—
  - (a) the petitioning creditor to whom the debt is owed has served on the debtor a written demand (known as "the statutory demand") in the prescribed form requiring him to pay the debt or to secure or compound for it to the satisfaction of the creditor, at least 3 weeks have elapsed since the demand was served and the demand has been neither complied with nor set aside in accordance with the rules; or
  - (b) a certificate of unenforceability has been granted under Article 19 of the Judgments Enforcement (Northern Ireland) Order 1981<sup>2</sup> in respect of the debt on a judgment or order of any court in favour of the petitioning creditor, or one or more of the petitioning creditors to whom the debt is owed.

(2) For the purposes of Article 241(2)(c) the debtor appears to have no reasonable prospect of being able to pay a debt if, but only if, the debt is not immediately payable and—

(a) the petitioning creditor to whom it is owed has served on the debtor a written demand (also known as "the statutory demand") in the prescribed form requiring him to establish to the satisfaction of the creditor that there is a reasonable prospect that the debtor will be able to pay the debt when it falls due,

(b) at least 3 weeks have elapsed since the demand was served, and

(c) the demand has been neither complied with nor set aside in accordance with the rules.

#### **243.— Creditor with security**

(1) A debt which is the debt, or one of the debts, in respect of which a creditor's petition is presented need not be unsecured if either—

(a) the petition contains a statement by the person having the right to enforce the security that he is willing, in the event of a bankruptcy order being made, to give up his security for the benefit of all the bankrupt's creditors, or

(b) the petition is expressed not to be made in respect of the secured part of the debt and contains a statement by that person of the estimated value at the date of the petition of the security for the secured part of the debt.

(2) In a case falling within paragraph (1)(b) the secured and unsecured parts of the debt are to be treated for the purposes of Articles 241 to 244 as separate debts.

#### **244. Expedited petition**

In the case of a creditor's petition presented wholly or partly in respect of a debt which is the subject of a statutory demand under Article 242, the petition may be presented before the expiration of the period of 3 weeks mentioned in that Article if there is a serious possibility that the debtor's property or the value of any of his property will be significantly diminished during that period and the petition contains a statement to that effect.

#### **245.— Proceedings on creditor's petition**

(1) The High Court shall not make a bankruptcy order on a creditor's petition unless it is satisfied that the debt, or one of the debts, in respect of which the petition was presented is either—

(a) a debt which, having been payable at the date of the petition or having since become payable, has been neither paid nor secured or compounded for, or

(b) a debt which the debtor has no reasonable prospect of being able to pay when it falls due.

(2) In a case in which the petition contains such a statement as is required by Article 244, the High Court shall not make a bankruptcy order within 3 weeks from the service of any statutory demand under Article 242.

(3) The High Court may dismiss the petition if it is satisfied that the debtor is able to pay all his debts or is satisfied—

(a) that the debtor has made an offer to secure or compound for a debt in respect of which the petition is presented,

(b) that the acceptance of that offer would have required the dismissal of the petition, and

(c) that the offer has been unreasonably refused;

and, in determining for the purposes of this paragraph whether the debtor is able to pay all his debts, the Court shall take into account his contingent and prospective liabilities.

(4) In determining for the purposes of this Article what constitutes a reasonable prospect that a debtor will be able to pay a debt when it falls due, it is to be assumed that the prospect given by the facts and other matters known to the creditor at the time he entered into the transaction resulting in the debt was a reasonable prospect.



(5) Nothing in Articles 241 to 244 and this Article prejudices the power of the High Court, in accordance with the rules, to authorise a creditor's petition to be amended by the omission of any creditor or debt and to be proceeded with as if things done for the purposes of those Articles and this Article had been done only by or in relation to the remaining creditors or debts.

### *Debtor's petition*

#### **246. Grounds of debtor's petition**

A joint debtor's petition in Form 8 in Schedule 3 to the Insolvent Partnerships Order (Northern Ireland) 1991 may be presented to the High Court by individual members only on the grounds that the partnership is unable to pay its debts.

#### **247.— Appointment of insolvency practitioner by the High Court**

(1) Subject to Article 248, on the hearing of a debtor's petition the High Court shall not make a bankruptcy order if it appears to the Court—

- (a) that if a bankruptcy order were made the aggregate amount of the bankruptcy debts, so far as unsecured, would be less than the small bankruptcies level,
- (b) that if a bankruptcy order were made, the value of the bankrupt's estate would be equal to or more than the minimum amount,
- (c) that within the 5 years immediately preceding the presentation of the petition the debtor has neither been adjudged bankrupt nor made a composition with his creditors in satisfaction of his debts or a scheme of arrangement of his affairs, and
- (d) that it would be appropriate to appoint a person to prepare a report under Article 248; and in this paragraph "the minimum amount" and "the small bankruptcies level" mean such amounts as may for the time being be specified by order under Article 362(1)(b).

(2) Where on the hearing of the petition it appears to the High Court as mentioned in paragraph (1), the Court shall appoint a person who is qualified to act as an insolvency practitioner in relation to the debtor—

- (a) to prepare a report under Article 248, and
- (b) subject to Article 232(3), to act in relation to any voluntary arrangement to which the report relates either as trustee or otherwise for the purpose of supervising its implementation.

#### **248.— Action on report of insolvency practitioner**

(1) A person appointed under Article 247 shall inquire into the debtor's affairs and, within such period as the High Court may direct, shall submit a report to the Court stating whether the debtor is willing, for the purposes of Part VIII, to make a proposal for a voluntary arrangement.

(2) A report which states that the debtor is willing as is mentioned in paragraph (1) shall also state—

- (a) whether, in the opinion of the person making the report, a meeting of the debtor's creditors should be summoned to consider the proposal, and
- (b) if in that person's opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.

(3) On considering a report under this Article the High Court may—

- (a) without any application, make an interim order under Article 226, if it thinks that it is appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal, or
- (b) if it thinks it would be inappropriate to make such an order, make a bankruptcy order.

(4) An interim order made by virtue of this Article ceases to have effect at the end of such period as the High Court may specify for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with the applicable provisions of Part VIII.

(5) Where it has been reported to the High Court under this Article that a meeting of the debtor's creditors should be summoned, the person making the report shall, unless the Court otherwise directs, summon that meeting for the time, date and place proposed in his report; and the meeting is then deemed to have been summoned under Article 231, and paragraphs (2) and (3) of that Article, and Articles 232 to 237 apply accordingly.

#### **248A.— Debtor who meets conditions for a debt relief order**

(1) This Article applies where, on the hearing of a debtor's petition —

(a) it appears to the High Court that a debt relief order would be made in relation to the debtor if, instead of presenting the petition, he had made an application under Part 7A; and  
(b) the Court does not appoint an insolvency practitioner under Article 247.

(2) If the High Court thinks it would be in the debtor's interests to apply for a debt relief order instead of proceeding on the petition, the Court may refer the debtor to an approved intermediary (within the meaning of Part 7A) for the purposes of making an application for a debt relief order.

(3) Where a reference is made under paragraph (2) the High Court shall stay proceedings on the petition on such terms and conditions as it thinks fit; but if following the reference a debt relief order is made in relation to the debtor the Court shall dismiss the petition.

#### **249.—**

Repealed

#### *Other cases for special consideration*

#### **250.— Default in connection with voluntary arrangement**

(1) The High Court shall not make a bankruptcy order on a petition under Article 238(1)(c) (supervisor of, or person bound by, voluntary arrangement proposed and approved) unless it is satisfied—

(a) that the debtor has failed to comply with his obligations under the voluntary arrangement, or

(b) that information which was false or misleading in any material particular or which contained material omissions—

(i) was contained in any statement of affairs or other document supplied by the debtor under Part VIII to any person, or

(ii) was otherwise made available by the debtor to his creditors ~~at or in connection with a meeting summoned~~ **in connection with a creditors' decision procedure instigated** under that Part, or

(c) that the debtor has failed to do all such things as may for the purposes of the voluntary arrangement have been reasonably required of him by the supervisor of the arrangement.

(2) Where a bankruptcy order is made on a petition under Article 238(1)(c), any costs properly incurred as costs of the administration of the voluntary arrangement in question shall be a first charge on the bankrupt's estate.

#### **251.—**

Repealed

#### *Commencement and duration of bankruptcy; discharge*

## **252. Commencement and continuance**

The bankruptcy of an individual against whom a bankruptcy order has been made—

- (a) commences with the day on which the order is made, and
- (b) continues until the individual is discharged under the following provisions of this Chapter.

## **253.— Duration**

(1) A bankrupt is discharged from bankruptcy at the end of the period of one year beginning with the date on which the bankruptcy commences.

(2)

(3) On the application of the official receiver or the trustee of a bankrupt's estate, the High Court may order that the period specified in paragraph (1) shall cease to run until—

- (a) the end of a specified period, or
- (b) the fulfilment of a specified condition.

(4) The High Court may make an order under paragraph (3) only if satisfied that the bankrupt has failed or is failing to comply with an obligation under this Part.

(5) In paragraph (3)(b) “condition” includes a condition requiring that the High Court be satisfied of something.

(6) This Article is without prejudice to any power of the High Court to annul a bankruptcy order.

(7) Nothing in this Article applies to a bankrupt who is a solicitor.

## **254.— Discharge where bankrupt is a solicitor**

(1) A bankrupt who is a solicitor is discharged from bankruptcy by an order of the High Court under this Article.

(1A) An application for an order under this Article may be made at any time.

(2) On an application under this Article the High Court may—

- (a) refuse to discharge the bankrupt from bankruptcy,
- (b) make an order discharging him absolutely, or
- (c) make an order discharging him subject to such conditions with respect to any income which may subsequently become due to him, or with respect to property devolving upon him, or acquired by him, after his discharge, as may be specified in the order.

(3) The High Court may provide for an order falling within paragraph (2)(b) or (c) to have immediate effect or to have its effect suspended 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.

## **255.— Effect of discharge**

(1) Subject to the following provisions of this Article, where a bankrupt is discharged, the discharge releases him from all the bankruptcy debts, but has no effect—

- (a) on the functions (so far as they remain to be carried out) of the trustee of his estate, or
- (b) on the operation, for the purposes of the carrying out of those functions, of the provisions of this Part;

and, in particular, discharge does not affect the right of any creditor of the bankrupt to prove in the bankruptcy for any debt from which the bankrupt is released.

(2) Discharge does not affect the right of any secured creditor of the bankrupt to enforce his security for the payment of a debt from which the bankrupt is released.

(3) Discharge does not release the bankrupt from any bankruptcy debt which he incurred in respect of, or forbearance in respect of which was secured by means of, any fraud or fraudulent breach of trust to which he was a party.

(4) Discharge does not release the bankrupt from any liability in respect of a fine imposed for an offence or from any liability under a recognisance except, in the case of a penalty imposed for an offence under a statutory provision relating to the public revenue or of a recognisance, with the consent of the Treasury.

(4A) In paragraph (4) the reference to a fine includes a reference to a confiscation order under Part 2, 3 or 4 of the Proceeds of Crime Act 2002.

(5) Discharge does not, except to such extent and on such conditions as the High Court may direct, release the bankrupt from any bankruptcy debt which—

(a) consists in a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, or to pay damages by virtue of Part II of the Consumer Protection (Northern Ireland) Order 1987, being in either case damages in respect of personal injuries to any person, or

(b) arises under any order made in family proceedings or in domestic proceedings or under a maintenance assessment made under the Child Support (Northern Ireland) Order 1991.

(6) Discharge does not release the bankrupt from such other bankruptcy debts, not being debts provable in his bankruptcy, as are prescribed.

(7) Discharge does not release any person other than the bankrupt from any liability (whether as partner or co-trustee of the bankrupt or otherwise) from which the bankrupt is released by the discharge, or from any liability as surety for the bankrupt or as a person in the nature of such a surety.

(8) In this Article—

"domestic proceedings" means domestic proceedings within the meaning of the Magistrates' Courts (Northern Ireland) Order 1981;

"family proceedings" has the meaning given by Article 12(5) of the Family Law (Northern Ireland) Order 1993;

"fine" includes any pecuniary penalty, pecuniary forfeiture or pecuniary compensation payable on a conviction; and

"personal injuries" includes death and any disease or other impairment of a person's physical or mental condition.

## **256.— Power of High Court to annul bankruptcy order**

(1) The High Court may annul a bankruptcy order if it at any time appears to the Court—

(a) that, on any grounds existing at the time the order was made, the order ought not to have been made, or

(b) that, to the extent required by the rules, the bankruptcy debts and the expenses of the bankruptcy have all, since the making of the order, been either paid or secured for to the satisfaction of the Court.

(2) The High Court may annul a bankruptcy order whether or not the bankrupt has been discharged from the bankruptcy.

(3)

(4) Where the High Court annuls a bankruptcy order (whether under this Article or under Article 235 ~~or 237D~~)—

(a) any sale or other disposition of property, payment made or other thing duly done, under any provision in Parts VIII to X, by or under the authority of the official receiver or a trustee of the bankrupt's estate or by the Court is valid, but

(b) if any of the bankrupt's estate is then vested, under any such provision, in such a trustee, it shall vest in such person as the Court may appoint or, in default of any such appointment, revert to the bankrupt on such terms (if any) as the Court may direct;

and the Court may include in its order such supplemental provisions as may be authorised by the rules.

### **255A. Post-discharge restrictions**

Schedule 2A (bankruptcy restrictions order and bankruptcy restrictions undertaking) shall have effect.

## **CHAPTER II**

### **PROTECTION OF BANKRUPT'S ESTATE AND INVESTIGATION OF HIS AFFAIRS**

#### **256A.— Bankrupt's home ceasing to form part of estate**

(1) This Article applies where property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

- (a) the bankrupt,
- (b) the bankrupt's spouse or civil partner, or
- © a former spouse or former civil partner of the bankrupt.

(2) At the end of the period of 3 years beginning with the date of the bankruptcy the interest mentioned in paragraph (1) shall—

- (a) cease to be comprised in the bankrupt's estate, and
  - (b) vest in the bankrupt (without conveyance, assignment or transfer).
- (3) Paragraph (2) shall not apply if during the period mentioned in that paragraph—
- (a) the trustee realises the interest mentioned in paragraph (1),
  - (b) the trustee applies for an order for sale in respect of the dwelling-house,
  - © the trustee applies for an order for possession of the dwelling-house,
  - (d) the trustee applies for an order under Article 286 in Chapter IV in respect of that interest,
- or

© the trustee and the bankrupt agree that the bankrupt shall incur a specified liability to his estate (with or without the addition of interest from the date of the agreement) in consideration of which the interest mentioned in paragraph (1) shall cease to form part of the estate.

(4) Where an application of a kind described in paragraph (3)(b) to (d) is made during the period mentioned in paragraph (2) and is dismissed, unless the High Court orders otherwise the interest to which the application relates shall on the dismissal of the application—

- (a) cease to be comprised in the bankrupt's estate, and
- (b) vest in the bankrupt (without conveyance, assignment or transfer).

(5) If the bankrupt does not inform the trustee or the official receiver of his interest in a property before the end of the period of 3 months beginning with the date of the bankruptcy, the period of 3 years mentioned in paragraph (2)—

- (a) shall not begin with the date of the bankruptcy, but
- (b) shall begin with the date on which the trustee or official receiver becomes aware of the bankrupt's interest.

(6) The High Court may substitute for the period of 3 years mentioned in paragraph (2) a longer period—

- (a) in prescribed circumstances, and
- (b) in such other circumstances as the Court thinks appropriate.

(7) The rules may make provision for this Article to have effect with the substitution of a shorter period for the period of 3 years mentioned in paragraph (2) in specified circumstances (which may be described by reference to action to be taken by a trustee in bankruptcy).

- (8) The rules may also, in particular, make provision—
- (a) requiring or enabling the trustee of a bankrupt's estate to give notice that this Article applies or does not apply;
  - (b) about the effect of a notice under sub-paragraph (a);
- © requiring the trustee of a bankrupt's estate to make an application to the Land Registry or the Registry of Deeds.
- (9) Rules under paragraph (8)(b) may, in particular—
- (a) disapply this Article;
  - (b) enable the High Court to disapply this Article;
- © make provision in consequence of a disapplication of this Article;
- (d) enable the Court to make provision in consequence of a disapplication of this Article;
- © make provision (which may include provision conferring jurisdiction on a court or tribunal) about compensation.

### **257.— Restrictions on dispositions of property**

- (1) Where a person is adjudged bankrupt, any disposition of property made by that person in the period to which this Article applies is void except to the extent that it is or was made with the consent of the High Court, or is or was subsequently ratified by the Court.
- (2) Paragraph (1) applies to a payment (whether in cash or otherwise) as it applies to a disposition of property and, accordingly, where any payment is void by virtue of that paragraph, the person paid shall hold the sum paid for the bankrupt as part of his estate.
- (3) This Article applies to the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting, under Articles 278 to 308, of the bankrupt's estate in a trustee.
- (4) The preceding provisions of this Article do not give a remedy against any person—
- (a) in respect of any property or payment which he received before the commencement of the bankruptcy in good faith, for value and without notice that the petition had been presented,
- or
- (b) in respect of any interest in property which derives from an interest in respect of which there is, by virtue of this paragraph, no remedy.
- (5) Where after the commencement of his bankruptcy the bankrupt has incurred a debt to a banker or other person by reason of the making of a payment which is void under this Article, that debt is deemed for the purposes of any of Parts VIII to X to have been incurred before the commencement of the bankruptcy unless—
- (a) that banker or person had notice of the bankruptcy before the debt was incurred, or
  - (b) it is not reasonably practicable for the amount of the payment to be recovered from the person to whom it was made.
- (6) A disposition of property is void under this Article notwithstanding that the property is not or, as the case may be, would not be comprised in the bankrupt's estate; but nothing in this Article affects any disposition made by a person of property held by him on trust for any other person.

### **258.— Restriction on proceedings and remedies**

- (1) At any time when proceedings on a bankruptcy petition are pending or an individual has been adjudged bankrupt the High Court may stay any action, proceedings, execution or other legal process against the property or person of the debtor or, as the case may be, of the bankrupt.
- (2) Any court in which proceedings are pending against any individual may, on proof that a

bankruptcy petition has been presented in respect of that individual or that he is an undischarged bankrupt, either stay the proceedings or allow them to continue on such terms as it thinks fit.

(3) Subject to paragraph (4) and to Part VI of the Judgments Enforcement (Northern Ireland) Order 1981 after the making of a bankruptcy order no person who is a creditor of the bankrupt in respect of a debt provable in the bankruptcy shall—

(a) have any remedy against the property or person of the bankrupt in respect of that debt, or

(b) before the discharge of the bankrupt, commence any action or other legal proceedings against the bankrupt except with the leave of the High Court and on such terms as the Court may impose.

(4) Nothing in Parts VIII to X affects any right of distress against property comprised in a bankrupt's estate and such right is exercisable notwithstanding that the property has vested in the trustee.

(5) Subject to paragraphs (6) and (7), paragraph (3) does not affect the right of a secured creditor of the bankrupt to enforce his security.

(6) Where any goods of an undischarged bankrupt are held by any person by way of pledge, pawn or other security, the official receiver may, after giving notice in writing of his intention to do so, inspect the goods.

(7) Where a notice such as is mentioned in paragraph (6) has been given to any person, that person is not entitled, without leave of the High Court, to realise his security unless he has given the trustee of the bankrupt's estate a reasonable opportunity of inspecting the goods and of exercising the bankrupt's right of redemption.

(8) References in this Article to the property or goods of the bankrupt are to any of his property or goods, whether or not comprised in his estate.

### **259.— Power to appoint interim receiver**

(1) The High Court may, if it is shown to be necessary for the protection of the debtor's property, at any time after the presentation of a bankruptcy petition and before making a bankruptcy order, appoint the official receiver **or an insolvency practitioner** to be interim receiver of the debtor's property.

(2) Where the High Court has, on a debtor's petition, appointed an insolvency practitioner under Article 247 and it is shown to the Court as mentioned in paragraph (1) of this Article, the Court may, without making a bankruptcy order, appoint that practitioner, ~~instead of the official receiver,~~ **another insolvency practitioner or the official receiver** to be interim receiver of the debtor's property.

(3) The High Court may by an order appointing any person to be an interim receiver direct that his powers shall be limited or restricted in any respect; but, save as so directed, an interim receiver has, in relation to the debtor's property, all the rights, powers, duties and immunities ~~of a receiver and manager under~~ **given by** Article 260.

(4) An order of the High Court appointing any person to be an interim receiver shall require that person to take immediate possession of the debtor's property or, as the case may be, the part of it to which his powers as interim receiver are limited.

(5) Where an interim receiver has been appointed, the debtor shall give him such inventory of his property and such other information, and shall attend on the interim receiver at such times, as the latter may for the purpose of carrying out his functions under this Article reasonably require.

(6) Where an interim receiver is appointed, Article 258(3) applies for the period between the appointment and the making of a bankruptcy order on the petition, or the dismissal of the petition, as if the appointment were the making of such an order.

(7) A person ceases to be interim receiver of a debtor's property if the bankruptcy petition relating to the debtor is dismissed, if a bankruptcy order is made on the petition or if the High Court by order otherwise terminates the appointment.

(8) References in this Article to the debtor's property are to all his property, whether or not it would be comprised in his estate if he were adjudged bankrupt.

**260.— ~~Receivership pending appointment of trustee~~ Powers of interim receiver**

~~(1) Between the making of a bankruptcy order and the time at which the bankrupt's estate vests in a trustee under Articles 278 to 308, the official receiver~~ **An interim receiver appointed under Article 259** is the receiver and (subject to Article 341 (special manager)) the manager of the ~~bankrupt's estate~~ **debtor's property** and is under a duty to act as such.

(2) The function of ~~the official~~ **an interim** receiver while acting as receiver or manager of the ~~bankrupt's estate~~ **debtor's property** under this Article is to protect ~~the estate~~ **the property**; and for this purpose—

(a) he has the same powers as if he were a receiver or manager appointed by the High Court, and

(b) he is entitled to sell or otherwise dispose of any perishable goods comprised in ~~the estate~~ **the property** and any other goods so comprised the value of which is likely to diminish if they are not disposed of.

(3) ~~The official~~ **An interim** receiver while acting as receiver or manager ~~of the estate~~ **of the debtor's property** under this Article—

(a) shall take all such steps as he thinks fit for protecting ~~any property which may be claimed for the estate by the trustee of that estate,~~ **the debtor's property,**

~~(b) is not, except in pursuance of directions given by the Department, required to do anything that involves his incurring expenditure;~~

**(b) is not required to do anything that involves his incurring expenditure, except in pursuance of directions given by—**

**(i) the Department, where the official receiver is the interim receiver, or**

**(ii) the High Court, in any other case,**

© may, if he thinks fit (and shall, if so directed by the High Court) at any time ~~summon a general meeting of~~ **seek a decision on a matter from** the ~~bankrupt's~~ **debtor's** creditors.

(4) Where—

~~(a) the official receiver acting as receiver or manager of the estate under this Article seizes or disposes of any property which is not comprised in the estate, and~~

**(a) an interim receiver acting as receiver or manager of the debtor's property under this Article seizes or disposes of any property which is not the debtor's property, and**

(b) at the time of the seizure or disposal the ~~official~~ **interim** receiver believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the High Court or otherwise) to seize or dispose of that property, the ~~official~~ **interim** receiver is not to be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by his negligence; and he has a lien on the property, or the proceeds of its sale, for such of the expenses of the ~~bankruptcy~~ **interim receivership** as were incurred in connection with the seizure or disposal.

~~(5) This Article does not apply where by virtue of Article 270 (appointment of trustee; special cases) the bankrupt's estate vests in a trustee immediately on the making of the bankruptcy order.~~



## **261.— Statement of affairs**

~~(1) Where a bankruptcy order has been made otherwise than on a debtor's petition, the bankrupt shall submit a statement of his affairs to the official receiver within 21 days from the commencement of the bankruptcy.~~

(1) Where a bankruptcy order has been made otherwise than on a debtor's petition, the official receiver may at any time before the discharge of the bankrupt require the bankrupt to submit to the official receiver a statement of affairs.

(2) The statement of affairs shall contain—

(a) such particulars of the bankrupt's creditors and of his debts and other liabilities and of his assets as may be prescribed, and

(b) such other information as may be prescribed.

(2A) Where a bankrupt is required under paragraph (1) to submit a statement of affairs to the official receiver, the bankrupt must do so (subject to paragraph (3)) before the end of the period of 21 days beginning with the day after the day on which the prescribed notice of the requirement is given to the bankrupt by the official receiver.

(3) The official receiver may, if he thinks fit—

~~(a) release the bankrupt from his duty under paragraph (1), or~~

~~(b) extend the period specified in paragraph (1);~~

(a) release a bankrupt from an obligation imposed on the bankrupt under paragraph (1), or

(b) either when giving the notice mentioned in paragraph (2A) or subsequently, extend the period mentioned in that paragraph,

and where the official receiver has refused to exercise a power conferred by this Article, the High Court, if it thinks fit, may exercise it.

(4) A bankrupt who—

(a) without reasonable excuse fails to comply with ~~the obligation imposed by~~ an obligation imposed under this Article,

or

(b) without reasonable excuse submits a statement of affairs that does not comply with the prescribed requirements,

is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

## **262.— Investigatory duties of official receiver**

(1) The official receiver shall—

(a) investigate the conduct and affairs of each bankrupt (including his conduct and affairs before the making of the bankruptcy order), and

(b) make such report (if any) to the High Court as the official receiver thinks fit.

(2) Paragraph (1) shall not apply to a case in which the official receiver thinks an investigation under that paragraph unnecessary.

(3) Where a bankrupt makes an application for discharge under Article 254—

(a) the official receiver shall make a report to the Court about such matters as may be prescribed, and

(b) the Court shall consider the report before determining the application.

(4) A report by the official receiver under this Article shall in any proceedings be prima facie evidence of the facts stated in it.

## **263.— Public examination of bankrupt**

(1) Where a bankruptcy order has been made, the official receiver may at any time before the

discharge of the bankrupt apply to the High Court for the public examination of the bankrupt.

(2) Unless the High Court otherwise orders, the official receiver shall make an application under paragraph (1) if notice requiring him to do so is given to him, in accordance with the rules, by one of the bankrupt's creditors with the concurrence of not less than one-half, in value, of those creditors (including the creditor giving notice).

(3) On an application under paragraph (1), the High Court shall direct that a public examination of the bankrupt shall be held on a day appointed by the Court; and the bankrupt shall attend on that day and be publicly examined as to his affairs, dealings and property.

(4) The following may take part in the public examination of the bankrupt and may question him concerning his affairs, dealings and property and the causes of his failure, namely—

(a) the official receiver,

(b) the trustee of the bankrupt's estate, if his appointment has taken effect,

© any person who has been appointed as special manager of the bankrupt's estate or business,

(d) any creditor of the bankrupt who has tendered a proof in the bankruptcy.

(5) If a bankrupt without reasonable excuse fails at any time to attend his public examination under this Article he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

## **264.— Duties of bankrupt in relation to official receiver**

~~(1) Where a bankruptcy order has been made, the bankrupt is under a duty—~~

~~(a) to deliver possession of his estate to the official receiver, and~~

~~(b) to deliver up to the official receiver all books, papers and other records of which he has possession or control and which relate to his estate and affairs (including any which would be privileged from disclosure in any proceedings);~~

~~(2) In the case of any part of the bankrupt's estate which consists of things possession of which cannot be delivered to the official receiver, and in the case of any property that may be claimed for the bankrupt's estate by the trustee, it is the bankrupt's duty to do all such things as may reasonably be required by the official receiver for the protection of those things or that property.~~

~~(3) Paragraphs (1) and (2) do not apply where by virtue of Article 270 the bankrupt's estate vests in a trustee immediately on the making of the bankruptcy order.~~

(4) The bankrupt shall give the official receiver such inventory of his estate and such other information, and shall attend on the official receiver at such times, as the official receiver may reasonably require—

(a) for a purpose of this Chapter, or

(b) in connection with the making of a bankruptcy restrictions order.

(5) Paragraph (4) applies to a bankrupt after his discharge.

(6) If the bankrupt without reasonable excuse fails to comply with any obligation imposed by this Article, he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

## **CHAPTER III**

### **TRUSTEES IN BANKRUPTCY**

#### *Tenure of office as trustee*

#### **First trustee in bankruptcy**

264A.—(1) On the making of a bankruptcy order the official receiver becomes trustee of the bankrupt's estate, unless the High Court appoints another person under paragraph (2) or (3).

(2) If an insolvency practitioner's report has been submitted to the High Court under Article 248, the Court may on making the order appoint the person who made the report as trustee.

(3) If when the order is made there is a supervisor of a voluntary arrangement approved in relation to the bankrupt under Chapter 2 of Part 8, the High Court may on making the order appoint the supervisor of the arrangement as the trustee.

(4) Where a person becomes trustee of a bankrupt's estate under this Article, the person must give notice of that fact to the bankrupt's creditors (or, if the High Court so allows, advertise it in accordance with the Court's directions).

(5) A notice or advertisement given by a trustee appointed under paragraph (2) or (3) must explain the procedure for establishing a creditors' committee under Article 274.

## **265.— ~~Power to make appointments~~ Appointment of trustees: general provision**

~~(1) The power to appoint a person as trustee of a bankrupt's estate (whether the first such trustee or a trustee appointed to fill any vacancy) is exercisable—~~

~~(a) by a general meeting of the bankrupt's creditors;~~

~~(b) under Articles 268(2), 269(2) or 273(6) by the Department; or~~

~~(c) under Article 270, by the High Court.~~

(1) This Article applies to any appointment of a person (other than the official receiver) as trustee of a bankrupt's estate.

(2) No person may be appointed as trustee of a bankrupt's estate unless he is, at the time of the appointment, qualified to act as an insolvency practitioner in relation to the bankrupt.

(3) Any power to appoint a person as trustee of a bankrupt's estate includes power to appoint 2 or more persons as joint trustees; but such an appointment must make provision as to the circumstances in which the trustees must act together and the circumstances in which one or more of them may act for the others.

(4) Subject to paragraph (5), the appointment of any person as trustee takes effect at the time specified in his certificate of appointment.

(5) The appointment of any person as trustee takes effect only if that person accepts the appointment in accordance with the rules.

~~(6) This Article is without prejudice to the provisions of this Chapter under which the official receiver is, in certain circumstances, to be trustee of the estate.~~

## **266.— ~~Summoning of meeting to appoint first trustee~~**

~~(1) Subject to Articles 267(3) and 270(5), where a bankruptcy order has been made, the official receiver shall, as soon as practicable within the 12 weeks from the day on which the order was made, decide whether to summon a general meeting of the bankrupt's creditors for the purpose of appointing a trustee of the bankrupt's estate.~~

~~(2) Subject to Article 267, if the official receiver decides not to summon such a meeting, he shall, before the expiration of the period of 12 weeks mentioned in paragraph (1), give notice of his decision to the High Court and to every creditor of the bankrupt who is known to the official receiver or is identified in the bankrupt's statement of affairs.~~

~~(3) As from the giving to the High Court of a notice under paragraph (2), the official receiver is the trustee of the bankrupt's estate.~~

**~~267.— Power of creditors to requisition meeting~~**

~~(1) Where in the case of any bankruptcy—~~

~~(a) the official receiver has not yet summoned, or has decided not to summon, a general meeting of the bankrupt's creditors for the purpose of appointing the trustee,~~

~~(b)~~

~~any creditor of the bankrupt may request the official receiver to summon such a meeting for that purpose.~~

~~(2) If such a request appears to the official receiver to be made with the concurrence of not less than one quarter, in value, of the bankrupt's creditors (including the creditor making the request),~~

~~the official receiver shall summon the requested meeting.~~

~~(3) Accordingly, where the duty imposed by paragraph (2) has arisen, the official receiver is required neither to reach a decision for the purposes of Article 266(1) nor (if he has reached one) to serve any notice under Article 266(2).~~

**~~268.— Failure of meeting to appoint trustee~~**

~~(1) If a meeting summoned under Article 266 or 267 is held but no appointment of a person as trustee is made, the official receiver shall decide whether to refer the need for an appointment to the Department.~~

~~(2) On a reference made in pursuance of that decision, the Department shall either make an appointment or decline to make one.~~

~~(3) If—~~

~~(a) the official receiver decides not to refer the need for an appointment to the Department,~~  
~~or~~

~~(b) on such a reference the Department declines to make an appointment,~~  
~~the official receiver shall give notice of his decision or, as the case may be, of the Department's decision to the High Court.~~

~~(4) As from the giving of notice under paragraph (3) in a case in which no notice has been given under Article 266(2), the official receiver shall be trustee of the bankrupt's estate.~~

**269.— Appointment of trustee by Department**

(1) At any time when the official receiver is the trustee of a bankrupt's estate by virtue of any provision of this Chapter he may apply to the Department for the appointment of a person as trustee instead of the official receiver.

(2) On an application under paragraph (1) the Department shall either make an appointment or decline to make one.

(3) Such an application may be made notwithstanding that the Department has declined to make an appointment either on a previous application under paragraph (1) or on a reference ~~under Article 268 or~~ under Article 273(4).

(4) Where the trustee of a bankrupt's estate has been appointed by the Department (whether under this Article or otherwise), the trustee shall give notice to the bankrupt's creditors of his appointment or, if the High Court so allows, shall advertise his appointment in accordance with the Court's directions.

(5) In that notice or advertisement the trustee shall—

~~(a) state whether he proposes to summon a general meeting of the bankrupt's creditors for the purpose of establishing a creditors' committee under Article 274, and~~

~~(b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.~~ explain the procedure for establishing a creditors' committee under Article 274.

## **270.— Special cases**

(1)

(2)

~~(3) Where a bankruptcy order is made in a case in which an insolvency practitioner's report has been submitted to the High Court under Article 248, the Court, if it thinks fit, may on making the order appoint the person who made the report as trustee.~~

~~(4) Where a bankruptcy order is made (whether or not on a petition under Article 238(1)(c)) at a time when there is a supervisor of a voluntary arrangement approved in relation to the bankrupt under Part VIII, the High Court, if it thinks fit, may on making the order appoint the supervisor of the arrangement as trustee.~~

~~(5) Where an appointment is made under paragraph (3) or (4), the official receiver is not under the duty imposed by Article 266(1) (to decide whether or not to summon a meeting of creditors).~~

~~(6) Where the trustee of a bankrupt's estate has been appointed by the High Court, the trustee shall give notice to the bankrupt's creditors of his appointment or, if the Court so allows, shall advertise his appointment in accordance with the directions of the Court.~~

~~(7) In that notice or advertisement he shall—~~

~~(a) state whether he proposes to summon a general meeting of the bankrupt's creditors for the purpose of establishing a creditors' committee under Article 274, and~~

~~(b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.~~

## **271.— Removal of trustee; vacation of office**

(1) Subject to paragraph (4), the trustee of a bankrupt's estate may be removed from office only by an order of the High Court or by a ~~general meeting of the bankrupt's creditors summoned~~ **decision of the bankrupt's creditors made by a creditors' decision procedure instigated** specially for that purpose in accordance with the rules.

(2)

(3) Where the official receiver is trustee by virtue of ~~Article 266(3) or 268(4)~~ **Article 264A(1)** or a trustee is appointed by the Department or (otherwise than under ~~Article 270(4)~~ **Article 264A(3)**) by the High Court, a ~~general meeting of the bankrupt's creditors shall be summoned~~ **creditors' decision procedure may be instigated** for the purpose of ~~replacing~~ **removing** the trustee only if—

(a) the trustee thinks fit, or

(b) the High Court so directs, or

(c) ~~the meeting is requested by one of the bankrupt's creditors~~ **so requests** with the concurrence of not less than one-quarter, in value, of the creditors (including the creditor making the request).

**(3A) Where the bankrupt's creditors decide to remove a trustee, they may in accordance with the rules appoint another person as trustee in his place.**

**(3B) Where the decision to remove a trustee is made under paragraph (3), the decision does not take effect until the bankrupt's creditors appoint another person as trustee in his place.**

(4) If the trustee was appointed by the Department, he may be removed by a direction of the Department.

(5) The trustee (not being the official receiver) shall vacate office if he ceases to be a person who is for the time being qualified to act as an insolvency practitioner in relation to the bankrupt.

(6) The trustee may, in the prescribed circumstances, resign his office by giving notice of his

resignation to the High Court.

(7) The trustee shall vacate office on giving notice to the High Court that ~~a final meeting has been held under Article 304 and of the decision (if any) of that meeting;~~ the trustee has given notice under Article 304(2).

(7A) A notice under paragraph (7)—

(a) must not be given before the end of the period prescribed by the rules as the period within which the bankrupt's creditors may object to the trustee's release, and

(b) must state whether any of the bankrupt's creditors objected to the trustee's release.

(8) The trustee shall vacate office if the bankruptcy order is annulled.

## **272.— Release of trustee**

(1) Where the official receiver has ceased to be the trustee of a bankrupt's estate and a person is appointed in his stead, the official receiver shall have his release with effect from the following time, that is to say—

(a) where that person is appointed by ~~a general meeting of~~ the bankrupt's creditors or by the Department, the time at which the official receiver gives notice to the High Court that he has been replaced, and

(b) where that person is appointed by the High Court, such time as the Court may determine.

(2) If the official receiver while he is the trustee gives notice to the Department that the administration of the bankrupt's estate in accordance with Chapter IV is for practical purposes complete, he shall have his release with effect from such time as the Department may determine.

~~(3) A person other than the official receiver who has ceased to be the trustee shall have his release with effect from the following time, that is to say—~~

~~(a) in the case of a person who has been removed from office by a general meeting of the bankrupt's creditors that has not resolved against his release or who has died, the time at which notice is given to the High Court in accordance with the rules that that person has ceased to hold office;~~

~~(b) in the case of a person who has been removed from office by a general meeting of the bankrupt's creditors that has resolved against his release, or by the High Court, or by the Department, or who has vacated office under Article 271(5), such time as the Department may, on an application by that person, determine;~~

~~(c) in the case of a person who has resigned, such time as may be prescribed;~~

~~(d) in the case of a person who has vacated office under Article 271(7)—~~

~~(i) if the final meeting referred to in that paragraph has resolved against that person's release, such time as the Department may, on an application by that person, determine; and~~

~~(ii) if that meeting has not so resolved, the time at which the person vacated office.~~

(3) A person other than the official receiver who has ceased to be the trustee has his release in accordance with paragraphs (3A) to (3F).

(3A) Where the person has been removed from office by a decision of the bankrupt's creditors—

(a) if the creditors have decided against his release, the person has his release with effect from such time as the Department may, on an application by the person, determine, or

(b) if the creditors have not decided against his release, the person has his release with effect from the time at which notice is given to the High Court in accordance with the rules that the person has ceased to hold office.

(3B) Where the person has died, the person has his release with effect from the time at which notice is given to the High Court in accordance with the rules that the person has ceased to hold office.

(3C) Where the person has been removed from office by the High Court or by the Department, the person has his release with effect from such time as the Department may, on an application by the person, determine.

(3D) Where the person has vacated office under Article 271(5), the person has his release with effect from such time as the Department may, on an application by the person, determine.

(3E) Where the person has resigned, the person has his release with effect from such time as may be prescribed.

(3F) Where the person has vacated office under Article 271(7)—

(a) if any of the bankrupt's creditors objected to the person's release before the end of the period for so objecting prescribed by the rules, the person has his release with effect from such time as the Department may, on an application by that person, determine;

(b) otherwise, the person has his release with effect from the time at which the person vacated office.

(3G) Where the person is removed from office by a decision of the bankrupt's creditors, any decision of the bankrupt's creditors as to whether the person should have his release must be made by a creditors' decision procedure.

(4) Where a bankruptcy order is annulled, the trustee at the time of the annulment has his release with effect from such time as the High Court may determine.

(5) Where the official receiver or the trustee has his release under this Article, he shall, with effect from the time specified in paragraphs (1) to (4), be discharged from all liability both in respect of acts or omissions of his in the administration of the estate and otherwise in relation to his conduct as trustee.

(6) Nothing in this Article prevents the exercise, in relation to a person who has had his release under this Article, of the High Court's powers under Article 277.

### **273.— Vacancy in office of trustee**

(1) This Article applies where the appointment of any person as trustee of a bankrupt's estate fails to take effect or, such an appointment having taken effect, there is otherwise a vacancy in the office of trustee.

(2) The official receiver shall be trustee until the vacancy is filled.

~~(3) The official receiver may summon a general meeting of the bankrupt's creditors for the purpose of filling the vacancy and shall summon such a meeting if required to do so in pursuance of Article 287(9) (creditors' requisition).~~

(3) The official receiver may ask the bankrupt's creditors to appoint a person as trustee, and must do so if so requested by not less than one tenth in value of the bankrupt's creditors.

(3A) If the official receiver makes such a request, the bankrupt's creditors may in accordance with the rules appoint a person as trustee.

(4) If at the expiration of 28 days from the day on which the vacancy first came to the official receiver's attention he has not ~~summoned, and is not proposing to summon, a general meeting of creditors for the purpose of filling the vacancy~~ asked, and is not proposing to ask, the bankrupt's creditors to appoint a person as trustee, he shall refer the need for an appointment to the Department.

(5)



(6) On a reference to the Department under paragraph (4) the Department shall either make an appointment or decline to make one.

(7) If on a reference under paragraph (4) no appointment is made, the official receiver shall continue to be trustee of the bankrupt's estate, but without prejudice to his power to make a further reference.

(8) References in this Article to a vacancy include a case where it is necessary, in relation to any property which is or may be comprised in a bankrupt's estate, to revive the trusteeship of that estate after ~~the holding of a final meeting summoned under Article 304~~ **the vacation of office by the trustee under Article 271(7)** or the giving by the official receiver of notice under Article 272(2).

### *Control of trustee*

#### **274.— Creditors' committee**

(1) Subject to paragraph (2), ~~a general meeting of a bankrupt's creditors (whether summoned under the preceding provisions of this Chapter or otherwise)~~ **a bankrupt's creditors** may, in accordance with the rules, establish a committee ("the creditors' committee") to exercise the functions conferred on it by or under this Order.

(2) ~~A general meeting of the bankrupt's creditors~~ **The bankrupt's creditors** shall not establish such a committee, or confer any functions on such a committee, at any time when the official receiver is the trustee of the bankrupt's estate, except in connection with ~~an appointment made by that meeting~~ **the appointment** of a person to be trustee instead of the official receiver.

#### **275.— Exercise by Department of functions of creditors' committee**

(1) The creditors' committee is not to be able or required to carry out its functions at any time when the official receiver is trustee of the bankrupt's estate; but at any such time the functions of the committee under this Order shall be vested in the Department, except to the extent that the rules otherwise provide.

(2) Where in the case of any bankruptcy there is for the time being no creditors' committee and the trustee of the bankrupt's estate is a person other than the official receiver, the functions of such a committee shall be vested in the Department, except to the extent that the rules otherwise provide.

#### **276.— General control of trustee by the High Court**

(1) If a bankrupt or any of his creditors or any other person is dissatisfied by any act, omission or decision of a trustee of the bankrupt's estate, he may apply to the High Court; and on such an application the Court may confirm, reverse or modify any act or decision of the trustee, may give him directions or may make such other order as it thinks fit.

(2) The trustee of a bankrupt's estate may apply to the High Court for directions in relation to any particular matter arising under the bankruptcy.

(2A) Where at any time after a bankruptcy petition has been presented to the High Court against any person, whether under the provisions of the Insolvent Partnerships Order (Northern Ireland) 1995 or not, the attention of the Court is drawn to the fact that the person in question is a member of an insolvent partnership, the Court may make an order as to the future conduct of the insolvency proceedings and any such order may apply any provisions of that Order with any necessary modifications.

(2B) Where a bankruptcy petition has been presented against more than one individual in the circumstances mentioned in paragraph (2A), the High Court may give such directions for consolidating the proceedings, or any of them, as it thinks just.



(2C) Any order or directions under paragraph (2A) or (2B) may be made or given on the application of the official receiver, any responsible insolvency practitioner, the trustee of the partnership, or any other interested person and may include provisions as to the administration of the joint estate of the partnership, and in particular how it and the separate estate of any member are to be administered.

#### **277.— Liability of trustee**

(1) Where on an application under this Article the High Court is satisfied—

(a) that the trustee of a bankrupt's estate has misapplied or retained, or become accountable for, any money or other property comprised in the bankrupt's estate, or

(b) that a bankrupt's estate has suffered any loss in consequence of any misfeasance or breach of fiduciary or other duty by a trustee of the estate in the carrying out of his functions, the Court may order the trustee, for the benefit of the estate, to repay, restore or account for money or other property (together with interest at such rate as the Court thinks just) or, as the case may require, to pay such sum by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the Court thinks just.

(2) Paragraph (1) is without prejudice to any liability arising apart from this Article.

(3) An application under this Article may be made by the official receiver, the Department, a creditor of the bankrupt or (whether or not there is, or is likely to be, a surplus for the purposes of Article 303(5) (final distribution)) the bankrupt himself.

(4) Where an application under paragraph (3) is to be made by the bankrupt or if it is to be made after the trustee has had his release under Article 272, the leave of the High Court is required for the making of the application.

(5) Where—

(a) the trustee seizes or disposes of any property which is not comprised in the bankrupt's estate, and

(b) at the time of the seizure or disposal the trustee believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the High Court or otherwise) to seize or dispose of that property, the trustee is not liable to any person (whether under this Article or otherwise) in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the negligence of the trustee; and he has a lien on the property, or the proceeds of its sale, for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

## **CHAPTER IV**

### **ADMINISTRATION BY TRUSTEE**

#### *Preliminary*

#### **278.— General functions of trustee**

(1) This Chapter applies in relation to any bankruptcy where either—

(a) the appointment of a person as trustee of a bankrupt's estate takes effect, or

(b) the official receiver becomes trustee of a bankrupt's estate.

(2) The function of the trustee is to get in, realise and distribute the bankrupt's estate in accordance with the following provisions of this Chapter; and in the carrying out of that function and in the management of the bankrupt's estate the trustee is entitled, subject to those provisions, to use his own discretion.

(3) It is the duty of the trustee, if he is not the official receiver—

(a) to furnish the official receiver with such information,

- (b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records, and
- (c) to give the official receiver such other assistance, as the official receiver may reasonably require for the purpose of enabling him to carry out his functions in relation to the bankruptcy.
- (4) The official name of the trustee shall be "the trustee of the estate of a bankrupt" (inserting the name of the bankrupt); but he may be referred to as "the trustee in bankruptcy" of the particular bankrupt.

### *Acquisition, control and realisation of bankrupt's estate*

#### **279.— Vesting of bankrupt's estate in trustee**

- (1) The bankrupt's estate shall vest in the trustee immediately on his appointment taking effect or, in the case of the official receiver, on his becoming trustee.
- (2) Where any property which is, or is to be, comprised in the bankrupt's estate vests in the trustee (whether under this Article or under any other provision of this Part), it shall so vest without any conveyance, assignment or transfer.

#### **279A.— Property subject to restraint order**

- (1) This Article applies where—
  - (a) property is excluded from the bankrupt's estate by virtue of section 423(2)(a) of the Proceeds of Crime Act 2002 (property subject to a restraint order),
  - (b) an order under section 50, 67A, 128, 131A, 198 or 215A of that Act has not been made in respect of the property,
  - (c) the restraint order is discharged, and
  - (d) immediately after the discharge of the restraint order the property is not detained under or by virtue of section 44A, 47J, 122A, 127J, 193A or 195J of that Act.
- (2) The property vests in the trustee as part of the bankrupt's estate.
- (3) But paragraph (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).

#### **279AA Property released from detention**

- (1) This Article applies where—
  - (a) property is excluded from the bankrupt's estate by virtue of section 423(2)(b) of the Proceeds of Crime Act 2002 (property detained under certain provisions),
  - (b) no order is in force in respect of the property under section 41, 50, 120, 128, 190 or 198 of that Act, and
  - (c) the property is released.
- (2) The property vests in the trustee as part of the bankrupt's estate.

#### **279B.— Property in respect of which receivership or administration order made**

- (1) This Article applies where—
  - (a) property is excluded from the bankrupt's estate by virtue of section 423(2)(c) of the Proceeds of Crime Act 2002 (property in respect of which an order for the appointment of a receiver or administrator under certain provisions of that Act is in force),
  - (b) a confiscation order is made under section 6, 92 or 156 of that Act,
  - (c) the amount payable under the confiscation order is fully paid, and
  - (d) any of the property remains in the hands of the receiver or administrator (as the case may be).

(2) The property vests in the trustee as part of the bankrupt's estate.

**279BA Property in respect of which realisation order made**

(1) This Article applies where—

(a) property is excluded from the bankrupt's estate by virtue of section 423(2)(d) of the Proceeds of Crime Act 2002 (property in respect of which an order has been made authorising realisation of the property by an appropriate officer),

(b) a confiscation order is made under section 6, 92 or 156 of that Act,

(c) the amount payable under the confiscation order is fully paid, and

(d) any of the property remains in the hands of the appropriate officer.

(2) The property vests in the trustee as part of the bankrupt's estate.

**279C.— Property subject to certain orders where confiscation order discharged or quashed**

(1) This Article applies where—

(a) property is excluded from the bankrupt's estate by virtue of section 423(2)(a), (b), (c) or (d) of the Proceeds of Crime Act 2002 (property excluded from the bankrupt's estate),

(b) a confiscation order is made under section 6, 92 or 156 of that Act, and

(c) the confiscation order is discharged under section 30, 114 or 180 of that Act (as the case may be) or quashed under that Act or in pursuance of any enactment relating to appeals against conviction or sentence.

(2) Any such property vests in the trustee as part of the bankrupt's estate if it is in the hands of—

(a) a receiver appointed under Part 2 or 4 of that Act,

(b) an administrator appointed under Part 3 of that Act,

(c) an appropriate officer (within the meaning of section 41A, 120A or 190A of that Act).

(3) But paragraph (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).]

**280.— After-acquired property**

(1) Subject to this Article and Article 282, the trustee may by notice in writing claim for the bankrupt's estate any property which has been acquired by, or has devolved upon, the bankrupt since the commencement of the bankruptcy.

(2) A notice under this Article shall not be served in respect of—

(a) any property falling within paragraph (2) or (3) of Article 11,

(aa) any property vesting in the bankrupt by virtue of Article 256A in Chapter II,

(b) any property which by virtue of any other statutory provision is excluded from the bankrupt's estate, or

(c) without prejudice to Article 254(2)(c) (order of High Court on application for discharge), any property which is acquired by, or devolves upon, the bankrupt after his discharge.

(3) Subject to paragraphs (4) and (4A), upon the service on the bankrupt of a notice under this Article the property to which the notice relates shall vest in the trustee as part of the bankrupt's estate; and the trustee's title to that property has relation back to the time at which the property was acquired by, or devolved upon, the bankrupt.

(4) Where, whether before or after service on the bankrupt of a notice under this Article—

(a) a person acquires property in good faith, for value and without notice of the bankruptcy,

(b)

the trustee is not in respect of that property entitled by virtue of this Article to any remedy against that person, or any person whose title to any property derives from that person.

(4A) Where a banker enters into a transaction before service on the banker of a notice under this Article (and whether before or after service on the bankrupt of a notice under this Article) the trustee is not in respect of that transaction entitled by virtue of this Article to any remedy against the banker.

This paragraph applies whether or not the banker has notice of the bankruptcy.

(5) References in this Article to property do not include any property which, as part of the bankrupt's income, may be the subject of an income payments order under Article 283.

### **281.— Vesting in trustee of certain items of excess value**

(1) Subject to Article 282, where—

(a) property is excluded by virtue of Article 11(2) (tools of trade, household effects, etc.) from the bankrupt's estate, and

(b) it appears to the trustee that the realisable value of the whole or any part of that property exceeds the cost of a reasonable replacement for that property or that part of it, the trustee may by notice in writing claim that property or, as the case may be, that part of it for the bankrupt's estate.

(2) Upon the service on the bankrupt of a notice under this Article, the property to which the notice relates vests in the trustee as part of the bankrupt's estate; and, except against a purchaser in good faith, for value and without notice of the bankruptcy, the trustee's title to that property has relation back to the commencement of the bankruptcy.

(3) The trustee shall apply funds comprised in the estate to the purchase by or on behalf of the bankrupt of a reasonable replacement for any property vested in the trustee under this Article; and

the duty imposed by this paragraph has priority over the obligation of the trustee to distribute the estate.

(4) For the purposes of this Article property is a reasonable replacement for other property if it is reasonably adequate for meeting the needs met by the other property.

### **282.— Time-limit for notice under Article 280 or 281**

(1) Except with the leave of the High Court, a notice shall not be served—

(a) under Article 280, after the expiration of 42 days from the day on which it first came to the knowledge of the trustee that the property in question had been acquired by, or had devolved upon, the bankrupt;

(b) under Article 281, after the expiration of 42 days from the day on which the property in question first came to the knowledge of the trustee.

(2) For the purposes of this Article—

(a) anything which comes to the knowledge of the trustee is deemed in relation to any successor of his as trustee to have come to the knowledge of the successor at the same time; and

(b) anything which comes (otherwise than under sub-paragraph (a)) to the knowledge of a person before he is the trustee is deemed to come to his knowledge on his appointment taking effect or, in the case of the official receiver, on his becoming trustee.

### **283.— Income payments orders**

(1) The High Court may make an order ("an income payments order") claiming for the bankrupt's estate so much of the income of the bankrupt during the period for which the order is in force as may be specified in the order.

(1A) An income payments order may be made only on an application instituted—

(a) by the trustee, and

(b) before the discharge of the bankrupt.

(2) The High Court shall not make an income payments order the effect of which would be to reduce the income of the bankrupt when taken together with any payments to which paragraph (8) applies below what appears to the Court to be necessary for meeting the reasonable domestic needs of the bankrupt and his family.

(3) An income payments order shall, in respect of any payment of income to which it is to apply, either—

(a) require the bankrupt to pay the trustee an amount equal to so much of that payment as is claimed by the order, or

(b) require the person making the payment to pay so much of it as is so claimed to the trustee, instead of to the bankrupt.

(4) Where the High Court makes an income payments order it may, if it thinks fit, discharge or vary any attachment of earnings order that is for the time being in force to secure payments by the bankrupt.

(5) Sums received by the trustee under an income payments order form part of the bankrupt's estate.

(6) An income payments order shall specify the period during which it is to have effect; and that period—

(a) may end after the discharge of the bankrupt, but

(b) may not end after the period of 3 years beginning with the date on which the order is made.

(6A) An income payments order may (subject to paragraph (6)(b)) be varied on the application of the trustee or the bankrupt (whether before or after discharge).

(6B) Where the Court has made an income payments order in relation to a bankrupt who is a solicitor, nothing in paragraph (6) shall affect the continuance of a condition with respect to income specified in an order made under Article 254(2)(c).

(7) For the purposes of this Article the income of the bankrupt comprises every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment and (despite anything in Article 12 or 13 of the Welfare Reform and Pensions (Northern Ireland) Order 1999)] any payment under a pension scheme but excluding any scheme to which paragraph (8) applies. This paragraph applies to—

(a) payments by way of guaranteed minimum pension

(b)

(9) In this Article, "guaranteed minimum pension" has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993.

### **283A.— Income payments agreement**

(1) In this Article "income payments agreement" means a written agreement between a bankrupt and his trustee or between a bankrupt and the official receiver which provides—

(a) that the bankrupt is to pay to the trustee or the official receiver an amount equal to a specified part or proportion of the bankrupt's income for a specified period, or

(b) that a third person is to pay to the trustee or the official receiver a specified proportion of money due to the bankrupt by way of income for a specified period.

(2) A provision of an income payments agreement of a kind specified in paragraph (1)(a) or

(b) may be enforced as if it were a provision of an income payments order.

(3) While an income payments agreement is in force the High Court may, on the application of the bankrupt, his trustee or the official receiver, discharge or vary an attachment of earnings order that is for the time being in force to secure payments by the bankrupt.

(4) The following provisions of Article 283 shall apply to an income payments agreement as they apply to an income payments order—

(a) paragraph (5) (receipts to form part of estate), and

(b) paragraphs (7) to (9) (meaning of income).

(5) An income payments agreement must specify the period during which it is to have effect; and that period—

(a) may end after the discharge of the bankrupt, but

(b) may not end after the period of 3 years beginning with the date on which the agreement is made.

(6) An income payments agreement may (subject to paragraph (5)(b)) be varied—

(a) by written agreement between the parties, or

(b) by the High Court on an application made by the bankrupt, the trustee or the official receiver.

(7) The High Court—

(a) may not vary an income payments agreement so as to include provision of a kind which could not be included in an income payments order, and

(b) shall grant an application to vary an income payments agreement if and to the extent that the Court thinks variation necessary to avoid the effect mentioned in Article 283(2).

#### **284.— Acquisition by trustee of control**

(1) The trustee shall take possession of all books, papers and other records which relate to the bankrupt's estate or affairs and which belong to him or are in his possession or under his control (including any which would be privileged from disclosure in any proceedings).

(2) In relation to, and for the purpose of acquiring or retaining possession of, the bankrupt's estate, the trustee is in the same position as if he were a receiver of property appointed by the High Court; and the Court may, on his application, enforce such acquisition or retention accordingly.

(3) Where any part of the bankrupt's estate consists of stock or shares in a company, shares in a ship or any other property transferable in the books of a company, office or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

(4) Where any part of the estate consists of things in action, they are deemed to have been assigned to the trustee; but notice of the deemed assignment need not be given except in so far as it is necessary, in a case where the deemed assignment is from the bankrupt himself, for protecting the priority of the trustee.

(5) Where any goods comprised in the estate are held by any person by way of pledge, pawn or other security and no notice has been served in respect of those goods by the official receiver under paragraph (6) of Article 258 (restriction on realising security), the trustee may serve such a notice in respect of the goods; and whether or not a notice has been served under this paragraph or that paragraph, the trustee may, if he thinks fit, exercise the bankrupt's right of redemption in respect of any such goods.

(6) A notice served by the trustee under paragraph (5) has the same effect as a notice served by the official receiver under Article 258(6).

#### **285.— Obligation to surrender control to trustee**

(1) Without prejudice to the general duties of the bankrupt under Article 306, the bankrupt shall deliver up to the trustee possession of any property, books, papers or other records of which he has possession or control and of which the trustee is required to take possession.

(2) If any of the following is in possession of any property, books, papers or other records of which the trustee is required to take possession, namely—

- (a) the official receiver,
- (b) a person who has ceased to be trustee of the bankrupt's estate, or
- (c) a person who has been the supervisor of a voluntary arrangement approved in relation to the bankrupt under Part VIII,

the official receiver or, as the case may be, that person shall deliver up possession of the property, books, papers or records to the trustee.

(3) Any banker or agent of the bankrupt or any other person who holds any property to the account of, or for, the bankrupt shall pay or deliver to the trustee all property in his possession or under his control which forms part of the bankrupt's estate and which he is not by law entitled to retain as against the bankrupt or trustee.

(4) If any person without reasonable excuse fails to comply with any obligation imposed by this Article, he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

### **286.— Charge on bankrupt's home**

(1) Where any property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse or by his civil partner or former civil partner is comprised in the bankrupt's estate and the trustee is, for any reason, unable for the time being to realise that property, the trustee may apply to the High Court for an order imposing a charge on the property for the benefit of the bankrupt's estate.

(2) If on an application under this Article the High Court imposes a charge on any property, the benefit of that charge shall be comprised in the bankrupt's estate and is enforceable, up to the charged value from time to time, for the payment of any amount which is payable otherwise than to the bankrupt out of the estate and of interest on that amount at the prescribed rate.

(2A) In paragraph (2) “the charged value” means—

(a) the amount specified in the charging order as the value of the bankrupt's interest in the property at the date of the order, plus

(b) interest on that amount from the date of the charging order at the prescribed rate.

(2B) In determining the value of an interest for the purposes of this Article the High Court shall disregard any matter which it is required to disregard by the rules.

(3) An order under this Article made in respect of property vested in the trustee shall provide, in accordance with the rules, for the property to cease to be comprised in the bankrupt's estate and, subject to the charge (and any prior charge), to vest in the bankrupt.

(4) An order under this Article may be made either absolutely or subject to conditions as to notifying the bankrupt or any person holding any interest in the property to which the order relates or as to the time when the charge is to become enforceable, or as to other matters.

(5) Subject to any provision made by rules, a charge imposed by an order under this Article shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the bankrupt by writing under his hand.

(6) The High Court may at any time, on the application of the bankrupt or of any person holding any interest in the property to which the order relates make an order discharging or varying the order imposing a charge on the property.

(7) Where an order under this Article has been protected by an entry registered under the Land Registration Act (Northern Ireland ) 1970<sup>4</sup> or the Registration of Deeds Acts, an order under paragraph (6) discharging that order may direct that the entry be vacated.

(8) But an order under paragraph (6) may not vary a charged value.

### **286A.— Low value home: application for sale, possession or charge**

(1) This Article applies where—

(a) property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

- (i) the bankrupt,
  - (ii) the bankrupt's spouse or civil partner, or
  - (iii) a former spouse or former civil partner of the bankrupt, and
- (b) the trustee applies for an order for the sale of the property, for an order for possession of the property or for an order under Article 286 in respect of the property.

(2) The High Court shall dismiss the application if the value of the interest is below such amount as may for the time being be specified for the purposes of this paragraph by order under Article 362(1)(b).

(3) In determining the value of an interest for the purposes of this Article the High Court shall disregard any matter which it is required to disregard by the order which specifies the amount for the purposes of paragraph (2).

## **287.— Powers of trustee**

~~(1) The trustee may—~~

~~(a) with the permission of the creditors' committee or the High Court, exercise any of the powers specified in Part I of Schedule 3, and~~

~~(b) without that permission, exercise any of the general powers specified in Part II of Schedule 3.~~

**(1) The trustee may exercise any of the powers specified in Parts 1 and 2 of Schedule 3.**

~~(2) With the permission of the creditors' committee or the High Court, the trustee may appoint the bankrupt—~~

- ~~(a) to superintend the management of his estate or any part of it,~~
- ~~(b) to carry on his business (if any) for the benefit of his creditors, or~~
- ~~(c) in any other respect to assist in administering the estate in such manner and on such terms as the trustee may direct.~~

~~(3) A permission given for the purposes of paragraph (1)(a) or (2) shall not be a general permission but shall relate to a particular proposed exercise of the power in question; and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required in either case has been given.~~

~~(4) Subject to paragraph (5), where the trustee has done anything without the permission required by paragraph (1)(a) or (2), the High Court or the creditors' committee may, for the purpose of enabling him to meet his expenses out of the bankrupt's estate, ratify what the trustee has done.~~

~~(5) The committee shall not ratify the trustee's action under paragraph (4) unless it is satisfied that the trustee has acted in a case of urgency and has sought its ratification without undue delay.~~

(6) Part III of Schedule 3 has effect with respect to the things which the trustee is able to do for the purposes of, or in connection with, the exercise of any of his powers under Parts VIII to X.

(7) Where the trustee (not being the official receiver) in exercise of the powers conferred on him by any provision in Parts VIII to X—

- (a) disposes of any property comprised in the bankrupt's estate to an associate of the bankrupt, or
- (b) employs a solicitor,

he shall, if there is for the time being a creditors' committee, give notice to the committee of that exercise of his powers.



(8) Without prejudice to the generality of paragraph (6) and Part III of Schedule 3, the trustee may, if he thinks fit, at any time ~~summon a general meeting of~~ **seek a decision on a matter from** the bankrupt's creditors.

(9) Subject to the preceding provisions in Part VIII and this Part, he shall ~~summon such a meeting~~ **seek a decision on a matter** if he is requested to do so by a creditor of the bankrupt and the request is made with the concurrence of not less than one-tenth, in value, of the bankrupt's creditors (including the creditor making the request).

(10) Nothing in this Order is to be construed as restricting the capacity of the trustee to exercise any of his powers outside Northern Ireland.

#### *Disclaimer of onerous property*

#### **288.— Disclaimer (general power)**

(1) Subject to paragraph (4) and Articles 289 to 291, the trustee may, by the giving of the prescribed notice, disclaim any onerous property and do so notwithstanding that he has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.

(2) The following is onerous property for the purposes of this Article, that is to say—

(a) any unprofitable contract, and

(b) any other property comprised in the bankrupt's estate which is unsaleable or not readily saleable, or is such that it may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this Article—

(a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the bankrupt and his estate in or in respect of the property disclaimed, and

(b) discharges the trustee from all personal liability in respect of that property as from the commencement of his trusteeship, but does not, except so far as is necessary for the purpose of releasing the bankrupt, the bankrupt's estate and the trustee from any liability, affect the rights or liabilities of any other person.

(4) A notice of disclaimer shall not be given under this Article in respect of any property that has been claimed for the estate under Article 280 (after-acquired property) or 281 (personal property of bankrupt exceeding reasonable replacement value), except with the leave of the High Court.

(5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this Article is deemed to be a creditor of the bankrupt to the extent of the loss or damage and accordingly may prove for the loss or damage as a bankruptcy debt.

#### **289.— Notice requiring trustee's decision**

(1) Notice of disclaimer shall not be given under Article 288 in respect of any property if—

(a) a person interested in the property has applied in writing to the trustee or one of his predecessors as trustee requiring the trustee or that predecessor to decide whether he will disclaim or not, and

(b) the period of 28 days from the day on which that application was made has expired without a notice of disclaimer having been given under Article 288 in respect of that property.

(2) The trustee is deemed to have adopted any contract which by virtue of this Article he is not entitled to disclaim.

#### **290.— Disclaimer of leaseholds**

- (1) The disclaimer of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person claiming under the bankrupt as underlessee of mortgagee and either—
- (a) no application under Article 293 is made with respect to the property before the expiration of 14 days from the day on which the last notice served under this paragraph was served, or
  - (b) where such an application has been made, the High Court directs that the disclaimer is to take effect.
- (2) Where the High Court gives a direction under paragraph (1)(b) it may also, instead of or in addition to any order it makes under Article 293, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.
- (3) For the purposes of this Article, property held under a fee farm grant creating the relation of landlord and tenant is property of a leasehold nature and a reference to an underlessee includes a person who holds a lease from the fee farm grantee.

### **291. Disclaimer of dwelling house**

Without prejudice to Article 290, the disclaimer of any property in a dwelling house does not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person in occupation of or claiming a right to occupy the dwelling house and either—

- (a) no application under Article 293 is made with respect to the property before the expiration of 14 days from the day on which the last notice served under this Article was served, or
- (b) where such an application has been made, the High Court directs that the disclaimer is to take effect.

### **292.— Disclaimer of land subject to rentcharge**

- (1) The following applies where, in consequence of the disclaimer under Article 288 of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person (referred to in paragraph (2) as "the proprietor").
- (2) The proprietor, and the successors in title of the proprietor, are not subject to any personal liability in respect of any sums becoming due under the rentcharge, except sums becoming due after the proprietor, or some person claiming under or through the proprietor, has taken possession or control of the land or has entered into occupation of it.

### **293.— High Court order vesting disclaimed property**

- (1) This Article and Article 294 apply where the trustee has disclaimed property under Article 288.
- (2) An application may be made to the High Court under this Article by—
- (a) any person who claims an interest in the disclaimed property,
  - (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer, or
  - (c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.
- (3) Subject to the following provisions of this Article and to Article 294, the High Court may, on an application under this Article, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to—
- (a) a person entitled to it or a trustee for such a person,
  - (b) a person subject to such a liability as is mentioned in paragraph (2)(b) or a trustee for such a person, or

(c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.

(4) The High Court shall not make an order by virtue of paragraph (3)(b) except where it appears to the Court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(5) The effect of any order under this Article shall be taken into account in assessing for the purposes of Article 288(5) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

(6) An order under this Article vesting property in any person need not be completed by any conveyance, assignment or transfer.

#### **294.— Order under Article 293 in respect of leaseholds**

(1) The High Court shall not make an order under Article 293 vesting property of a leasehold nature in any person, except on terms making that person—

(a) subject to the same liabilities and obligations as the bankrupt was subject to under the lease on the day the bankruptcy petition was presented, or

(b) if the Court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him on that day.

(2) For the purposes of an order under Article 293 relating to only part of any property comprised in a lease, the requirements of paragraph (1) apply as if the lease comprised only the property to which the order relates.

(3) Where paragraph (1) applies and no person is willing to accept an order under Article 293 on the terms required by that paragraph, the High Court may (by order under Article 293) vest the estate or interest of the bankrupt in the property in any person who is liable (whether personally or in a representative capacity and whether alone or jointly with the bankrupt) to perform the lessee's covenants in the lease.

(4) An order of the High Court under paragraph (3) may vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the bankrupt.

(5) Where paragraph (1) applies and a person declines to accept any order under Article 293, that person shall be excluded from all interest in the property.

(6) Paragraph (3) of Article 290 shall apply for the purposes of this Article as it applies for the purposes of that Article.

#### *Distribution of bankrupt's estate*

#### **295.— Proof of debts**

(1) Subject to this Article and Article 296, the proof of any bankruptcy debt by a secured or unsecured creditor of the bankrupt and the admission or rejection of any proof shall take place in accordance with the rules.

(2) Where a bankruptcy debt bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the commencement of the bankruptcy.

(3) The trustee shall estimate the value of any bankruptcy debt which, by reason of its being subject to any contingency or contingencies or for any other reason, does not bear a certain value.

(4) Where the value of a bankruptcy debt is estimated by the trustee under paragraph (3) or, by virtue of Article 276, by the High Court, the amount provable in the bankruptcy in respect of the debt is the amount of the estimate.

**296.— Mutual credit and set-off**

(1) This Article applies where before the commencement of the bankruptcy there have been mutual credits, mutual debts or other mutual dealings between the bankrupt and any creditor of the bankrupt proving or claiming to prove for a bankruptcy debt.

(2) An account shall be taken of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other.

(3) Sums due from the bankrupt to another party shall not be included in the account taken under paragraph (2) if that other party had notice at the time they became due that a bankruptcy petition relating to the bankrupt was pending.

(4) Only the balance (if any) of the account taken under paragraph (2) is provable as a bankruptcy debt or, as the case may be, to be paid to the trustee as part of the bankrupt's estate.

**297.— Distribution by means of dividend**

(1) Whenever the trustee has sufficient funds in hand for the purpose he shall, subject to the retention of such sums as may be necessary for the expenses of the bankruptcy, declare and distribute dividends among the creditors in respect of the bankruptcy debts which they have respectively proved.

(2) The trustee shall give notice of his intention to declare and distribute a dividend.

(3) Where the trustee has declared a dividend, he shall give notice of the dividend and of how it is proposed to distribute it; and a notice given under this paragraph shall contain the prescribed particulars of the bankrupt's estate.

(4) In the calculation and distribution of a dividend the trustee shall make provision—

(a) for any bankruptcy debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs,

(b) for any bankruptcy debts which are the subject of claims which have not yet been determined, and

(c) for disputed proofs and claims.

**298.— Claims by unsatisfied creditors**

(1) A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but—

(a) when he has proved that debt he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive; and

(b) any dividend or dividends payable under sub-paragraph (a) shall be paid before that money is applied to the payment of any such further dividend.

(2) No action lies against the trustee for a dividend, but if the trustee refuses to pay a dividend the High Court may, if it thinks fit, order him to pay it and also to pay, out of his own money—

(a) interest on the dividend, at the rate applicable to a money judgment of the Court at the time it was withheld, from that time, and

(b) the costs of the proceedings in which the order to pay is made.

**299.— Distribution of property in specie**

(1) Without prejudice to Articles 288 to 292 (disclaimer), the trustee may, with the permission of the creditors' committee, divide in its existing form among the bankrupt's

creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(2) A permission given for the purposes of paragraph (1) shall not be a general permission but shall relate to a particular proposed exercise of the power in question; and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required by paragraph (1) has been given.

(3) Where the trustee has done anything without the permission required by paragraph (1), the High Court or the creditors' committee may, for the purpose of enabling him to meet his expenses out of the bankrupt's estate, ratify what the trustee has done.

(4) The committee shall not ratify the trustee's action under paragraph (3) unless it is satisfied that the trustee acted in a case of urgency and has sought its ratification without undue delay.

### **300.— Priority of debts**

(1) In the distribution of the bankrupt's estate, his preferential debts shall be paid in priority to other debts.

(1A) Ordinary preferential debts rank equally among themselves after the expenses of the bankruptcy and shall be paid in full, unless the bankrupt's estate is insufficient to meet them, in which case they abate in equal proportions between themselves.

(1B) Secondary preferential debts rank equally among themselves after the ordinary preferential debts and shall be paid in full, unless the bankrupt's estate is insufficient to meet them, in which case they abate in equal proportions between themselves.

(2)

(3) Debts which are neither preferential debts nor debts to which Article 302 applies also rank equally between themselves and, after the preferential debts, shall be paid in full unless the bankrupt's estate is insufficient for meeting them, in which case they abate in equal proportions between themselves.

(3A) If the bankrupt is a relevant financial institution, paragraph (3) does not apply but—

(a) the bankrupt's ordinary non-preferential debts are to be paid in priority to the bankrupt's secondary non-preferential debts,

(b) the bankrupt's ordinary non-preferential debts rank equally among themselves after the secondary preferential debts and are to be paid in full, unless the bankrupt's estate is insufficient to meet them, in which case they abate in equal proportions,

(c) the bankrupt's secondary non-preferential debts are to be paid in priority to the bankrupt's tertiary non-preferential debts, and

(d) the bankrupt's secondary non-preferential debts rank equally among themselves after the ordinary non-preferential debts and are to be paid in full, unless the bankrupt's estate is insufficient to meet them, in which case they abate in equal proportions.

See Article 347A for definitions relevant to this paragraph.

(4) [ Any surplus remaining after the payment of the debts—

(a) where paragraph (3) applies, that are preferential or rank equally under that paragraph, or

(b) where paragraph (3A) applies, that are preferential or are referred to in that paragraph, shall be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the commencement of the bankruptcy; and interest on preferential

debts ranks equally with interest on debts other than preferential debts.

(5) The rate of interest payable under paragraph (4) in respect of any debt is whichever is the greater of the following—

(a) the rate applicable to a money judgment of the High Court at the commencement of the bankruptcy, and

(b) the rate applicable to that debt apart from the bankruptcy.

(6) This Article and Article 302 are without prejudice to any provision of this Order or any other statutory provision under which the payment of any debt or the making of any other payment is, in the event of bankruptcy, to have a particular priority or to be postponed.

(7) In this Article “preferential debts”, “ordinary preferential debts” and “secondary preferential debts” each has the meaning given in Article 346.

### **301.— Preferential charge on goods distrained**

(1) Paragraph (1A) applies where—

(a) any person has distrained upon the goods or effects of an individual who is adjudged bankrupt within 3 months from the distraint, or

(b) Her Majesty's Revenue and Customs has been paid any amount from an account of an individual under Part 1 of Schedule 8 to the Finance (No. 2) Act 2015 (enforcement by deduction from accounts) and the individual is adjudged bankrupt within 3 months from the payment.

(1A) Where this paragraph applies—

(a) in a case within paragraph (1)(a), the goods or effects, or the proceeds of their sale, and

(b) in a case within paragraph (1)(b), the amount in question,

is charged for the benefit of the bankrupt's estate with the preferential debts of the bankrupt to the

extent that the bankrupt's estate is for the time being insufficient for meeting them.

(2) Where by virtue of a charge under paragraph (1A) any person surrenders any goods or effects to the trustee of a bankrupt's estate or makes a payment to such a trustee, that person ranks, in respect of the amount of the proceeds of the sale of those goods or effects by the trustee or (as the case may be) the amount of the payment, as a preferential creditor of the bankrupt, except as against so much of the bankrupt's estate as is available for the payment of preferential creditors by virtue of the surrender or payment.

### **302.— Debts to spouse or civil partner**

(1) This Article applies to bankruptcy debts owed in respect of credit provided by a person who (whether or not the bankrupt's spouse or civil partner at the time the credit was provided) was the bankrupt's spouse or civil partner at the commencement of the bankruptcy.

(2) Such debts—

(a) rank in priority after the interest required to be paid in pursuance of Article 300(4), and

(b) are payable with interest at the rate specified in Article 300(5) in respect of the period during which they have been outstanding since the commencement of the bankruptcy; and the interest payable under sub-paragraph (b) has the same priority as the debts on which it is payable.

### **303.— Final distribution**

(1) When the trustee has realised all the bankrupt's estate or so much of it as can, in the trustee's opinion, be realised without needlessly protracting the trusteeship, he shall give notice in the prescribed manner either—

(a) of his intention to declare a final dividend, or

(b) that no dividend, or further dividend, will be declared.

(1A) A notice under paragraph (1)(b) need not be given to opted-out creditors.

(2) The notice under paragraph (1) shall contain the prescribed particulars and shall require claims against the bankrupt's estate to be established by a date ("the final date") specified in the notice.

(3) The High Court may, on the application of any person, postpone the final date.

(4) After the final date, the trustee shall—

(a) defray any outstanding expenses of the bankruptcy out of the bankrupt's estate, and

(b) if he intends to declare a final dividend, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved in the bankruptcy.

(5) If a surplus remains after payment in full and with interest of all the bankrupt's creditors and the payment of the expenses of the bankruptcy, the bankrupt is entitled to the surplus.

[(6)

### **304.— Final meeting report**

(1) ~~Subject to the provisions of this Article and to Article 305,~~ this Article applies where—

(a) it appears to the trustee that the administration of the bankrupt's estate in accordance with this Chapter is for practical purposes complete, and

(b) the trustee is not the official receiver.

**but this is subject to Article 305.**

~~(2) The trustee shall summon a final general meeting of the bankrupt's creditors which—~~

~~(a) shall receive the trustee's report of his administration of the bankrupt's estate, and~~

~~(b) shall determine whether the trustee should have his release under Article 272.~~

**(2) The trustee must give the bankrupt's creditors, other than opted-out creditors, notice that it appears to the trustee that the administration of the bankrupt's estate is for practical purposes complete.**

**(2A) The notice must—**

**(a) be accompanied by a report of the trustee's administration of the bankrupt's estate, and**

**(b) explain the effect of Article 272(3F) and how the creditors may object to the trustee's release.**

~~(3) The trustee may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice under Article 303(1); but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the trustee is able to report to the meeting that the administration of the bankrupt's estate is for practical purposes complete.~~

~~(4) In the administration of the estate it is the trustee's duty to retain sufficient sums from the estate to cover the expenses of summoning and holding the meeting required by this Article.~~

### **305.— Saving for bankrupt's home**

(1) This Article applies where—

(a) there is comprised in the bankrupt's estate property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse or by his civil partner or former civil partner, and

(b) the trustee has been unable for any reason to realise that property.

(2) The trustee shall not ~~summon a meeting under Article 304~~ **give notice under Article 304(2)** unless either—

(a) the High Court has made an order under Article 286 imposing a charge on that property for the benefit of the bankrupt's estate, or

(b) the Court has declined, on an application under that Article, to make such an order, or

(c) the Department has issued a certificate to the trustee stating that it would be inappropriate or inexpedient for such an application to be made in the case in question.

## *Supplemental*

### **306.— Duties of bankrupt in relation to trustee**

(1) The bankrupt shall—

- (a) give to the trustee such information as to his affairs,
- (b) attend on the trustee at such times, and
- (c) do all such other things,

as the trustee may for the purposes of carrying out his functions under Parts VIII to X reasonably require.

(2) Where at any time after the commencement of the bankruptcy any property is acquired by, or devolves upon, the bankrupt or there is an increase of the bankrupt's income, the bankrupt shall, within the prescribed period, give the trustee notice of the property or, as the case may be, of the increase.

(3) Paragraph (1) applies to a bankrupt after his discharge.

(4) If the bankrupt without reasonable excuse fails to comply with any obligation imposed by this Article, he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

### **307.— Stay of distribution in case of second bankruptcy**

(1) This Article and Article 308 apply where a bankruptcy order is made against an undischarged bankrupt; and in both Articles—

- (a) "the later bankruptcy" means the bankruptcy arising from that order,
- (b) "the earlier bankruptcy" means the bankruptcy (or, as the case may be, most recent bankruptcy) from which the bankrupt has not been discharged at the commencement of the later bankruptcy, and
- (c) "the existing trustee" means the trustee (if any) of the bankrupt's estate for the purposes of the earlier bankruptcy.

(2) Without prejudice to Article 257 (restrictions on dispositions of property following bankruptcy order), where the existing trustee has been given the prescribed notice of the presentation of the petition for the later bankruptcy, any distribution or other disposition by him of anything to which paragraph (3) applies, if made after the giving of the notice, is void except to the extent that it was made with the consent of the High Court or is or was subsequently ratified by the Court.

(3) This paragraph applies to—

- (a) any property which is vested in the existing trustee under Article 280(3) (after-acquired property);
- (b) any money paid to the existing trustee in pursuance of an income payments order under Article 283; and
- (c) any property or money which is, or in the hands of the existing trustee represents, the proceeds of sale or application of property or money falling within sub-paragraph (a) or (b).

### **308.— Adjustment between earlier and later bankruptcy estates**

(1) With effect from the commencement of the later bankruptcy anything to which Article 307(3) applies which, immediately before the commencement of that bankruptcy, is comprised in the bankrupt's estate for the purposes of the earlier bankruptcy is to be treated as comprised in the bankrupt's estate for the purposes of the later bankruptcy and, until there is a trustee of that estate, is to be dealt with by the existing trustee in accordance with the rules.

(2) Any sums which in pursuance of an income payments order under Article 283 are payable after the commencement of the later bankruptcy to the existing trustee shall form part of the



bankrupt's estate for the purposes of the later bankruptcy; and the High Court may give such consequential directions for the modification of the order as it thinks fit.

(3) Anything comprised in a bankrupt's estate by virtue of paragraph (1) or (2) is so comprised subject to a first charge in favour of the existing trustee for any bankruptcy expenses incurred by him in relation thereto.

(4) Except as provided by paragraphs (1) and (2) and in Article 307, property which is, or by virtue of Article 281 (personal property of bankrupt exceeding reasonable replacement value) is capable of being, comprised in the bankrupt's estate for the purposes of the earlier bankruptcy, or of any bankruptcy prior to it, shall not be comprised in his estate for the purposes of the later bankruptcy.

(5) The creditors of the bankrupt in the earlier bankruptcy and the creditors of the bankrupt in any bankruptcy prior to the earlier one, are not to be creditors of his in the later bankruptcy in respect of the same debts; but the existing trustee may prove in the later bankruptcy for—

(a) the unsatisfied balance of the debts (including any debt under this paragraph) provable against the bankrupt's estate in the earlier bankruptcy;

(b) any interest payable on that balance; and

(c) any unpaid expenses of the earlier bankruptcy.

(6) Any amount provable under paragraph (5) ranks in priority after all the other debts provable in the later bankruptcy and after interest on those debts and, accordingly, shall not be paid unless those debts and that interest have first been paid in full.

## CHAPTER V

### EFFECT OF BANKRUPTCY ON CERTAIN RIGHTS, TRANSACTIONS, ETC.

#### *Rights of occupation*

#### **309.— Rights of occupation, etc., of bankrupt's spouse or civil partner**

(1) Nothing occurring in the initial period of the bankruptcy (that is to say, the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting of the bankrupt's estate in a trustee) is to be taken as having given rise to any home rights under the Family Homes and Domestic Violence (Northern Ireland) Order 1998 in relation to a dwelling house comprised in the bankrupt's estate.

(2) Where a spouse's or civil partner's home rights under the Order of 1998 are a charge on the estate or interest of the other spouse or civil partner, or of trustees for the other spouse or civil partner, and the other spouse or civil partner is adjudged bankrupt—

(a) the charge continues to subsist notwithstanding the bankruptcy and, subject to the provisions of that Order, binds the trustee of the bankrupt's estate and persons deriving title under that trustee, and

(b) any application for an order under Article 11 of that Order shall be made to the High Court.

(3) Notwithstanding any provision of the Partition Act 1868, where a person and his spouse or former spouse or civil partner or former civil partner have a legal or equitable estate in a dwelling house vested in them jointly or as tenants in common and that person is adjudged bankrupt, in a suit for partition maintained by the trustee of the bankrupt's estate the High Court may make such order as it thinks fit.

(4) On an application such as is mentioned in paragraph (2) or in a suit such as is mentioned in paragraph (3) the High Court shall make such order under paragraph (3) or [Article 11 of the Order of 1998 as it thinks just and reasonable having regard to—

(a) the interests of the bankrupt's creditors,

- (b) the conduct of the spouse or former spouse or civil partner or former civil partner, so far as contributing to the bankruptcy,
  - (c) the needs and financial resources of the spouse or former spouse or civil partner or former civil partner,
  - (d) the needs of any children, and
  - (e) all the circumstances of the case other than the needs of the bankrupt.
- (5) Where such an application is made or such a suit is maintained after the expiration of one year from the first vesting under Chapter IV of the bankrupt's estate in a trustee, the High Court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

### **310.— Rights of occupation of bankrupt**

- (1) This Article applies where—
- (a) a person who is entitled to occupy a dwelling house by virtue of a beneficial estate or interest is adjudged bankrupt, and
  - (b) any persons under the age of 18 with whom that person had at some time occupied that dwelling house had their home with that person at the time when the bankruptcy petition was presented and at the commencement of the bankruptcy.
- (2) Whether or not the bankrupt's<sup>1</sup> spouse or civil partner (if any) has home rights under the Family Homes and Domestic Violence (Northern Ireland) Order 1998
- (a) the bankrupt has the following rights as against the trustee of his estate—
    - (i) if in occupation, a right not to be evicted or excluded from the dwelling house or any part of it, except with the leave of the High Court,
    - (ii) if not in occupation, a right with the leave of the Court to enter into and occupy the dwelling house, and
  - (b) the bankrupt's rights are a charge, having the like priority as an equitable interest created immediately before the commencement of the bankruptcy, on so much of his estate or interest in the dwelling house as vests in the trustee.
- (3) The Order of 1998 has effect, with the necessary modifications, as if—
- (a) the rights conferred by sub-paragraph (a) of paragraph (2) were home rights under that Order,
  - (b) any application for leave such as is mentioned in that sub-paragraph were an application for an order under Article 11 of that Order, and
  - (c) any charge under sub-paragraph (b) of that paragraph on the estate or interest of the trustee were a charge under that Order on the estate or interest of a spouse or civil partner.
- (4) Any application for leave such as is mentioned in paragraph (2)(a) or otherwise by virtue of this Article for an order under Article 11 of the Order of 1998 shall be made to the High Court.
- (5) On such an application the High Court shall make such order under Article 11 of the Order of 1998 as it thinks just and reasonable having regard to the interests of the creditors, to the bankrupt's financial resources, to the needs of the children and to all the circumstances of the case other than the needs of the bankrupt.
- (6) Where such an application is made after the expiration of one year from the first vesting (under Chapter IV) of the bankrupt's estate in a trustee, the High Court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

### **311. Payments in respect of premises occupied by bankrupt**

Where any premises comprised in a bankrupt's estate are occupied by him (whether by virtue of Article 310 or otherwise) on condition that he makes payments towards satisfying any

liability arising under a mortgage of the premises or otherwise towards the outgoings of the premises, the bankrupt does not, by virtue of those payments, acquire any interest in the premises.

*Adjustment of prior transactions, etc.*

**312.— Transactions at an undervalue**

(1) Subject to the following provisions of this Article and to Articles 314 and 315, where an individual is adjudged bankrupt and he has at a relevant time (defined in Article 314) entered into a transaction with any person at an undervalue, the trustee of the bankrupt's estate may apply to the High Court for an order under this Article.

(2) The High Court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction.

(3) For the purposes of this Article and Articles 314 and 315, an individual 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<sup>[1]</sup> 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.

**313.— Preferences**

(1) Subject to the following provisions of this Article and Articles 314 and 315, where an individual is adjudged bankrupt and he has at a relevant time (defined in Article 314) given a preference to any person, the trustee of the bankrupt's estate may apply to the High Court for an order under this Article.

(2) The High Court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not given that preference.

(3) For the purposes of this Article and Articles 314 and 315, an individual gives a preference to a person if—

(a) that person is one of the individual's creditors or a surety or guarantor for any of his debts or other liabilities, and

(b) the individual 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 of the individual's bankruptcy, will be better than the position he would have been in if that thing had not been done.

(4) The High Court shall not make an order under this Article in respect of a preference given to any person unless the individual who gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in paragraph

(3)(b).

(5) An individual who has given a preference to a person who, at the time the preference was given, was an associate of his (otherwise than by reason only of being his employee) is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in paragraph (4).

(6) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

### **314.— "Relevant time" under Articles 312, 313**

(1) Subject to the provisions of this Article, the time at which an individual enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into or the preference given—

(a) in the case of a transaction at an undervalue, at a time within the 5 years immediately preceding the day of the presentation of the bankruptcy petition on which the individual is adjudged bankrupt,

(b) in the case of a preference which is not a transaction at an undervalue and is given to a person who is an associate of the individual (otherwise than by reason only of being his employee), at a time within the 2 years immediately preceding that day, and

(c) in any other case of a preference which is not a transaction at an undervalue, at a time within the 6 months immediately preceding that day.

(2) Where an individual enters into a transaction at an undervalue or gives a preference at a time mentioned in sub-paragraph (a), (b) or (c) of paragraph (1) (not being, in the case of a transaction at an undervalue, a time less than 2 years before the expiration of the period of 5 years mentioned in sub-paragraph (a)), that time is not a relevant time for the purposes of Articles 312 and 313 unless the individual—

(a) is insolvent at that time, or

(b) becomes insolvent in consequence of the transaction or preference;

but the requirements of this paragraph are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by an individual with a person who is an associate of his (otherwise than by reason only of being his employee).

(3) For the purposes of paragraph (2), an individual is insolvent if—

(a) he is unable to pay his debts as they fall due, or

(b) the value of his assets is less than the amount of his liabilities, taking into account his contingent and prospective liabilities.

### **315.— Orders under Articles 312, 313**

(1) Without prejudice to the generality of Article 312(2) or 313(2), an order under either of those Articles with respect to a transaction or preference entered into or given by an individual who is subsequently adjudged bankrupt may (subject as follows)—

(a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the trustee of the bankrupt's estate as part of that estate;

(b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;

(c) release or discharge (in whole or in part) any security given by the individual;

(d) require any person to pay, in respect of benefits received by him from the individual, such sums to the trustee of his estate as the High Court may direct;

(e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction or by the giving of the preference to be under such new or revived obligations to that person as the Court thinks appropriate;

(f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference; and

(g) provide for the extent to which any person whose property is vested by the order in the trustee of the bankrupt's estate, or on whom obligations are imposed by the order, is to be able to prove in the bankruptcy for debts or other liabilities which arose from, or were

released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.

(2) An order under Article 312 or 313 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the individual in question entered into the transaction or, as the case may be, the person to whom the preference was given; but such an order—

(a) shall not prejudice any interest in property which was acquired from a person other than that individual and was acquired in good faith and for value, or prejudice any interest deriving from such an interest, and

(b) shall not require a person who received a benefit from the transaction or preference in good faith and for value to pay a sum to the trustee of the bankrupt's estate, except where he was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of that individual.

(2A) Where a person has acquired an interest in property from a person other than the individual in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt—

(a) he had notice of the relevant surrounding circumstances and of the relevant proceedings, or

(b) he was an associate of, or was connected with, either the individual in question or the person with whom that individual entered into the transaction or to whom that individual gave the preference,

then, unless the contrary is shown, it shall be presumed for the purposes of sub-paragraph (a) or (as the case may be) sub-paragraph (b) of paragraph (2) that the interest was acquired or the benefit was received otherwise than in good faith.

(3) Any sums required to be paid to the trustee in accordance with an order under Article 312 or 313 shall be comprised in the bankrupt's estate.

(4) For the purposes of paragraph (2A)(a), the relevant surrounding circumstances are (as the case may require)—

(a) the fact that the individual in question entered into the transaction at an undervalue; or

(b) the circumstances which amounted to the giving of the preference by the individual in question.

(5) For the purposes of paragraph (2A)(a), a person has notice of the relevant proceedings if he has notice—

(a) of the fact that the petition on which the individual in question is adjudged bankrupt has been presented; or

(b) of the fact that the individual in question has been adjudged bankrupt.

(6) Article 7 shall apply for the purposes of paragraph (2A)(b) as it applies for the purposes of Parts 1A to 7.

### **315A.— Recovery of excessive pension contributions**

(1) Where an individual who is adjudged bankrupt—

(a) has rights under an approved pension arrangement, or

(b) has excluded rights under an unapproved pension arrangement,

the trustee of the bankrupt's estate may apply to the High Court for an order under this Article.

(2) If the High Court is satisfied—

(a) that the rights under the arrangement are to any extent, and whether directly or indirectly, the fruits of relevant contributions, and

(b) that the making of any of the relevant contributions ("the excessive contributions") has unfairly prejudiced the individual's creditors,

the Court may make such order as it thinks fit for restoring the position to what it would have been had the excessive contributions not been made.

(3) Paragraph (4) applies where the High Court is satisfied that the value of the rights under the arrangement is, as a result of rights of the individual under the arrangement or any other pension arrangement having at any time become subject to a debit under Article 26(1)(a) of the Welfare Reform Order (debits giving effect to pension-sharing), less than it would otherwise have been.

(4) Where this paragraph applies—

(a) any relevant contributions which were represented by the rights which became subject to the debit shall, for the purposes of paragraph (2), be taken to be contributions of which the rights under the arrangement are the fruits, and

(b) where the relevant contributions represented by the rights under the arrangement (including those so represented by virtue of sub-paragraph (a)) are not all excessive contributions, relevant contributions which are represented by the rights under the arrangement otherwise than by virtue of sub-paragraph (a) shall be treated as excessive contributions before any which are so represented by virtue of that sub-paragraph.

(5) In paragraphs (2) to (4) "relevant contributions" means contributions to the arrangement or any other pension arrangement—

(a) which the individual has at any time made on his own behalf, or

(b) which have at any time been made on his behalf.

(6) The High Court shall, in determining whether it is satisfied under paragraph (2)(b), consider in particular—

(a) whether any of the contributions were made for the purpose of putting assets beyond the reach of the individual's creditors or any of them, and

(b) whether the total amount of any contributions—

(i) made by or on behalf of the individual to pension arrangements, and

(ii) represented (whether directly or indirectly) by rights under approved pension arrangements or excluded rights under unapproved pension arrangements,

is an amount which is excessive in view of the individual's circumstances when those contributions were made.

(7) For the purposes of this Article and Articles 315B and 315C ("the recovery provisions"), rights of an individual under an unapproved pension arrangement are excluded rights if they are rights which are excluded from his estate by virtue of regulations under Article 13 of the Welfare Reform Order.

(8) In the recovery provisions—

"approved pension arrangement" has the same meaning as in Article 12 of the Welfare Reform Order,

"unapproved pension arrangement" has the same meaning as in Article 13 of that Order

### **315B.— Orders under Article 315A**

(1) Without prejudice to the generality of Article 315A(2), an order under Article 315A may include provision—

(a) requiring the person responsible for the arrangement to pay an amount to the individual's trustee in bankruptcy,

(b) adjusting the liabilities of the arrangement in respect of the individual,

(c) adjusting any liabilities of the arrangement in respect of any other person that derive, directly or indirectly, from rights of the individual under the arrangement,

(d) for the recovery by the person responsible for the arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the bankrupt's case with any requirement under Article 315C(1) or

in giving effect to the order.

(2) In paragraph (1), references to adjusting the liabilities of the arrangement in respect of a person include (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.

(3) In paragraph (1)(c), the reference to liabilities of the arrangement does not include liabilities in respect of a person which result from giving effect to an order or provision falling within Article 25(1) of the Welfare Reform Order (pension sharing orders and agreements).

(4) The maximum amount which the person responsible for an arrangement may be required to pay by an order under Article 315A is the lesser of—

(a) the amount of the excessive contributions, and

(b) the value of the individual's rights under the arrangement (if the arrangement is an approved pension arrangement) or of his excluded rights under the arrangement (if the arrangement is an unapproved pension arrangement).

(5) An order under Article 315A which requires the person responsible for an arrangement to pay an amount ( "the restoration amount") to the individual's trustee in bankruptcy must provide for the liabilities of the arrangement to be correspondingly reduced.

(6) For the purposes of paragraph (5), liabilities are correspondingly reduced if the difference between—

(a) the amount of the liabilities immediately before the reduction, and

(b) the amount of the liabilities immediately after the reduction,  
is equal to the restoration amount.

(7) An order under Article 315A in respect of an arrangement—

(a) shall be binding on the person responsible for the arrangement, and

(b) overrides provisions of the arrangement to the extent that they conflict with the provisions of the order.

### **315C.— Orders under Article 315A: supplementary**

(1) The person responsible for—

(a) an approved pension arrangement under which a bankrupt has rights,

(b) an unapproved pension arrangement under which a bankrupt has excluded rights, or

(c) a pension arrangement under which a bankrupt has at any time had rights,

shall, on the bankrupt's trustee in bankruptcy making a written request, provide the trustee with such information about the arrangement and rights as the trustee may reasonably require for, or in connection with, the making of applications under Article 315A.

(2) Nothing in—

(a) any provision of section 155 of the Pension Schemes (Northern Ireland) Act 1993 or Article 89 of the Pensions (Northern Ireland) Order 1995 (which prevent assignment and the making of orders that restrain a person from receiving anything which he is prevented from assigning),

(b) any statutory provision (whether passed or made before or after the making of the Welfare Reform Order) corresponding to any of the provisions mentioned in sub-paragraph

(a), or

(c) any provision of the arrangement in question corresponding to any of those provisions, applies to the High Court exercising its powers under Article 315A.

(3) Where any sum is required by an order under Article 315A to be paid to the trustee in bankruptcy, that sum shall be comprised in the bankrupt's estate.

(4) Regulations may, for the purposes of the recovery provisions, make provision about the calculation and verification of—

(a) any such value as is mentioned in Article 315B(4)(b);

- (b) any such amounts as are mentioned in Article 315B(6)(a) and (b).
- (5) The power conferred by paragraph (4) includes power to provide for calculation or verification—
- (a) in such manner as may, in the particular case, be approved by a prescribed person; or
- (b) in accordance with guidance from time to time prepared by a prescribed person.
- (6) References in the recovery provisions to the person responsible for a pension arrangement are to—
- (a) the trustees, managers or provider of the arrangement, or
- (b) the person having functions in relation to the arrangement corresponding to those of a trustee, manager or provider.
- (7) In this Article and Articles 315A and 315B—
- "the Department" means the Department of Health and Social Services;
- "prescribed" means prescribed by regulations;
- "the recovery provisions" means this Article and Articles 315A and 315B;
- "regulations" means regulations made by the Department;
- "the Welfare Reform Order" means the Welfare Reform and Pensions (Northern Ireland) Order 1999.
- (8) Regulations under the recovery provisions may contain such incidental, supplemental and transitional provisions as appear to the Department necessary or expedient.
- (9) Regulations under the recovery provisions shall be subject to negative resolution.

**315D.— Recovery of excessive contributions in pension-sharing cases**

- (1) For the purposes of Articles 312, 314 and 315, a pension-sharing transaction shall be taken—
- (a) to be a transaction, entered into by the transferor with the transferee, by which the appropriate amount is transferred by the transferor to the transferee; and
- (b) to be capable of being a transaction entered into at an undervalue only so far as it is a transfer of so much of the appropriate amount as is recoverable.
- (2) For the purposes of Articles 313 to 315, a pension-sharing transaction shall be taken—
- (a) to be something (namely a transfer of the appropriate amount to the transferee) done by the transferor; and
- (b) to be capable of being a preference given to the transferee only so far as it is a transfer of so much of the appropriate amount as is recoverable.
- (3) If on an application under Article 312 or 313 any question arises as to whether, or the extent to which, the appropriate amount in the case of a pension-sharing transaction is recoverable, the question shall be determined in accordance with paragraphs (4) to (8).
- (4) The High Court shall first determine the extent (if any) to which the transferor's rights under the shared arrangement at the time of the transaction appear to have been (whether directly or indirectly) the fruits of contributions ( "personal contributions")—
- (a) which the transferor has at any time made on his own behalf, or
- (b) which have at any time been made on the transferor's behalf,
- to the shared arrangement or any other pension arrangement.
- (5) Where it appears that those rights were to any extent the fruits of personal contributions, the High Court shall then determine the extent (if any) to which those rights appear to have been the fruits of personal contributions whose making has unfairly prejudiced the transferor's creditors ("the unfair contributions").
- (6) If it appears to the High Court that the extent to which those rights were the fruits of the unfair contributions is such that the transfer of the appropriate amount could have been made



out of rights under the shared arrangement which were not the fruits of the unfair contributions, then the appropriate amount is not recoverable.

(7) If it appears to the High Court that the transfer could not have been wholly so made, then the appropriate amount is recoverable to the extent to which it appears to the Court that the transfer could not have been so made.

(8) In making the determination mentioned in paragraph (5) the High Court shall consider in particular—

(a) whether any of the personal contributions were made for the purpose of putting assets beyond the reach of the transferor's creditors or any of them, and

(b) whether the total amount of any personal contributions represented, at the time the pension-sharing transaction was made, by rights under pension arrangements is an amount which is excessive in view of the transferor's circumstances when those contributions were made.

(9) In this Article and Articles 315E and 315F—

"appropriate amount", in relation to a pension-sharing transaction, means the appropriate amount in relation to that transaction for the purposes of Article 26(1) of the Welfare Reform Order (creation of pension credits and debits);

"pension-sharing transaction" means an order or provision falling within Article 25(1) of the Welfare Reform Order (orders and agreements which activate pension-sharing);

"shared arrangement", in relation to a pension-sharing transaction, means the pension arrangement to which the transaction relates;

"transferee", in relation to a pension-sharing transaction, means the person for whose benefit the transaction is made;

"transferor", in relation to a pension-sharing transaction, means the person to whose rights the transaction relates;

"the Welfare Reform Order" means the Welfare Reform and Pensions (Northern Ireland) Order 1999.

### **315E.— Orders under Article 312 or 313 in respect of pension-sharing transactions**

(1) This Article and Article 315F apply if the High Court is making an order under Article 312 or 313 in a case where—

(a) the transaction or preference is, or is any part of, a pension-sharing transaction, and

(b) the transferee has rights under a pension arrangement ("the destination arrangement", which maybe the shared arrangement or any other pension arrangement) that are derived, directly or indirectly, from the pension-sharing transaction.

(2) Without prejudice to the generality of Article 312(2) or 313(2), or of Article 315, the order may include provision—

(a) requiring the person responsible for the destination arrangement to pay an amount to the transferor's trustee in bankruptcy,

(b) adjusting the liabilities of the destination arrangement in respect of the transferee,

(c) adjusting any liabilities of the destination arrangement in respect of any other person that derive, directly or indirectly, from rights of the transferee under the destination arrangement,

(d) for the recovery by the person responsible for the destination arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the transferor's case with any requirement under Article 315F(1) or in giving effect to the order,

(e) for the recovery, from the transferor's trustee in bankruptcy, by the person responsible for a pension arrangement, of costs incurred by that person in complying in the transferor's case with any requirement under Article 315F(2) or (3).

(3) In paragraph (2), references to adjusting the liabilities of the destination arrangement in respect of a person include (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.

(4) The maximum amount which the person responsible for the destination arrangement may be required to pay by the order is the smallest of—

(a) so much of the appropriate amount as, in accordance with Article 315D is recoverable,

(b) so much (if any) of the amount of the unfair contributions (within the meaning given by Article 315D(5)) as is not recoverable by way of an order under Article 315A containing provision such as is mentioned in Article 315B(1)(a), and

(c) the value of the transferee's rights under the destination arrangement so far as they are derived, directly or indirectly, from the pension-sharing transaction.

(5) If the order requires the person responsible for the destination arrangement to pay an amount ("the restoration amount") to the transferor's trustee in bankruptcy it must provide for the liabilities of the arrangement to be correspondingly reduced.

(6) For the purposes of paragraph (5), liabilities are correspondingly reduced if the difference between—

(a) the amount of the liabilities immediately before the reduction, and

(b) the amount of the liabilities immediately after the reduction, is equal to the restoration amount.

(7) The order—

(a) shall be binding on the person responsible for the destination arrangement, and

(b) overrides provisions of the destination arrangement to the extent that they conflict with the provisions of the order.

### **315F.— Orders under Article 312 or 313 in pension-sharing cases: supplementary**

(1) On the transferor's trustee in bankruptcy making a written request to the person responsible for the destination arrangement, that person shall provide the trustee with such information about—

(a) the arrangement,

(b) the transferee's rights under it, and

(c) where the destination arrangement is the shared arrangement, the transferor's rights under it, as the trustee may reasonably require for, or in connection with, the making of applications under Articles 312 and 313.

(2) Where the shared arrangement is not the destination arrangement, the person responsible for the shared arrangement shall, on the transferor's trustee in bankruptcy making a written request to that person, provide the trustee with such information about—

(a) the arrangement, and

(b) the transferor's rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under Articles 312 and 313.

(3) On the transferor's trustee in bankruptcy making a written request to the person responsible for any intermediate arrangement, that person shall provide the trustee with such information about—

(a) the arrangement, and

(b) the transferee's rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under Articles 312 and 313.

(4) In paragraph (3) "intermediate arrangement" means a pension arrangement, other than the shared arrangement or the destination arrangement, in relation to which the following conditions are fulfilled—

- (a) there was a time when the transferee had rights under the arrangement that were derived (directly or indirectly) from the pension-sharing transaction, and
- (b) the transferee's rights under the destination arrangement (so far as derived from the pension-sharing transaction) are to any extent derived (directly or indirectly) from the rights mentioned in sub-paragraph (a).

(5) Nothing in—

(a) any provision of section 155 of the Pension Schemes (Northern Ireland) Act 1993 or Article 89 of the Pensions (Northern Ireland) Order 1995 (which prevent assignment and the making of orders which restrain a person from receiving anything which he is prevented from assigning),

(b) any statutory provision (whether passed or made before or after the making of the Welfare Reform Order) corresponding to any of the provisions mentioned in sub-paragraph (a), or

(c) any provision of the destination arrangement corresponding to any of those provisions, applies to the High Court exercising its powers under Article 312 or 313.

(6) Regulations may, for the purposes of Articles 312 to 315, Articles 315D and 315E and this Article, make provision about the calculation and verification of—

(a) any such value as is mentioned in Article 315E(4)(c);

(b) any such amounts as are mentioned in Article 315E(6)(a) and (b).

(7) The power conferred by paragraph (6) includes power to provide for calculation or verification—

(a) in such manner as may, in the particular case, be approved by a prescribed person; or

(b) in accordance with guidance from time to time prepared by a prescribed person.

(8) In Article 315E and this Article, references to the person responsible for a pension arrangement are to—

(a) the trustees, managers or provider of the arrangement, or

(b) the person having functions in relation to the arrangement corresponding to those of a trustee, manager or provider.

(9) In this Article—

"the Department" means the Department of Health and Social Services;

"prescribed" means prescribed by regulations;

"regulations" means regulations made by the Department.

(10) Regulations under this Article may contain such incidental, supplemental and transitional provisions as appear to the Department necessary or expedient.

(11) Regulations under this Article shall be subject to negative resolution.

### **316.— Extortionate credit transactions**

(1) This Article applies where a person is adjudged bankrupt who is or has been a party to a transaction for, or involving, the provision to him of credit.

(2) The High Court may, on the application of the trustee of the bankrupt's estate, make an order with respect to the transaction if the transaction is or was extortionate and was not entered into more than the 3 years immediately preceding the commencement of the bankruptcy.

(3) For the purposes of this Article a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

(a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or

(b) it otherwise grossly contravened ordinary principles of fair dealing;

and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this Article is or, as the case may be, was extortionate.

(4) An order under this Article with respect to any transaction may contain such one or more of the following as the High Court thinks fit, that is to say—

- (a) provision setting aside the whole or part of any obligation created by the transaction;
- (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held;
- (c) provision requiring any person who is or was party to the transaction to pay to the trustee any sums paid to that person, by virtue of the transaction, by the bankrupt;
- (d) provision requiring any person to surrender to the trustee any property held by him as security for the purposes of the transaction;
- (e) provision directing accounts to be taken between any persons.

(5) Any sums or property required to be paid or surrendered to the trustee in accordance with an order under this Article shall be comprised in the bankrupt's estate.

(6)

(7) The powers conferred by this Article are exercisable in relation to any transaction concurrently with any powers exercisable under this Order in relation to that transaction as a transaction at an undervalue.

### **317.— Avoidance of general assignment of book debts**

(1) This Article applies where a person engaged in any business makes a general assignment to another person of his existing or future book debts, or any class of them, and is subsequently adjudged bankrupt.

(2) The assignment is void against the trustee of the bankrupt's estate as regards book debts which were not paid before the presentation of the bankruptcy petition, unless the assignment has been registered under the Bills of Sale (Ireland) Acts 1879 and 1883.

(3) For the purposes of paragraphs (1) and (2)—

(a) "assignment" includes an assignment by way of security or charge on book debts, and

(b) "general assignment" does not include—

(i) an assignment of book debts due at the date of the assignment from specified debtors or of debts becoming due under specified contracts, or

(ii) an assignment of book debts included either in a transfer of a business made in good faith and for value or in an assignment of assets for the benefit of creditors generally.

(4) For the purposes of registration under the Acts of 1879 and 1883 an assignment of book debts is to be treated as if it were a bill of sale given otherwise than by way of security for the payment of a sum of money; and the provisions of those Acts with respect to the registration of bills of sale apply accordingly with such necessary modifications as may be made by rules under those Acts.

### **318.— Contracts to which bankrupt is a party**

(1) This Article applies where a contract has been made with a person who is subsequently adjudged bankrupt.

(2) The High Court may, on the application of any other party to the contract, make an order discharging obligations under the contract on such terms as to payment by the applicant or the bankrupt of damages for non-performance or otherwise as appear to the Court to be equitable.

(3) Any damages payable by the bankrupt by virtue of an order of the High Court under this Article are provable as a bankruptcy debt.

(4) Where an undischarged bankrupt is a contractor in respect of any contract jointly with any

person, that person may sue or be sued in respect of the contract without the joinder of the bankrupt.

### **319.— Apprenticeships, etc.**

(1) This Article applies where—

(a) a bankruptcy order is made in respect of an individual to whom another individual was an apprentice or articulated clerk at the time when the petition on which the order was made was presented, and

(b) the bankrupt or the apprentice or clerk gives notice to the trustee terminating the apprenticeship or articles.

(2) Subject to paragraph (6), the indenture of apprenticeship or, as the case may be, the articles of agreement shall be discharged with effect from the commencement of the bankruptcy.

(3) If any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on an application made by or on behalf of the apprentice or clerk, pay such sum to the apprentice or clerk as the trustee thinks reasonable, having regard to—

(a) the amount of the fee,

(b) the proportion of the period in respect of which the fee was paid that has been served by the apprentice or clerk before the commencement of the bankruptcy, and

(c) the other circumstances of the case.

(4) The power of the trustee to make a payment under paragraph (3) has priority over his obligation to distribute the bankrupt's estate.

(5) Instead of making a payment under paragraph (3), the trustee may, if it appears to him expedient to do so on an application made by or on behalf of the apprentice or clerk, transfer the indenture or articles to a person other than the bankrupt.

(6) Where a transfer is made under paragraph (5), paragraph (2) has effect only as between the apprentice or clerk and the bankrupt.

### **320.— Unenforceability of liens on books, etc.**

(1) Subject to paragraph (2), a lien or other right to retain possession of any of the books, papers or other records of a bankrupt is unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the official receiver or the trustee of the bankrupt's estate.

(2) Paragraph (1) does not apply to a lien on documents which give a title to property and are held as such.

### **320A.— Arbitration agreements to which bankrupt is party.**

(1) This Article applies where a bankrupt had become party to a contract containing an arbitration agreement before the commencement of his bankruptcy.

(2) If the trustee in bankruptcy adopts the contract, the arbitration agreement is enforceable by or against the trustee in relation to matters arising from or connected with the contract.

(3) If the trustee in bankruptcy does not adopt the contract and a matter to which the arbitration agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings—

(a) the trustee with the consent of the creditors' committee, or

(b) any other party to the agreement,

may apply to the court which may, if it thinks fit in all the circumstances of the case, order that the matter be referred to arbitration in accordance with the arbitration agreement.

(4) In this Article—

"arbitration agreement" has the same meaning as in Part I of the Arbitration Act 1996; and

"the court" means the court which has jurisdiction in the bankruptcy proceedings.

## CHAPTER VI

### BANKRUPTCY OFFENCES

#### *Preliminary*

#### **321.— Scheme of this Chapter**

- (1) Subject to Article 331(3), this Chapter applies where the High Court has made a bankruptcy order on a bankruptcy petition.
- (2) This Chapter applies whether or not the bankruptcy order is annulled under Article 256, but proceedings for an offence under this Chapter shall not be instituted after the annulment.
- (3) Without prejudice to his liability in respect of a subsequent bankruptcy, the bankrupt is not guilty of an offence under this Chapter in respect of anything done after his discharge; but nothing in Parts VIII to X prevents the institution of proceedings against a discharged bankrupt for an offence committed before his discharge.
- (3A) Paragraph (3) is without prejudice to any provision of this Chapter which applies to a person in respect of whom a bankruptcy restrictions order is in force.
- (4) It is not a defence in proceedings for an offence under this Chapter that anything relied on, in whole or in part, as constituting that offence was done outside Northern Ireland.
- (5) Proceedings for an offence under this Chapter or under the rules shall not be instituted except by the Department or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

#### **322. Definitions for the purposes of this Chapter**

In this Chapter—

- (a) references to property comprised in the bankrupt's estate or to property possession of which is required to be delivered up to the official receiver or the trustee of the bankrupt's estate include any property which would be such property if a notice in respect of it were given under Article 280 (after-acquired property) or 281 (personal property and effects of bankrupt having more than replacement value);
- (b) "the initial period" means the period between the presentation of the bankruptcy petition and the commencement of the bankruptcy; and
- (c) a reference to a number of months or years immediately preceding petition is to that period ending with the presentation of the bankruptcy petition.

#### **323. Defence of innocent intention**

Where in the case of an offence under any provision of this Chapter it is stated that this Article applies, it shall be a defence for the person charged to prove that, at the time of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

#### *Wrongdoing by the bankrupt before and after bankruptcy*

#### **324.— Non-disclosure**

- (1) The bankrupt shall be guilty of an offence if—
  - (a) he does not to the best of his knowledge and belief disclose all the property comprised in his estate to the official receiver or the trustee, or

(b) he does not inform the official receiver or the trustee of any disposal of any property which but for the disposal would be so comprised, stating how, when, to whom and for what consideration the property was disposed of.

(2) Paragraph (1)(b) does not apply to any disposal in the ordinary course of a business carried on by the bankrupt or to any payment of the ordinary expenses of the bankrupt or his family.

(3) Article 323 applies to an offence under this Article.

### **325.— Concealment of property**

(1) The bankrupt shall be guilty of an offence if—

(a) he does not deliver up possession to the official receiver or trustee, or as the official receiver or trustee may direct, of such part of the property comprised in his estate as is in his possession or under his control and possession of which he is required by law so to deliver up,

(b) he conceals any debt due to or from him or conceals any property the value of which is not less than the amount specified by order under Article 362(1)(b) and possession of which he is required to deliver up to the official receiver or trustee, or

(c) in the 12 months immediately preceding petition, or in the initial period, he did anything which would have been an offence under sub-paragraph (b) if the bankruptcy order had been made immediately before he did it.

(2) Article 323 applies to an offence under paragraph (1).

(3) The bankrupt shall be guilty of an offence if he removes, or in the initial period removed, any property the value of which was not less than the amount specified by order under Article 362(1)(b) and possession of which he has or would have been required to deliver up to the official receiver or the trustee.

(4) Article 323 applies to an offence under paragraph (3).

(5) The bankrupt shall be guilty of an offence if he without reasonable excuse fails, on being required to do so by the official receiver, the trustee or the High Court—

(a) to account for the loss of any substantial part of his property incurred in the 12 months immediately preceding petition or in the initial period, or

(b) to give a satisfactory explanation of the manner in which such a loss was incurred.

### **326.— Concealment of books and papers; falsification**

(1) The bankrupt shall be guilty of an offence if he does not deliver up possession to the official receiver or the trustee, or as the official receiver or trustee may direct, of all books, papers and other records of which he has possession or control and which relate to his estate or his affairs.

(2) The bankrupt shall be guilty of an offence if—

(a) he prevents, or in the initial period prevented, the production of any books, papers or records relating to his estate or affairs;

(b) he conceals, destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any books, papers or other records relating to his estate or affairs;

(c) he makes, or causes or permits the making of, any false entries in any book, document or record relating to his estate or affairs; or

(d) in the 12 months immediately preceding petition, or in the initial period, he did anything which would have been an offence under sub-paragraph (b) or (c) if the bankruptcy order had been made before he did it.

(3) The bankrupt shall be guilty of an offence if—

(a) he disposes of, or alters or makes any omission in, or causes or permits the disposal,

altering or making of any omission in, any book, document or record relating to his estate or affairs, or

(b) in the 12 months immediately preceding petition, or in the initial period, he did anything which would have been an offence under sub-paragraph (a) if the bankruptcy order had been made before he did it.

(4) Article 323 applies to an offence under this Article.

(5) In their application to a trading record paragraphs (2)(d) and (3)(b) shall have effect as if the reference to 12 months were a reference to two years.

(6) In paragraph (5) “trading record” means a book, document or record which shows or explains the transactions or financial position of a person's business, including—

(a) a periodic record of cash paid and received,

(b) a statement of periodic stock-taking, and

(c) except in the case of goods sold by way of retail trade, a record of goods sold and purchased which identifies the buyer and seller or enables them to be identified.

### **327.— False statements**

(1) The bankrupt shall be guilty of an offence if he makes or has made any material omission in any statement made under any provision in Parts VIII to X and relating to his affairs.

(2) Article 323 applies to an offence under paragraph (1).

(3) The bankrupt shall be guilty of an offence if—

(a) knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails to inform the trustee as soon as practicable; or

(b) he attempts to account for any part of his property by fictitious losses or expenses; or

(c) ~~at any meeting of his creditors~~ **in connection with any creditors’ decision procedure or deemed consent procedure** in the 12 months immediately preceding petition or (whether or not ~~at such a meeting~~) **in connection with such a procedure** at any time in the initial period, he did anything which would have been an offence under sub-paragraph (b) if the bankruptcy order had been made before he did it; or

(d) he is, or at any time has been, guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to an agreement with reference to his affairs or to his bankruptcy.

### **328.— Fraudulent disposal of property**

(1) The bankrupt shall be guilty of an offence if he makes or causes to be made, or has in the 5 years immediately preceding the commencement of the bankruptcy made or caused to be made, any gift or transfer of, or any charge on, his property.

(2) The reference to making a transfer of or charge on any property includes causing or conniving at the enforcement of a judgment, or the levying of any execution, against that property.

(3) The bankrupt shall be guilty of an offence if he conceals or removes, or has at any time before the commencement of the bankruptcy concealed or removed, any part of his property after, or within the 2 months immediately preceding, the date on which a judgment or order for the payment of money has been obtained against him, being a judgment or order which was not satisfied before the commencement of the bankruptcy.

(4) Article 323 applies to an offence under this Article.

### **329.— Absconding**

(1) The bankrupt shall be guilty of an offence if—

(a) he leaves, or attempts or makes preparations to leave, Northern Ireland with any property



the value of which is not less than the amount specified by order under Article 362(1)(b) and possession of which he is required to deliver up to the official receiver or the trustee, or

(b) in the 6 months immediately preceding petition, or in the initial period, he did anything which would have been an offence under sub-paragraph (a) if the bankruptcy order had been made immediately before he did it.

(2) Article 323 applies to an offence under this Article.

### **330.— Fraudulent dealing with property obtained on credit**

(1) The bankrupt shall be guilty of an offence if, in the 12 months immediately preceding petition, or in the initial period, he disposed of any property which he had obtained on credit and, at the time he disposed of it, had not paid for.

(2) Article 323 applies to an offence under paragraph (1).

(3) A person shall be guilty of an offence if, in the 12 months immediately preceding petition or in the initial period, he acquired or received property from the bankrupt knowing or believing—

(a) that the bankrupt owed money in respect of the property, and

(b) that the bankrupt did not intend, or was unlikely to be able, to pay the money he so owed.

(4) In the case of an offence under paragraph (1) or (3) it shall be a defence for the person charged to prove that the disposal, acquisition or receipt of the property was in the ordinary course of a business carried on by the bankrupt at the time of the disposal, acquisition or receipt.

(5) In determining for the purposes of this Article whether any property is disposed of, acquired or received in the ordinary course of a business carried on by the bankrupt, regard may be had, in particular, to the price paid for the property.

(6) In this Article references to disposing of property include pawning or pledging it; and references to acquiring or receiving property shall be read accordingly.

### **331.— Obtaining credit; engaging in business**

(1) The bankrupt shall be guilty of an offence if—

(a) either alone or jointly with any other person, he obtains credit to the extent of the amount specified by order under Article 362(1)(b) or more without giving the person from whom he obtains it the relevant information about his status; or

(b) he engages (whether directly or indirectly) in any business under a name other than that in which he was adjudged bankrupt without disclosing to all persons with whom he enters into any business transaction the name in which he was so adjudged.

(2) The reference to the bankrupt obtaining credit includes the following cases—

(a) where goods are bailed to him under a hire-purchase agreement, or agreed to be sold to him under a conditional sale agreement, and

(b) where he is paid in advance (whether in money or otherwise) for the supply of goods or services.

(3) A person whose estate has been sequestrated in Scotland, or who has been adjudged bankrupt in England and Wales, shall be guilty of an offence if, before his discharge, he does anything in Northern Ireland which would be an offence under paragraph (1) if he were an undischarged bankrupt and the sequestration of his estate or the adjudication in England and Wales were an adjudication under this Part.

(4) For the purposes of paragraph (1)(a), the relevant information about the status of the person in question is the information that he is an undischarged bankrupt or, as the case may be, that his estate has been sequestrated in Scotland and that he has not been discharged.

(5) This Article applies to the bankrupt after discharge while a bankruptcy restrictions order is in force in respect of him.

(6) For the purposes of paragraph (1)(a) as it applies by virtue of paragraph (5), the relevant information about the status of the person in question is the information that a bankruptcy

**332.—**

Repealed

**333.—**

Repealed

## **CHAPTER VII**

### **POWERS OF HIGH COURT IN BANKRUPTCY**

**334.— General control of High Court**

(1) Every bankruptcy is under the general control of the High Court and, subject to the provisions in Parts VIII to X, the Court has full power to decide all questions of priorities and all other questions, whether of law or fact, arising in any bankruptcy.

(2) Without prejudice to any other provision in Parts VIII to X, an undischarged bankrupt or a discharged bankrupt whose estate is still being administered under Chapter IV shall do all such things as he may be directed to do by the High Court for the purposes of his bankruptcy or, as the case may be, the administration of that estate.

(3) The official receiver or the trustee of a bankrupt's estate may at any time apply to the High Court for a direction under paragraph (2).

(4) If any person without reasonable excuse fails to comply with any obligation imposed on him by paragraph (2), he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

**335.— Power of arrest**

(1) In the cases specified in paragraph (2) the High Court may cause a warrant to be issued to a constable—

(a) for the arrest of a debtor to whom a bankruptcy petition relates or of an undischarged bankrupt, or of a discharged bankrupt whose estate is still being administered under Chapter IV, and

(b) for the seizure of any books, papers, records, money or goods in the possession of a person arrested under the warrant, and may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the Court may order.

(2) The powers conferred by paragraph (1) are exercisable in relation to a debtor or undischarged or discharged bankrupt if, at any time after the presentation of the bankruptcy petition relating to him or the making of the bankruptcy order against him, it appears to the High Court—

(a) that there are reasonable grounds for believing that he has absconded, or is about to abscond, with a view to avoiding or delaying the payment of any of his debts or his appearance to a bankruptcy petition or to avoiding, delaying or disrupting any proceedings in bankruptcy against him or any examination of his affairs, or

(b) that he is about to remove his goods with a view to preventing or delaying possession being taken of them by the official receiver or the trustee of his estate, or

(c) that there are reasonable grounds for believing that he has concealed or destroyed, or

is about to conceal or destroy, any of his goods or any books, papers or records which might be of use to his creditors in the course of his bankruptcy or in connection with the administration of his estate, or

(d) that he has, without the leave of the official receiver or the trustee of his estate, removed any goods in his possession which exceed in value such amount specified in an order under Article 362(1)(b) for the purposes of this sub-paragraph, or

(e) that he has failed, without reasonable excuse, to attend any examination ordered by the Court.

### **336.— Seizure of bankrupt's property**

(1) At any time after a bankruptcy order has been made, the High Court may, on the application of the official receiver or the trustee of the bankrupt's estate, issue a warrant authorising the person to whom it is directed to seize any property comprised in the bankrupt's estate which is, or any books, papers or records relating to the bankrupt's estate or affairs which are, in the possession or under the control of the bankrupt or any other person who is required to deliver the property, books, papers or records to the official receiver or trustee.

(2) Any person executing a warrant under this Article may, for the purpose of seizing any property comprised in the bankrupt's estate or any books, papers or records relating to the bankrupt's estate or affairs, break open any premises where the bankrupt or anything that may be seized under the warrant is or is believed to be and any receptacle of the bankrupt which contains or is believed to contain anything that may be so seized.

(3) If, after a bankruptcy order has been made, the High Court is satisfied that any property comprised in the bankrupt's estate is, or any books, papers or records relating to the bankrupt's estate or affairs are, concealed in any premises not belonging to him, it may issue a warrant authorising any constable to search those premises for the property, books, papers or records.

(4) A warrant under paragraph (3) shall not be executed except in the prescribed manner and in accordance with its terms.

### **337.— Inquiry into bankrupt's dealings and property**

(1) At any time after a bankruptcy order has been made the High Court may, on the application of the official receiver or the trustee of the bankrupt's estate, summon to appear before it—

(a) the bankrupt or the bankrupt's spouse or former spouse or civil partner or former civil partner,

(b) any person known or believed to have any property comprised in the bankrupt's estate in his possession or to be indebted to the bankrupt,

(c) any person appearing to the Court to be able to give information concerning the bankrupt or the bankrupt's dealings, affairs or property.

(2) The High Court may require any person such as is mentioned in paragraph (1)(b) or (c) to submit an affidavit to the Court containing an account of his dealings with the bankrupt or to produce any documents in his possession or under his control relating to the bankrupt or the bankrupt's dealings, affairs or property.

(3) Without prejudice to Article 335, paragraphs (4) and (5) apply in a case where—

(a) a person without reasonable excuse fails to appear before the High Court when he is summoned to do so under this Article, or

(b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the Court under this Article.

- (4) The High Court may, for the purpose of bringing that person and anything in his possession before the Court, cause a warrant to be issued to a constable—
- (a) for the arrest of that person, and
  - (b) for the seizure of any books, papers, records, money or goods in that person's possession.
- (5) The High Court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the Court under the warrant or until such other time as the Court may order.

**338.— High Court's enforcement powers under Article 337**

- (1) If it appears to the High Court, on consideration of any evidence obtained under Article 337 or this Article, that any person has in his possession any property comprised in the bankrupt's estate, the Court may, on the application of the official receiver or the trustee of the bankrupt's estate, order that person to deliver the whole or any part of the property to the official receiver or the trustee at such time, in such manner and on such terms as the Court thinks fit.
- (2) If it appears to the High Court, on consideration of any evidence obtained under Article 337 or this Article, that any person is indebted to the bankrupt, the Court may, on the application of the official receiver or the trustee of the bankrupt's estate, order that person to pay to the official receiver or trustee, at such time and in such manner as the Court may direct, the whole or part of the amount due, whether in full discharge of the debt or otherwise as the Court thinks fit.
- (3) The High Court may, if it thinks fit, order that any person liable to be summoned to appear before it under Article 337 or this Article shall be examined on oath, either orally or by interrogatories, concerning the bankrupt or the bankrupt's dealings, affairs and property.

**339. Provision corresponding to Article 337, where interim receiver appointed**

Articles 337 and 338 apply where an interim receiver has been appointed under Article 259 as they apply where a bankruptcy order has been made, as if—

- (a) references to the official receiver or the trustee were to the interim receiver, and
- (b) references to the bankrupt and to his estate were (respectively) to the debtor and his property.

**340.— Order for production of documents by Inland Revenue**

- (1) For the purposes of an examination under Article 263 (public examination of bankrupt) or proceedings under Articles 337 to 339, the High Court may, on the application of the official receiver or the trustee of the bankrupt's estate, order an inland revenue official to produce to the Court—
- (a) any return, account or accounts submitted (whether before or after the commencement of the bankruptcy) by the bankrupt to any inland revenue official,
  - (b) any assessment or determination made (whether before or after the commencement of the bankruptcy) in relation to the bankrupt by any inland revenue official, or
  - (c) any correspondence (whether before or after the commencement of the bankruptcy) between the bankrupt and any inland revenue official.
- (2) Where the High Court has made an order under paragraph (1) for the purposes of any examination or proceedings, the Court may, at any time after the document to which the order relates is produced to it, by order authorise the disclosure of the document, or of any part of its contents, to the official receiver, the trustee of the bankrupt's estate or the bankrupt's creditors.

- (3) The High Court shall not address an order under paragraph (1) to an inland revenue official unless it is satisfied that that office is dealing, or has dealt, with the affairs of the bankrupt.
- (4) Where any document to which an order under paragraph (1) relates is not in the possession of the official to whom the order is addressed, it is the duty of that official to take all reasonable steps to secure possession of it and, if he fails to do so, to report the reasons for his failure to the High Court.
- (5) Where any document to which an order under paragraph (1) relates is in the possession of an inland revenue official other than the one to whom the order is addressed, it is the duty of the official in possession of the document, at the request of the official to whom the order is addressed, to deliver it to the official making the request.
- (6) In this Article "inland revenue official" means any inspector or collector of taxes appointed by the Commissioners of Inland Revenue or any person appointed by the Commissioners to serve in any other capacity.
- (7) This Article does not apply for the purposes of an examination under Articles 337 and 338 which takes place by virtue of Article 339 (interim receiver).

### **341.— Power to appoint special manager**

- (1) The High Court may, on an application under this Article, appoint any person to be the special manager—
- (a) of a bankrupt's estate, or
  - (b) of the business of an undischarged bankrupt, or
  - (c) of the property or business of a debtor in whose case ~~the official receiver has been appointed interim receiver~~ **an interim receiver has been appointed** under Article 259.
- (2) An application under this Article may be made by the ~~official receiver~~ **interim receiver** or the trustee of the bankrupt's estate in any case where it appears to the ~~official receiver~~ **interim receiver** or trustee that the nature of the estate, property or business, or the interests of the creditors generally, require the appointment of another person to manage the estate, property or business.
- (3) A special manager appointed under this Article has such powers as may be entrusted to him by the High Court.
- (4) The power of the High Court under paragraph (3) to entrust powers to a special manager includes power to direct that any provision in Parts VIII to X that has effect in relation to the official receiver, interim receiver or trustee shall have the like effect in relation to the special manager for the purposes of the carrying out by the special manager of any of the functions of the official receiver, interim receiver or trustee.
- (5) A special manager appointed under this Article shall—
- (a) give such security as may be prescribed,
  - (b) prepare and keep such accounts as may be prescribed, and
  - (c) produce those accounts in accordance with the rules to the Department or to such other persons as may be prescribed.

### **342.— Re-direction of bankrupt's letters, etc.**

- (1) Where a bankruptcy order has been made, the High Court may, on the application of the official receiver or the trustee of the bankrupt's estate, order[1 a postal operator (within the meaning of Part 3 of the Postal Services Act 2011) to re-direct and send or deliver to the official receiver or trustee or otherwise any postal packet (within the meaning of Part 3 of the Postal Services Act 2011) which would otherwise be sent or delivered by them to the bankrupt at such place or places as may be specified in the order.
- (2) An order under this Article has effect for such period, not exceeding 3 months, as may be

specified in the order.

## PART X

### INDIVIDUAL INSOLVENCY: GENERAL PROVISIONS

#### **343.— Supplies of gas water, electricity, etc.**

(1) This Article applies where on any day ("the relevant day")—

(a) a bankruptcy order is made against an individual or an interim receiver of an individual's property is appointed, or

(b) a voluntary arrangement proposed by an individual is approved under Chapter II of Part VIII ;

(c)

and "the office-holder" means the official receiver, the trustee in bankruptcy, the interim receiver, or the supervisor of the voluntary arrangement, as the case may be

(2) If a request falling within paragraph (3) is made for the giving after the relevant day of any of the supplies mentioned in paragraph (4), the supplier—

(a) may make it a condition of the giving of the supply that the office-holder personally guarantees the payment of any charges in respect of the supply, but

(b) shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the individual before the relevant day are paid.

(3) A request falls within this paragraph if it is made—

(a) by or with the concurrence of the office-holder, and

(b) for the purposes of any business which is or has been carried on by the individual, by a firm or partnership of which the individual is or was a member, or by an agent or manager for the individual or for such a firm or partnership.

(4) The supplies referred to in paragraph (2) are—

(a) a supply of electricity by a public electricity supplier within the meaning of Part II of the Electricity (Northern Ireland) Order 1992,

(aza) a supply of electricity by a class of person within Class A (small supply) or Class B (resale) of Schedule 3 to the Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 2013 (S.R. 2013/93);

(aa) a supply of gas by a holder of a licence under Article 8 of the Gas (Northern Ireland) Order 1996;

(b) a supply of water or sewerage services by a water or sewerage undertaker;

(ba) a supply of water by a person who has an interest in the premises to which the supply is given;

(c) a supply of communications services by a provider of a public electronic communications service,

(d) a supply of communications services by a person who carries on a business which includes giving such supplies;

(e) a supply of goods or services mentioned in paragraph (5) by a person who carries on a business which includes giving such supplies, where the supply is for the purpose of enabling or facilitating anything to be done by electronic means;

and in this paragraph "communications services" do not include electronic communications services to the extent that they are used to broadcast or transmit programme services (within the meaning of the Communications Act 2003).

(5) The goods and services referred to in paragraph (4)(e) are—

- (a) point of sale terminals;
- (b) computer hardware and software;
- (c) information, advice and technical assistance in connection with the use of information technology;
- (d) data storage and processing;
- (e) website hosting.

### **Further protection of essential supplies**

343A.—(1) An insolvency-related term of a contract for the supply of essential goods or services to an individual ceases to have effect if—

- (a) a voluntary arrangement proposed by the individual is approved under Chapter 2 of Part 8, and
- (b) the supply is for the purpose of a business which is or has been carried on by the individual, by a firm or partnership of which the individual is or was a member, or by an agent or manager for the individual or for such a firm or partnership.

(2) An insolvency-related term of a contract does not cease to have effect by virtue of paragraph (1) to the extent that—

- (a) it provides for the contract or the supply to terminate, or any other thing to take place, because the individual becomes subject to an insolvency procedure other than a voluntary arrangement;
- (b) it entitles a supplier to terminate the contract or the supply, or do any other thing, because the individual becomes subject to an insolvency procedure other than a voluntary arrangement; or
- (c) it entitles a supplier to terminate the contract or the supply because of an event that occurs, or may occur, after the voluntary arrangement proposed by the individual is approved.

(3) Where an insolvency-related term of a contract ceases to have effect under this Article the supplier may—

- (a) terminate the contract, if the condition in paragraph (4) is met;
- (b) terminate the supply, if the condition in paragraph (6) is met.

(4) The condition in this paragraph is that—

- (a) the supervisor of the voluntary arrangement consents to the termination of the contract,
- (b) the High Court grants permission for the termination of the contract, or
- (c) any charges in respect of the supply that are incurred after the voluntary arrangement is approved are not paid within the period of 28 days beginning with the day on which payment is due.

(5) The High Court may grant permission under paragraph (4)(b) only if satisfied that the continuation of the contract would cause the supplier hardship.

(6) The condition in this paragraph is that—

- (a) the supplier gives written notice to the supervisor of the voluntary arrangement that the supply will be terminated unless the supervisor personally guarantees the payment of any charges in respect of the continuation of the supply after the arrangement was approved, and
- (b) the supervisor does not give that guarantee within the period of 14 days beginning with the day the notice is received.

(7) For the purposes of securing that the interests of suppliers are protected, where—

- (a) an insolvency-related term of a contract (the “original term”) ceases to have effect by virtue of paragraph (1), and
  - (b) a subsequent voluntary arrangement proposed by the individual is approved,
- the contract is treated for the purposes of paragraphs (1) to (6) as if, immediately before the subsequent voluntary arrangement proposed by the individual is approved, it included an insolvency-related term identical to the original term.
- (8) A contract for the supply of essential goods or services is a contract for a supply mentioned in Article 343(4).
- (9) An insolvency-related term of a contract for the supply of essential goods or services to an individual is a provision of the contract under which—
- (a) the contract or the supply would terminate, or any other thing would take place, because the voluntary arrangement proposed by the individual is approved,
  - (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the voluntary arrangement proposed by the individual is approved, or
  - (c) the supplier would be entitled to terminate the contract or the supply because of an event that occurred before the voluntary arrangement proposed by the individual is approved.

#### **344. Time-limits**

Where by any provision in Parts 7A to 10 or by the rules the time for doing anything is limited, the High Court may extend the time, either before or after it has expired, on such terms, if any, as it thinks fit.

#### **345. Formal defects**

The acts of a person as the trustee of a bankrupt's estate or as a special manager, and the acts of the creditors' committee established for any bankruptcy, are valid notwithstanding any defect in the appointment, election or qualifications of the trustee or manager or, as the case may be, of any member of the committee.

#### *Creditors' decisions*

##### **Creditors' decisions: general**

- 345A.—(1) This Article applies where, for the purposes of Parts 7A to 10, a person (“P”) seeks a decision about any matter from an individual's creditors.
- (2) The decision may be made by any creditors' decision procedure P thinks fit, except that it may not be made by a creditors' meeting unless paragraph (3) applies.
- (3) This paragraph applies if at least the minimum number of creditors request in writing that the decision be made by a creditors' meeting.
- (4) If paragraph (3) applies, P must summon a creditors' meeting.
- (5) Paragraph (2) is subject to any provision of this Order, the rules or any other legislation, or any order of the High Court—
- (a) requiring a decision to be made, or prohibiting a decision from being made, by a particular creditors' decision procedure (other than a creditors' meeting);
  - (b) permitting or requiring a decision to be made by a creditors' meeting.



- (6) Article 345B provides that in certain cases the deemed consent procedure may be used instead of a creditors' decision procedure.
- (7) For the purposes of paragraph (3) the "minimum number" of creditors is any of the following—
- (a) 10% in value of the creditors;
  - (b) 10% in number of the creditors;
  - (c) 10 creditors.
- (8) The references in paragraph (7) to creditors are to creditors of any class, even where a decision is sought only from creditors of a particular class.
- (9) In this Article references to a meeting are to a meeting where the creditors are invited to be present together at the same place (whether or not it is possible to attend the meeting without being present at that place).
- (10) Except as provided by paragraph (8), references in this Article to creditors include creditors of a particular class.
- (11) In Parts 7A to 10 "creditors' decision procedure" means a procedure prescribed or authorised under paragraph 9A of Schedule 6.

### **Deemed consent procedure**

- 345B.—(1) The deemed consent procedure may be used instead of a creditors' decision procedure where an individual's creditors are to make a decision about any matter, unless—
- (a) a decision about the matter is required by virtue of this Order, the rules or any other legislation to be made by a creditors' decision procedure, or
  - (b) the High Court orders that a decision about the matter is to be made by a creditors' decision procedure.
- (2) If the rules provide for an individual's creditors to make a decision about the remuneration of any person, they must provide that the decision is to be made by a creditors' decision procedure.
- (3) The deemed consent procedure is that the relevant creditors other than opted-out creditors are given notice of—
- (a) the matter about which the creditors are to make a decision,
  - (b) the decision the person giving the notice proposes should be made (the "proposed decision"),
  - (c) the effect of paragraphs (4) and (5), and
  - (d) the procedure for objecting to the proposed decision.
- (4) If less than the appropriate number of relevant creditors object to the proposed decision in accordance with the procedure set out in the notice, the creditors are to be treated as having made the proposed decision.
- (5) Otherwise—
- (a) the creditors are to be treated as not having made a decision about the matter in question, and
  - (b) if a decision about that matter is again sought from the creditors, it must be sought using a creditors' decision procedure.
- (6) For the purposes of paragraph (4) the "appropriate number" of relevant creditors is 10% in value of those creditors.
- (7) "Relevant creditors" means the creditors who, if the decision were to be made by a creditors' decision procedure, would be entitled to vote in the procedure.
- (8) In this Article references to creditors include creditors of a particular class.

(9) The rules may make further provision about the deemed consent procedure.

#### **Power to amend Articles 345A and 345B**

345C.—(1) Regulations may amend Article 345A so as to change the definition of the minimum number of creditors.

(2) Regulations may amend Article 345B so as to change the definition of the appropriate number of relevant creditors.

(3) Regulations under this Article may define the minimum number or the appropriate number by reference to any one or more of—

(a) a proportion in value;

(b) a proportion in number;

(c) an absolute number;

and the definition may include alternative, cumulative or relative requirements.

(4) Regulations under paragraph (1) may define the minimum number of creditors by reference to all creditors, or by reference to creditors of a particular description.

(5) Regulations under this Article may make transitional provision.

(6) Regulations may not be made under this Article unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

#### *Giving of notices etc by office-holders*

#### **Use of websites**

345D.—(1) This Article applies where—

(a) a bankruptcy order is made against an individual or an interim receiver of an individual's property is appointed, or

(b) a voluntary arrangement in relation to an individual is proposed or is approved under Chapter 2 of Part 8,

and “the office-holder” means the official receiver, the trustee in bankruptcy, the interim receiver, the nominee or the supervisor of the voluntary arrangement, as the case may be.

(2) Where any provision of this Order or the rules requires the officeholder to give, deliver, furnish or send a notice or other document or information to any person, that requirement is satisfied by making the notice, document or information available on a website—

(a) in accordance with the rules; and

(b) in such circumstances as may be prescribed.

#### **Creditors' ability to opt out of receiving certain notices**

345E.—(1) Any provision of the rules which requires an office-holder to give a notice to creditors of an individual does not apply, in circumstances prescribed by the rules, in relation to opted-out creditors.

(2) Paragraph (1)—

(a) does not apply in relation to a notice of a distribution or proposed distribution to creditors;

(b) is subject to any order of the High Court requiring a notice to be given to all creditors (or all creditors of a particular category).

(3) Except as provided by the rules, a creditor may participate and vote in a creditors' decision procedure or a deemed consent procedure even

though, by virtue of being an opted-out creditor, the creditor does not receive notice of it.

(4) In this Article—

“give” includes deliver, furnish or send;

“notice” includes any document or information in any other form;

“office-holder”, in relation to an individual, means—

(a) where a bankruptcy order is made against the individual, the official receiver or the trustee in bankruptcy;

(b) where an interim receiver of the individual’s property is appointed, the interim receiver;

(c) the supervisor of a voluntary arrangement approved under Chapter 2 of Part 8 in relation to the individual.

## Remote attendance at meetings

### ~~345A. Remote attendance at meetings: individual insolvency~~

~~(1) Where—~~

~~(a) a bankruptcy order is made against an individual or an interim receiver of an individual's property is appointed; or~~

~~(b) a voluntary arrangement in relation to an individual is proposed or is approved under Chapter 2 of Part 8;~~

~~this Article applies to any meeting of the individual's creditors summoned under this Order or the rules.~~

~~(2) Where the person summoning a meeting (“the convener”) considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.~~

~~(3) Where a meeting is conducted and held in the manner referred to in paragraph (2), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.~~

~~(4) For the purposes of this Article—~~

~~(a) a person exercises the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and~~

~~(b) a person exercises the right to vote at a meeting when—~~

~~(i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and~~

~~(ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.~~

~~(5) The convener of a meeting which is to be conducted and held in the manner referred to in paragraph (2) shall make whatever arrangements the convener considers appropriate to—~~

~~(a) enable those attending the meeting to exercise their rights to speak or vote; and~~

~~(b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.~~

~~(6) Where in the reasonable opinion of the convener—~~

~~(a) a meeting will be attended by persons who will not be present together at the same place; and~~

~~(b) it is unnecessary or inexpedient to specify a place for the meeting;~~

~~any requirement under this Order or the rules to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak or vote.~~

~~(7) In making the arrangements referred to in paragraph (5) and in forming the opinion referred to in paragraph (6)(b), the convener must have regard to the legitimate interests of the creditors and others attending the meeting in the efficient despatch of the business of the meeting.~~

~~(8) If —~~

~~(a) the notice of a meeting does not specify a place for the meeting,~~

~~(b) the convener is requested in accordance with the rules to specify a place for the meeting, and~~

~~(c) that request is made by not less than 10 per cent. in value of the creditors, it shall be the duty of the convener to specify a place for the meeting.~~

## **Use of websites**

### **~~345B.— Use of websites: individual insolvency~~**

~~(1) This Article applies where —~~

~~(a) a bankruptcy order is made against an individual or an interim receiver of an individual's property is appointed, or~~

~~(b) a voluntary arrangement in relation to an individual is proposed or is approved under Chapter 2 of Part 8,~~

~~and “the office holder” means the official receiver, the trustee in bankruptcy, the interim receiver, the nominee or the supervisor of the voluntary arrangement, as the case may be.~~

~~(2) Where any provision of this Order or the rules requires the office holder to give, deliver, furnish or send a notice or other document or information to any person, that requirement is satisfied by making the notice, document or information available on a website —~~

~~(a) in accordance with the rules; and~~

~~(b) in such circumstances as may be prescribed.~~

## **PART XI**

## **PREFERENTIAL AND NON-PREFERENTIAL DEBTS IN COMPANY AND INDIVIDUAL INSOLVENCY**

### **346.— Categories of preferential debts**

(1) A reference in this Order to the preferential debts of a company or an individual is to the debts listed in Schedule 4 (contributions to occupational pension schemes; remuneration, &c. of employees; levies on coal and steel production; debts owed to the Financial Services Compensation Scheme ; deposits covered by the Financial Services Compensation Scheme; other deposits; certain HMRC debts ; and references to preferential creditors are to be read accordingly.

(1A) A reference in this Order to the “ordinary preferential debts” of a company or an individual is to the preferential debts listed in any of paragraphs 8 to 18 of Schedule 4 to this Order.

(1B) A reference in this Order to the “secondary preferential debts” of a company or an individual

is to the preferential debts listed in paragraphs 19, 20 or 22 of Schedule 4 to this Order.

(2) In Schedule 4 “the debtor” means the company or the individual concerned.

(3) Schedule 4 is to be read with Schedule 4 to the Social Security Pensions (Northern Ireland) Order 1975<sup>7</sup> (occupational pension scheme contributions).

### **347.— “The relevant date”**

- (1) This Article explains references in Schedule 4 to the relevant date (being the date which determines the existence and amount of a preferential debt).
- (2) For the purposes of Article 17 (~~meetings to consider~~ **consideration of** company voluntary arrangement), the relevant date in relation to a company which is not being wound up is—
- (a) if the company is in administration, the date on which it entered administration, and
  - (b) if the company is not in administration, the date on which the voluntary arrangement takes effect.
- (2A)
- (3) In relation to a company which is being wound up, the following applies—
- (a) if the winding up is by the High Court, and the winding-up order was made immediately upon the discharge of an administration order, the relevant date is the date on which the company entered administration;
- (aa)-(ab)
- (b) if the case does not fall within sub-paragraph (a) and the company—
    - (i) is being wound up by the Court, and
    - (ii) had not commenced to be wound up voluntarily before the date of the making of the winding-up order,the relevant date is the date of the appointment (or first appointment) of a provisional liquidator or, if no such appointment has been made, the date of the winding-up order;
  - (ba) if the case does not fall within sub-paragraph (a) or (b) and the company is being wound up following administration pursuant to paragraph 84 of Schedule B1, the relevant date is the date on which the company entered administration;
  - (c) if the case does not fall within sub-paragraph (a), the relevant date is the date of the passing of the resolution for the winding up of the company.
- (3A) In relation to a company which is in administration (and to which no other provision of this Article applies) the relevant date is the date on which the company enters administration.
- (4) In relation to a company in receivership (where Article 50 applies), the relevant date is the date of the appointment of the receiver by debenture-holders.
- (5) For the purposes of Article 232 (meeting to consider individual voluntary arrangements), the relevant date is, in relation to a debtor who is not an undischarged bankrupt
- (a) where an interim order has been made under Article 226 with respect to his proposal, the date of that order, and
  - (b) in any other case, the date on which the voluntary arrangement takes effect.
- (6) In relation to a bankrupt, the following applies—
- (a) where at the time the bankruptcy order was made there was an interim receiver appointed under Article 259, the relevant date is the date on which the interim receiver was first appointed after the presentation of the bankruptcy petition;
  - (b) otherwise, the relevant date is the date of the making of the bankruptcy order.
- (7) Nothing in this Article affects the definition of “the relevant date” in Article 5(1A).

### **347A.— Financial institutions and their non-preferential debts**

- (1) In this Order "relevant financial institution" means any of the following—
- (a) a credit institution,
  - (b) an investment firm,
  - (c) a financial holding company,
  - (d) a mixed financial holding company,
  - (da) an investment holding company,
  - (e) a financial institution which is—
    - (i) a subsidiary of an entity referred to in sub-paragraphs (a) to (da), and

(ii) covered by the supervision of that entity on a consolidated basis by the Financial Conduct Authority in accordance with Part 9C rules or by the Prudential Regulation Authority in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms or CRR rules, or,

(f) a mixed-activity holding company.

(2) The definitions in Article 4 of Regulation (EU) No. 575/2013 apply for the purposes of paragraph (1) except for the definitions of "consolidated basis" and "consolidated situation".

(2A) For the purposes of paragraph (1)—

"on a consolidated basis" means on the basis of the consolidated situation;

"consolidated situation" means the situation that results from an entity being treated, for the purposes of Part 9C rules, Regulation (EU) 575/2013 or CRR rules (as appropriate), as if that entity and one or more other entities formed a single entity;

"CRR rules" has the meaning given in section 144A of the Financial Services and Markets Act 2000;

"Part 9C rules" has the meaning given in section 143F of the Financial Services and Markets Act 2000.

(3) In this Order, in relation to a relevant financial institution—

(a) "ordinary non-preferential debts" means non-preferential debts which are neither secondary non-preferential debts nor tertiary non-preferential debts;

(b) "secondary non-preferential debts" means non-preferential debts issued under an instrument where—

(i) the original contractual maturity of the instrument is of at least one year,

(ii) the instrument is not a derivative and contains no embedded derivative, and

(iii) the relevant contractual documentation and where applicable the prospectus related to the issue of the debts explain the priority of the debts under this Order, and

(c) "tertiary non-preferential debts" means all subordinated debts, including (but not limited to) debts under Common Equity Tier 1 instruments, Additional Tier 1 instruments and Tier 2 instruments (all within the meaning of Part 1 of the Banking Act 2009).

(4) In paragraph(3)(b), "derivative" has the same meaning as in Article 2(5) of Regulation (EU) No 648/2012.

(5) For the purposes of paragraph (3)(b)(ii) an instrument does not contain an embedded derivative merely because—

(a) it provides for a variable interest rate derived from a broadly used reference rate, or

(b) it is not denominated in the domestic currency of the person issuing the debt (provided that the principal, repayment and interest are denominated in the same currency).

## **PART XII**

### **INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION**

*Restrictions on unqualified persons acting as liquidator, trustee in bankruptcy, etc.*

#### **348.— Acting as insolvency practitioner without qualification**

(1) A person who acts as an insolvency practitioner in relation to a company or an individual at a time when he is not qualified to do so shall be guilty of an offence.

(1A)

(2) This Article does not apply to the official receiver.

### **348A.—**

Repealed

### **348B.— Official receiver as nominee or supervisor**

- (1) The official receiver is authorised to act as nominee or supervisor in relation to a voluntary arrangement approved under Chapter II of Part VIII provided that the debtor is an undischarged bankrupt when the arrangement is proposed.
- (2) The Department may by order repeal the proviso in paragraph (1).
- (3) An order under paragraph (2) shall be subject to negative resolution.

*The requisite qualification, and the means of obtaining it*

### **349.— Persons not qualified to act as insolvency practitioners**

- (1) A person who is not an individual is not qualified to act as an insolvency practitioner.
- (2) A person is not qualified to act as an insolvency practitioner at any time unless at that time the person is appropriately authorised under Article 349A of this Order.
- (3) A person is not qualified to act as an insolvency practitioner in relation to another person at any time unless—
  - (a) there is in force at that time security **for the proper performance of the practitioner's functions**, and
  - (b) that security meets the prescribed requirements with respect to his so acting in relation to that other person.
- (4) A person is not qualified to act as an insolvency practitioner at any time if at that time—~~(a) he has been adjudged bankrupt under this Order or the 1986 Act or sequestration of his estate has been awarded and (in either case) he has not been discharged,~~
  - (a) any of the following is the case—**
    - (i) the person has been adjudged bankrupt under this Order,**
    - (ii) the person has been made bankrupt under the 1986 Act, or**
    - (iii) sequestration of the person's estate has been awarded,**
  - and (in each case) the person has not been discharged.**
  - (aa) a moratorium period under a debt relief order under this Order or the 1986 Act applies in relation to him,**
  - (b) he is subject to a disqualification order made or a disqualification undertaking accepted under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002, or**
  - ~~(c) he is a patient within the meaning of Part VII of the Mental Health Act 1983, section 125(1) of the Mental Health (Scotland) Act 1984 or Part VIII of the Mental Health (Northern Ireland) Order 1986.~~
    - (c) he is a patient within the meaning of Part 8 of the Mental Health (Northern Ireland) Order 1986, / he lacks capacity (within the meaning of the Mental Capacity (Northern Ireland) Act 2016) to act as an insolvency practitioner,**
    - (d) he is a patient within the meaning of section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 or has had a guardian appointed to him under the Adults with Incapacity (Scotland) Act 2000 (asp 4), or**
    - (e) he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as an insolvency practitioner.**
- (5) A person is not qualified to act as an insolvency practitioner while there is in force in respect of that person—
  - (a) a bankruptcy restrictions order under this Order, the 1986 Act or the Bankruptcy**

- (Scotland) Act 1985 or 2016, or  
(b) a debt relief restrictions order under this Order or the 1986 Act.  
(6) In this Article “the 1986 Act” means the Insolvency Act 1986.

### **349A.— Authorisation**

(1) In this Part—

“partial authorisation” means authorisation to act as an insolvency practitioner—

- (a) only in relation to companies, or
- (b) only in relation to individuals;

“full authorisation” means authorisation to act as an insolvency practitioner in relation to companies, individuals and insolvent partnerships;

“partially authorised” and “fully authorised” are to be construed accordingly.

(2) A person is fully authorised under this Article to act as an insolvency practitioner by virtue of being a member of a professional body recognised under Article 350(1) and being permitted to act as an insolvency practitioner for all purposes by or under the rules of that body.

(3) A person is partially authorised under this Article to act as an insolvency practitioner—

(a) by virtue of being a member of a professional body recognised under Article 350(1) and being permitted to act as an insolvency practitioner in relation only to companies or only to individuals by or under the rules of that body, or

(b) by virtue of being a member of a professional body recognised under Article 350(2) and being permitted to act as an insolvency practitioner by or under the rules of that body.

### **349B.— Partial authorisation: acting in relation to partnerships**

(1) A person who is partially authorised to act as an insolvency practitioner in relation to companies may nonetheless not accept an appointment to act in relation to a company if at the time of the appointment the person is aware that the company—

- (a) is or was a member of a partnership; and
- (b) has outstanding liabilities in relation to the partnership.

(2) A person who is partially authorised to act as an insolvency practitioner in relation to individuals may nonetheless not accept an appointment to act in relation to an individual if at the time of the appointment the person is aware that the individual—

- (a) is or was a member of a partnership other than a Scottish partnership, and
- (b) has outstanding liabilities in relation to the partnership.

(3) Subject to paragraph (9), a person who is partially authorised to act as an insolvency practitioner in relation to companies may nonetheless not continue to act in relation to a company if the person becomes aware that the company—

- (a) is or was a member of a partnership, and
  - (b) has outstanding liabilities in relation to the partnership,
- unless the person is granted permission to continue to act by the High Court.

(4) Subject to paragraph (9), a person who is partially authorised to act as an insolvency practitioner in relation to individuals may nonetheless not continue to act in relation to an individual if the person becomes aware that the individual—

- (a) is or was a member of a partnership other than a Scottish partnership, and
- (b) has outstanding liabilities in relation to the partnership,

unless the person is granted permission to continue to act by the High Court.

(5) The High Court may grant a person permission to continue to act for the purposes of paragraph (3) or (4) if it is satisfied that the person is competent to do so.

(6) A person who is partially authorised and becomes aware as mentioned in paragraph (3) or (4) may alternatively apply to the High Court for an order (a “replacement order”) appointing



in his or her place a person who is fully authorised to act as an insolvency practitioner in relation to the company or (as the case may be) the individual.

(7) A person may apply to the High Court for permission to continue to act or for a replacement order under—

(a) where acting in relation to a company, this Article or, if it applies, Article 143(5B);

(b) where acting in relation to an individual, this Article or, if it applies, Article 276(2C).

(8) A person who acts as an insolvency practitioner in contravention of any of paragraphs (1) to (4) is guilty of an offence under Article 348 (acting without qualification).

(9) A person does not contravene paragraph (3) or (4) by continuing to act as an insolvency practitioner during the permitted period if, within the period of 7 business days beginning with the day after the day on which the person becomes aware as mentioned in the paragraph, the person—

(a) applies to the High Court for permission to continue to act, or

(b) applies to the High Court for a replacement order.

(10) For the purposes of paragraph (9)—

“business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971;

“permitted period” means the period beginning with the day on which the person became aware as mentioned in paragraph (3) or (4) and ending on the earlier of—

(a) the expiry of the period of 6 weeks beginning with the day on which the person applies to the High Court as mentioned in paragraph (9)(a) or (b), and

(b) the day on which the High Court disposes of the application (by granting or refusing it);

“replacement order” has the meaning given by paragraph (6).

### **350.— Recognised professional bodies**

(1) The Department may by order, if satisfied that a body meets the requirements of paragraph (4), declare the body to be a recognised professional body which is capable of providing its insolvency specialist members with full authorisation or partial authorisation.

(2) The Department may by order, if satisfied that a body meets the requirements of paragraph (4), declare the body to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order (as to which, see Article 349A(1)).

(3) Article 350A makes provision about the making by a body of an application to the Department for an order under this Article.

(4) The requirements are that—

(a) the body regulates (or is going to regulate) the practice of a profession;

(b) the body has rules which it is going to maintain and enforce for securing that its insolvency specialist members—

(i) are fit and proper persons to act as insolvency practitioners; and

(ii) meet acceptable requirements as to education and practical training and experience; and

(c) the body's rules and practices for or in connection with authorising persons to act as insolvency practitioners, and its rules and practices for or in connection with regulating persons acting as such, are designed to ensure that the regulatory objectives are met (as to which, see Article 350C).

(5) An order of the Department under this Article has effect from such date as is specified in the order.

**(5A) An order under this Article is subject to negative resolution.**

(6) An order under this Article may be revoked by an order under Article 350L or 350N (and see Article 361A(1)(b)).

(7) In this Part—

(a) references to members of a recognised professional body are to persons who, whether members of that body or not, are subject to its rules in the practice of the profession in question;

(b) references to insolvency specialist members of a professional body are to members who are permitted by or under the rules of the body to act as insolvency practitioners.

(8) A reference in this Part to a recognised professional body is to a body recognised under this Article (and see Articles 350L(6) and 350N(5)).

### **Regulatory objectives**

#### **350B.— Application of regulatory objectives**

(1) In discharging regulatory functions, a recognised professional body must, so far as is reasonably practicable, act in a way—

(a) which is compatible with the regulatory objectives; and

(b) which the body considers most appropriate for the purpose of meeting those objectives.

(2) In discharging functions under this Part, the Department must have regard to the regulatory objectives.

#### **350C.— Meaning of “regulatory functions” and “regulatory objectives”**

(1) This Article has effect for the purposes of this Part.

(2) “Regulatory functions”, in relation to a recognised professional body, means any functions the body has—

(a) under or in relation to its arrangements for or in connection with—

(i) authorising persons to act as insolvency practitioners; or

(ii) regulating persons acting as insolvency practitioners; or

(b) in connection with the making or alteration of those arrangements.

(3) “Regulatory objectives” means the objectives of—

(a) having a system of regulating persons acting as insolvency practitioners that—

(i) secures fair treatment for persons affected by their acts and omissions;

(ii) reflects the regulatory principles; and

(iii) ensures consistent outcomes;

(b) encouraging an independent and competitive insolvency-practitioner profession whose members—

(i) provide high quality services at a cost to the recipient which is fair and reasonable;

(ii) act transparently and with integrity; and

(iii) consider the interests of all creditors in any particular case;

(c) promoting the maximisation of the value of returns to creditors and promptness in making those returns; and

(d) protecting and promoting the public interest.

(4) In paragraph (3)(a), “regulatory principles” means—

(a) the principles that regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and

(b) any other principle appearing to the body concerned (in the case of the duty under Article 350B(1)), or to the Department (in the case of the duty under Article 350B(2)), to lead to best regulatory practice.”.

## **Oversight of recognised professional bodies**

### **350D.— Directions**

- (1) This Article applies if the Department is satisfied that an act or omission of a recognised professional body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives.
- (2) The Department may, if in all the circumstances of the case satisfied that it is appropriate to do so, direct the body to take such steps as the Department considers will counter the adverse impact, mitigate its effect or prevent its occurrence or recurrence.
- (3) A direction under this Article may require a recognised professional body—
  - (a) to take only such steps as it has power to take under its regulatory arrangements;
  - (b) to take steps with a view to the modification of any part of its regulatory arrangements.
- (4) A direction under this Article may require a recognised professional body—
  - (a) to take steps with a view to the institution of, or otherwise in respect of, specific regulatory proceedings;
  - (b) to take steps in respect of all, or a specified class of, such proceedings.
- (5) For the purposes of this Article, a direction to take steps includes a direction which requires a recognised professional body to refrain from taking a particular course of action.
- (6) In this Article “regulatory arrangements”, in relation to a recognised professional body, means the arrangements that the body has for or in connection with—
  - (a) authorising persons to act as insolvency practitioners; or
  - (b) regulating persons acting as insolvency practitioners.

### **350E.— Directions: procedure**

- (1) Before giving a recognised professional body a direction under Article 350D, the Department must give the body a notice accompanied by a draft of the proposed direction.
- (2) The notice under paragraph (1) must—
  - (a) state that the Department proposes to give the body a direction in the form of the accompanying draft;
  - (b) specify why the Department has reached the conclusions mentioned in Article 350D(1) and (2); and
  - (c) specify a period within which the body may make written representations with respect to the proposal.
- (3) The period specified under paragraph (2)(c)—
  - (a) must begin with the date on which the notice is given to the body; and
  - (b) must not be less than 28 days.
- (4) On the expiry of that period, the Department must decide whether to give the body the proposed direction.
- (5) The Department must give notice of that decision to the body.
- (6) Where the Department decides to give the proposed direction, the notice under paragraph (5) must—
  - (a) contain the direction;
  - (b) state the time at which the direction is to take effect; and
  - (c) specify the Department's reasons for the decision to give the direction.
- (7) Where the Department decides to give the proposed direction, the Department must publish the notice under paragraph (5); but this paragraph does not apply to a direction to take any step with a view to the institution of, or otherwise in respect of, regulatory proceedings against an individual.

(8) The Department may revoke a direction under Article 350D; and, where doing so, the Department—

- (a) must give the body to which the direction was given notice of the revocation; and
- (b) must publish the notice and, if the notice under paragraph (5) was published under paragraph (7), must do so (if possible) in the same manner as that in which that notice was published.

### **350F.— Financial penalty**

(1) This Article applies if the Department is satisfied—

- (a) that a recognised professional body has failed to comply with a requirement to which this Article applies; and
- (b) that, in all the circumstances of the case, it is appropriate to impose a financial penalty on the body.

(2) This Article applies to a requirement imposed on the recognised professional body—

- (a) by a direction given under Article 350D; or

- (b) by a provision of this Order or of subordinate legislation under this Order.

(3) The Department may impose a financial penalty, in respect of the failure, of such amount as the Department considers appropriate.

(4) In deciding what amount is appropriate, the Department—

- (a) must have regard to the nature of the requirement which has not been complied with; and

- (b) must not take into account the Department's costs in discharging functions under this Part.

(5) A financial penalty under this Article is payable to the Department; and sums received by the Department in respect of a financial penalty under this Article (including by way of interest) are to be paid into the Consolidated Fund.

(6) In Articles 350G to 350I, “penalty” means a financial penalty under this Article.

### **350G.— Financial penalty: procedure**

(1) Before imposing a penalty on a recognised professional body, the Department must give notice to the body—

- (a) stating that the Department proposes to impose a penalty and the amount of the proposed penalty;

- (b) specifying the requirement in question;

- (c) stating why the Department is satisfied as mentioned in Article 350F(1); and

- (d) specifying a period within which the body may make written representations with respect to the proposal.

(2) The period specified under paragraph (1)(d)—

- (a) must begin with the date on which the notice is given to the body; and

- (b) must not be less than 28 days.

(3) On the expiry of that period, the Department must decide—

- (a) whether to impose a penalty; and

- (b) whether the penalty should be the amount stated in the notice or a reduced amount.

(4) The Department must give notice of the decision to the body.

(5) Where the Department decides to impose a penalty, the notice under paragraph (4) must—

- (a) state that the Department has imposed a penalty on the body and its amount;

- (b) specify the requirement in question and state—

- (i) why it appears to the Department that the requirement has not been complied with; or

- (ii) where, by that time, the requirement has been complied with, why it appeared to the Department when giving the notice under paragraph (1) that the requirement had not been complied with; and
- (c) specify a time by which the penalty is required to be paid.
- (6) The time specified under paragraph (5)(c) must be at least three months after the date on which the notice under paragraph (4) is given to the body.
- (7) Where the Department decides to impose a penalty, the Department must publish the notice under paragraph (4).
- (8) The Department may rescind or reduce a penalty imposed on a recognised professional body; and, where doing so, the Department—
  - (a) must give the body notice that the penalty has been rescinded or reduced to the amount stated in the notice; and
  - (b) must publish the notice; and it must (if possible) be published in the same manner as that in which the notice under paragraph (4) was published.

### **350H.— Appeal against financial penalty**

- (1) A recognised professional body on which a penalty is imposed may appeal to the High Court on one or more of the appeal grounds.
- (2) The appeal grounds are—
  - (a) that the imposition of the penalty was not within the Department's power under Article 350F;
  - (b) that the requirement in respect of which the penalty was imposed had been complied with before the notice under Article 350G(1) was given;
  - (c) that the requirements of Article 350G have not been complied with in relation to the imposition of the penalty and the interests of the body have been substantially prejudiced as a result;
  - (d) that the amount of the penalty is unreasonable;
  - (e) that it was unreasonable of the Department to require the penalty imposed to be paid by the time specified in the notice under Article 350G(5)(c).
- (3) An appeal under this Article must be made within the period of three months beginning with the day on which the notice under Article 350G(4) in respect of the penalty is given to the body.
- (4) On an appeal under this Article the Court may—
  - (a) quash the penalty;
  - (b) substitute a penalty of such lesser amount as the Court considers appropriate; or
  - (c) in the case of the appeal ground in paragraph (2)(e), substitute for the time imposed by the Department a different time.
- (5) Where the Court substitutes a penalty of a lesser amount, it may require the payment of interest on the substituted penalty from such time, and at such rate, as it considers just and equitable.
- (6) Where the Court substitutes a later time for the time specified in the notice under Article 350G(5)(c), it may require the payment of interest on the penalty from the substituted time at such rate as it considers just and equitable.
- (7) Where the Court dismisses the appeal, it may require the payment of interest on the penalty from the time specified in the notice under Article 350G(5)(c) at such rate as it considers just and equitable.

### **350I.— Recovery of financial penalties**

- (1) If the whole or part of a penalty is not paid by the time by which it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being applicable

to a money judgment of the High Court (but this is subject to any requirement imposed by the Court under Article 350H(5), (6) or (7)).

(2) If an appeal is made under Article 350H in relation to a penalty, the penalty is not required to be paid until the appeal has been determined or withdrawn.

(3) Paragraph (4) applies where the whole or part of a penalty has not been paid by the time it is required to be paid and—

(a) no appeal relating to the penalty has been made under Article 350H during the period within which an appeal may be made under that Article; or

(b) an appeal has been made under that Article and determined or withdrawn.

(4) The Department may recover from the recognised professional body in question, as a debt due to the Department, any of the penalty and any interest which has not been paid.

### **350J.— Reprimand**

(1) This Article applies if the Department is satisfied that an act or omission of a recognised professional body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives.

(2) The Department may, if in all the circumstances of the case satisfied that it is appropriate to do so, publish a statement reprimanding the body for the act or omission (or series of acts or omissions).

### **350K.— Reprimand: procedure**

(1) If the Department proposes to publish a statement under Article 350J in respect of a recognised professional body, it must give the body a notice—

(a) stating that the Department proposes to publish such a statement and setting out the terms of the proposed statement;

(b) specifying the acts or omissions to which the proposed statement relates; and

(c) specifying a period within which the body may make written representations with respect to the proposal.

(2) The period specified under paragraph (1)(c)—

(a) must begin with the date on which the notice is given to the body; and

(b) must not be less than 28 days.

(3) On the expiry of that period, the Department must decide whether to publish the statement.

(4) The Department may vary the proposed statement; but before doing so, the Department must give the body notice—

(a) setting out the proposed variation and the reasons for it; and

(b) specifying a period within which the body may make written representations with respect to the proposed variation.

(5) The period specified under paragraph (4)(b)—

(a) must begin with the date on which the notice is given to the body; and

(b) must not be less than 28 days.

(6) On the expiry of that period, the Department must decide whether to publish the statement as varied.

## **Revocation etc. of recognition**

### **350L.— Revocation of recognition at instigation of Department**

(1) An order under Article 350(1) or (2) in relation to a recognised professional body may be revoked by the Department by order if the Department is satisfied that—

(a) an act or omission of the body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives; and

(b) it is appropriate in all the circumstances of the case to revoke the body's recognition under Article 350.

(2) If the condition set out in paragraph (3) is met, an order under Article 350(1) in relation to a recognised professional body may be revoked by the Department by an order which also declares the body concerned to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order (see Article 349A(1)).

(3) The condition is that the Department is satisfied—

(a) as mentioned in paragraph (1)(a); and

(b) that it is appropriate in all the circumstances of the case for the body to be declared to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order.

(4) In this Part—

(a) an order under paragraph (1) is referred to as a “revocation order”;

(b) an order under paragraph (2) is referred to as a “partial revocation order”.

(5) A revocation order or partial revocation order—

(a) has effect from such date as is specified in the order; and

(b) may make provision for members of the body in question to continue to be treated as fully or partially authorised (as the case may be) to act as insolvency practitioners for a specified period after the order takes effect.

**(5A) A revocation order or partial revocation order is subject to negative resolution.**

(6) A partial revocation order has effect as if it were an order made under Article 350(2).

### **350M.— Orders under Article 350L: procedure**

(1) Before making a revocation order or partial revocation order in relation to a recognised professional body, the Department must give notice to the body—

(a) stating that the Department proposes to make the order and the terms of the proposed order;

(b) specifying the Department's reasons for proposing to make the order; and

(c) specifying a period within which the body, members of the body or other persons likely to be affected by the proposal may make written representations with respect to it.

(2) Where the Department gives a notice under paragraph (1), the Department must publish the notice on the same day.

(3) The period specified under paragraph (1)(c)—

(a) must begin with the date on which the notice is given to the body; and

(b) must not be less than 28 days.

(4) On the expiry of that period, the Department must decide whether to make the revocation order or (as the case may be) partial revocation order in relation to the body.

(5) The Department must give notice of the decision to the body.

(6) Where the Department decides to make the order, the notice under paragraph (5) must specify—

(a) when the order is to take effect; and

(b) the Department's reasons for making the order.

(7) A notice under paragraph (5) must be published; and it must (if possible) be published in the same manner as that in which the notice under paragraph (1) was published.

### **350N.— Revocation of recognition at request of body**

(1) An order under Article 350(1) or (2) in relation to a recognised professional body may be revoked by the Department by order if—

- (a) the body has requested that an order be made under this paragraph; and
- (b) the Department is satisfied that it is appropriate in all the circumstances of the case to revoke the body's recognition under Article 350.

(2) An order under Article 350(1) in relation to a recognised professional body may be revoked by the Department by an order which also declares the body concerned to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order (see Article 349A(1)) if—

- (a) the body has requested that an order be made under this paragraph; and
- (b) the Department is satisfied that it is appropriate in all the circumstances of the case for the body to be declared to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order.

(3) Where the Department decides to make an order under this Article the Department must publish a notice specifying—

- (a) when the order is to take effect; and
- (b) the Department's reasons for making the order.

(4) An order under this Article—

- (a) has effect from such date as is specified in the order; and
- (b) may make provision for members of the body in question to continue to be treated as fully or partially authorised (as the case may be) to act as insolvency practitioners for a specified period after the order takes effect.

**(4A) An order under this Article is subject to negative resolution.**

(5) An order under paragraph (2) has effect as if it were an order made under Article 350(2).

### **Court sanction of insolvency practitioners in public interest cases**

#### **350O.— Direct sanction orders**

(1) For the purposes of this Part a “direct sanctions order” is an order made by the High Court against a person who is acting as an insolvency practitioner which—

- (a) declares that the person is no longer authorised (whether fully or partially) to act as an insolvency practitioner;
- (b) declares that the person is no longer fully authorised to act as an insolvency practitioner but remains partially authorised to act as such either in relation to companies or individuals, as specified in the order;
- (c) declares that the person's authorisation to act as an insolvency practitioner is suspended for the period specified in the order or until such time as the requirements so specified are complied with;
- (d) requires the person to comply with such other requirements as may be specified in the order while acting as an insolvency practitioner;
- (e) requires the person to make such contribution as may be specified in the order to one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.

(2) Where the Court makes a direct sanctions order, the relevant recognised professional body must take all necessary steps to give effect to the order.

(3) A direct sanctions order must not specify a contribution as mentioned in paragraph (1)(e) which is more than the remuneration that the person has received or will receive in respect of acting as an insolvency practitioner in the case.



(4) In this Article and Article 350P, “relevant recognised professional body”, in relation to a person who is acting as an insolvency practitioner, means the recognised professional body by virtue of which the person is authorised so to act.

**350P.— Application for, and power to make, direct sanctions order**

(1) The Department may apply to the High Court for a direct sanctions order to be made against a person if it appears to the Department that it would be in the public interest for the order to be made.

(2) The Department must send a copy of the application to the relevant recognised professional body.

(3) The Court may make a direct sanctions order against a person where, on an application under this Article, the Court is satisfied that condition 1 and at least one of conditions 2, 3, 4 and 5 are met in relation to the person.

(4) The conditions are set out in Article 350Q.

(5) In deciding whether to make a direct sanctions order against a person the Court must have regard to the extent to which—

(a) the relevant recognised professional body has taken action against the person in respect of the failure mentioned in condition 1; and

(b) that action is sufficient to address the failure.

**350Q.— Direct sanctions order: conditions**

(1) Condition 1 is that the person, in acting as an insolvency practitioner or in connection with any appointment as such, has failed to comply with—

(a) a requirement imposed by the rules of the relevant recognised professional body;

(b) any standards, or code of ethics, for the insolvency-practitioner profession adopted from time to time by the relevant recognised professional body.

(2) Condition 2 is that the person—

(a) is not a fit and proper person to act as an insolvency practitioner;

(b) is a fit and proper person to act as an insolvency practitioner only in relation to companies, but the person's authorisation is not so limited; or

(c) is a fit and proper person to act as an insolvency practitioner only in relation to individuals, but the person's authorisation is not so limited.

(3) Condition 3 is that it is appropriate for the person's authorisation to act as an insolvency practitioner to be suspended for a period or until one or more requirements are complied with.

(4) Condition 4 is that it is appropriate to impose other restrictions on the person acting as an insolvency practitioner.

(5) Condition 5 is that loss has been suffered as a result of the failure mentioned in condition 1 by one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.

(6) In this Article “relevant recognised professional body” has the same meaning as in Article 350O.

**350R.— Direct sanctions direction instead of order**

(1) The Department may give a direction (a “direct sanctions direction”) in relation to a person acting as an insolvency practitioner to the relevant recognised professional body (instead of applying, or continuing with an application, for a direct sanctions order against the person) if the Department is satisfied that—

(a) condition 1 and at least one of conditions 2, 3, 4 and 5 are met in relation to the person (see Article 350Q); and

(b) it is in the public interest for the direction to be given.

- (2) But the Department may not give a direct sanctions direction in relation to a person without that person's consent.
- (3) A direct sanctions direction may require the relevant recognised professional body to take all necessary steps to secure that—
- (a) the person is no longer authorised (whether fully or partially) to act as an insolvency practitioner;
  - (b) the person is no longer fully authorised to act as an insolvency practitioner but remains partially authorised to act as such either in relation to companies or individuals, as specified in the direction;
  - (c) the person's authorisation to act as an insolvency practitioner is suspended for the period specified in the direction or until such time as the requirements so specified are complied with;
  - (d) the person must comply with such other requirements as may be specified in the direction while acting as an insolvency practitioner;
  - (e) the person makes such contribution as may be specified in the direction to one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.
- (4) A direct sanctions direction must not specify a contribution as mentioned in paragraph (3)(e) which is more than the remuneration that the person has received or will receive in respect of acting as an insolvency practitioner in the case.
- (5) In this Article “relevant recognised professional body” has the same meaning as in Article 350O.

## **General**

### **350S.— Power for Department to obtain information**

- (1) A person mentioned in paragraph (2) must give the Department such information as the Department may by notice in writing require for the exercise of the Department's functions under this Part.
- (2) Those persons are—
- (a) a recognised professional body;
  - (b) any individual who is or has been authorised under Article 349A to act as an insolvency practitioner;
  - (c) any person who is connected to such an individual.
- (3) A person is connected to an individual who is or has been authorised to act as an insolvency practitioner if, at any time during the authorisation—
- (a) the person was an employee of the individual;
  - (b) the person acted on behalf of the individual in any other way;
  - (c) the person employed the individual;
  - (d) the person was a fellow employee of the individual's employer;
  - (e) in a case where the individual was employed by a firm, partnership or company, the person was a member of the firm or partnership or (as the case may be) a director of the company.
- (4) In imposing a requirement under paragraph (1) the Department may specify—
- (a) the time period within which the information in question is to be given; and
  - (b) the manner in which it is to be verified.

### **350T.— Compliance orders**

- (1) If at any time it appears to the Department that—
- (a) a recognised professional body has failed to comply with a requirement imposed on it

by or by virtue of this Part; or

(b) any other person has failed to comply with a requirement imposed on the person by virtue of Article 350S,

the Department may make an application to the High Court.

(2) If, on an application under this Article, the Court decides that the body or other person has failed to comply with the requirement in question, it may order the body or person to take such steps as the Court considers will secure that the requirement is complied with.

**351.—**

Repealed

**352.—**

Repealed

**353.—**

Repealed

**354.—**

Repealed

## **PART XIII**

### **PUBLIC ADMINISTRATION**

#### *Official receivers*

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

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

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

#### **356.— Functions and status of official receivers**

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

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

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

#### **357.— Deputy official receivers**

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

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

#### *Insolvency Account*

### **358.— Insolvency Account**

- (1) An account, to be called the Insolvency Account, shall continue to be kept by the Department with such bank as may be agreed with the Department of Finance and Personnel.
- (2) The Department may, with the agreement of the Department of Finance and Personnel, invest any money from time to time standing to the credit of the Insolvency Account.
- (3) The Department shall in respect of each year ending on 31st March prepare an account, in such form and manner as the Department of Finance and Personnel may direct, of sums credited and debited to the Insolvency Account during that year.
- (4) On or before 31st August in each year the Department shall transmit to the Comptroller and Auditor General for Northern Ireland the account prepared under paragraph (3) in respect of the year ending on the preceding 31st March and the Comptroller and Auditor General shall examine and certify such account and the Department shall lay copies thereof, together with the report of the Comptroller and Auditor General thereon, before the Assembly.
- (5) On or before 31st March in each year the Department shall pay into the Consolidated Fund the amount of any lodgment made into the Insolvency Account of unclaimed dividends and unapplied or undistributed balances, which has remained unclaimed for a period of at least 2 years from the date of lodgment.

### **Adjustment of balances**

#### **358A.— Adjustment of balances**

- (1) The Department of Finance and Personnel may direct the payment out of the Consolidated Fund of sums into the Insolvency Account.
- (2) The Department of Finance and Personnel shall certify to the Assembly the reason for any payment under paragraph (1).
- (3) The Department may pay sums out of the Insolvency Account into the Consolidated Fund.

### *Insolvency rules*

#### **359.— Insolvency rules**

- (1) The Department of Justice may, with the concurrence of the Department and after consultation with the committee appointed under Article 360, make rules for the purpose of giving effect to this Order [ the EU Regulation.
- (1A) Rules that affect court procedure may be made under paragraph (1) only with the concurrence of the Lord Chief Justice.
- (1B) The Lord Chief Justice may nominate any of the following to exercise his functions under paragraph (1A)—
  - (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).
- (1C) Rules may also be made for the purpose of giving effect to Part 2 of the Banking Act 2009 (bank insolvency orders); and rules for that purpose shall be made—
  - (a) by the Lord Chancellor with the concurrence of—
    - (i) the Treasury, and
    - (ii) in the case of rules that affect court procedure, the Lord Chief Justice.
  - (1D) Rules may also be made for the purpose of giving effect to Part 3 of the Banking Act 2009 (bank administration); and rules for that purpose shall be made—
    - (a) by the Lord Chancellor with the concurrence of—

- (i) the Treasury, and
- (ii) in the case of rules that affect court procedure, the Lord Chief Justice.
- (2) Without prejudice to the generality of paragraph (1), (1C) or (1D) or to any provision of this Order by virtue of which rules under this Article may be made with respect to any matter, rules under this Article may contain—
  - (a) any such provision as is specified in Schedule 5 or corresponds to provision contained immediately before the coming into operation of this Order in rules made, or having effect as if made under Article 613(1) and (2) of the Companies (Northern Ireland) Order 1986 (old winding-up rules), and
  - (b) any such provision as is specified in Schedule 6 or corresponds to provision contained immediately before the coming into operation of this Order in rules made under Article 33(1) and (2) of the Bankruptcy Amendment (Northern Ireland) Order 1980 (old bankruptcy rules), and
  - (c) provision for enabling the Master (Bankruptcy) to exercise such of the jurisdiction conferred for the purposes of this Order on the High Court as may be prescribed and for enabling the review of any such jurisdiction, and
  - (d) such incidental, supplemental and transitional provision as may appear to the Department of Justice or, as the case may be, the Department or the Treasury necessary or expedient.
- (2A) For the purposes of paragraph (2), a reference in Schedule 5 or Schedule 6 to doing anything under or for the purposes of a provision of this Order includes a reference to doing anything under or for the purposes of the EU Regulation (in so far as the provision of this Order relates to a matter to which the EC Regulation applies).
- (2B) Rules under this Article for the purpose of giving effect to the EU Regulation may not create a new relevant offence (see Article 366A).
- (2C) For the purposes of paragraph (2), a reference in Schedule 5 to this Order to doing anything under or for the purposes of a provision of this Order includes a reference to doing anything under or for the purposes of Part 2 of the Banking Act 2009.
- (2D) For the purposes of paragraph (2), a reference in Schedule 5 to this Order to doing anything under or for the purposes of a provision of this Order includes a reference to doing anything under or for the purposes of Part 3 of the Banking Act 2009.
- (3) In Schedule 5 "liquidator" includes a provisional liquidator or bank liquidator or administrator; and references in this Article to this Order or Part 2 or 3 of the Banking Act 2009 are to be read as including the Companies Acts so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies.
- (3A) In this Article references to Part 2 or 3 of the Banking Act 2009 include references to those Parts as applied to building societies (see section 90C of the Building Societies Act 1986).
- (4) Rules under this Article shall be subject to negative resolution.
- (5) Regulations made by the Department or the Treasury under a power conferred by rules under this Article shall be subject to affirmative resolution.
- (6) Nothing in this Article prejudices any power to make rules of court.

### **360.— Committee to review rules under Article 359**

- (1) There shall be a committee appointed by the Lord Chief Justice to keep under review rules for the time being in force under Article 359 and to make recommendations to the Department of Justice as to any changes in the rules that may appear to the committee to be desirable.
- (2) The committee shall consist of—

- (a) the Chancery Judge;
  - (b) the Master (Bankruptcy);
  - (c) a practising barrister-at-law;
  - (d) a practising solicitor of the Supreme Court;
  - (e) a practising accountant; and
  - (f) such additional persons, if any, as appear to the Lord Chief Justice to have qualifications or experience that would be of value to the committee in considering any matter with which it is concerned.
- (3) The Lord Chief Justice may nominate any of the following to exercise his functions under this Article—
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).

### *Fees*

#### **361.— Fees orders**

- (1) The Department may, with the concurrence of the Department of Finance and Personnel, by order subject to affirmative resolution specify the fees which shall be paid in respect of—
- (za) the costs of persons acting as approved intermediaries under Part 7A;
  - (a) proceedings under this Order other than fees to which section 116 of the Judicature (Northern Ireland) Act 1978<sup>2</sup> (court fees, etc.) applies; and
  - (b) the performance by the official receiver or the Department of functions under this Order; and the Department of Finance and Personnel may direct by whom and in what manner the fees are to be collected and accounted for.
- (2) The Department may, with the concurrence of the Department of Finance and Personnel, by order subject to negative resolution provide for sums to be deposited, by such persons, in such manner and in such circumstances as may be specified in the order, by way of security for—
- (a) fees payable by virtue of this Article, and
  - (b) fees payable to any person who has prepared an insolvency practitioner's report under Article 248.
- (3) An order under this Article may contain such incidental, supplemental, and transitional provisions as may appear to the Department or (as the case may be) the Department of Finance and Personnel necessary or expedient.
- (4) References in paragraph (1) to this Order are to be read as including [ the Companies Acts so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies.
- (5) Nothing in this Article prejudices any power to make rules of court.

### **Fees orders (supplementary)**

#### **361A.—**

- (A1) The Department—
- (a) may, with the concurrence of the Department of Finance and Personnel, by order subject to negative resolution require a person or body to pay a fee in connection with the grant or maintenance of a designation of that person or body as a competent authority under Article 208U, and
  - (b) may refuse to grant, or may withdraw, any such designation where a fee is not paid.
- (1) The Department—

(a) may, with the concurrence of the Department of Finance and Personnel, by order subject to negative resolution require a body to pay a fee in connection with the grant or maintenance of recognition of the body under Article 350, and

(b) may refuse recognition, or revoke an order of recognition under Article 350(1) or (2) by a further order, where a fee is not paid.

(1A) Fees under paragraph (1) may vary according to whether the body is recognised under Article 350(1) (body providing full and partial authorisation) or under Article 350(2) (body providing partial authorisation).

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

(2) The Department—

(a) may, with the concurrence of the Department of Finance and Personnel, by order subject to negative resolution require a person to pay a fee in connection with the grant or maintenance of authorisation of the person under Article 352, and

(b) may disregard an application or withdraw an authorisation where a fee is not paid.

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

(a) the operation of the Insolvency Account;

(b) payments into and out of that Account.

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

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

(5A) Article 350M applies for the purposes of an order under paragraph (1)(b) as it applies for the purposes of a revocation order made under Article 350L.

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

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

### **362.— Monetary limits**

(1) The Department may by order—

(za) increase or reduce any of the money sums for the time being specified in the following provisions of Part 1A—

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

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

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

(a) increase or reduce any of the money sums for the time being specified in—

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

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

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

(b) specify amounts for the purposes of the following provisions—

Article 208S(4) (maximum amount of credit which a person in respect of whom a

debt relief order is made may obtain without disclosure of his status);  
Article 247 (minimum value of debtor's estate determining whether immediate bankruptcy order should be made; small bankruptcies level);  
Article 286A (value of property below which application for sale, possession or charge to be dismissed);  
Article 325(1)(b) and (3) (minimum amount of concealed debt, or value of property concealed or removed, determining criminal liability under the Article);  
Article 329(1)(a) (minimum value of property taken by a bankrupt out of Northern Ireland, determining his criminal liability);  
Article 331(1)(a) (maximum amount of credit which bankrupt may obtain without disclosure of his status);  
~~Article 332(2)(a) (exemption of bankrupt from criminal liability for failure to keep proper accounts, if unsecured debts not more than the prescribed minimum);~~  
Article 335(2)(d) (minimum value of goods removed by the bankrupt, determining his liability to arrest)  
paragraphs 6 to 8 of Schedule 2ZA (maximum amount of a person's debts, monthly surplus income and property for purposes of obtaining a debt relief order)

[(c)

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

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

### *Insolvency practice*

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

(1) The Department may make regulations for the purpose of giving effect to Part 12 of this Order.

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

(a) provision as to the matters to be taken into account in determining whether a person is a fit and proper person to act as an insolvency practitioner;

(b) provision prohibiting a person from so acting in prescribed cases, being cases in which a conflict of interest will or may arise;

(c) provision imposing requirements with respect to—

(i) the preparation and keeping by a person who acts as an insolvency practitioner of prescribed books, accounts and other records, and

(ii) the production of those books, accounts and records to prescribed persons;

(d) provision conferring power on prescribed persons—

(i) to require any person who acts or has acted as an insolvency practitioner to answer any inquiry in relation to a case in which he is so acting or has so acted, and

(ii) to apply to a court to examine such a person or any other person on oath concerning such a case;

(e) provision making non-compliance with any of the regulations a criminal offence; and

(f) such incidental, supplemental and transitional provisions as may appear to the Department necessary or expedient.

(3) In making regulations under this Article, the Department must have regard to the regulatory objectives (as defined by Article 350C(3)).



*Other order making powers*

**364.— Insolvent partnerships**

(1) The Department of Justice may, by order made with the concurrence the Lord Chief Justice and of the Department, provide that such provisions of this Order, Part VI of the Judgments Enforcement (Northern Ireland) Order 1981<sup>3</sup>, the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts as may be specified in the order shall apply in relation to insolvent partnerships with such modifications as may be so specified.

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

(a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;

(b) a Lord Justice of Appeal (as defined in section 88 of that Act).

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

(1B) Provision made by virtue of this Article in relation to the EU Regulation may not create a new relevant offence (see Article 366A).

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

**365.— Insolvent estates of deceased persons**

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

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

(a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;

(b) a Lord Justice of Appeal (as defined in section 88 of that Act).

(1A) 5 An order under this Article may make provision in relation to the EU Regulation.

(1B) Provision made by virtue of this Article in relation to the EU Regulation may not create a new relevant offence (see Article 366A).

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

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

**365A.— Insolvent estates: joint tenancies**

(1) This Article applies where—

(a) an insolvency administration order has been made in respect of the insolvent estate of a deceased person,

(b) the petition for the order was presented after the commencement of this Article and within the period of 5 years beginning with the day on which he died, and

(c) immediately before his death he was beneficially entitled to an interest in any property as joint tenant.

(2) For the purpose of securing that debts and other liabilities to which the estate is subject are met, the High Court may, on an application by the trustee appointed pursuant to the

insolvency administration order, make an order under this Article requiring the survivor to pay to the trustee an amount not exceeding the value lost to the estate.

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

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

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

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

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

(8) If there is more than one survivor—

(a) an order under this Article may be made against all or any of them, but

(b) no survivor shall be required to pay more than so much of the value lost to the estate as is properly attributable to him.

(9) In this Article—

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

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

### **366.— Formerly authorised banks**

(1) The Department may, by order subject to negative resolution, after consultation with the Financial Conduct Authority and the Prudential Regulation Authority provide that specified provisions in Parts 1A to 7 shall apply with specified modifications in relation to any person who—

(a) has a liability in respect of a deposit which he accepted in accordance with the Banking Act 1979 or 1987, but

(b) does not have permission under Part IV of the Financial Services and Markets Act 2000 (regulated activities) to accept deposits.

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

(a) section 22 of the Financial Services and Markets Act 2000 (classes of regulated activity and categories of investment),

(b) any relevant order under that section, and

(c) Schedule 2 to that Act (regulated activities).

### **366A. Meaning of "relevant offence"**

In Articles 359(2B), 364(1B) and 365(1B), a "relevant offence" is a criminal offence punishable with imprisonment for more than two years or punishable on summary conviction with imprisonment for more than three months or with a fine of more than level 5 on the standard scale (if not calculated on a daily basis) or with a fine of more than £100 a day.

## **PART XIV**

## **MISCELLANEOUS**

### *Provisions against debt avoidance*

#### **367.— Transactions defrauding creditors**

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

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

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

- (a) restoring the position to what it would have been if the transaction had not been entered into, and
  - (b) protecting the interests of persons who are victims of the transaction.
- (3) In the case of a person entering into such a transaction, an order shall only be made if the High Court is satisfied that it was entered into by him for the purpose—
- (a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or
  - (b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make.

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

#### **368.— Those who may apply for an order under Article 367**

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

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

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

#### **369.— Provision which may be made by order under Article 367**

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

- (a) require any property transferred as part of the transaction to be vested in any person, either absolutely or for the benefit of all the persons on whose behalf the application for the order is treated as made;
- (b) require any property to be so vested if it represents, in any person's hands, the application either of the proceeds of sale of property so transferred or of money so transferred;

- (c) release or discharge (in whole or in part) any security given by the debtor;
  - (d) require any person to pay to any other person in respect of benefits received from the debtor such sums as the High Court may direct;
  - (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction to be under such new or revived obligations as the High Court thinks appropriate;
  - (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction.
- (2) An order under Article 367 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the debtor entered into the transaction; but such an order—
- (a) shall not prejudice any interest in property which was acquired from a person other than the debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest, and
  - (b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.
- (3) For the purposes of this Article the relevant circumstances in relation to a transaction are the circumstances by virtue of which an order under Article 367 may be made in respect of the transaction.
- (4) In this Article "security" means any mortgage, charge, lien or other security.

#### *Disqualifications, reviews and reports*

### **370.— Assembly disqualification**

- (1) If the High Court makes any order mentioned in paragraph (1A) in respect of a member of the Assembly, the Court shall notify the presiding officer of the Assembly.
- (1A) The orders are—
- (a) a bankruptcy restrictions order;
  - (b) a debt relief restrictions order;
  - (c) an interim bankruptcy restrictions order; or
  - (d) an interim debt relief restrictions order.
- (2) If the Department accepts a bankruptcy restrictions undertaking or a debt relief restrictions undertaking made by a member of the Assembly, the Department shall notify the presiding officer of the Assembly.

### **370A. Irrelevance of privilege**

A statutory provision about insolvency applies in relation to a member of the Assembly irrespective of any privilege of the Assembly.

### **371. Review, etc., by High Court of its orders**

The High Court may review, rescind or vary any order made by it in the exercise of the jurisdiction under this Order.

### **372. Annual report**

The Department shall cause an annual general report of matters for which it and its officers, including the official receiver, are responsible under this Order to be prepared and laid before the Assembly.

### *Legal proceedings*

#### **373.— Prosecution and punishment of offences**

- (1) Schedule 7 sets out in tabular form the manner in which offences under this Order are punishable on conviction.
- (2) In relation to an offence under a provision of this Order specified in column 1 of Schedule 7 (the general nature of the offence being described in column 2)—
- (a) column 3 shows whether the offence is punishable on conviction on indictment, or on summary conviction, or either in one way or the other;
- (b) column 4 shows the maximum punishment by way of fine or imprisonment which may be imposed on a person convicted of the offence in the way specified in relation to it in column 3 (that is to say, on indictment or summarily) any reference to a period of years or months being to a term of imprisonment of that duration;
- (c) column 5 shows (in relation to an offence for which there is an entry in that column) that a person convicted of the offence after continued contravention is liable to a daily default fine; that is to say he is liable on a second or subsequent conviction of the offence to the fine specified in that column for each day on which the contravention is continued (instead of the penalty specified for the offence in column 4).
- (3) This Article and Schedule 7 shall be subject to any provision of this Order with respect to the prosecution and punishment of any offence specified in that Schedule.
- (4) The power to charge a person by virtue of section 20(2) of the Interpretation Act (Northern Ireland) 1954 of any offence committed by a body corporate under this Order does not extend to an offence committed under Articles 13DA(5), 13DG(3), 13DH(4), 13DI(1), 13DJ(5), 13DK(6), 13DL(2), 13DM(9), 13DN(4), 40, 49(2), 71(2), 75(4) and (6), 139, 159(2), 166(4), 170(1), (2) and (5), 171(1), 172(1) **and (2)**, 173, 174(1) **and (2)** and 175(1).
- (5) In Schedule 7 a reference to a fine without a qualifying reference shall be construed as a reference to an unlimited fine.

#### **374.— Summary proceedings**

- (1) Summary proceedings for any offence under any of Parts 1A to 7 may (without prejudice to any jurisdiction exercisable apart from this paragraph) be taken against a body corporate at any place at which the body has a place of business, and against any other person at any place at which he is for the time being.
- (2) Notwithstanding anything in Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981 (limitation of time for taking proceedings) summary proceedings for an offence under this Order, other than under Articles 34(6), 40, 41(1), 57(6), 75(4), ~~84(4)~~, 85(3), 111(7), 139, 170(1) and (2), 171(1), 172(1) **and (2)**, 173, 174(1) **and (2)**, 175(1), 180(4), 199(5), 223, 324(1), 325(1), (3) and (5), 326(1), (2) and (3), 327(1) and (3), 328(1) and (3), 329(1), 330(1) and (3), 331(1) and (3), 332, 333(1) and 348(1) may be instituted at any time within 3 years from the commission of the offence and within 12 months from the date on which evidence sufficient in the opinion of the Director of Public Prosecutions for Northern Ireland or, as the case may be, the Department to justify the proceedings comes to his or the Department's knowledge.
- (3) For the purposes of this Article, a certificate of the Director of Public Prosecutions for Northern Ireland or, as the case may be, the Department as to the date on which such evidence as is referred to in paragraph (2) came to his or the Department's knowledge is conclusive evidence.

#### **375.— Admissibility in evidence of statements of affairs, etc.**

- (1) In any proceedings (whether or not under this Order)—
- (a) a statement of affairs prepared for the purposes of any provision of this Order, and
  - (b) any other statement made in pursuance of a requirement imposed by or under any such provision or by or under rules made under this Order,
- may be used in evidence against any person making or concurring in making the statement.
- (2) However, in criminal proceedings in which any such person is charged with an offence to which this paragraph applies—
- (a) no evidence relating to the statement may be adduced, and
  - (b) no question relating to it may be asked,
- by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.
- (3) Paragraph (2) applies to any offence other than—
- (a) an offence under Article 34(6), 57(6), 58(8), 81(7), ~~84(5), 85(3)(a)~~ **85(3)**, 111(7), 162(2), 172(1) (a) or (d) or (2), 174, 199(5), 324(1), 325(1)(b) or (5) or 327(1) or (3)(a) or (b);
  - (b) an offence which is—
    - (i) created by rules made under this Order, and
    - (ii) designated for the purposes of this paragraph by such rules or by regulations;
  - (c) an offence which is—
    - (i) created by regulations made under any such rules, and
    - (ii) designated for the purposes of this paragraph by such regulations; or
  - (d) an offence under Article 3, 7 or 10 of the Perjury (Northern Ireland) Order 1979 (false statements made on oath or made otherwise than on oath).
- (4) Regulations under paragraph (3)(b)(ii) shall after being made be laid before the Assembly.

### *Supplemental*

#### **376. Judicial notice of court documents**

In all proceedings under this Order, all courts, judges and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court shall take judicial notice—

- (a) of the signature of any officer of the High Court in Northern Ireland or of the High Court or a county court in England and Wales, or of the Court of Session or a sheriff court in Scotland, and also
- (b) of the official seal or stamp of the several offices of the High Court in Northern Ireland or England and Wales or of the Court of Session, appended to or impressed on any document made, issued or signed under the provisions of this Order or the Companies Acts, or any official copy of such a document.

#### **377. Exemption from stamp duty**

Stamp duty shall not be charged on—

- (a) any document, being a deed, conveyance, assignment, surrender, admission or other assurance relating solely to property which—
  - (i) in the case of a winding up by the High Court or of a creditors' voluntary winding up, forms part of the company's assets; or
  - (ii) is comprised in a bankrupt's estate;and which, after the execution of that document, is or remains at law or in equity part of that company's assets or the property of the bankrupt or of the trustee in bankruptcy, as the case may require,
- (b) any order, certificate or other instrument relating solely to—
  - (i) the assets of any company which is being wound up as mentioned in head (a)(i)

or any proceedings under such a winding up, or  
(ii) the property of a bankrupt or any bankruptcy proceedings.

### **378. Crown application**

For the avoidance of doubt it is hereby declared that provisions of this Order bind the Crown, including the Crown in right of Her Majesty's government in the United Kingdom, so far as affecting or relating to the following matters, namely—

- (a) remedies against, or against the property of, companies or individuals;
- (b) priorities of debts;
- (c) transactions at an undervalue or preferences;
- (d) voluntary arrangements approved under Part II or Part VIII, and
- (e) discharge from bankruptcy.

### **379. Transitional provisions and savings**

The transitional provisions and savings set out in Schedule 8 shall have effect, the Schedule comprising the following Parts—

Part I: company insolvency and winding up (matters arising before the date of the coming into operation of this Order, and continuance of proceedings in certain cases as before that date);

Part II: individual insolvency (matters so arising, and continuance of bankruptcy proceedings in certain cases as before that date); and

Part III: other general transitional provisions and savings.

### **380**

Repealed.

### **381**

Art.381-Amendments

### **382**

Art.382-Repeals

## **PART 15**

### **SUPPLEMENTARY PROVISIONS**

#### **383. Introductory**

The provisions of this Part have effect for the purposes of—

- (a) [ Parts 1A to 7 ] <sup>2</sup> (company insolvency; companies winding-up),
- (b) Articles 2 and 5 to 8 (interpretation), and
- (c) Articles 359, 360, 361 and 362 in Part 13.

#### **384.— Representation of corporations in decision procedures and at meetings**

(1) If a corporation is a creditor or debenture-holder, it may by resolution of its directors or other governing body authorise a person or persons to act as its representative or representatives—

~~(a) at any meeting of the creditors of a company held in pursuance of this Order or of rules made under it, or~~

**(a) in a qualifying decision procedure, held in pursuance of this Order**

or of rules made under it, by which a decision is sought from the creditors of a company, or

(b) at any meeting of a company held in pursuance of the provisions contained in a debenture or trust deed.

(2) Where the corporation authorises only one person, that person is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual creditor or debenture-holder.

(3) Where the corporation authorises more than one person, any one of them is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual creditor or debenture-holder.

(4) Where the corporation authorises more than one person and more than one of them purport to exercise a power under paragraph (3)—

(a) if they purport to exercise the power in the same way, the power is treated as exercised in that way;

(b) if they do not purport to exercise the power in the same way, the power is treated as not exercised.

### **385. Legal professional privilege**

In proceedings against a person for an offence under this Order nothing in this Order is to be taken to require any person to disclose any information that he is entitled to refuse to disclose on grounds of legal professional privilege.

### **386.— Enforcement of company's filing obligations**

(1) This Article applies where a company has made default in complying with any obligation under this Order—

(a) to deliver a document to the registrar, or

(b) to give notice to the registrar of any matter.

(2) The registrar, or any member or creditor of the company, may give notice to the company requiring it to comply with the obligation.

(3) If the company fails to make good the default within 14 days after service of the notice, the registrar, or any member or creditor of the company, may apply to the High Court for an order directing the company, and any specified officer of it, to make good the default within a specified time.

(4) The High Court's order may provide that all costs of or incidental to the application are to be borne by the company or by any officers of it responsible for the default.

(5) This Article does not affect the operation of any enactment imposing penalties on a company or its officers in respect of any such default.

### **387. Application of filing obligations to overseas companies**

The provisions of this Order requiring documents to be forwarded or delivered to, or filed with, the registrar apply in relation to an overseas company that is required to register particulars under section 1046 of the Companies Act 2006 as they apply in relation to a company registered under that Act in Northern Ireland.

*G. I. de Deney*

Clerk of the Privy Council

## **SCHEDULE ZA1**

### **MORATORIUM: ELIGIBLE COMPANIES**

#### **Article 13AA**



## **Eligible companies**

### **1**

A company is "eligible" for the purposes of this Part unless it is excluded from being eligible by any of the following—

- paragraph 2 (current or recent insolvency procedure);
- paragraph 3 (insurance companies);
- paragraph 4 (banks);
- paragraph 5 (electronic money institutions);
- paragraph 6 (investment banks and investment firms);
- paragraph 7 (market contracts, market charges, etc);
- paragraph 8 (participants in designated systems);
- paragraph 9 (payment institutions);
- paragraph 10 (operators of payment systems, infrastructure providers etc);
- paragraph 11 (recognised investment exchanges, clearing houses and CSDs);
- paragraph 12 (securitisation companies);
- paragraph 13 (parties to capital market arrangements);
- paragraph 15 (public-private partnership project companies);
- paragraph 18 (certain overseas companies).

## **Companies subject to, or recently subject to, moratorium or an insolvency procedure**

### **2**

- (1) A company is excluded from being eligible if—
  - (a) on the filing date, a moratorium for the company is in force, or
  - (b) at any time during the period of 12 months ending with the filing date, a moratorium for the company was in force (but see Article 13F(6) for power of the High Court to modify the effect of this paragraph).
- (2) A company is excluded from being eligible if—
  - (a) on the filing date, the company is subject to an insolvency procedure, or
  - (b) at any time during the period of 12 months ending with the filing date, the company was subject to an insolvency procedure within sub-paragraph (3)(a) or (b).
- (3) For the purposes of sub-paragraph (2), a company is subject to an insolvency procedure at any time if at that time—
  - (a) a voluntary arrangement has effect in relation to the company,
  - (b) the company is in administration,
  - (c) paragraph 45 of Schedule B1 applies in relation to the company (administration: interim moratorium),
  - (d) there is an administrative receiver of the company,
  - (e) there is a provisional liquidator of the company,
  - (f) the company is being wound up, or
  - (g) a relevant petition for the winding up of the company has been presented and has not been withdrawn or determined.
- (4) In sub-paragraph (3)(g) "relevant petition" means a petition under—
  - (a) Article 104A (winding up on grounds of public interest),
  - (b) Article 104B (winding up of SE), or
  - (c) Article 104C (winding up of SCE).

## **Insurance companies**

### 3

(1) A company is excluded from being eligible if—

(a) it carries on the regulated activity of effecting or carrying out contracts of insurance, and

(b) it is not an exempt person in relation to that activity.

(2) In this paragraph—

"exempt person", in relation to a regulated activity, has the meaning given by section 417 of the Financial Services and Markets Act 2000;

"regulated activity" has the meaning given by section 22 of that Act, taken with Schedule 2 to that Act and any order under that section..

### 4

(1) A company is excluded from being eligible if—

(a) it has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits,

(b) it is a banking group company within the meaning of Part 1 of the Banking Act 2009 (see section 81D of that Act), or

(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.

(2) In sub-paragraph (1)(a) "regulated activity" has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section.

## **Electronic money institutions**

### 5

A company is excluded from being eligible if it is an electronic money institution within the meaning of the Electronic Money Regulations 2011 (S.I. 2011/99) (see regulation 2 of those Regulations).

## **Investment banks and investment firms**

### 6

(1) A company is excluded from being eligible if it is an investment bank or an investment firm.

(2) In this paragraph—

"investment bank" means a company that has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of—

(a) safeguarding and administering investments,

(b) managing an AIF or a UCITS,

(c) acting as trustee or depositary of an AIF or a UCITS,

(d) dealing in investments as principal, or

(e) dealing in investments as agent,

but does not include a company that has permission to arrange for one or more others to carry on the activity mentioned in paragraph (a) if it does not otherwise have permission to carry on any of the activities mentioned in paragraphs (a) to (e);

"investment firm" has the same meaning as in the Banking Act 2009 (see section 258A of that Act), disregarding any order made under section 258A(2)(b) of that Act;

"regulated activity" has the meaning given by section 22 of the Financial Services and

Markets Act 2000, taken with Schedule 2 to that Act and any order under that section..

## **Companies that are party to market contracts or subject to market charges, etc | 1**

**7**

(1) A company is excluded from being eligible if it is a party to a market contract for the purposes of Part 5 of the Companies (No. 2) (Northern Ireland) Order 1990 (see Article 80 of that Order).

(2) A company is excluded from being eligible if any of its property is subject to a market charge for the purposes of Part 5 of the Companies (No. 2) (Northern Ireland) Order 1990 (see Article 95 of that Order).

(3) A company is excluded from being eligible if any of its property is subject to a charge that is a system-charge, within the meaning of the Financial Markets and Insolvency Regulations (Northern Ireland) 1996 (S.R. (N.I.) 1996/252) (see regulation 2 of those Regulations).

## **Participants in designated systems**

**8**

A company is excluded from being eligible if—

(a) it is a participant in a designated system, within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979) (see regulation 2 of those Regulations), or (b) any of its property is subject to a collateral security charge within the meaning of those Regulations (see regulation 2 of those Regulations).

## **Payment institutions**

**9**

A company is excluded from being eligible if it is an authorised payment institution, a small payment institution or a registered account information service provider within the meaning of the Payment Services Regulations 2017 (S.I. 2017/752) (see regulation 2 of those Regulations).

## **Operators of payment systems, infrastructure providers etc**

**10**

A company is excluded from being eligible if—

(a) it is the operator of a payment system or an infrastructure provider within the meaning of Part 5 of the Financial Services (Banking Reform) Act 2013 (see section 42 of that Act), or

(b) it is an infrastructure company, within the meaning of Part 6 of that Act (see section 112 of that Act).

## **Recognised investment exchanges, clearing houses and CSDs**

**11**

A company is excluded from being eligible if it is a recognised investment exchange, a recognised clearing house or a recognised CSD within the meaning of the Financial Services and Markets Act 2000 (see section 285 of that Act).

## **Securitisation companies**

## 12

A company is excluded from being eligible if it is a securitisation company within the meaning of the Taxation of Securitisation Companies Regulations 2006 (S.I. 2006/3296) (see regulation 4 of those Regulations).

### **Parties to capital market arrangement**

## 13

(1) A company is excluded from being eligible if, on the filing date—

(a) it is a party to an agreement which is or forms part of a capital market arrangement (see sub-paragraph (2)),

(b) 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 (at any time during the life of the capital market arrangement), and

(c) the arrangement involves the issue of a capital market investment (see paragraph 14).

(2) For the purposes of this paragraph, an arrangement is a "capital market arrangement" if any of the following applies—

(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;

(b) at least one party guarantees the performance of obligations of another party;

(c) at least one party provides security in respect of the performance of obligations of another party;

(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 (S.I. 2001/544) (options, futures and contracts for differences).

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

(a) a reference to holding a security as trustee includes a reference to holding it 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 reference to holding a capital market investment is to holding a legal or beneficial interest in it.

(4) For the purposes of sub-paragraph (1)(b), where a debt is denominated wholly or partly in a foreign currency, the sterling equivalent is to be calculated as at the time when the arrangement is entered into.

## 14

(1) For the purposes of paragraph 13 an investment is a "capital market investment" if condition A or B is met.

(2) Condition A is that the investment—

(a) is within article 77 or 77A 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.

(3) In sub-paragraph (2)—

"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..

(4) In sub-paragraph (3)—

"foreign market" has the same meaning as "relevant market" in article 67(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529) (foreign markets);

"recognised investment exchange" has the meaning given by section 285 of the Financial Services and Markets Act 2000 (recognised investment exchange)..

(5) Condition B is that the investment 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 2005 (S.I. 2005/1529);

(b) a person who, when the agreement mentioned in paragraph 13(1) is entered into, is a 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, etc);

(d) a person who, when the agreement mentioned in paragraph 13(1) is entered into, is a certified sophisticated investor in relation to a communication within the meaning of article 50(1) of that Order;

(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.

(6) For the purposes of sub-paragraph (5)—

(a) in applying article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005—

(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;

(b) in applying article 49(2) of that Order, ignore article 49(2)(e);

(c) "bond" means—

(i) a bond that is within article 77(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, or

(ii) an alternative finance investment bond within the meaning of article 77A of that Order;

(d) "commercial paper" has the meaning given by article 9(3) of that Order.

## **Public-private partnership project companies ] 1**

### **15**

(1) A company is excluded from being eligible if, on the filing date, it is a project company of a project which—

(a) is a public-private partnership project (see paragraph 16), and

(b) includes step-in rights (see paragraph 17).

(2) For the purposes of this paragraph a company is a "project company" of a project if any of the following applies—

(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;
- (e) it is the holding company of a company within any of paragraphs (a) to (d).
- (3) But a company is not a "project company" of a project if—
  - (a) it performs a function within sub-paragraph (2)(a) to (d) or is within sub-paragraph (2)(e), but
  - (b) it also performs a function which is not—
    - (i) within sub-paragraph (2)(a) to (d),
    - (ii) related to a function within sub-paragraph (2)(a) to (d), or
    - (iii) related to the project.
- (4) 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.

## **16**

- (1) For the purposes of paragraph 15 "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) "public body" means —
  - (a) a body which exercises public functions,
  - (b) a body specified for the purposes of this paragraph by the Department, or
  - (c) a body within a class specified for the purposes of this paragraph by the Department.
- (3) In sub-paragraph (1)(a) "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;
  - (e) any other commercial resource.
- (4) A specification under sub-paragraph (2) may be—
  - (a) general, or
  - (b) for the purpose of the application of paragraph 15 to a specified case.

## **17**

- (1) For the purposes of paragraph 15 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.

## **Overseas companies with corresponding functions**

## **18**

A company is excluded from being eligible if its registered office or head office is outside the United Kingdom and—

- (a) its functions correspond to those of a company mentioned in any of the previous paragraphs of this Schedule apart from paragraph 2 and, if it were a company registered under the Companies Act 2006 in Northern Ireland, it would be excluded from being eligible by that paragraph, or

(b) it has entered into a transaction or done anything else that, if done in Northern Ireland by a company registered under the Companies Act 2006 in Northern Ireland, would result in the company being excluded by any of the previous paragraphs of this Schedule apart from paragraph 2.

## **Interpretation of Schedule**

### **Notes**

#### **19**

- (1) This paragraph applies for the purposes of this Schedule.
- (2) "Agreement" includes any 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, Scotland or another jurisdiction.
- (3) "The filing date" means the date on which documents are filed with the High Court under Article 13B, 13BA or 13BB.
- (4) "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.

## **Power to amend Schedule | 1**

#### **20**

- (1) Regulations may amend this Schedule so as to alter the circumstances in which a company is "eligible" for the purposes of this Part.
- (2) Regulations may not be made under this paragraph unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

## **SCHEDULE ZA2**

## **MORATORIUM: CONTRACT OR OTHER INSTRUMENT INVOLVING FINANCIAL SERVICES**

### **Article 13D**

#### **Introductory**

##### **1 Introductory**

For the purposes of Article 13D "contract or other instrument involving financial services" means a contract or other instrument to which any of the following paragraphs applies.

#### **Financial contracts**

##### **2 Financial contracts**

- (1) This paragraph applies to a financial contract.
- (2) "Financial contract" means —
  - (a) a contract for the provision of financial services consisting of—
    - (i) lending (including the factoring and financing of commercial transactions),
    - (ii) financial leasing, or
    - (iii) providing guarantees or commitments;
  - (b) a securities contract, including—

- (i) a contract for the purchase, sale or loan of a security, group or index of securities;
- (ii) an option on a security or group or index of securities;
- (iii) a repurchase or reverse repurchase transaction on any such security, group or index;
- (c) a commodities contract, including—
  - (i) a contract for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;
  - (ii) an option on a commodity or group or index of commodities;
  - (iii) a repurchase or reverse repurchase transaction on any such commodity, group or index;
- (d) a futures or forwards contract, including a contract (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;
- (e) a swap agreement, including—
  - (i) a swap or option relating to interest rates, spot or other foreign exchange agreements, currency, an equity index or equity, a debt index or debt, commodity indexes or commodities, weather, emissions or inflation;
  - (ii) a total return, credit spread or credit swap;
  - (iii) any agreement or transaction that is similar to an agreement that is referred to in sub-paragraph (i) or (ii) and is the subject of recurrent dealing in the swaps or derivatives markets;
- (f) an inter-bank borrowing agreement where the term of the borrowing is three months or less;
- (g) a master agreement for any of the contracts or agreements referred to in paragraphs (a) to (f).
- (3) For the purposes of this paragraph "commodities" includes—
  - (a) units recognised for compliance with the requirements of EU Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading,
  - (b) allowances under paragraph 5 of Schedule 2 to the Climate Change Act 2008 relating to a trading scheme dealt with under Part 1 of that Schedule (schemes limiting activities relating to emissions of greenhouse gas), and
  - (c) renewables obligation certificates issued—
    - (i) by the Gas and Electricity Markets Authority under an order made under section 32B of the Electricity Act 1989, or
    - (ii) by the Northern Ireland Authority for Utility Regulation under the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) and pursuant to an order made under Articles 52 to 55F of that Order.

## **Securities financing transactions**

### **3 Securities financing transactions**

- (1) This paragraph applies to a securities financing transaction.
- (2) "Securities financing transaction" has the meaning given by Article 3(11) of Regulation (EU) 2015/2365 on the transparency of securities financing transactions.
- (3) But for the purposes of that Article as it applies for the purposes of this paragraph, references to "commodities" in that Regulation are to be taken as including the units, allowances and certificates referred to in paragraph 2(3)(a), (b) and (c).

## **Derivatives**



#### **4 Derivatives**

This paragraph applies to a derivative, within the meaning given by Article 2(5) of Regulation (EU) No. 648/2012.

#### **Spot contracts**

##### **5 Spot contracts**

(1) This paragraph applies to a spot contract.

(2) "Spot contract" has the meaning given by Article 7(2) or 10(2) of Commission Delegated Regulation of 25.4.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

#### **Capital market arrangements**

##### **6 Capital market arrangements**

This paragraph applies to a capital market arrangement within the meaning given by paragraph 13(2) of Schedule ZA1.

#### **Contracts forming part of a public-private partnership**

##### **7 Contracts forming part of a public-private partnership**

This paragraph applies to a contract forming part of a public-private partnership project within the meaning given by paragraph 16 of Schedule ZA1.

#### **Market contracts**

##### **8 Market contracts**

This paragraph applies to a market contract within the meaning of Part 5 of the Companies (No.2) (Northern Ireland) Order 1990 (see Article 80 of that Order).

#### **Qualifying collateral arrangements and qualifying property transfers**

##### **9 Qualifying collateral arrangements and qualifying property transfers**

This paragraph applies to qualifying collateral arrangements and qualifying property transfers within the meaning of Part 7 of the Companies Act 1989 (see section 155A of that Act).

#### **Contracts secured by certain charges or arrangements**

##### **10 Contracts secured by certain charges or arrangements**

This paragraph applies to a contract where any obligation under the contract is—

(a) secured by a market charge within the meaning of Part 5 of the Companies (No.2) (Northern Ireland) Order 1990 (see Article 95 of that Order),

(b) secured by a system-charge within the meaning of the Financial Markets and Insolvency Regulations (Northern Ireland) 1996 (S.R. (N.I.) 1996/252) (see regulation 2 of those Regulations), or

(c) secured or otherwise covered by a financial collateral arrangement within the meaning of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226) (see regulation 3 of those Regulations).

## **Default arrangements and transfer orders**

### **11 Default arrangements and transfer orders**

This paragraph applies to a contract which is included in default arrangements, or a transfer order, within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979) (see regulation 2 of those Regulations).

## **Card-based payment transactions**

### **12 Card-based payment transactions**

This paragraph applies to a contract to accept and process card-based payment transactions within the meaning given by Regulation (EU) 2015/751 of the European Parliament and of the Council of 29th April 2015 on interchange fees for card-based payment transactions.

## **Power to amend Schedule**

### **13 Power to amend Schedule**

- (1) Regulations may amend this Schedule so as to change the meaning of "contract or other instrument involving financial services" for the purposes of Article 13D.
- (2) Regulations may not be made under this paragraph unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

## **SCHEDULE A1**

### **PART I**

Corporate Insolvency and Governance Act 2020 c. 12 Sch.7 para.26 (June 26, 2020)

Repealed

**1.**

Repealed

**2.—**

Repealed

**3.—**

**Notes**

Repealed

**4.—**

Repealed

**5.**

**Notes**

Repealed

**6.**

Repealed

**7.—**

Repealed

**8.—**

Repealed

**9.—**

Repealed

**10.—**  
Repealed

**11.**  
**Notes**  
Repealed

**12.—**  
Repealed

**13**  
Repealed

**14.—**  
Repealed

**15.**  
Repealed

**16.—**  
Repealed

**PART II**  
Repealed

**17.—**  
Repealed

**18.—**  
Repealed

**19.—**  
Repealed

**20.—**  
Repealed

**21.—**  
Repealed

**22.—**  
Repealed

**PART**  
Repealed

**23.—**  
Repealed

**24.—**  
Repealed

**25.**  
Repealed

**26.—**  
Repealed

**27.—**  
Repealed

**28.—**  
Repealed

**29.—**  
Repealed

**30.—**  
Repealed

**31.—**  
Repealed

**32**  
Repealed

**33.—**  
Repealed

**PART IV**  
Repealed

**34.—**  
Repealed

**35.—**  
Repealed

**36.—**  
Repealed

**37.—**  
Repealed

**38.—**  
Repealed

**PART V**  
Repealed

**39.—**  
Repealed

**40.—**  
Repealed

**41.—**  
Repealed

**42.—**  
Repealed

**43.—**  
Repealed

**44.—**  
Repealed

**45.—**  
Repealed

**46.—**  
Repealed

**47.—**  
Repealed

**48.—**  
Repealed

**49.—**  
Repealed

**PART VI)**  
Repealed

**50.— [...]**  
Repealed

**51.—**  
Repealed

**52.—**  
Repealed

**53.—**  
Repealed

**54.—**  
Repealed

**55.—**  
Repealed

## **SCHEDULE B1**

### **ADMINISTRATION**

#### **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,

~~“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,

“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 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.

(1A) In this Schedule, “company” means—

(a) a company registered under the Companies Act 2006 in Northern Ireland,

(b) a company incorporated in an EEA State, or

(c) a company not incorporated in an EEA State but having its centre of main interests either in a member State other than Denmark or in the United Kingdom.

(1B) In sub-paragraph (1A), in relation to a company, “centre of main interests” has the same meaning [ as in Article 3 of the EU 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.

## **Non-UK companies**

### **1A. Non-UK companies**

A company incorporated [ outside the United Kingdom 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—

(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)(a) 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.

### **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.

**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~~



(d) the chief clerk or a collection officer in the exercise of the power mentioned in section 35(4A) and (4B) of the Criminal Justice Act (Northern Ireland) 1945 (enforcement of fines imposed on companies),

(e) a clerk of petty sessions or a collection officer in the exercise of the power mentioned in Article 92A(1) and (1A) of the Magistrates' Courts (Northern Ireland) Order 1981 (enforcement of fines imposed on companies), 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.

## **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—
  - (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.
- (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.—**

Repealed

**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.

**26A.—**(1) Paragraph 26(a) does not prevent the appointment of an administrator of a company if the petition for the winding up of the company was presented after the person proposing to make the appointment filed the notice of intention to appoint with the High Court under paragraph 28.

(2) But sub-paragraph (1) does not apply if the petition was presented under a provision mentioned in paragraph 43(4).

### **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~~ gives notice of intention to appoint under sub-paragraph (1) 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—

(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.
- (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.

## **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

(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**

#### **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 Conduct Authority or the Prudential Regulation Authority ] 2).

(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.

### **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,

(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.

### **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 Conduct Authority or the Prudential Regulation 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.

### **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~~ **application to enforce judgment** and distress) may be instituted or

continued against the company or property of the company except—

(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.

### **Interim moratorium**

#### **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.

- (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.
- (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.

## **Publicity**

### **46.—**

- (1) While a company is in administration, every business document issued by or on behalf of the company or the administrator, and all the company's websites, must state—
- (a) the name of the administrator, and
  - (b) that the affairs, business and property of the company are being managed by the administrator.
- (2) Any of the following persons commits an offence if without reasonable excuse the person 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,
  - (c) a business letter, and
  - (d) an order form,
- whether in hard copy, electronic or any other form.

## **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.
- (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.
- (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

### 50.—

- (1) The administrator of a company shall make a statement setting out proposals for achieving the purpose of administration.
- (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.
- (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 Part 26 or 26A of the Companies Act 2006 (arrangements and reconstructions).
- (4) The administrator shall send a copy of the statement of his proposals—
  - (a) to the registrar,
  - (b) to every creditor of the company, **other than an opted-out creditor**, 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
  - (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~~

### *Consideration of administrator's proposals by creditors*

### 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.~~

(1) The administrator must seek a decision from the company's creditors as to whether they approve the proposals set out in the statement made under paragraph 50(1).

(2) The initial decision date for that decision must be within the period of 10 weeks beginning with the day on which the company enters administration.

(3) The "initial decision date" for that decision—

(a) if the decision is initially sought using the deemed consent procedure, is the date on which a decision will be made if the creditors by that procedure approve the proposals, and

(b) if the decision is initially sought using a qualifying decision procedure, is the date on or before which a decision will be made if it is made by that qualifying decision procedure (assuming that date does not change after the procedure is instigated).

(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~~ seek a decision from the company's creditors as to whether they approve the proposals set out in the statement made under paragraph 50(1) if requested to do so—

(a) by creditors of the company whose debts amount to at least 10 per cent. of the total debts of the company,

(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.~~

(3) Where a decision is sought by virtue of sub-paragraph (2) the initial decision date (as defined in paragraph 52(3)) must be within 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~~**

### *Creditors' decision*

#### **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.~~

(1) The company's creditors may approve the administrator's proposals—

(a) without modification, or

(b) with modification to which the administrator consents.

(2) ~~After the conclusion of an initial creditors' meeting the~~ The administrator shall as soon as is reasonably practicable report any decision taken by the company's creditors 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~~ by the company's creditors,

(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 who is not an opted-out 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.~~

(d) seek a decision from the company's creditors as to whether they approve the proposed revision.

(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~~

~~(b) approve it with modification to which the administrator consents.~~

(5) The company's creditors may approve the proposed revision—

(a) without modification, or

(b) with modification to which the administrator consents.

(6) ~~After the conclusion of a creditors' meeting the~~ The administrator shall as soon as is reasonably practicable report any decision taken by the company's creditors 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.~~

(1) This paragraph applies where an administrator—

- (a) reports to the High Court under paragraph 54 that a company's creditors have failed to approve the administrator's proposals, or
- (b) reports to the Court under paragraph 55 that a company's creditors have failed to approve a revision of the administrator's proposals.

(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~~ decisions**

#### **57.—**

(1) The administrator of a company shall ~~summon a creditors' meeting~~ **seek a decision from the company's creditors on a matter** 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~~ **do so**.

(2) An administrator commits an offence if he fails without reasonable excuse to ~~summon a creditors' meeting~~ **seek a decision from the company's creditors on a matter** as required by this paragraph.

### **Creditors' committee**

#### **58.—**

(1) ~~A creditors' meeting may~~ **The company's creditors may, in accordance with the rules,** 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.

## **~~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.**

- (1) The administrator of a company has the powers specified in Schedule 1.  
(2) But the power to sell, hire out or otherwise dispose of property is subject to any regulations that may be made under paragraph 61A.

### **61A.**

- (1) Regulations may make provision for—  
(a) prohibiting, or  
(b) imposing requirements or conditions in relation to, the disposal, hiring out or sale of property of a company by the administrator to a connected person in circumstances specified in the regulations.  
(2) Regulations under this paragraph may in particular require the approval of, or provide for the imposition of requirements or conditions by—  
(a) creditors of the company,  
(b) the High Court, or  
(c) a person of a description specified in the regulations.  
(3) In sub-paragraph (1), "connected person", in relation to a company, means—  
(a) a relevant person in relation to the company, or  
(b) a company connected with the company.  
(4) For the purposes of sub-paragraph (3)—  
(a) "relevant person", in relation to a company, means—  
(i) a director or other officer, or shadow director, of the company;  
(ii) a non-employee associate of such a person;  
(iii) a non-employee associate of the company;  
(b) a company is connected with another if any relevant person of one is or has been a relevant person of the other.



(5) In sub-paragraph (4), "non-employee associate" of a person means a person who is an associate of that person otherwise than by virtue of employing or being employed by that person.

(6) Paragraph (11) of Article 4 (extended definition of company) applies for the purposes of sub-paragraphs (3) to (5) as it applies for the purposes of that Article.

(7) Regulations under this paragraph may make incidental, consequential, supplemental and transitional provision.

(8) Regulations may not be made under this paragraph unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(9) This paragraph expires at the end of June 2021 unless the power conferred by it is exercised before then.

## **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.~~  
~~may—~~

- (a) call a meeting of members of the company;
- (b) seek a decision on any matter from the company's creditors.

## **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**

### **65A.—**

(1) This paragraph applies where a company enters administration before the end of the period of 12 weeks beginning with the day after the end of any moratorium **for the company** under Part 1A.

(2) The administrator must make a distribution to the creditors of the company in respect of—

- (a) moratorium debts (within the meaning given by Article 148A), and
- (b) priority pre-moratorium debts (within the meaning given by Article 148A).

(3) A sum payable under sub-paragraph (2) is to be paid in priority to—

- (a) any security to which paragraph 71 applies;
- (b) any sums payable under paragraph 100.

(4) The administrator must realise any property necessary to comply with sub-paragraph (2).

(5) The rules may make provision as to the order in which the moratorium and priority pre-moratorium debts rank among themselves for the purposes of this paragraph in a case where the assets of the company are insufficient to meet them in full.

**66.—**

(1) If the assets of a company are sufficient to meet any debts or other liabilities payable under paragraph 65A in full, the administrator of the company may make a distribution to any other creditor of the company.

(2) Articles 149 and 150ZZA shall apply in relation to a distribution under this paragraph as they apply 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~~ unless—

(a) the distribution is made by virtue of Article 150A(2)(a), or

(b) the High Court gives permission.

**67.**

If the debts or other liabilities payable under paragraph 65A have been met, 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.

### **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.

### **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.

(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).

### **Protection for priority 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,
  - (bb) would result in an ordinary preferential debt of the company being paid otherwise than in priority to its secondary preferential debts,
  - (c) would result in one preferential creditor of the company being paid a smaller proportion of an ordinary preferential debt than another
  - (d) would result in one preferential creditor of the company being paid a smaller proportion of a secondary preferential debt than another
  - (e) if the company is a relevant financial institution (see Article 347A), would result in any non-preferential debt being paid otherwise than in accordance with the rules in Article 150ZZA(2) or (3).
- (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) ),
  - (c) a proposal for a compromise or arrangement to be sanctioned under Part 26 or 26A of the Companies Act 2006 (arrangements and reconstructions) ~~or~~
  - ~~(d) a proposal for a cross border merger within the meaning of regulation 2 of the Companies (Cross-Border Mergers) Regulations 2007.~~
- (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).
- (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;~~
  - (c) require a decision of the company's creditors to be sought on a matter;**
  - (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 Part 26 or 26A of the Companies Act 2006 (arrangements and reconstructions)
  - ~~(ba) a cross-border merger within the meaning of regulation 2 of the Companies (Cross-Border Mergers) Regulations 2007, 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.

## **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,
  - (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~~ **1 year** 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.~~

**(b) if the company has unsecured debts, the unsecured creditors of the company.**

(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.~~

**(ii) the preferential creditors of the company.**

**(2A) Whether the company's unsecured creditors or preferential creditors consent is to be determined by the administrator seeking a decision from those creditors as to whether they 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~~ the company's creditors decide that he must 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).

### **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, ~~other than an opted-out creditor~~, 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 Conduct Authority or the Prudential Regulation 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).

(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) **which is not a distribution by virtue of Article 150A(2)(a).**



- (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, **other than an opted-out 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.

## **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.
  - (1A)
  - (1B)
- (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, **other than an opted-out 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.
  - (6A)

(6B)

(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.

## **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**

### **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,
- (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.

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

**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.~~

**(2) The administrator may be replaced by a decision of the creditors made by a qualifying decision procedure.**

**(3) The decision has effect only if, before the decision is made, the new administrator has consented to act in writing.**

**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.~~

(1A) The discharge provided by sub-paragraph (1) takes effect in accordance with sub-paragraphs (2) to (2C).

(2) In the case of an administrator who dies, the discharge takes effect on the filing with the High Court of notice of his or her death.

(2A) In the case of an administrator who was appointed under paragraph 15 or 23 and who has not made a statement under paragraph 53(1)(b), the discharge takes effect at a time appointed—

(a) by resolution of the creditors' committee, or

(b) if there is no such committee, by ~~resolution~~ decision of the creditors.

(2B) In the case of an administrator who was appointed under paragraph 15 or 23 and who has made a statement under paragraph 53(1)(b), the discharge takes effect at a time decided by the relevant creditors (as to which, see sub-paragraphs (3) and (3A)).

(2C) In any case, the discharge takes effect at such time as may be specified by the Court.

(3) For the purposes of sub-paragraph (2B), the "relevant creditors" are the secured creditors of the company, unless sub-paragraph (3A) applies.

(3A) If the administrator has made a distribution to preferential creditors, or thinks that a distribution may be made to preferential creditors, the "relevant creditors" are—

(a) the secured creditors of the company, and

(b) the preferential creditors of the company.

(3B) In a case where the administrator is removed from office, a decision of the creditors for the purposes of sub-paragraph (2A)(b), or of the preferential creditors for the purposes of sub-paragraph (2B), must be made by a qualifying decision procedure.

(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.

(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, and

(d)

(e) a contribution to an occupational pension scheme.

## **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

(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.

(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—

- (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.~~

**(b) if the company has unsecured debts, the unsecured creditors of the company.**

(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.~~

**(ii) the preferential creditors of the company.**

**(3A) Whether the company's unsecured creditors or preferential creditors consent is to be determined by the administrator seeking a decision from those creditors as to whether they 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.

**SCHEDULE 1**

**POWERS OF ADMINISTRATOR OR ADMINISTRATIVE RECEIVER**

**Articles 27, 52.**

**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.**

Without prejudice to Article 28 or 30 of the Property (Northern Ireland) Order 1997, 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.**

Power to call up any uncalled capital of the company.

**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.

## **SCHEDULE 1A**

### **EXCEPTIONS TO PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE RECEIVER: SUPPLEMENTARY PROVISIONS**

#### **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
  - (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 or 77A 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 2005,

(b) a person who is, when the agreement mentioned in Article 59B(1) is entered into, a 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 or 77A 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”,

(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.**

For 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—
  - (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 of Part 3 of the Postal Services Act 2011 (c.5),

(e) by a Post Office company within the meaning of Part 1 of that Act, or

(f)

(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.

(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.

(3) In sub-paragraph (1)(g), an “EEA State” means a member State, Norway, Iceland or Liechtenstein.

## **“Person”**

### **11.**

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

## **SCHEDULE 2**

### **POWERS OF LIQUIDATOR IN A WINDING UP**

**Articles 140, 142.**

#### **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.

**3.**  
Repealed

**3A.**  
Power to bring legal proceedings under Article 177, 178, 202, 203 or 367.

## **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.**  
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.

~~**7A.**  
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) subject to paragraph 2 in Part 1 of this Schedule, 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.~~

**8.**

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

**8A.**

Power to use the company's seal.

**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 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.

(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.

**SCHEDULE 2ZZA**

**OF SUPPLIES UNDER ARTICLE 197B: EXCLUSIONS**

## **Article 197B**

### **PART 1**

#### **ESSENTIAL SUPPLIES**

##### **1 Essential supplies**

- (1) Article 197B(3) and (4) do not apply in relation to provision of a contract if—
- (a) the company becomes subject to a relevant insolvency procedure as specified in Article 197B(2)(b) or (d), and
  - (b) the provision of the contract ceases to have effect under Article 197A(1).
- (2) Article 197B(7) does not apply in relation to a supply to the company if—
- (a) the company becomes subject to a relevant insolvency procedure as specified in Article 197B(2)(b) to (f), and
  - (b) the supply is a supply mentioned in Article 197(3).

### **PART 2**

#### **PERSONS INVOLVED IN FINANCIAL SERVICES**

##### **2 Introductory**

Article 197B does not apply in relation to a contract for the supply of goods or services to a company ("the company") where any of paragraphs 3 to 11 applies.

##### **3 Insurers**

- (1) This paragraph applies where either the company or the supplier—
- (a) carries on the regulated activity of effecting or carrying out contracts of insurance, and
  - (b) is not an exempt person in relation to that activity.
- (2) In this paragraph—
- "exempt person", in relation to a regulated activity, has the meaning given by section 417 of the Financial Services and Markets Act 2000;
- "regulated activity" has the meaning given by section 22 of that Act, taken with Schedule 2 to that Act and any order under that section.

##### **[ 4 Banks**

- (1) This paragraph applies where either the company or the supplier—
- (a) has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits,
  - (b) is a banking group company within the meaning of Part 1 of the Banking Act 2009 (see section 81D of that Act), or
  - (c) has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 or the Banking Act 1987.
- (2) In sub-paragraph (1)(a) "regulated activity" has the meaning given by section 22 of the Financial Services and Markets Act 2000 2000, taken with Schedule 2 to that Act and any order under that section.

##### **5 Electronic money institutions**

This paragraph applies where either the company or the supplier is an electronic money institution within the meaning of the Electronic Money Regulations 2011 (S.I. 2011/99) (see regulation 2 of those Regulations).

##### **Notes**

## **6 Investment banks and investment firms**

(1) This paragraph applies where either the company or the supplier is an investment bank or an investment firm.

(2) In this paragraph—

"investment bank" means a company or other entity that has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of—

- (a) safeguarding and administering investments,
- (b) managing an AIF or a UCITS,
- (c) acting as trustee or depository of an AIF or a UCITS,
- (d) dealing in investments as principal, or
- (e) dealing in investments as agent;

"investment firm" has the same meaning as in the Banking Act 2009 (see section 258A of that Act), disregarding any order made under section 258A(2)(b) of that Act;

"regulated activity" has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section.

## **7 Payment institutions**

This paragraph applies where either the company or the supplier is an authorised payment institution, a small payment institution or a registered account information service provider within the meaning of the Payment Services Regulations 2017 (S.I. 2017/752) (see regulation 2 of those Regulations).

## **8 Operators of payment systems, infrastructure providers etc**

This paragraph applies where either the company or the supplier is—

- (a) the operator of a payment system or an infrastructure provider within the meaning of Part 5 of the Financial Services (Banking Reform) Act 2013 (see section 42 of that Act), or
- (b) an infrastructure company within the meaning of Part 6 of that Act (see section 112 of that Act).

## **9 Recognised investment exchanges etc**

This paragraph applies where either the company or the supplier is a recognised investment exchange, a recognised clearing house or a recognised CSD within the meaning of the Financial Services and Markets Act 2000 (see section 285 of that Act).

## **10 Securitisation companies**

This paragraph applies where either the company or the supplier is a securitisation company within the meaning of the Taxation of Securitisation Companies Regulations 2006 (S.I. 2006/3296) (see regulation 4 of those Regulations).

## **11 Overseas activities**

This paragraph applies where either the company or the supplier does or has done anything outside the United Kingdom which, if done in the United Kingdom, would cause any of the preceding paragraphs of this Part of this Schedule to apply.

# **PART 3**

## **CONTRACTS INVOLVING FINANCIAL SERVICES**

### **12 Introductory**

To the extent that anything to which any of paragraphs 13 to 18 applies is a contract for the supply of goods or services, Article 197B does not apply in relation to it.

### **13 Financial contracts**

(1) This paragraph applies to a financial contract.

(2) "Financial contract" means—

(a) a contract for the provision of financial services consisting of—

(i) lending (including the factoring and financing of commercial transactions),

(ii) financial leasing, or

(iii) providing guarantees or commitments;

(b) a securities contract, including—

(i) a contract for the purchase, sale or loan of a security or group or index of securities;

(ii) an option on a security or group or index of securities;

(iii) a repurchase or reverse repurchase transaction on any such security, group or index;

(c) a commodities contract, including—

(i) a contract for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;

(ii) an option on a commodity or group or index of commodities;

(iii) a repurchase or reverse repurchase transaction on any such commodity, group or index;

(d) a futures or forwards contract, including a contract (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;

(e) a swap agreement, including—

(i) a swap or option relating to interest rates, spot or other foreign exchange agreements, currency, an equity index or equity, a debt index or debt, commodity indexes or commodities, weather, emissions or inflation;

(ii) a total return, credit spread or credit swap;

(iii) any agreement or transaction similar to an agreement that is referred to in sub-paragraph (i) or (ii) and is the subject of recurrent dealing in the swaps or derivatives markets;

(f) an inter-bank borrowing agreement where the term of the borrowing is three months or less;

(g) a master agreement for any of the contracts or agreements referred to in paragraphs (a) to (f).

(3) For the purposes of this paragraph "commodities" includes—

(a) units recognised for compliance with the requirements of EU Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading,

(b) allowances under paragraph 5 of Schedule 2 to the Climate Change Act 2008 relating to a trading scheme dealt with under Part 1 of that Schedule (schemes limiting activities relating to emissions of greenhouse gas), and

(c) renewables obligation certificates issued—

(i) by the Gas and Electricity Markets Authority under an order made under section 32B of the Electricity Act 1989, or

(ii) by the Northern Ireland Authority for Utility Regulation under the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) and pursuant to an order made under Articles 52 to 55F of that Order.

#### **14 Securities financing transactions**

(1) This paragraph applies to—

- (a) a securities financing transaction, and
- (b) a master agreement for securities financing transactions.

(2) "Securities financing transaction" has the meaning given by Article 3(11) of Regulation (EU) 2015/2365 on the transparency of securities financing transactions.

(3) But for the purposes of that Article as it applies for the purposes of this paragraph, references to "commodities" in that Regulation are to be taken as including the units, allowances and certificates referred to in paragraph 13(3)(a) to (c).

#### **15 Derivatives**

(1) This paragraph applies to—

- (a) a derivative, and
- (b) a master agreement for derivatives.

(2) "Derivative" has the meaning given by Article 2(5) of Regulation (EU) No. 648/2012.

#### **16 Spot contracts**

(1) This paragraph applies to—

- (a) a spot contract, and
- (b) a master agreement for spot contracts.

(2) "Spot contract" has the meaning given by Article 7(2) or 10(2) of Commission Delegated Regulation of 25.4.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

#### **17 Capital market investments**

(1) This paragraph applies to an agreement which is, or forms part of, an arrangement involving the issue of a capital market investment.

(2) "Capital market investment" has the meaning given by paragraph 14 of Schedule ZA1.

#### **18 Contracts forming part of a public-private partnership**

This paragraph applies to a contract forming part of a public-private partnership project within the meaning given by paragraph 16 of Schedule ZA1.

### **PART 4**

#### **OTHER EXCLUSIONS**

#### **19 Financial markets and insolvency**

Nothing in Article 197B affects the operation of—

- (a) Part 5 of the Companies (No. 2) (Northern Ireland) Order 1990 (financial markets and insolvency),
- (b) the Financial Markets and Insolvency Regulations (Northern Ireland) 1996 (S.R. 1996/252),
- (c) the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), or
- (d) the Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226).

#### **20 Set-off and netting**

Nothing in Article 197B affects any set-off or netting arrangements (within the meanings given by section 48(1)(c) and (d) of the Banking Act 2009).

## **21 Aircraft equipment**

Nothing in Article 197B affects the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 (S.I. 2015/912).

# **SCHEDULE 2ZA**

## **Conditions for making a debt relief order**

### **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

(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.

**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.

**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.

## **SCHEDULE 2ZB**

### **Debt relief restrictions orders and undertakings**

#### **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.
- (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 subparagraph (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.

**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.

## **SCHEDULE 2A**

### **BANKRUPTCY RESTRICTIONS ORDER AND UNDERTAKING**

#### **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.
- (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.<sup>1</sup>
- (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,

(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).

## **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.

### **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**

### **POWERS OF TRUSTEE IN BANKRUPTCY**

#### **Article 287.**

#### **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.

##### **2A.**

Power to bring legal proceedings under Article 312, 313 or 367.

**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.**

Repealed

**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.

## **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.**

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.

**10A.**

Power to refer to arbitration, or compromise on such terms as may be agreed, 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.

**10B.**

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 by the trustee on any person.

**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.

### **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;

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**

#### **THE CATEGORIES OF PREFERENTIAL DEBTS**

#### **Article 346.**

##### **Category 1: Debts due to Inland Revenue**

**1.—**

Repealed

**2.**

Repealed

##### **Category 2: Debts due to Customs and Excise**

Repealed

**3.—**

Repealed



**3A.**

Repealed

**3B.**

Repealed

**3C.**

Repealed

**3D**

Repealed

**4.**

Repealed

**5.**

Repealed

**5A.**

Repealed

**5B.**

Repealed

[5C. [...]]<sup>1</sup>

**Category 3: Social security contributions**

**6.**

Repealed

**7.**

Repealed

**Category 4: Contributions to occupational pension schemes, etc.**

**8.**

Any sum which is owed by the debtor and is a sum to which<sup>[1</sup> Schedule 3 to the Pension Schemes (Northern Ireland) Act 1993] applies (contributions to occupational pension schemes and state scheme premiums).

**Category 5: Remuneration, etc., of employees**

**9.**

So much of any amount which—

- (a) is owed by the debtor to a person who is or has been an employee of the debtor, and
  - (b) is payable by way of remuneration in respect of the whole or any part of the period of 4 months next before the relevant date,
- as does not exceed so much as may be specified in an order made by the Department.

**10.**

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

**11.**

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

**12.**

So much of any amount which—

(a) is ordered (whether before or after the relevant date) to be paid by the debtor under the Reserve Forces (Safeguard of Employment) Act 1985, 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.

**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.

(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).]

**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 section 754 of the Companies Act 2006.

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

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

**15.**

Without prejudice to paragraphs 13 and 14—

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

(b)

### **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.

### **Category 6A: Debts owed to the Financial Services Compensation Scheme**

#### **17A.**

Any debt owed by the debtor to the scheme manager of the Financial Services Compensation Scheme under section 215(2A) of the Financial Services and Markets Act 2000.

### **Category 7: Deposits covered by Financial Services Compensation Scheme**

#### **18.**

So much of any amount owed at the relevant date by the debtor in respect of an eligible deposit as does not exceed the compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme to the person or persons to whom the amount is owed.

### **Category 8: Other deposits**

#### **19.**

So much of any amount owed at the relevant date by the debtor to one or more eligible persons in respect of an eligible deposit as exceeds any compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme to that person or those persons.

#### **20.**

An amount owed at the relevant date by the debtor to one or more eligible persons in respect of a deposit that—

(a) was made through a non-UK branch of a credit institution authorised by the competent authority of the United Kingdom, and

(b) would have been an eligible deposit if it had been made through a UK branch of that credit institution.

## **Interpretation for Categories 6A, 7 and 8**

### **21.—**

(A1) In paragraph 17A “the scheme manager” has the meaning given in section 212(1) of the Financial Services and Markets Act 2000.

(1) In paragraphs 18 to 20 “eligible deposit” means a deposit in respect of which the person, or any of the persons, to whom it is owed would be eligible for compensation under the Financial Services Compensation Scheme.

(2) For the purposes of those paragraphs and this paragraph a “deposit” means rights of the kind described in—

(a) paragraph 22 of Schedule 2 to the Financial Services and Markets Act 2000 (deposits), or

(b) section 1(2)(b) of the Dormant Banks and Building Society Accounts Act 2008 (balances transferred under that Act to authorised reclaim fund).

(3) In paragraphs 19 and 20, “eligible person” means—

(a) an individual, or

(b) any micro, small or medium-sized enterprise, as defined with regard to the annual turnover criterion referred to in Article 2(1) of the Annex to Commission Recommendation 2003/361/EC.

(4) In paragraph 20—

(a) “credit institution” has the meaning given in Article 4.1(1) of the capital requirements regulation;

(b) “non-UK branch” means a branch, as defined in Article 4(1)(17) of the capital requirements regulation, which is established outside the United Kingdom;

(c) “UK branch” means a branch, as so defined, which is established in the United Kingdom;

and for this purpose “the capital requirements regulation” means Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012.

### **22 Category 9: Certain HMRC debts**

(1) Any amount owed at the relevant date by the debtor to the Commissioners in respect of—

(a) value added tax, or

(b) a relevant deduction.

(2) In sub-paragraph (1), the reference to “any amount” is subject to any regulations under section 99(1) of the Finance Act 2020.

(3) For the purposes of sub-paragraph (1)(b) a deduction is “relevant” if—

(a) the debtor is required, by virtue of an enactment, to make the deduction from a payment made to another person and to pay an amount to the Commissioners on account of the deduction,

(b) the payment to the Commissioners is credited against any liabilities of the other person, and

(c) the deduction is of a kind specified in regulations under section 99(3) of the Finance Act 2020.

(4) In this paragraph “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs.

## **SCHEDULE 5**

### **PROVISIONS CAPABLE OF INCLUSION IN COMPANY INSOLVENCY RULES**

#### **Article 359.**

##### **High Court**

**1.**

(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.

(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.

**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.

**3.**

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

**4.**

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

**5.**

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

5A. Provision for enabling a creditor of a company to elect to be, or to cease to be, an opted-out creditor in relation to an office-holder of the company (within the meaning of Article 8A), including, in particular, provision—

(a) for requiring an office-holder to provide information to creditors about how they may elect to be, or cease to be, opted-out creditors;

(b) for deeming an election to be, or cease to be, an opted-out creditor in relation to a particular office-holder of a company to be such an election also in relation to any other office-holder of the company.

##### **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 monitor in relation to a moratorium under Part 1A or the liquidator, administrator or administrative receiver of a company.

8A.—(1) Provision about the making of decisions by creditors and contributories, including provision—

- (a) prescribing particular procedures by which creditors and contributories may make decisions;
- (b) authorising the use of other procedures for creditors and contributories to make decisions, if those procedures comply with prescribed requirements.

(2) Provision under sub-paragraph (1) may in particular include provision about—

- (a) how creditors and contributories may request that a creditors' meeting or a contributories' meeting be held;
- (b) the rights of creditors, contributories and others to be given notice of, and participate in, procedures;
- (c) creditors' and contributories' rights to vote in procedures;
- (d) the period within which any right to participate or vote is to be exercised;
- (e) the proportion of creditors or contributories that must vote for a proposal for it to be approved;
- (f) how the value of any debt or contribution should be determined;
- (g) the time at which decisions taken by a procedure are to be treated as having been made.

**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.

9A. Provision about how a company's creditors may nominate a person to be liquidator, including in the case of a voluntary winding up provision conferring functions on the directors of the company.

**10.—**

- (1) Provision as to the **establishment** functions, membership and proceedings of a committee ~~established under~~ **provided for by** 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~~ **seeking a decision from** 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.

**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.

13A. Provision for a creditor who has not proved a small debt to be treated as having done so for purposes relating to the distribution of a company's property (and for provisions of, or contained in legislation made under, this Order to apply accordingly).

**14.**

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

**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.

## **Administration**

### **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.

## **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.

### **16A.**

Provision enabling the Department to set the rate of interest paid on sums which have been paid into the Insolvency Account.

### **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<sup>1</sup> (refund of tax in cases of bad debts) and the supply of copies of the certificate to creditors of the company.

**24.**

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

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

**25.**

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

**26.**

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

**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 Article 57, 111, 121(2) or 199 of, or paragraph 48 of Schedule B1 to, this Order or Article 10(5) of the Company Directors Disqualification (Northern Ireland) Order 2002.

**30.**

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

## **SCHEDULE 6**

### **PROVISIONS CAPABLE OF INCLUSION IN INDIVIDUAL INSOLVENCY RULES**

#### **Article 359.**

##### **High Court**

**1.**

Provision for regulating the practice and procedure of the High Court for the purposes of Parts 7A to 10, 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 7A to 10, on the official receiver.

##### **Notices, etc.**

**3.**

Provision requiring notice of any proceedings under Parts 7A to 10 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 7A to 10, 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 7A to 10 is to be given.

**5ZA. Provision for enabling a creditor of an individual to elect to be, or to cease to be, an opted-out creditor in relation to an office-holder for the individual (within the meaning of Article 11A), including, in particular, provision—**

- (a) for requiring an office-holder to provide information to creditors about how they may elect to be, or cease to be, opted-out creditors;**
- (b) for deeming an election to be, or cease to be, an opted-out creditor**

in relation to a particular office-holder for an individual to be such an election also in relation to any other office-holder for the individual.

## **Debt relief orders**

### **5A.**

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

### **5B.**

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

### **5C.**

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

## **Debt relief restrictions orders and undertakings**

### **5D.**

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

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

### **5E.**

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

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

## **Voluntary arrangements**

### **6.**

Provision for the registration of voluntary arrangements approved under Part VIII, including provision for the keeping and inspection of a register.

## **Official receiver acting on voluntary arrangement**

### **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.

## **Interim receiver**

7.

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

#### **~~Receiver or manager~~**

~~8.~~

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

#### **Administration of individual insolvency**

9.

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

9A.—(1) Provision about the making of decisions by creditors, including provision—

(a) prescribing particular procedures by which creditors may make decisions;

(b) authorising the use of other procedures for creditors to make decisions, if those procedures comply with prescribed requirements.

(2) Provision under sub-paragraph (1) may in particular include provision about—

(a) how creditors may request that a creditors' meeting be held;

(b) the rights of creditors and others to be given notice of, and participate in, procedures;

(c) creditors' rights to vote in procedures;

(d) the period within which any right to participate or vote is to be exercised;

(e) the proportion of creditors that must vote for a proposal for it to be approved;

(f) how the value of any debt should be determined;

(g) the time at which decisions taken by a procedure are to be treated as having been made.

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.

10A. Provision about how a bankrupt's creditors may appoint a person as trustee.

11.

Provision as to the **establishment** functions, membership and proceedings of a creditors' committee ~~established under~~ **provided for by** Article 274.

12.

Provision as to the manner in which any requirement that may be imposed on a person under Parts 7A to 10 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)

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.

16A. Provision for a creditor who has not proved a small debt to be treated as having done so for purposes relating to the distribution of a bankrupt's estate (and for provisions of, or contained in legislation made under, this Order to apply accordingly).

17.

Provision modifying the application of Parts VIII to X in relation to a debtor or bankrupt who has died.

## **Financial provisions**

18.

Provision as to the amount, or manner of determining the amount, payable to an interim receiver, the trustee of a bankrupt's estate or a special manager appointed under Article 341

by way of remuneration for the performance of functions in connection with or arising out of the bankruptcy of any person.

**19.**

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

**19A.**

Provision enabling the Department to set the rate of interest paid on sums which have been paid into the Insolvency Account.

**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 7A to 10, 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 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 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.

### **Official receiver acting on voluntary arrangement**

**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.

### **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 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**

### **PUNISHMENT OF OFFENCES UNDER THIS ORDER**

#### **Article 373.**

	<b>General nature of offence</b>	<b>Mode of prosecution</b>	<b>Punishment</b>	<b>Daily default fine (where applicable)</b>
13BE(4)	Directors failing to notify monitor of beginning of moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.	
13BE(5)	Monitor failing to	Summary.	Level 3 on the	

	notify creditors etc of beginning of moratorium.		standard scale.	
13CH(6)	Directors failing to notify monitor of change in end of moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.	
13CH(7)	Monitor failing to notify creditors etc of change in end of moratorium.	Summary.	Level 3 on the standard scale.	
13DA(5)	Company or officer failing to state in correspondence etc that moratorium in force.	Summary.	Level 3 on the standard scale.	
13DF(4)	Directors failing to notify monitor of insolvency proceedings etc.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.	
13DG(3)(a)	Company obtaining credit without disclosing existence of moratorium.	1. On indictment. 2. Summary.	A fine.  The statutory maximum.	
3DG(3)(b)	Obtaining credit for company without disclosing existence of moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.	
13DH(4)(a)	Company granting security without monitor's consent.	1. On indictment. 2. Summary.	A fine.  The statutory maximum.	
13DH(4)(b)	Authorising or permitting company to do so.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.	
13DI(1)(a)	Company entering into market contract, etc.	1. On indictment. 2. Summary.	A fine.  The statutory maximum.	
13DI(1)(b)	Authorising or permitting company to do so.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.	
13DJ(5)(a)	Company making unauthorised payments.	1. On indictment. 2. Summary.	A fine.  The statutory maximum.	
13DJ(5)(b)	Authorising or permitting company to do so.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.	
13DK(6)(a)	Company making unauthorised disposal of property.	1. On indictment. 2. Summary.	A fine.  The statutory maximum.	
13DK(6)(b)	Authorising or permitting such a disposal.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the	



			statutory maximum or both.	
13DL(2)(a)	Unauthorised disposal of hire- purchase property.	1. On indictment. 2. Summary.	A fine.  The statutory maximum.	
13DL(2)(b)	Authorising or permitting such a disposal.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.	
13DM(8)	Directors failing to send to registrar copy of court order permitting disposal of charged property.	Summary.	Level 3 on the standard scale.	
13DM(9)(a)	Company failing to comply with requirements relating to disposal of charged property.	1. On indictment. 2. Summary.	A fine.  The statutory maximum.	
13DM(9)(b)	Authorising or permitting such a failure.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.	
13DN(4)(a)	Company failing to comply with requirements relating to disposal of hire- purchase property.	1. On indictment. 2. Summary.	A fine.  The statutory maximum.	
13DN(4)(b)	Authorising or permitting such a failure.		2 years or a fine or both. 6 months or the statutory maximum or both.	
13DN(6)	Directors failing to send to registrar copy of court order permitting disposal of hire-purchase property.	Summary.	Level 3 on the standard scale.	
13EE(9)	Monitor failing to notify creditors etc of change in monitor.	Summary.	Level 3 on the standard scale.	
13G(1)	Fraud or privity to fraud during or in anticipation of moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.	
13G(4)	Knowingly taking in pawn or pledge, or otherwise receiving, company property.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.	
13GA(1)	False representation or fraud for purpose of obtaining or extending moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.	
13H(5)	Directors failing to notify regulator of qualifying decision procedure in	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory	

	relation to regulated company		maximum or both.	
19A(1).	False representation or fraud for purpose of obtaining members' or creditor's approval of proposed voluntary arrangement.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum or both.	
40	Body corporate acting as receiver.	1. On indictment. 2. Summary.	A fine.  The statutory maximum.	
41(1)	Bankrupt or person in respect of whom a debt relief order is made 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 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.
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.
70(3)	Company failing to give notice to Enforcement of Judgments Office of proposed resolution for voluntary winding up.	Summary.	Level 3 on the standard scale.	-
71(2)	Company failing to give notice <del>in Belfast Gazette</del> of resolution for <del>voluntary winding up</del> as required by Article 71(1) or (1A).	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.

75(4)	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)	Liquidator failing to summon general meeting of company at each year's end.	Summary.	One-fifth of the statutory maximum.	
<del>80(4)</del>	<del>Liquidator failing to send to registrar a copy of account of winding up and return of final meeting.</del>	<del>Summary.</del>	<del>One-fifth of the statutory maximum.</del>	<del>One-fiftieth of the statutory maximum.</del>
80(4)	Liquidator failing to send to company members a copy of account of winding up.	Summary	Level 3 on the standard scale.	-
<del>80(6)</del>	<del>Liquidator failing to call final meeting.</del>	<del>Summary.</del>	<del>One-fifth of the statutory maximum.</del>	
80(5)	Liquidator failing to send to registrar a copy of account of winding up.	Summary.	Level 3 on the standard scale.	One-tenth of level 3 on the standard scale.
<del>81(6)</del> 81(7)	Liquidator failing to comply with <del>Article 81</del> Article 81(1) to (4) where company insolvent.	Summary.	The statutory maximum.	
<del>84(4)</del>	<del>Company failing to comply with Article 84 in respect of summoning and giving notice of creditors' meeting.</del>	<del>1. On indictment. 2. Summary.</del>	<del>A fine. The statutory maximum.</del>	
85(3)	Directors failing to <del>attend and lay statement in prescribed form before creditors' meeting</del> send statement in prescribed form to creditors.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
91(3)	Liquidator failing to summon company general meeting and creditors' meeting at each year's end.	Summary.	One-fifth of the statutory maximum.	
92(4)	<del>Liquidator failing to send to registrar account of winding up and return</del>	<del>Summary.</del>	<del>One-fifth of the statutory maximum.</del>	<del>One-fiftieth of the statutory maximum.</del>

	<del>of final meetings.</del>			
92(6)	<del>Liquidator failing to call final meeting of company or creditors.</del>	<del>Summary.</del>	<del>One-fifth of the statutory maximum.</del>	
92(5)	Liquidator failing to send to company members and creditors a copy of account of winding up.	Summary.	Level 3 on the standard scale.	-
92(6)	Liquidator failing to send to registrar a copy of account of winding up.	Summary.	Level 3 on the standard scale.	One-tenth of level 3 on the standard scale.”.
95(2)	Liquidator failing to publish, or deliver to the registrar, notice of his appointment.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
99(4)	Directors exercising powers in breach of Article 99, where no liquidator.	Summary.	The statutory maximum.	
111(7)	Failing to comply with requirements as to statement of affairs, where liquidator appointed.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.
139	Giving, offering, etc., corrupt inducement affecting appointment of liquidator.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
141(7)	Liquidator failing to comply with requirements of Article 141 in creditors' voluntary winding up.	Summary.	The statutory maximum.	
159(2)	Default in compliance with Article 159 as to notification that company being wound up.	Summary.	One-fifth of the statutory maximum.	
162(2)	Liquidator failing to notify registrar as to progress of winding up.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
166(4)	Failing to deliver to registrar copy of High Court order deferring dissolution.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
168(6)	Failing to deliver to registrar copy of directions or result of appeal under Article 168.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
169(5)	Failing to deliver to registrar copy of Department's directions Or High Court order deferring dissolution.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
170(1)	Fraud, etc., in	1. On indictment.	7 years or a fine, or	

	anticipation of winding up.	2. Summary.	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.	
172(2)	Officer of company accounting for property by fictitious losses or expenses.	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.		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 in the course of winding up.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
174(2)	Officer of company making material omission from statement relating to company's affairs prior to winding up.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	-
175(1)	False representation or fraud for purpose of obtaining creditors' consent to an agreement in connection with winding up.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
180(4)	Contravening restrictions on re-use of name of company in insolvent liquidation.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
199(5)	Failing to co-operate with office-holder.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.
208O(1)	False representations or omissions in making an application for a debt relief order.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
208O(2)(a)	Failing to comply with duty in connection with an	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the	

	application for a debt relief order.		statutory maximum, or both.	
208O(2)(b)	False representations or omissions in connection with duty in relation to an application for a debt relief order.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
208O(4)(a)	Failing to comply with duty in connection with a debt relief order.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
208O(4)(b)	False representations or omissions in connection with a duty in relation to a debt relief order.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
208P(1)	Failing to deliver books, records and papers to official receiver, concealing or destroying them or making false entries in them by person in respect of whom a debt relief order is made.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
208P(2)	Person in respect of whom debt relief order is made doing anything falling within subparagraphs (c) to (e) of Article 208P(1) during the period of 12 months ending with the application date or doing anything falling within subparagraphs (b) to (e) of Article 208P(1) after that date but before the effective date.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
208Q(1)	Fraudulent disposal of property by person in respect of whom a debt relief order is made.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
208R(1)	Disposal of property that is not paid for by person in respect of whom a debt relief order is made.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
208R(2)	Obtaining property in respect of which money is owed by a person in respect of whom a debt relief order is made.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
208S(1)	Person in respect of	1. On indictment.	2 years or a fine, or	

	whom a debt relief order is made obtaining credit or engaging in business without disclosing his status or name.	2. Summary.	both. 6 months or the statutory maximum, or both.	
217(2)	Default in compliance with Article 374 as to notification that deed is void.	Summary	One-fifth 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.	
236A(1)	False representation or fraud for purpose of obtaining creditor's approval of proposed voluntary arrangement.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
324(1)	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)	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)	Bankrupt removing property which he is required to deliver to official receiver or trustee.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
325(5)	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)	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)	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)	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)	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)	Bankrupt making false statement, or	1. On indictment. 2. Summary.	7 years or a fine, or both.	

	failing to inform trustee, where false debt proved.		6 months or the statutory maximum, or both.	
328(1)	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)	Bankrupt conceals or removes property.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
329(1)	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)	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)	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)	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)	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.	
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.	
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.	
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.
Sch. B1, para. 28(4)	Making false statement in statutory declaration where appointment of administrator proposed by company	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	



	or directors.			
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.	
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.
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.	
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.
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.
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.
Sch. B1, para. 52(5)	Administrator failing to <del>arrange initial creditors' meeting</del> <b>seek creditors' decision.</b>	Summary.	One-fifth of the statutory maximum.	One fiftieth of the statutory maximum.
Sch. B1, para. 54(3)	Administrator failing to report decision taken <del>at initial creditors' meeting</del> <b>by creditors.</b>	Summary.	One-fifth of the statutory maximum.	One fiftieth of the statutory maximum.
Sch. B1, para. 55(7)	Administrator failing to report <del>decision taken at creditors' meeting</del> <b>summoned to consider creditors' decision on revised proposal.</b>	Summary.	One-fifth of the statutory maximum.	One fiftieth of the statutory maximum.
Sch. B1, para. 57(2)	Administrator failing to <del>summon creditors' meeting</del> <b>seek creditors' decision.</b>	Summary.	One-fifth of the statutory maximum.	One fiftieth of the statutory maximum.
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.
Sch. B1, para. 73(5)	Administrator failing to file Court order enabling disposal of hire-purchase	Summary.	One-fifth of the statutory maximum.	One fiftieth of the statutory maximum.

	property.			
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.
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.
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.
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.
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.
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.

## SCHEDULE 8

### TRANSITIONAL PROVISIONS AND SAVINGS

#### Article 379.

### PART I

### COMPANY INSOLVENCY AND WINDING UP

#### Administration orders

##### 1.—

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

(2) In sub-paragraph (1) "administrative receiver" has the meaning assigned by Article 5(1).

#### Receivers and managers

##### 2.—

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

(2) In relation to any such receiver or manager as is mentioned in sub-paragraph (1) the Companies (Northern Ireland) Order 1986 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 (Northern Ireland) Order 1986 (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 (Northern Ireland) Order 1986 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 (Northern Ireland) Order 1986 (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 (Northern Ireland) Order 1986 does not apply, in relation to any liquidator of that company who holds office on or at any time

after the commencement date and is not the official receiver;

(b) Article 124(3) of this Order applies in relation to the carrying out at any time after that date by any liquidator of the company of any of his functions; and

(c) a liquidator in relation to whom Article 146(7) of this Order has effect by virtue of this paragraph has his release with effect from the time specified in Article 148(4)(d) of this Order.

(4) Paragraph (6) of Article 148 of this Order has effect for the purposes of sub-paragraph (3) (c) as it has for the purposes of that Article, but as if the reference to Article 176 were to Article 584 of [ the Companies (Northern Ireland) Order 1986.

### **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 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 but as if such acts included failure to comply with a statutory demand served under Article 242 of this Order.

### **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, as applied by Article 39 of that Order (release of trustee), then—

(a) except where the Department otherwise directs, Articles 271(7), 277 and 304(1) to (3) of this Order apply, and Article 27 of that Order of 1980 as applied by Article 39 of that Order does not apply, in relation to any trustee of the bankrupt's estate who holds office on or at any time after the commencement date;

(b) Article 304(4) of this Order applies in relation to the carrying out at any time on or after the commencement date by the trustee of the bankrupt's estate of any of his functions; and

(c) a trustee in relation to whom Article 271(7) of this Order has effect by virtue of this paragraph has his release with effect from the time specified in Article 272(3)(d).

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

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

(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.

## **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, or section 51 of the Bankruptcy (Ireland) Amendment Act 1872.

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

## **Setting aside of preferences and other transactions**

### **14.—**

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

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

## **Bankruptcy offences**

### **15.—**

(1) Where a bankruptcy order is made under this Order on or after the commencement date, a person is not guilty of an offence under Chapter VI of Part IX in respect of anything done before that date; but, notwithstanding the repeal by Article 382 and Schedule 10 of sections 11, 12 and 13(4) of the Debtors (Ireland) Act 1872 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.

## **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**

### **17.**

Repealed

## **Insolvency practitioners**

### **18.**

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

## **Official receiver**

### **19.**

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

## **Transitional effect of Articles 367 to 369**

**20.—**

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

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

**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<sup>1</sup>.

**Interpretation**

**23.**

In this Schedule—

"the Bankruptcy Acts" means the Bankruptcy Acts (Northern Ireland) 1857 to 1980;

"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.

**Schedule 9**

**Amendments**

**Article 381.**

**PART I**

**AMENDMENTS OF COMPANIES (NORTHERN IRELAND) ORDER 1986**

**1.**

Repealed



**2.**  
Repealed

Repealed  
**3.**  
Repealed

**4.**  
Repealed

**5.**  
Repealed

**6.**  
Repealed

**7.**  
Repealed

**8.**  
Repealed

**9.**  
Repealed

**10.**  
Repealed

**11.**  
Repealed

**12.**  
Repealed

**13.**  
Repealed

**14.**  
Repealed

**15.**  
Repealed

**16.**  
Repealed

**17.**  
Repealed

**18.**  
Repealed

**19.**  
Repealed

**20.**  
Repealed

**21.**

Repealed

**22.**

Repealed

**PART II**

**OTHER AMENDMENTS**

*(1) ACTS OF THE PARLIAMENT OF THE UNITED KINGDOM*

**The Exchange Control Act 1947 (c. 14)**

**23**

In paragraph 8 of Schedule 4 (legal proceedings)—

(a) sub-paragraph (3) shall be omitted;

(b) in sub-paragraph (4) for “section twenty-one of the Bankruptcy (Ireland) Amendment Act 1872, as amended by the Bankruptcy Amendment Act (Northern Ireland) 1929” substitute “Articles 241 to 244 of the Insolvency (Northern Ireland) Order 1989”.

**The Medicines Act 1968 (c. 67)**

**24.**

In section 72(4) (which specifies the persons who may carry on the business of a pharmacist in the case of his death or disability) at the end add “or Chapter II of Part VIII of the Insolvency (Northern Ireland) Order 1989”.

**The Social Security (Northern Ireland) Act 1975 (c. 15)**

**25.** In section 143(6) (provisions supplementary to sections 141 and 142) for “the provisions mentioned in subsection (2)” substitute “sections 141 and 142”.

**The Policyholders Protection Act 1975 (c. 75)**

**26.**

In section 5(1)(a) (application of sections 6 to 11) for “Companies (Northern Ireland) Order 1986” substitute “Insolvency (Northern Ireland) Order 1989”.

**27.**

In section 15(1) (interim payments to policyholders of companies in liquidation, etc.) for “Article 493 of the Companies (Northern Ireland) Order 1986” substitute “Article 115 of the Insolvency (Northern Ireland) Order 1989”.

**28.**

In section 16(1)(b) (companies in financial difficulties) for “Companies (Northern Ireland) Order 1986” substitute “Insolvency (Northern Ireland) Order 1989”.

**The Judicature (Northern Ireland) Act 1978 (c. 23)**

**29.**

In section 35(2) (appeals to Court of Appeal from High Court) at the end insert—

“(j)without the leave of the High Court or of the Court of Appeal, from a decision of the High Court under the Insolvency (Northern Ireland) Order 1989”.

**30.**

For section 106(1)(a) and (b) (rights of audience in High Court and Court of Appeal) substitute—

“(a) any matter relating to individual voluntary arrangements or bankruptcy under Parts VIII to X of the Insolvency (Northern Ireland) Order 1989;

(b) any matter relating to company voluntary arrangements, receivership or the winding up of a company under Parts II and IV to VII of that Order of 1989”.

**The Finance Act 1981 (c. 35)**

**31.**

In section 55(4) (stock relief) for “Companies (Northern Ireland) Order 1986” substitute “Insolvency (Northern Ireland) Order 1989”.

**The Civil Jurisdiction and Judgments Act 1982 (c. 27)**

**32.**

In paragraph 1 of Schedule 5 (proceedings to which provisions relating to the allocation of proceedings within the United Kingdom to not apply) for “Companies (Northern Ireland) Order 1986” substitute “Insolvency (Northern Ireland) Order 1989”.

**The Insurance Companies Act 1982 (c. 50)**

**33.**

In section 53 (winding up of insurance companies)—

(a) for “Companies (Northern Ireland) Order 1986” substitute “Insolvency (Northern Ireland) Order 1989”;

(b) for “that Order of 1986” substitute “that Order of 1989”.

**34.**

In section 54 (winding up of insurance company on petition of Department)—

(a) in subsection (2)—

(i) for “Companies (Northern Ireland) Order 1986” substitute “Part V or VI of the Insolvency (Northern Ireland) Order 1989”;

(ii) in paragraph (a) for “Articles 479 and 480 or Articles 616 to 619” substitute “Article 103 or Articles 186 to 188”;

(b) in subsection (4) for “Companies (Northern Ireland) Order 1986” substitute “Insolvency (Northern Ireland) Order 1989”.

**35.**

In section 55 (winding up of insurance companies with long term business)—

(a) in subsection (5) for “paragraphs (1) to (3) of Article 500 of the Companies (Northern Ireland) Order 1986” substitute “Article 143(2) of the Insolvency (Northern Ireland) Order 1989”;

(b) in subsection (6) for “Article 584 of the Companies (Northern Ireland) Order 1986” substitute “Article 176 of the Insolvency (Northern Ireland) Order 1989”.

**36.**

In section 56 (continuation of long term business of insurance companies in liquidation)—

(a) in subsection (4)—

(i) for “Article 517(3) of the Companies (Northern Ireland) Order 1986” substitute “Article 151(5) of the Insolvency (Northern Ireland) Order 1989”;

(ii) for “Article 517 of the said Order of 1986” substitute “Article 151 of the said Order of 1989”;

(b) in subsection (7)—

(i) for “Article 499(1) of the said Order of 1986” substitute “Article 142 of, and Schedule 2 to, the Insolvency (Northern Ireland) Order 1989”;

(ii) for “committee of inspection” substitute “a specified committee”.

**37.**

In section 59 (winding-up rules)—

(a) in subsection (1) for “Article 613 of the Companies (Northern Ireland) Order 1986” substitute “Article 359 of the Insolvency (Northern Ireland) Order 1989”;

(b) in subsection (2)—

(i) for “Article 613 of the said Order of 1986” substitute “Article 359 of the said Order of 1989”;

(ii) in paragraph (b) for “Article 570 of, and Schedule 18 to, the Companies (Northern Ireland) Order 1986” substitute “Articles 149 and 150 of, and Schedule 4 to, the Insolvency (Northern Ireland) Order 1989”.

**38.**

In section 96(1), in the definition of “insolvent” for “Articles 479 and 480 or Article 616 of the Companies (Northern Ireland) Order 1986” substitute “Articles 102 and 103 or Article 185 of the Insolvency (Northern Ireland) Order 1989”.

**The Value Added Tax Act 1983 (c. 55)**

**39.**

In section 22 (refund of tax in cases of bad debts)—

(a) in subsection (2)(c) for the words from “a resolution” onwards substitute “a composition or scheme proposed by him is approved under Chapter II of Part VIII of the Insolvency (Northern Ireland) Order 1989 or, after his death, his estate falls to be administered in accordance with an order under Article 365 of that Order; or”;

(b) in subsection (3)(b) after “Great Britain” insert “or Northern Ireland”;

(c) in subsection (8) after “Insolvency Act 1985” insert “or Article 5(1) of the Insolvency (Northern Ireland) Order 1989”.

**The Finance Act 1985 (c. 54)**

**40.**

In section 79 (voluntary winding-up: transfer of shares) in subsection (1) after “1960” insert “Article 539 of the Companies (Northern Ireland) Order 1986 or Articles 96 and 97 of the Insolvency (Northern Ireland) Order 1989”.

**The Insolvency Act 1986 (c. 45)**

**41.**

In section 426 (co-operation between courts exercising jurisdiction in relation to insolvency)—

(a) in subsection (10)(c) for the words from “the Bankruptcy Acts” onwards substitute “the Insolvency (Northern Ireland) Order 1989”;

(b) at the end of subsection (11) insert—

“(12) In the application of this section to Northern Ireland—

(a) for any reference to the Secretary of State there is substituted a reference to the Department of Economic Development in Northern Ireland;

(b) in subsection (3) for the words “another part of the United Kingdom” and the words “that other part” there is substituted the words “Northern Ireland”;

(c) for subsection (9) there is substituted the following subsection—

“(9) An order made under subsection (3) by the Department of Economic Development in Northern Ireland shall be a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 and shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.”.

**The Building Societies Act 1986 (c. 53)**

**42.**

Repealed

**43.**

In section 28 (insolvent building society liable where Board makes an insolvency payment)—

(a) in subsection (8)(c) for “the Official Assignee for company liquidation” substitute “the Official Receiver for Northern Ireland”;

(b) in subsection (9)(b) for “Article 613 of the Companies (Northern Ireland) Order 1986” substitute “Article 359 of the Insolvency (Northern Ireland) Order 1989”.

**44.**

In section 100(6)(b) (priority rights on transfer of business from building society to company) for “Article 570 of the Companies (Northern Ireland) Order 1986” substitute “the Insolvency (Northern Ireland) Order 1989”.

**45.**

In Schedule 15 (application of companies winding up legislation to building societies)—

(a) in paragraph 1—

(i) for sub-paragraph (b) substitute—

“(b) Articles 5 to 8 of Part I and Parts V, VII and XI of the Insolvency (Northern Ireland) Order 1989; or”;

(ii) for “Articles 678 of, and Schedule 23 to, the Companies (Northern Ireland) Order 1986” substitute “Articles 2(6) and 373 of, and Schedule 7 to, the Insolvency (Northern Ireland) Order 1989”;

(b) in paragraph 5 for “Article 614 of the Companies (Northern Ireland) Order 1986” substitute “Article 362 of the Insolvency (Northern Ireland) Order 1989”;

(c) for paragraphs 34 to 55 substitute—

**“PART III MODIFIED APPLICATION OF INSOLVENCY (NORTHERN IRELAND)  
ORDER 1989 PARTS V AND XI**

*Preliminary*

**34.** In this Part of this Schedule, Part V of the Insolvency (Northern Ireland) Order 1989 is referred to as “Part V”, that Order is referred to as “the Order” and references to “Articles” are references to Articles of that Order.

*Members of a building society as contributories in winding up*

**35.—**(1) Article 61 (liability of members) is modified as follows.

(2) In paragraph (1), the reference to any past member shall be omitted.

(3) Sub-paragraphs (a) to (d) of paragraph (2) shall be omitted; and so shall paragraph (3).

(4) The extent of the liability of a member of a building society in a winding up shall not exceed the extent of his liability under paragraph 6 of Schedule 2 to this Act.

**36.** Articles 62 to 65 and 69 in Chapter I of Part V (miscellaneous provisions not relevant to building societies) do not apply.

**37.** In the enactments as applied to a building society, “contributory”—

(a) means every person liable to contribute to the assets of the society in the event of its being wound up, and

(b) for the purposes of all proceedings for determining, and all proceedings prior to the determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory, and

(c) includes persons who are liable to pay or contribute to the payment of—

(i) any debt or liability of the building society being wound up, or

(ii) any sum for the adjustment of rights of members among themselves, or

(iii) the expenses of the winding up;

but does not include persons liable to contribute by virtue of a declaration by the Court under Article 177 (imputed responsibility for fraudulent trading) or Article 178 (wrongful trading).

*Voluntary winding up*

**38.—**(1) Article 70 does not apply.

(2) In the enactments as applied to a building society, the expression “resolution for voluntary winding up” means a resolution passed under section 88(1) of this Act.

**39.** In paragraph (1) of Article 87 (appointment of liquidation committee), the reference to functions conferred on a liquidation committee by or under the Order shall have effect as a reference to its functions by or under the Order as applied to building societies.

**40.—**(1) Article 93 (distribution of property) does not apply; and the following applies in its place.

(2) Subject to the provisions of Part V relating to preferential payments, a building society’s property in a voluntary winding up shall be applied in satisfaction of the society’s liabilities to creditors (including any liability resulting from the variation to the liquidator’s duty effected by section 28 or 31 of this Act) *pari passu* and, subject to that application, in accordance with the rules of the society.

**41.** Articles 96 and 97 (liquidator accepting shares, etc., as consideration for sale of company property) do not apply.

**42.** Article 101 (saving for certain rights) shall also apply in relation to the dissolution by consent of a building society as it applies in relation to its voluntary winding up.

#### *Winding up by the High Court*

**43.** Article 102 (circumstances in which company may be wound up by the High Court) does not apply.

**44.** Article 104 (application for winding up) does not apply.

**45.—**(1) In Article 105 (powers of High Court on hearing of petition), paragraph (1) applies with the omission of the words from “but the Court” to the end of the paragraph.

(2) The conditions which the High Court may impose under Article 105 include conditions for securing—

(a) that the building society be dissolved by consent of its members under section 87, or

(b) that the society amalgamates with, or transfers its engagements to, another building society under section 93 or 94, or

(c) that the society transfers its business to a company under section 97,

and may also include conditions for securing that any default which occasioned the petition be made good and that the costs of the proceedings on that petition be defrayed by the person or persons responsible for the default.

**46.** Article 106 (power of High Court, between petition and winding-up order, to stay or restrain proceedings against company) has effect with the omission of paragraph (2).

**47.** If, before the presentation of a petition for the winding up by the High Court of a building society, an instrument of dissolution under section 87 is placed in the society’s public file, Article 109(1) (commencement of winding up by the High

Court) shall also apply in relation to the date on which the instrument is so placed and to any proceedings in the course of the dissolution as it applies to the commencement date for, and proceedings in, a voluntary winding up.

**48.**—(1) Article 110 (consequences of winding-up order) shall have effect with the following modifications.

(2) Paragraphs (1) and (3) shall be omitted.

(3) A building society shall, within 15 days of a winding-up order being made in respect of it, give notice of the order to the central office; and the central office shall keep the notice in the public file of the society.

(4) If a building society fails to comply with sub-paragraph (3) above, it shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale; and so shall any officer who is also guilty of the offence.

**49.** Article 119 (appointment of liquidator by High Court in certain circumstances) does not apply.

**50.** In the application of Article 120(1) (liquidation committee) to building societies, the references to functions conferred on a liquidation committee by or under the Order shall have effect as references to its functions by or under the Order as so applied.

**51.** The conditions which the High Court may impose under Article 125 (power to stay winding up) shall include those specified in paragraph 45(2) above.

**52.** Article 132 (adjustment of rights of contributories) shall have effect with the modification that any surplus is to be distributed in accordance with the rules of the society.

**53.** In Article 140(2) (liquidator's powers), the reference to an extraordinary resolution shall have effect as a reference to a special resolution.

#### *Winding up: general*

**54.** Article 158 (power to make over assets to employees) does not apply.

**55.**—(1) In Article 166 (dissolution: voluntary winding up), paragraph (2) applies without the words from “and on the expiration” to the end of the paragraph and, in paragraph (3), the word “However” shall be omitted.

(2) Articles 167 and 168 (early dissolution) do not apply.

**55A.** In Article 169 (dissolution: winding up by the High Court) paragraph (1) applies with the omission of the words from “and, subject” to the end of the paragraph; and in paragraphs (2) and (3) references to the Department shall have effect as references to the Commission.

#### *Penal provisions*

**55B.** Articles 180 and 181 (restriction on re-use of name) do not apply.

**55C.**—(1) Articles 182 and 183 (prosecution of delinquent officers) do not apply in relation to offences committed by members of a building society acting in that capacity.

(2) Article 182(4) and paragraphs (1) and (2) of Article 183 do not apply.



(3) The references in paragraphs (3) and (5) of Article 183 to the Department shall have effect as references to the Commission; and the reference in paragraph (3) to Article 182 shall have effect as a reference to that Article as supplemented by paragraph 55D below.

**55D.**—(1) Where a report is made to the prosecuting authority (within the meaning of Article 182) under Article 182(3), in relation to an officer of a building society, he may, if he thinks fit, refer the matter to the Commission for further enquiry.

(2) On such a reference to it the Commission shall exercise its power under section 55(1) of this Act to appoint one or more investigators to investigate and report on the matter.

(3) An answer given by a person to a question put to him in exercise of the powers conferred by section 55 on a person so appointed may be used in evidence against the person giving it.

#### *Preferential debts*

**55E.** Article 347 (meaning in Schedule 4 of “the relevant date”) applies with the omission of paragraphs (2) and (4) to (6).”;

(d) in paragraph 56—

(i) in sub-paragraph (1)(b) for “543 or (as the case may be) 553 of the Companies (Northern Ireland) Order 1986” substitute “80 or (as the case may be) 92 of the Insolvency (Northern Ireland) Order 1989”;

(ii) in sub-paragraph (2)(a) after “societies” insert “or, as the case may be, Article 146(7) of the Insolvency (Northern Ireland) Order 1989 (as applied to building societies)”;

(iii) in sub-paragraph (2)(b) for “Official Assignee for company liquidations” substitute “official receiver for Northern Ireland”;

(iv) in sub-paragraph (2) after “that Act” insert “or Article 169 of that Order”;

(e) in paragraph 59—

(i) in sub-paragraph (1) for “Article 615 of the Companies (Northern Ireland) Order 1986” substitute “Article 359 of the Insolvency (Northern Ireland) Order 1989”;

(ii) for sub-paragraph (2) substitute—

“(2) An order made by the Department of Economic Development under Article 361 of the Insolvency (Northern Ireland) Order 1989 may make provision for fees to be payable under that Article in respect of proceedings under the applicable winding-up legislation and the performance by the official receiver for Northern Ireland or that Department of functions under it.”.

#### **The Financial Services Act 1986 (c. 60)**

##### **46.**

In section 54(6)(c) (rules establishing scheme for compensation) for “Article 613 of the Companies (Northern Ireland) Order 1986” substitute “Article 359 of the Insolvency (Northern Ireland) Order 1989”.

**47.**

In section 73 (winding up orders: Northern Ireland)—

(a) in subsection (1)(a) for the words from “Article 480” onwards substitute “Article 103 or, as the case may be, Article 185 of the Insolvency (Northern Ireland) Order 1989”;

(b) in subsection (2)—

(i) in paragraph (b) for “Article 615 of that Order” substitute “Article 184 of the Insolvency (Northern Ireland) Order 1989”;

(ii) in paragraph (c) for “that Order” substitute “the Companies (Northern Ireland) Order 1986”;

(c) in subsection (4)—

(i) for “Companies (Northern Ireland) Order 1986” substitute “Insolvency (Northern Ireland) Order 1989”;

(ii) for “Article 615” substitute “Article 184”.

**48.**

In section 74 (administration orders) after “Act applies” insert “, or under Article 22 of the Insolvency (Northern Ireland) Order 1989 (applications for administration orders) in relation to a company to which Article 21 of that Order applies,”.

**The Banking Act 1987 (c. 22)**

**49**

In section 11(8) (revocation of authorisation) at the end insert “or under Article 21 of the Insolvency (Northern Ireland) Order 1989”.

**50.**

Repealed

**51.**

Repealed

**52.**

In section 62(8) (liability of institution in respect of compensation payments)—

(a) in paragraph (c) for “Article 613 of the Companies (Northern Ireland) Order 1986” substitute “Article 359 of the Insolvency (Northern Ireland) Order 1989”;

(b) at the end insert “or Part III of the Insolvency (Northern Ireland) Order 1989”.

**53.**

In section 65(3) (power to obtain information) after “1986” insert “or Part III of the Insolvency (Northern Ireland) Order 1989”.

**54.**

In the Table in section 84(1) (disclosure for facilitating discharge of functions by other supervisory authorities)—

- (a) in the entry relating to the Department of Economic Development in Northern Ireland, in column 2, after “1986” insert “or Part XII of the Insolvency (Northern Ireland) Order 1989”;
- (b) in the entry relating to the Official Receiver or, in Northern Ireland, the Official Assignee for company liquidations or for bankruptcy,—
- (i) in column 1, for the words from “Assignee” onwards substitute “Receiver for Northern Ireland”;
- (ii) in column 2, for “, bankruptcy order or order of adjudication of bankruptcy” substitute “or bankruptcy order”;
- (c) at the end insert the following entry—

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“A recognised professional body (within the Meaning of Article 350 of the Insolvency (Northern Ireland) Order 1989.	Functions in its capacity as such a body under the Insolvency (Northern Ireland) Order 1989.”.
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**55.**

In section 85(1)(f) (other permitted disclosures) after “1986” insert “or Parts II to VII or IX and X of the Insolvency (Northern Ireland) Order 1989”.

**56.**

In section 92 (winding up on petition from the Bank)—

- (a) in subsection (3)(a) for the words from “Article 480” onwards substitute “Article 103 or, as the case may be, Article 185 of the Insolvency (Northern Ireland) Order 1989”;
- (b) in subsection (4)—
  - (i) for “1986” substitute “1989”;
  - (ii) for “Article 615” substitute “Article 184”.

**The Criminal Justice Act 1987 (c. 38)**

**57.**

For section 3(6)(d) (disclosure of information) substitute—

“(d) the official receiver for Northern Ireland;”.

**The Criminal Justice (Scotland) Act 1987 (c. 41)**

**58.**

For section 54(5)(d) (disclosure of information) substitute—

“(d) the official receiver for Northern Ireland;”.

**The Income and Corporation Taxes Act 1988 (c. 1)**

**59.**

In section 293(5) (relief for investment in new corporate trades) for “Companies (Northern Ireland) Order 1986” substitute “Insolvency (Northern Ireland) Order 1989”.

**60.**

In section 345(5) (computation of chargeable gains) for “496 of the Companies (Northern Ireland) Order 1986” substitute “123 of the Insolvency (Northern Ireland) Order 1989”.

**61.**

Repealed

**The Prevention of Terrorism (Temporary Provisions) Act 1989 (c. 4)**

**62.**

In Schedule 4—

(a) in paragraph 31—

(i) in sub-paragraph (5)(a) for “Article 25 of the Bankruptcy Amendment (Northern Ireland) Order 1980” substitute “Article 160(2) or, as the case may be, Article 300(4) of the Insolvency (Northern Ireland) Order 1989”;

(ii) in sub-paragraph (8) in the definition of “the commencement of an insolvency” in head (c) after “Wales” insert “or in Northern Ireland”;

(b) in paragraph 33—

(i) in sub-paragraph (3) for the words from “Bankruptcy Acts” onwards substitute “Insolvency (Northern Ireland) Order 1989”;

(ii) for sub-paragraph (4)(b) substitute—

“(b) any question whether a person is acting as an insolvency practitioner in Northern Ireland shall be determined in accordance with Article 3 of the Insolvency (Northern Ireland) Order 1989, except that—

(i) paragraph (5) shall be disregarded; and

(ii) the expression shall also include the official receiver acting as receiver or manager of property.”;

(c) in paragraph 34 at the end of sub-paragraph (6) insert—

“(7) In the application of this paragraph to Northern Ireland—

(a) for any reference to the Secretary of State there is substituted a reference to the Department of Economic Development in Northern Ireland;

(b) in sub-paragraph (1) for the words “any part of the United Kingdom” and the words “that or any other part of the United Kingdom” there is substituted the words “Northern Ireland”;

(c) for sub-paragraph (4) there is substituted the following sub-paragraph—

“(4) An order made under this paragraph by the Department of Economic Development in Northern Ireland shall be a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 and shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.”;

- (d) in paragraph 35(1) in the definition of “qualifying insolvency proceedings”—
- (i) in head (a) for “Companies (Northern Ireland) Order 1986” substitute “Insolvency (Northern Ireland) Order 1989” and for “Part XX” substitute “Part V”;
- (ii) in head (b) after “Wales” insert “or in Northern Ireland” and after “1986 Act” insert “or Article 364 of the Insolvency (Northern Ireland) Order 1989”;
- (iii) in head (d) after “Wales” insert “or in Northern Ireland” and after “1986 Act” insert “or Article 365 of the Insolvency (Northern Ireland) Order 1989”.

**(2)**

**ACTS OF THE PARLIAMENT OF NORTHERN IRELAND**

**The Third Parties (Rights against Insurers) Act (Northern Ireland) 1930 (c. 19)**

**63.**

Repealed

**64.**

Repealed

**65.**

Repealed

**The Arbitration Act (Northern Ireland) 1937 (c. 8)**

**66.**

Repealed

**The Pig Production Development Act (Northern Ireland) 1964 (c. 25)**

**67.**

Repealed

**The Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 (c.19)**

**68.**

Repealed

**The Transport Act (Northern Ireland) 1967 (c. 37)**

**69.**

In section 33(2)(a) (transfer of licences) for the words “adjudicated bankrupt” to the end substitute “adjudged bankrupt or makes a voluntary arrangement proposed for the purposes of, and approved under, Part VIII of the Insolvency (Northern Ireland) Order 1989.”.

**Co-operative and Community Benefit Societies Act (Northern Ireland) 1969**

**70.**

In section 64 (dissolution of registered society) for “Companies (Northern Ireland) Order 1986” substitute “Insolvency (Northern Ireland) Order 1989”.

**The Land Registration Act (Northern Ireland) 1970 (c. 18)**

71.

For section 59 substitute—

**““59. Transmissions on bankruptcy of registered owner.**

(1) Upon the bankruptcy of the registered owner of any land his trustee shall (on production of the prescribed evidence to be furnished by the official receiver or trustee in bankruptcy that the land is comprised in the bankrupt’s estate) be entitled to be registered as owner of the land or, as the case may be, as a tenant in common of the land with another or others.

(2) Where a trustee in bankruptcy disclaims a registered leasehold estate under Articles 288 to 292 of the Insolvency (Northern Ireland) Order 1989, and an order is made by the High Court vesting the leasehold estate in any person, the order shall direct the alteration of the appropriate register in favour of the person in whom the leasehold estate is so vested, and in such case the Registrar shall, on being served with such order, forthwith (without notice to the bankrupt or any other person and without requiring production of the land certificate) alter the register accordingly, and no right to indemnity under this Act shall arise by reason of such alteration.

**“59A. Effect of transmissions on bankruptcy.**

(1) Subject to subsection (2), where a trustee in bankruptcy is registered as owner of land he shall in all respects, and in particular as respects registered dealing with the land, be in the same position as if he had taken the land under a transfer for valuable consideration.

(2) The trustee in bankruptcy shall hold the land in respect of which he is registered for the purposes upon and subject to which the land is applicable by law, and subject to all unregistered rights subject to which the bankrupt held the land.”.

72.

After section 67 insert—

**Protection of creditors prior to registration of trustee in bankruptcy.**

**67A.**—(1) If a bankruptcy petition is presented by or against any person who appears to the High Court to be the registered owner of any land, the Court shall give notice to the Registrar of the presenting of the petition, in such manner as may be prescribed, and notice of the presenting of the petition shall thereupon be entered on the appropriate register.

(2) A notice registered under subsection (1) shall protect the rights of all creditors, and unless cancelled by the Registrar in the prescribed manner such notice shall remain in force until a bankruptcy inhibition is registered or the trustee in bankruptcy is registered as owner.

(3) Where a bankruptcy order is made and the bankrupt is a registered owner of land, the official receiver or the trustee in bankruptcy shall notify the Registrar in the prescribed form and the Registrar shall thereupon enter an inhibition (“a bankruptcy inhibition”) against the title of the registered owner of the land.

(4) No fee shall be charged for the entry of a notice under subsection (1) or a bankruptcy inhibition under subsection (3).

(5) From and after the entry of a bankruptcy inhibition (but without prejudice to dealings with or in right of interests having priority over the estate of the bankrupt owner), no dealing affecting the land of the registered owner, other than the registration of the trustee in bankruptcy, shall be entered on the appropriate register until the inhibition is cancelled as to the whole or part of the land dealt with.

(6) Without prejudice to section 34(4), where under a disposition of registered land to a purchaser in good faith for valuable consideration such purchaser is registered as owner of an estate, then, notwithstanding that the person making the disposition is adjudged bankrupt, the title of his trustee in bankruptcy shall, as from the date of the registration of such disposition, be void as against such purchaser unless at that date, either a notice under subsection (1) or a bankruptcy inhibition has been registered; but a purchaser who, at the date of the execution of the registered disposition has actual knowledge of the bankruptcy petition or the adjudication, shall be deemed not to take in good faith.

(7) Nothing in this section shall impose on a purchaser a liability to make any search under the Registration of Deeds Acts.

(8) If neither a notice under subsection (1) nor a bankruptcy inhibition is registered against a registered owner of land, nothing in this section shall prejudicially affect a registered disposition of any registered land acquired by the bankrupt after adjudication.

(9) If and when a bankruptcy inhibition is wholly or partially cancelled, for any cause other than by reason of the registration of the trustee in bankruptcy, any registered estate vested in the trustee in bankruptcy shall, as respects the registered estate to which the cancellation extends, be divested and the same shall vest in the registered owner in whom it would have been vested if there had been no adjudication in bankruptcy.”.

**73.**

In section 85(3) (rules) at the end add—

“(q)the postponing of the registration of a notice under section 67A(1) or a bankruptcy inhibition under section 67A(3) where the name, address and description of the debtor or bankrupt appearing in the notice for the registration of the bankruptcy petition or bankruptcy order are not identical to those stated in the appropriate register, until the Registrar is satisfied as to the identity of the debtor or bankrupt;

(r)the requiring of the official receiver to notify to the Registrar any mistake occurring in the bankruptcy order or any other fact relevant to any proposed amendment in the appropriate register; and the enabling of the Registrar to make any consequential amendment;

(s)the providing for the whole or partial cancellation (subject to notice to the official receiver or trustee in bankruptcy) of a bankruptcy inhibition registered under section 67A(3) in prescribed circumstances.”.

**74.**

In section 94 (interpretation) insert the following definitions—

““bankruptcy order” means an order adjudging an individual bankrupt;

“bankruptcy petition” means a petition to the High Court for a bankruptcy order;

“debtor” in relation to a bankruptcy petition, means the individual to whom the petition relates;”.

**75.**

In Part I of Schedule 6 (registration of certain burdens)—

(a) in paragraph 7 after “judgment” insert—

“(other than a bankruptcy order)”;

(b) after paragraph 8 insert—

“**8A.** Any bankruptcy petition relating to the land whether existing before or after the first registration of the land.”.

**76.**

In Part II of Schedule 6 (provisions affecting registration of Schedule 6 burdens)—

(a) in paragraph 4 after “8” insert “8A”;

(b) after paragraph 6 insert—

*Registration of bankruptcy petitions*

**6A.** Paragraph 6 shall apply to the registration of a bankruptcy petition as it applies to the registration of a pending action.”

**The Registration of Deeds Act (Northern Ireland) 1970 (c. 25)**

**77.**

After section 3 insert—

**Pending actions relating to bankruptcy.**

**3A.**—(1) A bankruptcy petition, whether or not it is known to affect land, may be registered by the lodgment in the registry of deeds of 2 copies of a prescribed document, stating such matters as may be prescribed, one of which copies shall be certified by the High Court.

(2) The certified copy of the document referred to in subsection (1) shall, for the purposes of the Registration of Deeds Acts, be treated as the document to be registered and the other copy thereof shall, subject to section 12 and to any regulations made thereunder, be treated for those purposes as the memorial of that document.

(3) Subsections (4) and (6) of section 3 apply for the purposes of the registration of a bankruptcy petition under this section as they apply to the registration of a pending action relating to land.

(4) No fee shall be charged for the registration of a bankruptcy petition if the application for registration is made by the High Court.

(5) A bankruptcy petition filed on or after the coming into operation of the Insolvency (Northern Ireland) Order 1989 shall not bind or affect a purchaser of any



unregistered land who has acted in good faith without actual knowledge of that petition—

- (a) unless it is registered under this section; and
- (b) before the expiration of 21 days from the date on which it is registered.

(6) In this section and section 3B “purchaser” means—

- (a) any person (including a mortgagee or lessee) who, for valuable consideration, takes any estate in any unregistered land; and
- (b) the agent of any such person.

### **Bankruptcy orders.**

**3B.**—(1) Without prejudice to section 2(3), a bankruptcy order, whether or not the bankrupt’s estate is known to include land, may be registered by the lodgment in the registry of deeds of 2 copies of the order one of which copies shall be certified by the High Court and 2 copies of a prescribed document, stating such matters as may be prescribed, one of which copies shall be certified by the official receiver.

(2) The certified copy of the bankruptcy order and the certified copy of the document referred to in subsection (1) shall, for the purposes of the Registration of Deeds Acts, be treated as the document to be registered and the other copy of the bankruptcy order and the document referred to in subsection (1) shall, subject to section 12 and to any regulations made thereunder, be treated for those purposes as the memorial of the document to be registered.

(3) Subsections (4) and (6) of section 3 apply for the purposes of the registration of a bankruptcy order under this section as they apply to the registration of a pending action relating to land.

(4) No fee shall be charged for the registration of a bankruptcy order if the application is made by the official receiver.

(5) Subject to paragraph (6), the title of a trustee in bankruptcy shall be void as against a purchaser of any unregistered land who has acted in good faith without actual knowledge of the bankruptcy order claiming under a conveyance registered before the expiration of 21 days from the date on which the bankruptcy order is registered under this section.

(6) Where a bankruptcy petition has been registered under section 3A, the title of the trustee in bankruptcy shall be void against a purchaser of any unregistered land who has acted in good faith without actual knowledge of the petition claiming under a conveyance registered on or after the expiration of 21 days from the date of registration of the petition, unless at the date of the registration of the conveyance either—

- (a) the registration of the petition is in force; or
- (b) a bankruptcy order is registered under this section and 21 days have expired from the date on which the order is registered.”.

In section 4(1) (effect of registration) for “section 5” substitute “sections 3A(5), 3B(5) and 5”.

**79.**

After section 19(2) (regulations) insert—

“(3) The power of the Lord Chancellor, with the concurrence of the Department of Economic Development, to make rules under Article 359 of the Insolvency (Northern Ireland) Order 1989 shall include power to make rules as respects the registration and re-registration of a bankruptcy petition under section 3A and a bankruptcy order under section 3B, as if the registration and re-registration were required by that Order of 1989.

(4) Any rules made by virtue of paragraph (3) shall be made with the concurrence of the Department.”

**80.**

In section 20(1) (interpretation) insert the following definitions—

““bankruptcy order” means an order adjudging an individual bankrupt;

“bankruptcy petition” means a petition to the High Court for a bankruptcy order;”.

**The Friendly Societies Act (Northern Ireland) 1970 (c. 31)**

**81.**

In section 77(2) (winding-up of registered friendly societies and branches) for “Companies (Northern Ireland) Order 1986” substitute “Insolvency (Northern Ireland) Order 1989”.

**82.**

In section 87(3)(b) (offence for aiding and abetting dissolution) for “Companies (Northern Ireland) Order 1986” substitute “Insolvency (Northern Ireland) Order 1989”.

**The Licensing Act (Northern Ireland) 1971 (c. 13)**

**83.**

In section 25(1) (temporary continuance of business on death, bankruptcy, etc.)—

(a) in paragraph (a) for the words from “his business” to “his creditors” substitute “a composition or scheme proposed by him is approved under Chapter II of Part VIII of the Insolvency (Northern Ireland) Order 1989, or a trustee is appointed under a deed of arrangement under Chapter I of that Part VIII for the benefit of his creditors”;

(b) for the words from “assignees” to “the deed” substitute “person who is for the time being trustee in bankruptcy, supervisor of the composition or scheme, trustee under the deed,”.

**The Local Government Act (Northern Ireland) 1972 (c. 9)**

**84.**

Repealed

## **ORDERS IN COUNCIL**

### **The Superannuation (Northern Ireland) Order 1972 (NI 10)**

**85.**

In Article 7(2) (rule that benefit is unassignable not to affect powers of court under section 319 of the Irish Bankrupt and Insolvent Act 1857) for “section 319 of the Irish Bankrupt and Insolvent Act 1857” substitute “Article 283 of the Insolvency (Northern Ireland) Order 1989”.

### **The Social Security Pensions (Northern Ireland) Order 1975 (NI 15)**

**86.**

Repealed

### **The Solicitors (Northern Ireland) Order 1976 (NI 12)**

**87.**

In Article 13(1)(k) (application for a practising certificate by a person who has been adjudged bankrupt and has obtained his discharge) for “adjudicated a bankrupt and obtained his discharge” substitute “adjudged a bankrupt and discharged”.

### **The Industrial Relations (Northern Ireland) Order 1976 (NI 16)**

**88.**

Repealed

**89.**

Repealed

**90.**

Repealed

### **The Matrimonial Causes (Northern Ireland) Order 1978 (NI 15)**

**91.**

In Article 41 (settlement, etc., made in compliance with a property adjustment order may be avoided on bankruptcy of settlor) for the words from “a settlement of” onwards substitute “a transaction in respect of which an order may be made under Article 312 or 313 of the Insolvency (Northern Ireland) Order 1989”.

### **The Housing (Northern Ireland) Order 1981 (NI 3)**

**92.**

Repealed

### **The Judgments Enforcement (Northern Ireland) Order 1981 (NI 6)**

**93.**

In Article 2, in the definition of “company”, in sub-paragraph (a) for “Companies (Northern Ireland) Order 1986” substitute “Insolvency (Northern Ireland) Order 1989”.

**94.**

In Article 14(3) (stay of enforcement in cases of insolvency)—

(a) omit sub-paragraph (a)(i);

(b) in sub-paragraph (b) at end add—

“(iv) the directors of the company will make a proposal to the company and its creditors for a voluntary arrangement under Part II of the Insolvency (Northern Ireland) Order 1989, or

(v) an application will be made to the court for an administration order under Part III of that Order of 1989, or”.

**95.**

For Article 86 substitute—

**Default of debtor**

**86.—**(1) If the debtor fails to make any payment which he is required to make by virtue of an administration order the Office, if it considers it proper to revoke the administration order, may upon doing so make an order directing that this Article and Article 15 of the Companies (Northern Ireland) Order 1989 shall apply to the person for such period, not exceeding 2 years, as may be specified in the order.

(2) A person to whom this Article so applies shall not—

(a) either alone or jointly with another person, obtain credit to the extent of the amount prescribed for the purposes of Article 331(1)(a) of the Insolvency (Northern Ireland) Order 1989 or more, or

(b) enter into any transaction in the course of or for the purposes of any business in which he is directly or indirectly engaged,

without disclosing to the person from whom he obtains the credit, or (as the case may be) with whom the transaction is entered into, the fact that this Article applies to him.

(3) The reference in paragraph (2) to a person obtaining credit includes—

(a) a case where goods are bailed or hired to him under a hire-purchase agreement or agreed to be sold to him under a conditional sale agreement, and

(b) a case where he is paid in advance (whether in money or otherwise) for the supply of goods or services.

(4) A person who contravenes this Article shall be guilty of an offence and shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both.”.

**96.**

n Article 88 (effect of bankruptcy or winding up on enforcement)—

(a) in paragraph (1)—

- (i) after “paragraph (2)” insert “of this Article, Articles 106 and 258 of the Insolvency (Northern Ireland) Order 1989 (restrictions on proceedings and remedies)”;
- (ii) for “Companies (Northern Ireland) Order 1986” substitute “Insolvency (Northern Ireland) Order 1989”;
- (iii) in sub-paragraph (a) for the words from the beginning to “such bankruptcy” substitute “as against the official receiver or trustee of the bankrupt’s estate”;
- (b) in paragraph (2)(a)—
  - (i) for “of the adjudication” substitute “on which the bankruptcy order is made”;
  - (ii) for “Companies (Northern Ireland) Order 1986” substitute “Insolvency (Northern Ireland) Order 1989”;
- (c) in paragraph (2)(b)—
  - (i) in head (i) for “adjudication” substitute “making of the bankruptcy order” and for “filed” substitute “presented”;
  - (ii) in head (ii) for “an order of adjudication” substitute “a bankruptcy order”;
- (d) in paragraph (3)—
  - (i) for “, the assignees in bankruptcy” substitute “and Article 90(3A), the official receiver”;
  - (ii) at the end insert “and, subject to paragraph (3A), that money and proceeds shall be comprised in the bankrupt’s estate”;
- (e) after paragraph (3) insert—
 

“(3A) The rights conferred by this Article on the official receiver, the trustee or the liquidator may, to such extent and on such terms as it thinks fit, be set aside by the High Court in favour of the creditor.”.

## 97.

In Article 90 (functions of Office as to proceeds of enforcement, etc.)—

- (a) in paragraph (1)—
  - (i) in sub-paragraph (i) for “filed” substitute “presented”;
  - (ii) in sub-paragraph (ii) for “an order of adjudication of bankruptcy” substitute “a bankruptcy order” and for “Official Assignee” substitute “official receiver”;
- (b) in paragraph (2)(a) for “an adjudication order” substitute “a bankruptcy order” and for “Official Assignee” substitute “official receiver”;
- (c) in paragraph (3)—
  - (i) for “Official Assignee” substitute “official receiver”;
  - (ii) at the end insert “and, subject to paragraph (3A), that money or property shall be comprised in the bankrupt’s estate”;
- (c) after paragraph (3) insert—
 

“(3A) The rights conferred by this Article on the official receiver, the trustee or the liquidator may, to such extent and on such terms as it thinks fit, be set aside by the High Court in favour of the creditor.

(3B) Paragraph (1)(ii), (2)(a) or (3) shall not apply in relation to money or other property which has been acquired by or has devolved upon the debtor since the making of a bankruptcy order against him unless—

(a) at the time the money is received or, as the case may be, the money or property is seized; or

(b) before completion of the enforcement;

the money or other property has been or is claimed for the bankrupt's estate under Article 280 of the Insolvency (Northern Ireland) Order 1989 (after-acquired property) and a copy of the notice given under that Article has been or is served upon the Office.”.

**98.**

In Article 91 (retention by Office of money or property pending result of interpleader) for “Official Assignee” substitute “official receiver”.

**99.**

In Article 92 (charge in respect of costs of enforcement) for “Official Assignee” in both places where it occurs substitute “official receiver”.

**100.**

In Article 93 (special provisions as to charges on land)—

(a) omit the words “the assignees in the bankruptcy of the debtor or”;

(b) in sub-paragraph (a)—

(i) for “filed” substitute “presented”;

(ii) for “an order of adjudication” substitute “a bankruptcy order”.

**The Agricultural Marketing (Northern Ireland) Order 1982 (NI 12)**

**101.**

In paragraph 6 of Schedule 2 (provisions as to winding up agricultural marketing boards regulating products)—

(a) in sub-paragraph (1) for “Part XXI of The Companies (Northern Ireland) Order 1986” substitute “Part VI of the Insolvency (Northern Ireland) Order 1989”;

(b) in sub-paragraph (2) for “Article 616 of the Companies (Northern Ireland) Order 1986” substitute “Articles 185, 186 and 188 of the Insolvency (Northern Ireland) Order 1989”;

(c) in sub-paragraph (3) for the words from the beginning to “(c)” substitute “Article 187 of the Insolvency (Northern Ireland) Order 1989 shall not apply and Article 188(1)(b)”;

(d) in sub-paragraph (4) for “the provisions of the Companies (Northern Ireland) Order 1986” substitute “Part V of the Insolvency (Northern Ireland) Order 1989”.

**102.**

In paragraph 5 of Schedule 6 (provisions as to winding up of agricultural marketing boards regulating services)—

- (a) in sub-paragraph (1) for “Part XXI of the Companies (Northern Ireland) Order 1986” substitute “Part VI of the Insolvency (Northern Ireland) Order 1989”;
- (b) in sub-paragraph (2) for “Article 616 of the Companies (Northern Ireland) Order 1986” substitute “Articles 185, 186 and 188 of the Insolvency (Northern Ireland) Order 1989”;
- (c) in sub-paragraph (3) for the words from the beginning to “(c)” substitute “Article 187 of the Insolvency (Northern Ireland) Order 1989 shall not apply and Article 188(1)(b)”;
- (d) in sub-paragraph (4) for “the provisions of the Companies (Northern Ireland) Order 1986” substitute “Part V of the Insolvency (Northern Ireland) Order 1989”.

**The Credit Unions (Northern Ireland) Order 1985 (NI 12)**

**103.**

In Article 68(a) (dissolution of credit union) for “Companies Acts (Northern Ireland) 1960 to 1983” substitute “Insolvency (Northern Ireland) Order 1989”.

## **PART III**

### **INTERIM AMENDMENTS RELATING TO PREFERENTIAL DEBTS**

**The Bankruptcy Amendment (Northern Ireland) Order 1980 (NI 4)**

**104.**

**Preferential payments**

**19.—**(1) Subject to Article 21, in the distribution of the property of a bankrupt there shall be paid in priority to all other debts the following debts—

*Category 1: Debts due to Inland Revenue*

**1.—**(1) Sums due at the relevant date from the debtor on account of deductions of income tax from emoluments paid during the period of 12 months next before that date.

(2) The deductions referred to in sub-paragraph (1) are those which the debtor was liable to make under section 203 of the Income and Corporation

Taxes Act 1988 (pay as you earn), less the amount of the payments of income tax which the debtor was liable to make during that period.

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

*Category 2: Debts due to Customs and Excise*

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

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

(a) where the whole of the prescribed accounting period to which any value added tax is attributable falls within the 6-month period, the whole amount of that tax is referable to that period; and

(b) in any other case the amount of any value added tax which is referable to the 6-month period is the proportion of the tax which is equal to such proportion (if any) of the accounting reference period in question as falls within the 6-month period.

(3) In sub-paragraph (2)(a) “prescribed” means prescribed by regulations under the Value Added Tax Act 1983.

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

5. Any amount which is due—

(a) by way of general betting duty or bingo duty, or

(b) under section 16 of the Miscellaneous Transferred Excise Duties Act (Northern Ireland) 1972 (general betting duty and pool betting duty recoverable from agent collecting stakes), or

(c) under section 24(1) of that Act (gaming licence duty),

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

*Category 3: Social security contributions*



**6.** All sums which on the relevant date are due from the debtor on account of Class 1 or Class 2 contributions under the Social Security Act 1975 or the Social Security (Northern Ireland) Act 1975 and which became due from the debtor in the 12 months next before the relevant date.

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

(a) are due to the Commissioners of Inland Revenue (rather than to the Secretary of State or the Department of Health and Social Services), and

(b) are assessed on the debtor up to 5th April next before the relevant date, but not exceeding, in the whole, any one year's assessment.

*Category 4: Contributions to occupational pension schemes, etc.*

**8.** Any sum which is owed by the debtor and is a sum to which Schedule 4 to the Social Security Pensions (Northern Ireland) Order 1975 applies (contributions to occupational pension schemes and state scheme premiums).

*Category 5: Remuneration, etc., of employees*

**9.** So much of any amount which—

(a) is owed by the debtor to a person who is or has been an employee of the debtor, and

(b) is payable by way of remuneration in respect of the whole or any part of the period of 4 months next before the relevant date,

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

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

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

**12.** So much of any amount which—

(a) is ordered (whether before or after the relevant date) to be paid by the debtor under the Reserve Forces (Safeguard of Employment) Act 1985, 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.

*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.

(2) An amount falls within this sub-paragraph if it is—

(a) a guarantee payment under Article 3(1) of the Industrial Relations (No. 2) (Northern Ireland) Order 1976 (employment without work to do for a day or part of a day);

(b) remuneration on suspension on medical grounds under Article 9 of that Order of 1976;

(c) any payment for time off under Article 37(4) (trade union duties), 41(3) (looking for work, etc.) or 41A(4) (ante-natal care) of that Order of 1976; or

(d) remuneration under a protective award made by an industrial tribunal under Article 51 of the Industrial Relations (Northern Ireland) Order 1976 (redundancy dismissal with compensation).

**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.

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

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

**15.** Without prejudice to paragraphs 13 and 14—

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

*Category 6: Levies on coal and steel production*

**16.** 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.

(2) An order under paragraph 9 or 12 of Category 5—

- (a) may contain such transitional provisions as may appear to the Department necessary or expedient;
- (b) shall be subject to negative resolution.

(3) For the purposes of this Article “the relevant date” means—

- (a) in relation to a bankrupt, the date of the order of adjudication of bankruptcy, and
- (b) in relation to an arranging debtor, the date of the order for protection.”.

## **The Companies (Northern Ireland) Order 1986 (NI 6)**

**105.**

For Schedule 18 substitute—

“SCHEDULE 18

PREFERENCE AMONG CREDITORS IN COMPANY WINDING UP

*Category 1: Debts due to Inland Revenue*

**1.—**(1) Sums due at the relevant date from the debtor on account of deductions of income tax from emoluments paid during the period of 12 months next before that date.

(2) The deductions referred to in sub-paragraph (1) are those which the debtor was liable to make under section 203 of the Income and Corporation Taxes Act 1988 (pay as you earn), less the amount of the repayments of income tax which the debtor was liable to make during that period.

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

*Category 2: Debts due to Customs and Excise*

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

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

(a) where the whole of the prescribed accounting period to which any value added tax is attributable falls within the 6-month period, the whole amount of that tax is referable to that period; and

(b) in any other case the amount of any value added tax which is referable to the 6-month period is the proportion of the tax which is equal to such proportion (if any) of the accounting reference period in question as falls within the 6-month period.

(3) In sub-paragraph (2)(a) “prescribed” means prescribed by regulations under the Value Added Tax Act 1983.

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

**5.** Any amount which is due—

(a) by way of general betting duty or bingo duty, or

(b) under section 16 of the Miscellaneous Transferred Excise Duties Act (Northern Ireland) 1972 (general betting duty and pool betting duty recoverable from agent collecting stakes), or

(c) under section 24(1) of that Act (gaming licence duty),

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

*Category 3: Social security contributions*

**6.** All sums which on the relevant date are due from the debtor on account of Class 1 or Class 2 contributions under the Social Security Act 1975 or the Social Security (Northern Ireland) Act 1975 and which became due from the debtor in the 12 months next before the relevant date.

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

(a) are due to the Commissioners of Inland Revenue (rather than to the Secretary of State or the Department of Health and Social Services), and

(b) are assessed on the debtor up to 5th April next before the relevant date, but not exceeding, in the whole, any one year's assessment.

*Category 4: Contributions to occupational pension schemes, etc.*

**8.** Any sum which is owed by the debtor and is a sum to which Schedule 4 to the Social Security Pensions (Northern Ireland) Order 1975 applies (contributions to occupational pension schemes and state scheme premiums).

*Category 5: Remuneration, etc., of employees*

**9.** So much of any amount which—

(a) is owed by the debtor to a person who is or has been an employee of the debtor, and

(b) is payable by way of remuneration in respect of the whole or any part of the period of 4 months next before the relevant date,

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

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

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

**12.** So much of any amount which—

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

*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.

(2) An amount falls within this sub-paragraph if it is—

- (a) a guarantee payment under Article 3(1) of the Industrial Relations (No. 2) (Northern Ireland) Order 1976 (employment without work to do for a day or part of a day);
- (b) remuneration on suspension on medical grounds under Article 9 of that Order of 1976;
- (c) any payment for time off under Article 37(4) (trade union duties), 41(3) (looking for work, etc.) or 41A(4) (ante-natal care) of that Order of 1976; or
- (d) remuneration under a protective award made by an industrial tribunal under Article 51 of the Industrial Relations (Northern Ireland) Order 1976 (redundancy dismissal with compensation).

**14.—**(1) This paragraph relates to a case in which a person's employment has been terminated before, or by the effect of, the winding-up order or resolution.

(2) For the purposes of paragraphs 9 to 12, holiday remuneration is deemed to have accrued to that person in respect of any period of employment if, by virtue of his contract of employment or of any statutory provision, that

remuneration would have accrued in respect of that period if his employment had continued until he became entitled to be allowed the holiday.

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

**15.** Without prejudice to paragraphs 13 and 14—

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

(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.

**18.** For the purposes of this Schedule “the relevant date” is—

(a) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator or, if no such appointment has been made, the date of the winding-up order, unless in either case the company had commenced to be wound up voluntarily before that date, and

(b) otherwise, the date of the passing of the resolution for winding up the company.”.

## Schedule 10 Repeals

Article 382

<i>Chapter or number</i>	<i>Short title</i>	<i>Extent of repeal</i>
<a href="#">1634 c. 3.</a>	The Conveyancing Act (Ireland) 1634.	Section 10.
<a href="#">1857 c. 60.</a>	The Irish Bankrupt and Insolvent Act 1857.	The whole Act.
<a href="#">1872 c. 57.</a>	The Debtors Act (Ireland) 1872.	Section 4.  Section 11.  Section 12.  Section 13(4).  Section 15.
<a href="#">1872 c. 58.</a>	The Bankruptcy (Ireland) Amendment Act 1872.	The whole Act.
<a href="#">1887 c. 57.</a>	The Deeds of Arrangement Act 1887.	The whole Act.
<a href="#">1890 c. 24.</a>	The Deeds of Arrangement (Amendment) Act 1890.	The whole Act.
<a href="#">1894 c. 60.</a>	The Merchant Shipping Act 1894.	Section 36.
<a href="#">1929 c. 1 (N.I.).</a>	The Bankruptcy Amendment Act (Northern Ireland) 1929.	The whole Act.
<a href="#">1947 c. 14.</a>	The Exchange Control Act 1947.	In Schedule 4, paragraph 8(3).
<a href="#">1955 c. 24 (N.I.).</a>	The Administration of Estates Act (Northern Ireland) 1955.	Section 30(1).  In Schedule 1, Part I.
<a href="#">1963 c. 23 (N.I.).</a>	The Bankruptcy (Amendment) Act (Northern Ireland) 1963.	The whole Act.
<a href="#">1969 c. 30 (N.I.).</a>	The Judgments Enforcement Act (Northern Ireland) 1969.	Section 78.  In section 129(1), the definitions of “company” and “debtor”.  Schedule 2.  In Schedule 4, in Part II, the entries relating to the Irish Bankrupt and Insolvent Act 1857 and the Bankruptcy Amendment (Ireland) Act 1872.
<a href="#">1974 c. 39.</a>	The Consumer Credit Act 1974.	



		In Schedule 4, in Part II, paragraph 38.
<a href="#">1975 c. 15.</a>	The Social Security (Northern Ireland) Act 1975.	Section 143(2).
		Section 144.
		Schedule 15.
<a href="#">1975 c. 66.</a>	The Recess Elections Act 1975.	In section 1(2), in the definition of “the relevant bankruptcy enactment”, paragraph (c).
<a href="#">1975 NI 16.</a>	The Child Benefit (Northern Ireland) Order 1975.	Article 14(2).
<a href="#">1976 NI 12.</a>	The Solicitors (Northern Ireland) Order 1976.	In Article 41, paragraph (2); in paragraph (3), in sub-paragraph (a) the words from “or being” to “or enters” in the second place where it occurs; and paragraph (5).
<a href="#">1980 NI 4.</a>	The Bankruptcy Amendment (Northern Ireland) Order 1980.	The whole Order.
<a href="#">1981 NI 6.</a>	The Judgments Enforcement (Northern Ireland) Order 1981.	Article 14(3)(a)(i).
		In Article 93 the words “the assignees in the bankruptcy of the debtor or”.
<a href="#">1983 NI 22.</a>	The Judgments Enforcement (Attachment of Debts) (Northern Ireland) Order 1983.	Article 5.
<a href="#">1984 NI 14.</a>	The Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984.	Article 5(7).
<a href="#">1986 NI 6.</a>	The Companies (Northern Ireland) Order 1986.	In Article 2(3) in the definition of “prescribed” the words from “(a)” to “otherwise”, and the definition of “a resolution for voluntary winding up”.
		Article 188(7).
		Articles 455 to 601.
		Articles 610 to 624.
		Article 658(4).
		Article 659(3).
		Article 681(4).
		Schedules 16 to 19.
		In Schedule 23 from the entry relating to Article 453 to the entry relating to Article 594(2) and the entry relating to Article 659(3).
<a href="#">1986 NI 9.</a>	The Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986.	In Schedule 1, in Part I the entries relating to the Judgments Enforcement Act (Northern Ireland) 1969, the Industrial Relations (Northern Ireland) Order 1976, the Bankruptcy Amendment (Northern Ireland) Order 1980 and in Part II the entries relating to the Social Security (Northern Ireland) Act 1975.

<a href="#">1988 c. 1.</a>	The Income and Corporation Taxes Act 1988.	Section 559(6).
<a href="#">1989 NI 19.</a>	The Insolvency (Northern Ireland) Order 1989.	In Schedule 9, Part III.

**KEELING SCHEDULE FOR THE COMPANY DIRECTORS  
DISQUALIFICATION (NORTHERN IRELAND) ORDER 2002 AS  
AMENDED BY THE INSOLVENCY (AMENDMENT) BILL**

**2002 No. 3150**

**NORTHERN IRELAND**

**The Company Directors Disqualification  
(Northern Ireland) Order 2002**

*Made 17th December 2002*

*Coming into operation on days to be appointed under Article 1(2)*

At the Court at Buckingham Palace, the 17th day of December 2002

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c.1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

*Introductory*

**1.— Title and commencement**

- (1) This Order may be cited as the Company Directors Disqualification (Northern Ireland) Order 2002.
- (2) This Order shall come into operation on such day or days as the Department may by order appoint.

**2.— Interpretation**

- (1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.
- (2) In this Order—
  - “administrative receiver” has the meaning given by Article 5(1) of the Insolvency (Northern Ireland) Order 1989;
  - “CMA” means the Competition and Markets Authority;
  - “company” means—
    - (a) a company registered under the Companies Act 2006 in Northern Ireland, or

(b) a company that may be wound up under Part 6 of the Insolvency (Northern Ireland) Order 1989 (unregistered companies);

“the Companies Acts” has the meaning given by section 2(1) of the Companies Act 2006;

“the Department” means the Department of Enterprise, Trade and Investment;

“director” includes any person occupying the position of director by whatever name called;

“officer” has the same meaning as in the Companies Acts (see section 1173(1) of the Companies Act 2006);

“the official receiver” means, in relation to the winding up of a company or the bankruptcy of an individual, any officer of the Department who by virtue of Article 355 or 357 of the Insolvency (Northern Ireland) Order 1989 is authorised to act as the official receiver in relation to that winding up or bankruptcy;

“overseas company” is a company which is incorporated or formed outside Northern Ireland;

“prescribed” means prescribed by regulations;

“the registrar” means the registrar of companies for Northern Ireland;

“regulations” means—

(a) in Article 13D, regulations made by the Secretary of State, and

(b) in other provisions of this Order, regulations made by the Department subject (except in Article 23(3)) to negative resolution;

“shadow director”, in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act, but so that a person is not deemed a shadow director by reason only that the directors act—

(a) on advice given by that person in a professional capacity;

(b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under a statutory provision;

(c) in accordance with guidance or advice given by that person in that person's capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975);

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).

(3) Article 6 of [ the Insolvency (Northern Ireland) Order 1989 (interpretation for Parts II to VII of that Order) applies as regards references to a company's insolvency and to its going into liquidation; and references to acting as an insolvency practitioner are to be read in accordance with Article 3 of that Order.

(4) Any reference to provisions, or a particular provision, of the Companies Acts or the Insolvency (Northern Ireland) Order 1989 includes the corresponding provisions or provision of corresponding earlier legislation.

(5) Subject to the provisions of this Article, expressions that are defined for the purposes of the Companies Acts (see section 1174 of, and Schedule 8 to, the Companies Act 2006) have the same meaning in this Order.

(6) Any reference to acting as receiver—

(a) includes acting as manager or as both receiver and manager, but

(b) does not include acting as administrative receiver.

### **3.— Disqualification orders: general**

(1) In the circumstances specified in this Order a court may, and under Articles 9 and 13A shall, make against a person a disqualification order, that is to say an order that, for a period specified in the order—

(a) he shall not be a director of a company, act as receiver of a company's property or in

any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of the High Court, and  
(b) he shall not act as an insolvency practitioner.

(2) In each Article which gives to a court power or, as the case may be, imposes on it the duty to make a disqualification order there is specified the maximum (and, in Articles 9 and 11A, the minimum) period of disqualification which may or (as the case may be) must be imposed by means of the order and, unless the court otherwise orders, the period of disqualification so imposed shall begin at the end of the period of 21 days beginning with the date of the order.

(3) Where a disqualification order is made against a person who is already subject to such an order or to a disqualification undertaking, the periods specified in those orders or, as the case may be, in the order and the undertaking shall run concurrently.

(4) A disqualification order may be made on grounds which are or include matters other than criminal convictions, notwithstanding that the person in respect of whom it is to be made may be criminally liable in respect of those matters.

#### **4.— Disqualification undertakings: general**

(1) In the circumstances specified in Articles 8A, 10, 11, 11C and 11E the Department may accept a disqualification undertaking, that is to say an undertaking by any person that, for a period specified in the undertaking, the person—

(a) will not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of the High Court, and  
(b) will not act as an insolvency practitioner.

(2) The maximum period which may be specified in a disqualification undertaking is 15 years; and the minimum period which may be specified in a disqualification undertaking under Article 10 or 11C is two years.

(3) Where a disqualification undertaking by a person who is already subject to such an undertaking or to a disqualification order is accepted, the periods specified in those undertakings or (as the case may be) the undertaking and the order shall run concurrently.

(4) In determining whether to accept a disqualification undertaking by any person, the Department may take account of matters other than criminal convictions, notwithstanding that the person may be criminally liable in respect of those matters.

#### *Disqualification for general misconduct in connection with companies*

#### **5.— Disqualification on conviction of offence punishable only on indictment or either on conviction on indictment or on summary conviction**

(1) The court may make a disqualification order against a person where he is convicted of an offence punishable only on conviction on indictment or either on conviction on indictment or on summary conviction (whether on indictment or on summary conviction) in connection with the promotion, formation, management, liquidation or striking off of a company, with the receivership of a company's property or with his being an administrative receiver of a company.

(1A) In paragraph (1), “company” includes overseas company.

(2) “The court” for this purpose means—

(a) the High Court, or  
(b) the court by or before which the person is convicted of the offence, or  
(c) in the case of a summary conviction, any other court of summary jurisdiction.

(3) The maximum period of disqualification under this Article is—

(a) where the disqualification order is made by a court of summary jurisdiction, 5 years,

and

(b) in any other case, 15 years.

#### **6.— Disqualification for persistent default under companies legislation**

(1) The High Court may make a disqualification order against a person where it appears to it that he has been persistently in default in relation to provisions of the companies legislation requiring any return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the registrar.

(2) On an application to the High Court for an order to be made under this Article, the fact that a person has been persistently in default in relation to such provisions as are mentioned in paragraph (1) may (without prejudice to its proof in any other manner) be conclusively proved by showing that in the 5 years ending with the date of the application he has been adjudged guilty (whether or not on the same occasion) of 3 or more defaults in relation to those provisions.

(3) A person is to be treated under paragraph (2) as being adjudged guilty of a default in relation to any such provision if—

(a) he is convicted (whether on indictment or on summary conviction) of an offence consisting in a contravention of that provision (whether on his own part or on the part of any company), or

(b) a default order is made against him, that is to say an order under any of the following provisions—

(i) section 452 of the Companies Act 2006 (order requiring delivery of company accounts),

(ii) section 456 of the Companies Act 2006 (order requiring preparation of revised accounts),

(iii) section 1113 of the Companies Act 2006 (enforcement of company's filing obligations),

(iv) Article 51 of the Insolvency (Northern Ireland) Order 1989 (enforcement of receiver's or manager's duty to make returns), or

(v) Article 144 of that Order (corresponding provision for liquidator in winding up),

in respect of any such contravention of that provision (whether on his own part or on the part of any company).

(3A) In this Article “the companies legislation” means the Companies Acts and Parts 2 to 7 of the Insolvency (Northern Ireland) Order 1989 (company insolvency and winding up).

(3B) In this Article “company” includes overseas company.

(4) The maximum period of disqualification under this Article is 5 years.

#### **7.— Disqualification for fraud, etc., in winding up**

(1) The High Court may make a disqualification order against a person if, in the course of the winding up of a company, it appears that he—

(a) has been guilty of an offence for which he is liable (whether he has been convicted or not) under section 993 of the Companies Act 2006 (fraudulent trading), or

(b) has otherwise been guilty, while an officer or liquidator of the company or receiver of the company's property or administrative receiver of the company, of any fraud in relation to the company or of any breach of his duty as such officer, liquidator, receiver or administrative receiver.

(2) In this Article “officer” includes a shadow director.

(3) The maximum period of disqualification under this Article is 15 years.

## **8.— Disqualification on summary conviction of offence**

(1) An offence counting for the purposes of this Article is one of which a person is convicted (either on indictment or on summary conviction) in consequence of a contravention of any provision of the companies legislation requiring a return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the registrar (whether the contravention is on the person's own part or on the part of any company).

(2) Where a person is convicted by a court of summary jurisdiction of an offence mentioned in paragraph (1), the court by which he is convicted, or any other court of summary jurisdiction may make a disqualification order against him if the circumstances specified in paragraph (3) are present.

(3) Those circumstances are that, during the 5 years ending with the date of the conviction, the person has had made against him, or has been convicted of, in total not less than 3 default orders and offences counting for the purposes of this Article and those offences may include that of which he is convicted as mentioned in paragraph (2) and any other offence of which he is convicted on the same occasion.

(4) For the purposes of this Article “default order” means the same as in Article 6(3)(b).

(4A) In this Article “the companies legislation” means the Companies Acts and Parts 2 to 7 of the Insolvency (Northern Ireland) Order 1989 (company insolvency and winding up).

(4B) In this Article “company” includes overseas company.

(5) The maximum period of disqualification under this Article is 5 years.

## **8A Disqualification for certain convictions abroad**

(1) If it appears to the Department that it is expedient in the public interest that a disqualification order under this Article should be made against a person, the Department may apply to the High Court for such an order.

(2) The High Court may, on an application under paragraph (1), make a disqualification order against a person who has been convicted of a relevant foreign offence.

(3) A “relevant foreign offence” is an offence committed outside Northern Ireland—

(a) in connection with—

(i) the promotion, formation, management, liquidation or striking off of a company (or any similar procedure),

(ii) the receivership of a company's property (or any similar procedure), or

(iii) a person being an administrative receiver of a company (or holding a similar position), and

(b) which corresponds to an indictable offence under the law of Northern Ireland.

(4) Where it appears to the Department that, in the case of a person who has offered to give a disqualification undertaking—

(a) the person has been convicted of a relevant foreign offence, and

(b) it is expedient in the public interest that the Department should accept the undertaking (instead of applying, or proceeding with an application, for a disqualification order), the Department may accept the undertaking.

(5) In this Article, “company” includes an overseas company.

(6) The maximum period of disqualification under an order under this Article is 15 years.

## *Disqualification for unfitness*

## **9.— Duty of High Court to disqualify unfit directors**

(1) The High Court shall make a disqualification order against a person in any case where, on an application under this Article—

(a) the Court is satisfied—

- (i) that the person is or has been a director of a company which has at any time become insolvent (whether while the person was a director or subsequently), or
- (ii) that the person has been a director of a company which has at any time been dissolved without becoming insolvent (whether while the person was a director or subsequently), and
- (b) the Court is satisfied that the person's conduct as a director of that company (either taken alone or taken together with the person's conduct as a director of one or more other companies or overseas companies) makes the person unfit to be concerned in the management of a company.
- (1A) In this Article references to a person's conduct as a director of any company or overseas company include, where that company or overseas company has become insolvent, references to that person's conduct in relation to any matter connected with or arising out of the insolvency.
- (2) For the purposes of this Article, a company becomes insolvent if—
  - (a) the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up,
  - (b) the company enters administration, or
  - (c) an administrative receiver of the company is appointed.
- (2A) For the purposes of this Article, an overseas company becomes insolvent if the company enters into insolvency proceedings of any description (including interim proceedings) in any jurisdiction.
- (2B) In this Article and Article 10, “director” includes a shadow director.
- (3) Under this Article the minimum period of disqualification is 2 years, and the maximum period is 15 years.

## **10.— Disqualification orders under Article 9: applications and acceptance of undertakings**

- (1) If it appears to the Department that it is expedient in the public interest that a disqualification order under Article 9 should be made against any person, an application for the making of such an order against that person may be made—
  - (a) by the Department, or
  - (b) if the Department so directs in the case of a person who is or has been a director of a company which is being, or has been, wound up by the High Court, by the official receiver.
- (2) Except with the leave of the High Court, an application for the making under Article 9 of a disqualification order against any person shall not be made after the expiration of 3 years from
  - (a) in a case where the person is or has been a director of a company which has become insolvent, the day on which the company became insolvent, or
  - (b) in a case where the person has been a director of a company which has been dissolved without becoming insolvent, the day on which the company was dissolved.
- (3) If it appears to the Department that the conditions mentioned in Article 9(1) are satisfied as respects any person who has offered to give the Department a disqualification undertaking, the Department may accept the undertaking if it appears to the Department that it is expedient in the public interest that the Department should do so (instead of applying, or proceeding with an application, for a disqualification order).
- (4)
- ~~(5) The Department or the official receiver may require the liquidator, administrator or administrative receiver of a company, or the former liquidator, administrator or administrative receiver of a company—~~
- ~~(a) to furnish the Department or, as the case may be, the official receiver with such~~



~~information with respect to any person's conduct as a director of the company, and~~  
~~(b) to produce and permit inspection of such books, papers and other records relevant to~~  
~~that person's conduct as such a director,~~  
~~as the Department or the official receiver may reasonably require for the purpose of~~  
~~determining whether to exercise, or of exercising, any function under this Article.~~  
~~(5A) The Department or the official receiver may require any person—~~  
~~(a) to furnish the Department or, as the case may be, the official receiver with such~~  
~~information with respect to that person's or another person's conduct as a director of a~~  
~~company which has been dissolved without becoming insolvent (whether while the person~~  
~~was a director or subsequently), and~~  
~~(b) to produce and permit inspection of such books, papers and other records as are~~  
~~considered by the Department or, as the case may be, the official receiver to be relevant to~~  
~~that person's or another person's conduct as such a director,~~  
~~as the Department or the official receiver may reasonably require for the purpose of~~  
~~determining whether to exercise, or of exercising, any function under this Article.~~

(5) Where a company or overseas company (“C”) has at any time become insolvent, the Department or the official receiver may require any person (“A”)—

(a) to furnish the Department or, as the case may be, the official receiver with such relevant information, and  
(b) to produce and permit inspection of such relevant records, as the Department or the official receiver may reasonably require for the purpose of determining whether to exercise, or of exercising, any function under this Article.

(5A) Where a company or overseas company (“C”) has been dissolved without becoming insolvent, the Department or the official receiver may require any person (“A”)—

(a) to furnish the Department or, as the case may be, the official receiver with such relevant information, and  
(b) to produce and permit inspection of such relevant records, as the Department or the official receiver may reasonably require for the purpose of determining whether to exercise, or of exercising, any function under this Article.

(5B) “Relevant information” is information with respect to the conduct of A, or another person, as a director of company C.

(5C) “Relevant records” are books, papers and other records that are considered by the Department or (as the case may be) the official receiver to be relevant to the conduct of A, or another person, as a director of company C.

(5D) For the purposes of paragraphs (5B) and (5C) it does not matter whether company C became insolvent, or was dissolved, while A or (as the case may be) the other person was a director or subsequently.

(6) Paragraphs (1A) ~~and (2)~~, (2) and (2A) of Article 9 apply for the purposes of this Article as they apply for the purposes of that Article.

### **10A Office-holder's report on conduct of directors**

(1) The office-holder in respect of a company which is insolvent must prepare a report (a “conduct report”) about the conduct of each person who was a director of the company—

(a) on the insolvency date, or  
(b) at any time during the period of 3 years ending with that date.

(2) For the purposes of this Article a company is insolvent if—

(a) the company is in liquidation and at the time it went into liquidation its assets were insufficient for the payment of its debts and other liabilities and the expenses of the winding up,

(b) the company has entered administration, or

(c) an administrative receiver of the company has been appointed;

and paragraph (1A) of Article 9 applies for the purposes of this Article as it applies for the purposes of that Article.

(3) A conduct report must, in relation to each person, describe any conduct of the person which may assist the Department in deciding whether to exercise the power under Article 10(1) or (3) in relation to that person.

(4) The office-holder must send the conduct report to the Department before the end of—

(a) the period of 3 months beginning with the insolvency date, or

(b) such other longer period as the Department considers appropriate in the particular circumstances.

(5) If new information comes to the attention of an office-holder, the office-holder must send that information to the Department as soon as reasonably practicable.

(6) “New information” is information which an office-holder considers should have been included in a conduct report prepared in relation to the company, or would have been so included had it been available before the report was sent.

(7) If there is more than one office-holder in respect of a company at any particular time (because the company is insolvent by virtue of falling within more than one sub-paragraph of paragraph (2) at that time), paragraph (1) applies only to the first of the office-holders to be appointed.

(8) In the case of a company which is at different times insolvent by virtue of falling within one or more different sub-paragraphs of paragraph (2)—

(a) the references in paragraph (1) to the insolvency date are to be read as references to the first such date during the period in which the company is insolvent, and

(b) paragraph (1) does not apply to an office-holder if at any time during the period in which the company is insolvent a conduct report has already been prepared and sent to the Department.

(9) The “office-holder” in respect of a company which is insolvent is—

(a) in the case of a company being wound up by the High Court, the official receiver;

(b) in the case of a company being wound up otherwise, the liquidator;

(c) in the case of a company in administration, the administrator;

(d) in the case of a company of which there is an administrative receiver, the receiver.

(10) The “insolvency date” —

(a) in the case of a company being wound up by the High Court, means the date on which the Court makes the winding-up order (see Article 105 of the Insolvency (Northern Ireland) Order 1989);

(b) in the case of a company being wound up by way of a members' voluntary winding up, means the date on which the liquidator forms the opinion that the company will be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors' declaration of solvency under Article 75 of the Insolvency (Northern Ireland) Order 1989;

(c) in the case of a company being wound up by way of a creditors' voluntary winding up where no such declaration under Article 75 of that Order has been made, means the date of the passing of the resolution for voluntary winding up;

(d) in the case of a company which has entered administration, means the date the company did so;

(e) in the case of a company in respect of which an administrative receiver has been

appointed, means the date of that appointment.

(11) For the purposes of paragraph (10)(e), any appointment of an administrative receiver to replace an administrative receiver who has died or vacated office pursuant to Article 55 of the Insolvency (Northern Ireland) Order 1989 is to be ignored.

(12) In this Article, “director” includes a shadow director.

### **11.— Disqualification of director on finding of unfitness**

(1) If it appears to the Department that it is expedient in the public interest that a disqualification order should be made against a person who is, or has been, a director or shadow director of a company, the Department may apply to the High Court for such an order.

(2)

(3) Where it appears to the Department that, in the case of a person who has offered to give the Department a disqualification undertaking—

(a) the conduct of the person in relation to a company of which the person is or has been a director or shadow director (either taken alone or taken together with his conduct as a director or shadow director of one or more other companies or overseas companies), makes him unfit to be concerned in the management of a company, and

(b) it is expedient in the public interest that the Department should accept the undertaking (instead of applying, or proceeding with an application, for a disqualification order), the Department may accept the undertaking.

(4) The High Court may make a disqualification order against a person where, on an application under this Article, it is satisfied that his conduct in relation to the company (either taken alone or taken together with his conduct as a director or shadow director of one or more other companies or overseas companies) makes him unfit to be concerned in the management of a company.

(4A) Paragraph (1A) of Article 9 applies for the purposes of this Article as it applies for the purposes of that Article.

(5) The maximum period of disqualification under this Article is 15 years.

### **Persons instructing unfit directors**

#### **11A Order disqualifying person instructing unfit director**

(1) The High Court may make a disqualification order against a person (“P”) if, on an application under Article 11B, it is satisfied—

(a) either—

(i) that a disqualification order under Article 9 has been made against a person who is or has been a director (but not a shadow director) of a company, or

(ii) that the Department has accepted a disqualification undertaking from such a person under Article 10(3), and

(b) that P exercised the requisite amount of influence over the person.

That person is referred to in this Article as “the main transgressor”.

(2) For the purposes of this Article, P exercised the requisite amount of influence over the main transgressor if any of the conduct—

(a) for which the main transgressor is subject to the order made under Article 9, or

(b) in relation to which the undertaking was accepted from the main transgressor under Article 10(3),

was the result of the main transgressor acting in accordance with P's directions or instructions.

- (3) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.
- (4) Under this Article the minimum period of disqualification is 2 years and the maximum period is 15 years.

### **11B Application for order under Article 11A**

- (1) If it appears to the Department that it is expedient in the public interest that a disqualification order should be made against a person under Article 11A, the Department may—
- (a) make an application to the High Court for such an order, or
- (b) in a case where an application for an order under Article 9 against the main transgressor has been made by the official receiver, direct the official receiver to make such an application.
- (2) Except with the leave of the High Court, an application for a disqualification order under Article 11A must not be made after the end of the period of 3 years beginning with the day on which the company in question became insolvent (within the meaning given by Article 9(2) ) or was dissolved without becoming insolvent.
- (3) Paragraphs (5) ~~and (5A)~~ to (5D) of Article 10 apply for the purposes of this Article as they apply for the purposes of that Article.

### **11C Disqualification undertaking instead of an order under Article 11A**

- (1) If it appears to the Department that it is expedient in the public interest to do so, the Department may accept a disqualification undertaking from a person (“P”) if—
- (a) any of the following is the case—
- (i) a disqualification order under Article 9 has been made against a person who is or has been a director (but not a shadow director) of a company,
- (ii) the Department has accepted a disqualification undertaking from such a person under Article 10(3), or
- (iii) it appears to the Department that such an undertaking could be accepted from such a person (if one were offered), and
- (b) it appears to the Department that P exercised the requisite amount of influence over the person.

That person is referred to in this Article as “the main transgressor”.

- (2) For the purposes of this Article, P exercised the requisite amount of influence over the main transgressor if any of the conduct—
- (a) for which the main transgressor is subject to the disqualification order made under Article 9,
- (b) in relation to which the disqualification undertaking was accepted from the main transgressor under Article 10(3), or
- (c) which led the Department to the conclusion set out in paragraph (1)(a)(iii), was the result of the main transgressor acting in accordance with P's directions or instructions.
- (3) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.
- (4) Paragraphs (5) ~~and (5A)~~ to (5D) of Article 10 apply for the purposes of this Article as they apply for the purposes of that Article.

### **11D Order disqualifying person instructing unfit director: other cases**

- (1) The High Court may make a disqualification order against a person (“P”) if, on an application under this Article, it is satisfied—
- (a) either—

(i) that a disqualification order under Article 11 has been made against a person who is or has been a director (but not a shadow director) of a company, or  
(ii) that the Department has accepted a disqualification undertaking from such a person under Article 11(3), and

(b) that P exercised the requisite amount of influence over the person.

That person is referred to in this Article as “the main transgressor”.

(2) The Department may make an application to the High Court for a disqualification order against P under this Article if it appears to the Department that it is expedient in the public interest for such an order to be made.

(3) For the purposes of this Article, P exercised the requisite amount of influence over the main transgressor if any of the conduct—

(a) for which the main transgressor is subject to the order made under Article 11, or

(b) in relation to which the undertaking was accepted from the main transgressor under Article 11(3),

was the result of the main transgressor acting in accordance with P's directions or instructions.

(4) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.

(5) Under this Article the maximum period of disqualification is 15 years.

### **11E Disqualification undertaking instead of an order under Article 11D**

(1) If it appears to the Department that it is expedient in the public interest to do so, the Department may accept a disqualification undertaking from a person (“P”) if—

(a) any of the following is the case—

(i) a disqualification order under Article 11 has been made against a person who is or has been a director (but not a shadow director) of a company,

(ii) the Department has accepted a disqualification undertaking from such a person under Article 11(3), or

(iii) it appears to the Department that such an undertaking could be accepted from such a person (if one were offered), and

(b) it appears to the Department that P exercised the requisite amount of influence over the person.

That person is referred to in this Article as “the main transgressor”.

(2) For the purposes of this Article, P exercised the requisite amount of influence over the main transgressor if any of the conduct—

(a) for which the main transgressor is subject to the disqualification order made under Article 11,

(b) in relation to which the disqualification undertaking was accepted from the main transgressor under Article 11(3), or

(c) which led the Department to the conclusion set out in paragraph (1)(a)(iii),

was the result of the main transgressor acting in accordance with P's directions or instructions.

(3) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.

### **Further provision about disqualification undertakings**

## **12.— Variation etc. of disqualification undertaking**

(1) The High Court may, on the application of a person who is subject to a disqualification undertaking—

- (a) reduce the period for which the undertaking is to be in force, or
- (b) provide for it to cease to be in force.

(2) On the hearing of an application under paragraph (1), the Department shall appear and call the attention of the Court to any matters which seem to the Department to be relevant, and may give evidence or call witnesses.

(3) Paragraph (2) does not apply to an application in the case of an undertaking given under Article 13B, and in such a case on the hearing of the application whichever of the CMA or a specified regulator (within the meaning of Article 13E) accepted the undertaking—

- (a) shall appear and call the attention of the Court to any matters which appear to it to be relevant;
- (b) may give evidence or call witnesses.

## **13.—**

Repealed

## **Disqualification for competition infringements**

### **13A.— Competition disqualification order**

(1) The High Court shall make a disqualification order against a person if the following two conditions are satisfied in relation to him.

(2) The first condition is that an undertaking which is a company of which he is a director commits a breach of competition law.

(3) The second condition is that the High Court considers that his conduct as a director makes him unfit to be concerned in the management of a company.

(4) An undertaking commits a breach of competition law if it engages in conduct which infringes either of the following—

- (a) the Chapter 1 prohibition (within the meaning of the Competition Act 1998) (prohibition on agreements, etc. preventing, restricting or distorting competition);
- (b) the Chapter 2 prohibition (within the meaning of that Act) (prohibition on abuse of a dominant position).

(c)-(d)

(5) For the purpose of deciding under paragraph (3) whether a person is unfit to be concerned in the management of a company the High Court—

- (a) shall have regard to whether paragraph (6) applies to him;
- (b) may have regard to his conduct as a director of a company in connection with any other breach of competition law;
- (c) shall not have regard to the matters mentioned in Schedule 1.

(6) This paragraph applies to a person if as a director of the company—

- (a) his conduct contributed to the breach of competition law mentioned in paragraph (2);
- (b) his conduct did not contribute to the breach but he had reasonable grounds to suspect that the conduct of the undertaking constituted the breach and he took no steps to prevent it;
- (c) he did not know but ought to have known that the conduct of the undertaking constituted the breach.

- (7) For the purposes of paragraph (6)(a) it is immaterial whether the person knew that the conduct of the undertaking constituted the breach.
- (8) For the purposes of paragraph (4)(a) references to the conduct of an undertaking are references to its conduct taken with the conduct of one or more other undertakings.
- (9) The maximum period of disqualification under this Article is 15 years.
- (10) An application under this Article for a disqualification order may be made by the CMA or by a specified regulator.
- (11) Section 60A of the Competition Act 1998 (certain principles etc to be considered or applied from IP completion day applies in relation to any question arising by virtue of paragraph (4)(a) or (b) as it applies in relation to any question arising under Part 1 of that Act.

### **13B.— Competition undertakings**

- (1) This Article applies if—
- (a) the CMA or a specified regulator thinks that in relation to any person an undertaking which is a company of which he is a director has committed or is committing a breach of competition law,
  - (b) the CMA or the specified regulator thinks that the conduct of the person as a director makes him unfit to be concerned in the management of a company, and
  - (c) the person offers to give the CMA or the specified regulator (as the case may be) a disqualification undertaking.
- (2) The CMA or the specified regulator (as the case may be) may accept a disqualification undertaking from the person instead of applying for or proceeding with an application for a disqualification order.
- (3) A disqualification undertaking is an undertaking by a person that for the period specified in the undertaking he will not—
- (a) be a director of a company;
  - (b) act as receiver of a company's property;
  - (c) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company;
  - (d) act as an insolvency practitioner.
- (4) But a disqualification undertaking may provide that a prohibition falling within paragraph (3)(a) to (c) does not apply if the person obtains the leave of the High Court.
- (5) The maximum period which may be specified in a disqualification undertaking is 15 years.
- (6) If a disqualification undertaking is accepted from a person who is already subject to a disqualification undertaking under this Order or to a disqualification order the periods specified in those undertakings or the undertaking and the order (as the case may be) run concurrently.
- (7) Paragraphs (4) to (8) of Article 13A apply for the purposes of this Article as they apply for the purposes of that Article but in the application of paragraph (5) of that Article the reference to the High Court shall be construed as a reference to the CMA or a specified regulator (as the case may be).

### **13C.— Competition investigations**

- (1) If the CMA or a specified regulator has reasonable grounds for suspecting that a breach of competition law has occurred it may carry out an investigation for the purpose of deciding whether to make an application under Article 13A for a disqualification order.
- (2) For the purposes of such an investigation sections 26 to 30 of the Competition Act 1998 (c. 41) apply to the CMA and the specified regulators as they apply to the CMA for the purposes of an investigation under section 25 of that Act.

- (3) Paragraph (4) applies if as a result of an investigation under this Article the CMA or a specified regulator proposes to apply under Article 13A for a disqualification order.
- (4) Before making the application the CMA or regulator (as the case may be) shall—
- (a) give notice to the person likely to be affected by the application, and
  - (b) give that person an opportunity to make representations.

### **13D.— Co-ordination**

- (1) The Secretary of State may make regulations for the purpose of co-ordinating the performance of functions under Articles 13A to 13C (relevant functions) which are exercisable concurrently by two or more persons.
- (2) Section 54(5) to (7) of the Competition Act 1998 (c. 41) applies to regulations made under this Article as it applies to regulations made under that section and for that purpose in that section—
- (a) references to Part 1 functions shall be read as references to relevant functions;
  - (aa) the reference in subsection (6A)(b) to notice under section 31(1) of the Competition Act 1998 that the regulator proposes to make a decision within the meaning given by section 31(2) of that Act is to be read as notice under Article 13C(4) that the specified regulator proposes to apply under Article 13A for a disqualification order;
  - (b) references to a regulator shall be read as references to a specified regulator; and
  - (c) a competent person also includes any of the specified regulators.
- (3) Regulations made under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.
- (4) Regulations may contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks appropriate.

### **13E.— Interpretation**

- (1) This Article applies for the purposes of Articles 13A to 13D.
- (2) Each of the following is a specified regulator for the purposes of a breach of competition law in relation to a matter in respect of which it has a function—
- (a) the Office of Communications;
  - (b) the Northern Ireland Authority for Utility Regulation;
  - (c) the Civil Aviation Authority.
- (3) Conduct includes omission.
- (4) Director includes shadow director.

### *Other cases of disqualification*

### **14.— Participation in wrongful trading**

- (1) Where the High Court makes a declaration under Article 177 or 178 of the Insolvency (Northern Ireland) Order 1989 that a person is liable to make a contribution to a company's assets, then, whether or not an application for such an order is made by any person, the Court may, if it thinks fit, also make a disqualification order against the person to whom the declaration relates.
- (2) The maximum period of disqualification under this Article is 15 years.
- (3) In this Article “company” includes overseas company.

### **15.— Undischarged bankrupts**

- (1) It is an offence for a person to act as director of a company or directly or indirectly to take part in or be concerned in the promotion, formation or management of a company, without



the leave of the court, at a time when any of the circumstances mentioned in paragraph (1A) apply to the person.

(1A) The circumstances are—

(a) the person is an undischarged bankrupt—

(i) in Northern Ireland, or

(ii) in England and Wales or Scotland,

(b) a bankruptcy restrictions order or undertaking is in force in respect of the person under—

(i) the Insolvency (Northern Ireland) Order 1989, or

(ii) the Bankruptcy (Scotland) Act 1985 or 2016 or the Insolvency Act 1986,

(c) a debt relief restrictions order or undertaking is in force in respect of the person under—

(i) the Insolvency (Northern Ireland) Order 1989, or

(ii) the Insolvency Act 1986,

(d) a moratorium period under a debt relief order applies in relation to the person under—

(i) the Insolvency (Northern Ireland) Order 1989, or

(ii) the Insolvency Act 1986.

(1B) In paragraph (1) “the court” means—

(a) for the purposes of sub-paragraphs (a)(i), (b)(i), (c)(i) and (d)(i) of paragraph (1A), the High Court,

(b) for the purposes of paragraph (1A)(a)(ii)—

~~(i) the court by which the person was adjudged bankrupt, or~~

(i) the court by which the bankruptcy order was made or (if the order was not made by a court) the court to which a debtor may appeal against a refusal to make a bankruptcy order, or

(ii) in Scotland, the court by which sequestration of the person's estate was awarded or, if awarded other than by the court, the court which would have jurisdiction in respect of sequestration of the person's estate,

(c) for the purposes of paragraph (1A)(b)(ii)—

(i) the court which made the order,

(ii) in Scotland, if the order has been made other than by the court, the court to which the person may appeal against the order, or

(iii) the court to which the person may make an application for annulment of the undertaking,

(d) for the purposes of paragraph (1A)(c)(ii)—

(i) the court which made the order, or

(ii) the court to which the person may make an application for annulment of the undertaking,

(e) for the purposes of paragraph (1A)(d)(ii), the court to which the person would make an application under section 251M(1) of the Insolvency Act 1986 (if the person were dissatisfied as mentioned there).

(2) The leave of the High Court shall not be given unless notice of intention to apply for it has been served on the official receiver and the official receiver shall, if he is of opinion that it is contrary to the public interest that the application should be granted, attend on the hearing of the application and oppose it.

(3) In this Article “company” includes a company incorporated outside Northern Ireland that has an established place of business in Northern Ireland.

## **16.— Failure to pay under administration order**

(1) The following has effect where an administration order under Part VI of the Judgments Enforcement (Northern Ireland) Order 1981 (NI 6) is revoked.

(2) A person to whom Article 86 of that Order of 1981 (default of debtor) applies by virtue of an order under paragraph (1) of that Article shall not, except with the leave of the High Court, act as director or liquidator of, or directly or indirectly take part in or be concerned in the promotion, formation or management of, a company.

### **17. Persons disqualified in Great Britain**

A person subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986 (c. 46)—

- (a) shall not be a director of a company, act as receiver of a company's property or in any way either directly or indirectly be concerned or take part in the promotion, formation or management of a company unless (in each case) he has leave of the High Court; and
- (b) shall not act as an insolvency practitioner.

### **17A Determining unfitness etc.: matters to be taken into account**

(1) This Article applies where the High Court must determine—

- (a) whether a person's conduct as a director of one or more companies or overseas companies makes the person unfit to be concerned in the management of a company;
- (b) whether to exercise any discretion it has to make a disqualification order under any of Articles 5 to 7, 8A, 11 or 14;
- (c) where the Court has decided to make a disqualification order under any of those Articles or is required to make an order under Article 9, what the period of disqualification should be.

(2) This Article also applies where the Department must determine—

- (a) whether a person's conduct as a director of one or more companies or overseas companies makes the person unfit to be concerned in the management of a company;
- (b) whether to exercise any discretion the Department has to accept a disqualification undertaking under any of Articles 8A, 10 or 11.

(3) In making any such determination in relation to a person, the High Court or the Department must—

- (a) in every case, have regard in particular to the matters set out in paragraphs 1 to 4 of Schedule 1;
- (b) in a case where the person concerned is or has been a director of a company or overseas company, also have regard in particular to the matters set out in paragraphs 5 to 7 of that Schedule.

(4) In this Article “director” includes a shadow director.

(5) Paragraph (1A) of Article 9 applies for the purposes of this Article as it applies for the purposes of that Article.

(6) The Department may by order modify Schedule 1; and such an order may contain such transitional provision as may appear to the Department to be necessary or expedient.

(7) An order under paragraph (5) is subject to affirmative resolution.

### *Consequences of contravention*

### **18. Offences**

If a person acts in contravention of a disqualification order or disqualification undertaking, or in contravention of Article 15, 16(2) or 17, he shall be guilty of an offence and shall be liable—

- (a) on conviction on indictment, to imprisonment for not more than 2 years or a fine, or both; and
- (b) on summary conviction, to imprisonment for not more than 6 months or a fine not

exceeding the statutory maximum, or both.

### **19.— Personal liability for company's debts where person acts while disqualified**

(1) A person is personally responsible for all the relevant debts of a company if at any time—

(a) in contravention of a disqualification order or disqualification undertaking or in contravention of Article 15 or 17 he is involved in the management of the company, or  
(b) as a person who is involved in the management of the company, he acts or is willing to act on instructions given without the leave of the High Court by a person whom he knows at that time to be—

(i) the subject of a disqualification order or disqualification undertaking,

(ii) the subject of a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 (c. 46), or

(iii) an undischarged bankrupt.

(2) Where a person is personally responsible under this Article for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under this Article or otherwise, is so liable.

(3) For the purposes of this Article the relevant debts of a company are—

(a) in relation to a person who is personally responsible under paragraph (1)(a), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company, and

(b) in relation to a person who is personally responsible under paragraph (1)(b), such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in that paragraph.

(4) For the purposes of this Article, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.

(5) For the purposes of this Article a person who, as a person involved in the management of a company, has at any time acted on instructions given without the leave of the High Court by a person whom he knew at that time to be—

(a) the subject of a disqualification order or disqualification undertaking, or

(b) the subject of a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 (c. 46), or

(c) an undischarged bankrupt,

is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given that person.

### **Compensation orders and undertakings**

#### **19A Compensation orders and undertakings**

(1) The High Court may make a compensation order against a person on the application of the Department if the Court is satisfied that the conditions mentioned in paragraph (3) are met.

(2) If it appears to the Department that the conditions mentioned in paragraph (3) are met in respect of a person who has offered to give the Department a compensation undertaking, the Department may accept the undertaking instead of applying, or proceeding with an application, for a compensation order.

(3) The conditions are that—

(a) the person is subject to a disqualification order or disqualification undertaking under this Order, and

(b) conduct for which the person is subject to the order or undertaking has caused loss to

one or more creditors of an insolvent company, or a company which has been dissolved without becoming insolvent, of which the person has at any time been a director.

(4) An “insolvent company” is a company that is or has been insolvent and a company becomes insolvent if—

(a) the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up,

(b) the company enters administration, or

(c) an administrative receiver of the company is appointed.

(5) The Department may apply for a compensation order at any time before the end of the period of two years beginning with the date on which the disqualification order referred to in paragraph (3)(a) was made, or the disqualification undertaking referred to in that paragraph was accepted.

(6) In the case of a person subject to a disqualification order under Article 11A or 11D, or a disqualification undertaking under Article 11C or 11E, the reference in paragraph (3)(b) to conduct is a reference to the conduct of the main transgressor in relation to which the person has exercised the requisite amount of influence.

### **19B Amounts payable under compensation orders and undertakings**

(1) A compensation order is an order requiring the person against whom it is made to pay an amount specified in the order—

(a) to the Department for the benefit of—

(i) a creditor or creditors specified in the order;

(ii) a class or classes of creditor so specified;

(b) as a contribution to the assets of a company so specified.

(2) A compensation undertaking is an undertaking to pay an amount specified in the undertaking—

(a) to the Department for the benefit of—

(i) a creditor or creditors specified in the undertaking;

(ii) a class or classes of creditor so specified;

(b) as a contribution to the assets of a company so specified.

(3) When specifying an amount the High Court (in the case of an order) and the Department (in the case of an undertaking) must in particular have regard to—

(a) the amount of the loss caused;

(b) the nature of the conduct mentioned in Article 19A(3)(b);

(c) whether the person has made any other financial contribution in recompense for the conduct (whether under a statutory provision or otherwise).

(4) An amount payable by virtue of paragraph (2) under a compensation undertaking is recoverable as if payable under a court order.

(5) An amount payable under a compensation order or compensation undertaking is provable as a bankruptcy debt.

### **19C Variation and revocation of compensation undertakings**

(1) The High Court may, on the application of a person who is subject to a compensation undertaking—

(a) reduce the amount payable under the undertaking, or

(b) provide for the undertaking not to have effect.

(2) On the hearing of an application under paragraph (1), the Department must appear and call the attention of the Court to any matters which the Department considers relevant, and may give evidence or call witnesses.

## **20.— Application for disqualification order**

(1) A person intending to apply for the making of a disqualification order by the High Court shall give not less than 10 days' notice of his intention to the person against whom the order is sought; and on the hearing of the application the last-mentioned person may appear and himself give evidence or call witnesses.

(2) An application to the High Court for the making against any person of a disqualification order under any of Articles 5 to 7 may be made by the Department or the official receiver, or by the liquidator or any past or present member or creditor of any company or overseas company in relation to which that person has committed or is alleged to have committed an offence or other default.

(3) On the hearing of an application made by a person falling within paragraph (4) the applicant shall appear and call the attention of the High Court to any matters which seem to be relevant, and may give evidence or call witnesses.

(4) The following fall within this paragraph—

- (a) the Department;
- (b) the official receiver;
- (c) the [CMA] 4;
- (d) the liquidator;
- (e) a specified regulator (within the meaning of Article 13E).

## **21. Application for leave under an order or undertaking**

(1) On the hearing of an application for leave for the purposes of Article 3(1)(a) or 4(1)(a), the Department shall appear and call the attention of the High Court to any matters which seem to the Department to be relevant, and may give evidence or call witnesses.

(2) Paragraph (1) does not apply to an application for leave for the purposes of Article 3(1)(a) if the application for the disqualification order was made under Article 13A.

(3) In such a case and in the case of an application for leave for the purposes of Article 13B(4) on the hearing of the application whichever of the CMA or a specified regulator (within the meaning of Article 13E) applied for the order or accepted the undertaking (as the case may be)—

- (a) must appear and draw the attention of the Court to any matters which appears to it to be relevant;
- (b) may give evidence or call witnesses.

## **22.— Register of disqualification orders and undertakings**

(1) Where—

- (a) a disqualification order is made, or
  - (b) any action is taken by a court in consequence of which such an order or a disqualification undertaking is varied or ceases to be in force, or
  - (c) leave is granted by the High Court for a person subject to such an order to do any thing which otherwise the order prohibits him from doing, or
  - (d) leave is granted by the High Court for a person subject to such an undertaking to do anything which otherwise the undertaking prohibits him from doing,
- the clerk of the court shall furnish to the Department and to the Secretary of State such particulars as may be prescribed and regulations may prescribe the time within which, and the form and manner in which, such particulars are to be furnished.

(2) The Department shall, from the particulars so furnished continue to maintain the register of disqualification orders, and of cases in which leave has been granted as mentioned in paragraph (1).

- (3) The Department shall include in the register such particulars as it considers appropriate of—
- (a) disqualification undertakings accepted by it under Article 8A, 10, 11, 11C or 11E;
  - (b) disqualification undertakings accepted by the [CMA] 4 or a specified regulator under Article 13B;
  - (c) cases in which leave has been granted as mentioned in paragraph (1)(d).
- (4) When an order or undertaking of which entry is made in the register ceases to be in force, the Department shall delete the entry from the register and all particulars relating to it which have been furnished to the Department under this Article or any previous corresponding provision and, in the case of a disqualification undertaking, any other particulars the Department has included in the register.
- (5) The register shall be open to inspection on payment of such fee as may be prescribed.
- (6) The Department may furnish to the Secretary of State such particulars as the Department considers appropriate of disqualification undertakings accepted by it under Article 10 or 11.
- (7) Regulations under this Article may extend the preceding provisions of this Article, to such extent and with such modifications as may be specified in the regulations, to disqualification orders made and disqualification undertakings accepted under the Company Directors Disqualification Act 1986 (c. 46).

*Miscellaneous and general*

**23.— Admissibility in evidence of statements**

- (1) In any proceedings (whether or not under this Order), any statement made in pursuance of a requirement imposed by or under Articles 8A to 14, 17A or 19 to 19C or Schedule 1 or by or under rules made for the purposes of this Order under [ the Insolvency (Northern Ireland) Order 1989, may be used in evidence against any person making or concurring in making the statement.
- (2) However, in criminal proceedings in which any such person is charged with an offence to which this paragraph applies—
- (a) no evidence relating to the statement may be adduced, and
  - (b) no question relating to it may be asked,
- by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.
- (3) Paragraph (2) applies to any offence other than—
- (a) an offence which is—
    - (i) created by rules made for the purposes of this Order under the Insolvency (Northern Ireland) Order 1989, and
    - (ii) designated for the purposes of this paragraph by such rules or by regulations;
  - (b) an offence which is—
    - (i) created by regulations made under any such rules, and
    - (ii) designated for the purposes of this paragraph by such regulations; or
  - (c) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (NI 19) (false statements made otherwise than on oath).
- (4) Regulations under paragraph (3)(a)(ii) shall after being made be laid before the Assembly.

**23A. Legal professional privilege**

In proceedings against a person for an offence under this Order nothing in this Order is to be taken to require any person to disclose any information that he is entitled to refuse to disclose on grounds of legal professional privilege.

## **24.— Interaction with the Insolvency (Northern Ireland) Order 1989**

(1) Articles 4, 8A to 14, 17A, 18 ~~to 19C to 20 and 22~~ **and 22 to 23A** and Schedule 1, and Articles 3 and 21 as they apply for the purposes of those provisions, are deemed included in Parts II to VII of the Insolvency (Northern Ireland) Order 1989 for the purposes of the following Articles of that Order—

Article 359 (power to make insolvency rules);

Article 361 (fees orders);

Article 364 (orders extending provisions about insolvent companies to insolvent partnerships);

Article 366 (modifications of such provisions in their application to recognised banks).

(2) Article 378 of that Order (Crown application) applies to Articles 4, 8A to 14, 17A, 18 ~~to 19C to 20 and 22~~ **and 22 to 23A** and Schedule 1, and Articles 3 and 21 as they apply for the purposes of those provisions, as it does to the provisions of that Order which are there mentioned.

### **24A Bank insolvency**

Section 121 of the Banking Act 2009 provides for this Act to apply in relation to bank insolvency as it applies in relation to liquidation.

### **24B Bank administration**

Section 155 of the Banking Act 2009 provides for this Act to apply in relation to bank administration as it applies in relation to liquidation.

### **24C. Building society insolvency and special administration**

Section 90E of the Building Societies Act 1986 provides for this Act to apply in relation to building society insolvency and building society special administration as it applies in relation to liquidation.

### **24D.— Application of Order to building societies**

(1) This Order applies to building societies as it applies to companies.

(2) References in this Order to a company, or to a director or an officer of a company, include, respectively, references to a building society within the meaning of the Building Societies Act 1986 or to a director or officer, within the meaning of that Act, of a building society.

(3) In relation to a building society the definition of “shadow director” in Article 2(2) applies with the substitution of “building society” for “company”.

(3A) In relation to a building society, this Order applies as if—

(a) Articles 9(1)(a)(ii) and 10(2)(b) and (5A) were omitted;

(b) references in Articles 11B(2) and 19A(3)(b) to a company which has been dissolved without becoming insolvent were omitted.

(4)

### **24E.—**

Repealed

## **25.— Application of Order to incorporated friendly societies**

(1) This Order applies to incorporated friendly societies as it applies to companies.

(2) References in this Order to a company, or to a director or an officer of a company include, respectively, references to an incorporated friendly society within the meaning of the Friendly Societies Act 1992 (c. 40) or to a member of the committee of management or officer, within the meaning of that Act, of an incorporated friendly society.

(3) In relation to an incorporated friendly society every reference to a shadow director shall be omitted.

(3A) In relation to an incorporated friendly society, this Order applies as if

(a) Articles 9(1)(a)(ii), 10(2)(b) and (5A) and 11A to 11E were omitted;

(b) the reference in Article 19A(3)(b) to a company which has been dissolved without becoming insolvent were omitted.

(4)

#### **[25A.— Application of Order to registered societies**

(1) This Order applies to registered societies within the meaning of the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969 (“the 1969 Act”) as it applies to companies.

(2) In its application to registered societies, this Order shall have effect as follows—

(a) references in this Order to a company, or to a director or an officer of a company shall include, respectively, references to a registered society or to a member of the committee of management or officer, within the meaning of the 1969 Act, of a registered society;

(b) in Article 5(1) “striking off of a company” shall include the cancellation of the registration of a registered society under that Act;

(c) in Articles 6(1) and 8(1) “the companies legislation” shall include that Act;

(d)

(e) references to the registrar shall have effect as references to the registrar as defined in section 101(1) of that Act;

(f) references to a shadow director shall be omitted;

(g) Articles 9(1)(a)(ii), 10(2)(b) and (5A) and 11A to 11E are to be omitted;

(h) the reference in Article 19A(3)(b) to a company which has been dissolved without becoming insolvent is to be omitted.

(3)

#### **25B.— Application of Order to credit unions**

(1) This Order applies to credit unions as it applies to companies.

(2) Accordingly, in this Order—

(a) references to a company include a credit union,

(b) references to a director of a company include a member of the board of directors of a credit union, and

(c) references to an officer of a company include an officer of a credit union.

(3) In its application in relation to credit unions, this Order has effect as if—

(a) in Article 5(1) the reference to striking off included the cancellation of the registration of a credit union under the 1985 Order;

(b) in Articles 6(1) and 8(1) references to the companies legislation included the 1985 Order;

(c) Articles 9(1)(a)(ii), 10(2)(b) and (5A) and 11A to 11E were omitted;

(ca) the reference in Article 19A(3)(b) to a company which has been dissolved without becoming insolvent were omitted;

(d) references to the Financial Conduct Authority;

(e) references to a shadow director were omitted.

(4) In this Article—

“board of directors”, “credit union” and “officer” (in relation to a credit union) have the meaning given by Article 2(2) of the 1985 Order;

“the 1985 Order” means the Credit Unions (Northern Ireland) Order 1985.



## **25C.— Application of Order to protected cell companies**

(1) In this Article—

(a) “protected cell company” means a protected cell company incorporated under Part 4 of the Risk Transformation Regulations 2017 which has its registered office in Northern Ireland; and

(b) a reference to a part of a protected cell company is a reference to the core or a cell of the protected cell company (see regulations 42 and 43 of the Risk Transformation Regulations 2017).

(2) This Order applies to protected cell companies as it applies to companies.

(3) Accordingly, in this Order, references to a company are to be read as including references to a protected cell company.

(4) As they apply in relation to protected cell companies, the provisions of this Order have effect with the following modifications—

(za) Articles 9(1)(a)(ii) and 10(2)(b) and (5A) are to be omitted;

(zb) references in Articles 11B(2) and 19A(3)(b) to a company which has been dissolved without becoming insolvent are to be omitted;

(a) references to the administration, insolvency, liquidation or winding up of a company are to be read as references to the administration, insolvency, liquidation or winding up of a part of a protected cell company;

(b) references to striking off are to be read as including references to dissolution;

(c) references to a director of a company which is or has been insolvent are to be read as references to the director of a protected cell company, a part of which is or has been insolvent;

(d) references to a director of a company which is being or has been wound up are to be read as references to the director of a protected cell company, a part of which is being or has been wound up;

(e) references to the companies legislation are to be read as references to Part 4 of, and Schedules 1 to 3 to, the Risk Transformation Regulations 2017;

(f) references to the Insolvency (Northern Ireland) Order 1989 are to be read as references to that Order as applied by Part 4 of, and Schedules 1 to 3 to, the Risk Transformation Regulations 2017;

(g) references to sections 452 and 456 of the Companies Act 2006 are to be read as references to those sections as applied by regulation 163 of the Risk Transformation Regulations 2017;

(h) references to the registrar of companies are to be read as references to the Financial Conduct Authority; and

(i) references to an overseas company include references to a protected cell company incorporated under the Risk Transformation Regulations 2017 which has its registered office in England and Wales (or Wales) or Scotland.

(5) Where two or more parts of a protected cell company are or have been insolvent, then Articles 9 to 10A and 11A to 11C apply in relation to each part separately.

(6) A contribution to the assets of a protected cell company given in accordance with a compensation order under Article 19A(1) or a compensation undertaking under Article 19A(2) is to be held by the protected cell company on behalf of the part of the protected cell company specified in the order or undertaking.

## **26.— Transitional provisions, savings, amendments and repeals**

(1) The transitional provisions and savings in Schedule 2 shall have effect for the purposes of this Order.

(2) The statutory provisions specified in Schedule 3 shall have effect subject to the amendments specified there, being amendments consequential on the provisions of this Order.

(3) The Department may by order, subject to negative resolution, make—

(a) any supplementary, incidental or consequential provision, and

(b) any transitory, transitional or saving provision,

which it considers necessary or expedient for the purposes of this Order.

(4) An order under paragraph (3) may—

(a) modify, exclude or apply (with or without modifications) any statutory provision;

(b) make consequential amendments, repeals and revocations of any such provision.

(5) Subject to paragraph (1) and any transitory, transitional or saving provision made under paragraph (3), the statutory provisions specified in Schedule 4 are hereby repealed to the extent specified in column 2 of that Schedule.

*A. K. Galloway*  
Clerk of the Privy Council

## **SCHEDULE 1**

### **Matters to be taken into account in all cases**

**1**

The extent to which the person was responsible for the causes of any material contravention by a company or overseas company of any applicable legislative or other requirement.

**2**

Where applicable, the extent to which the person was responsible for the causes of a company or overseas company becoming insolvent.

Law In Force

**[3]**

The frequency of conduct of the person which falls within paragraph 1 or 2.

**4**

The nature and extent of any loss or harm caused, or any potential loss or harm which could have been caused, by the person's conduct in relation to a company or overseas company.

### **Additional matters to be taken into account where the person is or has been a director**

**5**

Any misfeasance or breach of any fiduciary duty by the director in relation to a company or overseas company.

**6**

Any material breach of any legislative or other obligation of the director which applies as a result of being a director of a company or overseas company.

**7**

The frequency of conduct of the director which falls within paragraph 5 or 6.

### **Interpretation**

**8**

Paragraphs (1A) to (2A) of Article 9 apply for the purposes of this Schedule as they apply for the purposes of that Article.

**9**

In this Schedule “director” includes a shadow director.”

## **PART I**

### **MATTERS APPLICABLE IN ALL CASES**

**1.**

[ Existing Sch.1 is not repealed but has been substituted for a new Sch.1 consisting of paras 1-9.

**2.**

[ Existing Sch.1 is not repealed but has been substituted for a new Sch.1 consisting of paras 1-9.

**3.**

Existing Sch.1 is not repealed but has been substituted for a new Sch.1 consisting of paras 1-9.

**4.**

[ Existing Sch.1 is not repealed but has been substituted for a new Sch.1 consisting of paras 1-9.

**5.**

Existing Sch.1 is not repealed but has been substituted for a new Sch.1 consisting of paras 1-

**6.**

**9.**

Repealed

**7.**

Repealed

## **PART II**

### **MATTERS APPLICABLE WHERE COMPANY HAS BECOME INSOLVENT**

**8.**

[ Existing Sch.1 is not repealed but has been substituted for a new Sch.1 consisting of paras 1-9.

**9.**

Existing Sch.1 is not repealed but has been substituted for a new Sch.1 consisting of paras 1-9.

**10.**

Repealed

**11.**

Repealed

**12.**

Repealed

## **SCHEDULE 2**

### **TRANSITIONAL PROVISIONS AND SAVINGS**

**1.**

In this Schedule, “the commencement date” for the purposes of any provision of this Schedule, means the day appointed under Article 1 for the coming into operation of that provision.

**2.**

Where any period of time specified in any provision repealed by Article 26(3) and Schedule 4 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 been passed;

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

**3.**

The provision of this Schedule shall have effect without prejudice to sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954 (c. 33).

## **SCHEDULE 3**

### **CONSEQUENTIAL AMENDMENTS**

#### **The Judgments Enforcement (Northern Ireland) Order 1981 (NI 6)**

**1.**

In Article 86(1) (default of debtor), for “Article 15 of the Companies (Northern Ireland) Order 1989” substitute “Article 16 of the Company Directors Disqualification (Northern Ireland) Order 2002”.

#### **The Insolvency Act 1986 (c. 45)**

**2.**

In section 426(10)(c) (co-operation between courts exercising jurisdiction in relation to insolvency) for “or Part II of the Companies (Northern Ireland) Order 1989” substitute “or the Company Directors Disqualification (Northern Ireland) Order 2002”.

#### **The Companies (Northern Ireland) Order 1986 (NI 6)**

**3.**

Repealed

**4.**

Repealed

**5.**

Repealed

### **The Insolvency (Northern Ireland) Order 1989 (NI 19)**

**6.**

For Article 349(4)(b) (persons not qualified to act as insolvency practitioners) substitute—  
“(b) he is subject to a disqualification order made or a disqualification undertaking accepted under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002, or”.

**7.**

In Schedule 5 (provisions capable of inclusion in company insolvency rules)—  
(a) in paragraph 26, for “Article 10(3) of the Companies (Northern Ireland) Order 1989” substitute “Article 10(4) of the Company Directors Disqualification (Northern Ireland) Order 2002”; and  
(b) in paragraph 29, for “Article 10(4) of the Companies (Northern Ireland) Order 1989” substitute “Article 10(5) of the Company Directors Disqualification (Northern Ireland) Order 2002”.

### **The Electricity (Northern Ireland) Order 1992 (NI 1)**

**8.**

In Article 73(6) (initial Government holding in the companies), for “Part II of the Companies (Northern Ireland) Order 1989” substitute “the Company Directors Disqualification (Northern Ireland) Order 2002”.

### **The Airports (Northern Ireland) Order 1994 (NI 1)**

**9.**

In Article 57(6) (initial Government holding in the successor company), for “Part II of the Companies (Northern Ireland) Order 1989” substitute “the Company Directors Disqualification (Northern Ireland) Order 2002”.

### **The Pensions (Northern Ireland) Order 1995 (NI 22)**

**10.**

In Article 4(1)(e) (suspension orders), for “Part II of the Companies (Northern Ireland) Order 1989” substitute “the Company Directors Disqualification (Northern Ireland) Order 2002”.

**11.**

In Article 29(1)(f) (persons disqualified for being trustees of trust schemes), for the words from “under Part II” to “an order” substitute “or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002 or to such an order or undertaking”.

**12.**

In Article 106(2)(c) (permitted disclosure of restricted information), for “Article 10 or 11 of the Companies (Northern Ireland) Order 1989” substitute “Article 10 or 11 of the Company Directors Disqualification (Northern Ireland) Order 2002”.

## **The Deregulation and Contracting Out (Northern Ireland) Order 1996 (NI 11)**

### **13.**

In Article 12(6) (official receiver), in the definition of “the insolvency legislation”, for “Part II of the Companies (Northern Ireland) Order 1989” substitute “the Company Directors Disqualification (Northern Ireland) Order 2002”.

### **14.**

In Schedule 3 (functions of official receiver which cannot be contracted out), in paragraph 9, for “Part II of the Companies (Northern Ireland) Order 1989” substitute “the Company Directors Disqualification (Northern Ireland) Order 2002”.

## **SCHEDULE 4**

### **REPEALS**

#### **Article 26(3).**

#### **Short Title**

The Companies (Northern Ireland) Order 1989 (NI 18).  
The Companies (Northern Ireland) Order 1990 (NI 5).  
The Companies (No. 2) (Northern Ireland) Order 1990 (NI 10).  
The Criminal Justice Act 1993 (c. 36).  
The Deregulation and Contracting Out Act 1994 (c. 40).  
The Youth Justice and Criminal Evidence Act 1999 (c. 23).

#### **Extent of repeal**

Part II. Schedules 1 to 3.  
  
In Part II of Schedule 10, paragraph 31.  
  
Articles 26 and 74(4).  
In Schedule 2, paragraph 2.  
In Part II of Schedule 5, paragraph 21.  
In Schedule 11, paragraph 10.  
  
In Schedule 3, paragraph 22.  
In Schedule 4, paragraph 18.

**KEELING SCHEDULE FOR THE INSOLVENT PARTNERSHIPS ORDER (NORTHERN IRELAND)  
1995 AS AMENDED BY THE INSOLVENCY (AMENDMENT) BILL**

**1995 No. 225**

**INSOLVENCY**

**The Insolvent Partnerships Order (Northern  
Ireland) 1995**

*Made 22nd May 1995*

*To be laid before Parliament*

*Coming into operation 1st September 1995*

The Lord Chancellor, in exercise of the powers conferred on him by Article 364 of the Insolvency (Northern Ireland) Order 1989<sup>1</sup> and Article 24(1) of the Companies (Northern Ireland) Order 1989 and of all other powers enabling him in that behalf, with the concurrence of the Department of Economic Development, hereby makes the following Order:

**PART I**

**GENERAL**

**1. Citation and commencement**

This Order may be cited as the Insolvent Partnerships Order (Northern Ireland) 1995 and shall come into operation on 1st September 1995.

**2.— Interpretation: definitions**

(1) In this Order, except in so far as the context otherwise requires—

“corporate member” means a member which is a Company;

“individual member” means a member who is an individual;

“insolvency order” means—

(a) the case of an insolvent partnership or a corporate member, a winding-up order;  
and

(b) in the case of an individual member, a bankruptcy order;

“insolvency petition” means, in the case of a petition presented to the High Court—

(a) against a corporate member, a petition for its winding up by the Court;

(b) against an individual member, a petition for a bankruptcy order to be made  
against that individual,

where the petition is presented in conjunction with a petition for the winding up of  
the partnership by the Court as an unregistered Company under the Order;

“insolvency proceedings” means any proceedings under the Order, this Order or the  
Insolvency Rules (Northern Ireland) 1991;

“insolvent member” means a member of an insolvent partnership, against whom an insolvency petition has been presented;

“joint bankruptcy petition” means a petition by virtue of Article 11;

“joint debt” means a debt of an insolvent partnership in respect of which an order is made by virtue of Part IV or V;

“joint estate” means the partnership property of an insolvent partnership in respect of which an order is made by virtue of Part IV or V;

“joint expenses” means expenses incurred in the winding up of an insolvent partnership or in the winding up of the business of an insolvent partnership and the administration of its property;

“limited partner” has the same meaning as in the Limited Partnerships Act 1907;

“member” means a member of a partnership and any person who is liable as a partner within the meaning of section 14 of the Partnership Act 1890;

“officer”, in relation to an insolvent partnership, means—

- (a) a member; or
- (b) a person who has management or control of the partnership business;

“the Order” means the Insolvency (Northern Ireland) Order 1989;

“partnership property” has the same meaning as in the Partnership Act 1890;

“postponed debt” means a debt the payment of which is postponed by or under any provision of the Order or of any other statutory provision;

“responsible insolvency practitioner” means—

- (a) in winding up, the liquidator of an insolvent partnership or corporate member;

and

- (b) in bankruptcy, the trustee of the estate of an individual member, and in either case includes the official receiver when so acting;

“separate debt” means a debt for which a member of a partnership is liable, other than a joint debt;

“separate estate” means the property of an insolvent member against whom an insolvency order has been made;

“separate expenses” means expenses incurred in the winding up of a corporate member, or in the bankruptcy of an individual member; and

“trustee of the partnership” means a person authorised by order made by virtue of Article 11 to wind up the business of an insolvent partnership and to administer its property.

(2) The definitions in paragraph (1), other than the definition of “the Order” shall be added to those in Article 2 of the Order.

(3) References in provisions of the Order applied by this Order to any provision of the Order so applied shall, unless the context otherwise requires, be construed as references to the provision as so applied.

(4) Where in any Schedule, all or any of the provisions of one or more Articles of the Order are expressed to be modified by a single paragraph of the Schedule, the modification includes the separation of such Article into the Articles set out in that paragraph; or (as the case may be) the combination of such Articles into the one or more Articles set out in that paragraph.

### **3.— Interpretation: expressions appropriate to companies**

(1) This Article applies for the interpretation in relation to insolvent partnerships of expressions appropriate to companies in provisions of the Order and of the Company Directors Disqualification (Northern Ireland) Order 2002 applied by this Order, unless the contrary intention appears.

(2) References to companies shall be construed as references to insolvent partnerships and all references to the registrar shall be omitted.



- (3) References to shares of a Company shall be construed—
- (a) in relation to an insolvent partnership with capital, as references to rights to share in that capital; and
  - (b) in relation to an insolvent partnership without capital, as references to interests—
    - (i) conferring any right to share in the profits or liability to contribute to the losses of the partnership, or
    - (ii) giving rise to an obligation to contribute to the debts or expenses of the partnership in the event of a winding up.
- (4) Other expressions appropriate to companies shall be construed, in relation to an insolvent partnership, as references to the corresponding persons, officers, documents or organs (as the case may be) appropriate to a partnership.

## PART II

### VOLUNTARY ARRANGEMENTS

#### **4.— Voluntary arrangement of insolvent partnership**

- (1) The provisions of Part II of, and Schedule A1 to, the Order shall apply in relation to an insolvent partnership, certain of those provisions being modified in such manner that, after modification, they are as set out in Schedule 1.
- (2) For the purposes of the provisions of the Order applied by paragraph (1), the provisions of the Order specified in paragraph (3) (including any related Schedule), insofar as they relate to company voluntary arrangements, shall also apply in relation to insolvent partnerships.
- (3) The provisions referred to in paragraph (2) are—
- (a) Articles 2 to 7 and 8A in Part I,
  - (za) Article 150ZZA in Part 5,
  - (b) Articles 197 to 197B, 208ZE, 208ZF and 208ZJ in Part VII,
  - (c) Part XI,
  - (d) Part XII,
  - (e) Articles 359 to 361 and 363 in Part XIII, ~~and~~
  - (f) Part XIV, and
  - (g) Part 15.

#### **5.— Voluntary arrangements of members of insolvent partnership**

- (1) Where insolvency orders are made against an insolvent partnership and an insolvent member of that partnership in his capacity as such, Part II of the Order shall apply to corporate members and Chapter II of Part VIII to individual members of that partnership, with the modification that any reference to the creditors of the Company or of the debtor, as the case may be, includes a reference to the creditors of the partnership.
- (2) Paragraph (1) is not to be construed as preventing the application of Part II or (as the case may be) Chapter II of Part VIII of the Order to any person who is a member of an insolvent partnership (whether or not a winding-up order has been made against that partnership) and against whom an insolvency order has not been made under this Order or under the Order.

(3) Where Part 2 of the Order applies to a corporate member of an insolvent partnership by virtue of paragraph (1), Articles 208ZE and 208ZF of the Order, insofar as they relate to company voluntary arrangements, apply in relation to that corporate member, with the modification that any reference to creditors of the company includes a reference to the creditors of the partnership.

(4) Where Chapter 2 of Part 8 of the Order applies to an individual member of an insolvent partnership by virtue of paragraph (1), Articles 345A and 345B of the Order, insofar as they relate to individual voluntary arrangements, apply in relation to that individual member, with the modification that any reference to creditors of the individual includes a reference to the creditors of the partnership.

## PART III

### ADMINISTRATION ORDERS

#### 6.— Administration in relation to insolvent partnership

(1) The provisions of Part III of, and Schedule B1 to, the Order shall apply in relation to an insolvent partnership, certain of those provisions being modified in such manner that, after modification, they are as set out in Schedule 2.

(2) For the purposes of the provisions of the Order applied by paragraph (1), the provisions of the Order specified in paragraph (3) (including any related Schedule) insofar as they relate to the appointment of an administrator, shall also apply in relation to insolvent partnerships.

(3) The provisions referred to in paragraph (2) are—

(a) Articles 2 to 7 and 8A in Part 1,

(za) Article 150ZZA in Part 5,

(b) Part VII,

(c) Part XI,

(d) Part XII,

(e) Articles 359 to 363 in Part XIII, and

(f) Part XIV, and

(g) Part 15.

## PART IV

### CREDITORS' ETC. WINDING-UP PETITIONS

#### 7.— Winding up of insolvent partnership as unregistered Company on petition of creditor etc, where no concurrent petition presented against member

(1) Subject to paragraph (2), the provisions of Part VI of the Order shall apply in relation to the winding up of an insolvent partnership as an unregistered company on the petition of a creditor of 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, of a temporary administrator (within the meaning of Article 38 of the EC Regulation), a responsible insolvency practitioner, the administrator of the partnership, the supervisor of a voluntary arrangement in relation to a member~~ in relation to the partnership or a member of the partnership, the Department or any other person other than a member where no insolvency petition is presented by the petitioner against a member or former member of that partnership in his capacity as such.

(2) Certain of the provisions referred to in paragraph (1) are modified in their application in relation to insolvent partnerships which are being wound up by virtue of that paragraph in such manner that, after modification, they are as set out in Part I of Schedule 3.

(3) The provisions of the Order specified in Part II of Schedule 3 shall apply as set out in that Part for the purposes of Article 185(5) of the Order, as modified by Part I of that Schedule.

**8.— Winding up of insolvent partnership as unregistered company on the petition of creditor etc., where concurrent petitions presented against one or more members**

(1) Subject to paragraph (2), the provisions of Part VI of the Order (other than Articles 187 and 188 ), shall apply in relation to the winding up of an insolvent partnership as an unregistered Company on the petition of a creditor, ~~of 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 of a temporary administrator (within the meaning of Article 38 of the EC Regulation)~~ where insolvency petitions are presented by the petitioner against the partnership and against one or more members or former members of the partnership in their capacity as such.

(2) Certain of the provisions referred to in paragraph (1) are modified in their application in relation to insolvent partnerships which are being wound up by virtue of that paragraph in such manner that, after modification, they are as set out in Part I of Schedule 4.

(3) The provisions of the Order specified in Part II of Schedule 4 shall apply as set out in that Part for the purposes of Article 185(5) of the Order, as modified by Part I of that Schedule.

(4) The provisions of the Order specified in paragraph (5) (including any related Schedule), insofar as they relate to winding up of companies by the High Court on a creditor's petition, shall apply in relation to the winding up of a corporate member or former corporate member (in its capacity as such) of an insolvent partnership which is being wound up by virtue of paragraph (1).

(5) The provisions referred to in paragraph (4) are—

(a) Articles 2 to ~~8~~ **8A** and 13 in Part I,

(b) Part V,

(c) Part VII, and

(d) Part XI to ~~XIV~~ **15**.

(6) The provisions of the Order specified in paragraph (7) (including any related Schedule), insofar as they relate to the bankruptcy of individuals on a petition presented to a creditor, shall apply in relation to the bankruptcy of an individual member or former individual member (in his capacity as such) of an insolvent partnership which is being wound up by virtue of paragraph (1).

(7) The provisions referred to in paragraph (6) are—

(a) Articles 2, **2B**, 3, 4, 9, 10, ~~and 11~~ **and 11A** in Part I,

(b) Part IX (other than Articles 243, 244, 260 and 270), and

(c) Parts X to ~~XIV~~ **15**.

(8) Certain of the provisions referred to in paragraphs (4) and (6) are modified in their application in relation to the corporate or individual members or former corporate or individual members of insolvent partnerships in such manner that, after modification, they are as set out in Part II of Schedule 4.

(9) The provisions of the Order applied by this Article shall further be modified so that references to a corporate or individual member include any former such member against whom an insolvency petition has been presented by virtue of this Article.

## **PART V**

### **MEMBERS' PETITIONS**

**9. Winding up of insolvent partnership as unregistered Company on member's petition where no concurrent petition presented against member**

The following provisions of the Order shall apply in relation to the winding up of an insolvent partnership as an unregistered Company on the petition of a member where no

insolvency petition is presented by the petitioner against a member of that partnership in his capacity as such—

(a) Article 185, modified in such manner that, after modification, it is as set out in Schedule 5; and

(b) the other provisions of Part VI of the Order, certain of those provisions being modified in such manner that, after modification, they are as set out in Part I of Schedule 3.

#### **10.— Winding up of insolvent partnership as unregistered Company on member's petition where concurrent petitions presented against all members**

(1) The following provisions of the Order shall apply in relation to the winding up of an insolvent partnership as an unregistered Company on a member's petition where insolvency petitions are presented by the petitioner against the partnership and against all its members in their capacity as such—

(a) Articles 104, 105, 185, 238, 245 and 246 of the Order, modified in such manner that, after modification, ~~it is~~ **they are** as set out in Schedule 6;

(b) Articles 184, 189 and 191 to 193 of the Order, Article 184 being modified in such manner that, after modification, it is as set out in Part I of Schedule 4.

(2) The provisions of the Order specified in paragraph (3) (including any related Schedule), insofar as they relate to winding up of companies by the High Court on a member's petition, shall apply in relation to the winding up of a corporate member (in its capacity as such) of an insolvent partnership which is wound up by virtue of paragraph (1).

(3) The provisions referred to in paragraph (2) are—

(a) Articles 2 to ~~8~~ **8A** and 13 in Part I,

(b) Part V,

(c) Part VII, and

(d) Part XI to ~~XIV~~ **15**

(4) The provisions of the Order specified in paragraph (5) (including any related Schedule), insofar as they relate to the bankruptcy of individuals where a bankruptcy petition is presented by a debtor, shall apply in relation to the bankruptcy of an individual member (in his capacity as such) of an insolvent partnership which is being wound up by virtue of paragraph (1).

(5) The provisions referred to in paragraph (4) are—

(a) ~~Articles 2, 3, 4, 9, 10 and 11 in Part I,~~

**(a) Articles 2, 2B, 3, 4, 9, 10, 11 and 11A in Part I,**

(b) Part IX (other than Articles 247, 248, 260 and 270), and

(c) Parts X to ~~XIV~~ **15**.

(6) Certain of the provisions referred to in paragraphs (2) and (4) are modified in their application in relation to the corporate or individual members of insolvent partnerships in such manner that, after modification, they are as set out in Part II of Schedule 4.

#### **11.— Insolvency proceedings not involving winding up of insolvent partnership as unregistered Company where individual members present joint bankruptcy petition**

(1) The provisions of the Order specified in paragraph (2) (including any related Schedule) shall apply in relation to the bankruptcy of the individual members of an insolvent partnership where those members jointly present a petition to the High Court for orders to be made for the bankruptcy of each of them in his capacity as a member of the partnership, and the winding up of the partnership business and administration of its property, without the partnership being wound up as an unregistered company under Part VI of the Order.

(2) The provisions referred to in paragraph (1) are—

~~(a) Articles 2, 3, 4 and 9, 10 and 11 in Part I,~~

(a) Articles 2, 2B, 3, 4, 9, 10, 11 and 11A in Part I,

(b) Part IX (other than Articles 247, 248 and 260), and

(c) Parts X to ~~XIV~~ 15

insofar as they relate to the insolvency of individuals where a bankruptcy petition is presented by a debtor.

(3) Certain of the provisions referred to in paragraph (1) are modified in their application in relation to the individual members of insolvent partnerships in such manner that, after modification, they are as set out in Schedule 7.

## **PART VI**

### **PROVISIONS APPLYING IN INSOLVENCY PROCEEDINGS IN RELATION TO INSOLVENT PARTNERSHIPS**

#### **12. Winding up of unregistered company which is member of insolvent partnership being wound up by virtue of this Order**

Where an insolvent partnership or other body which may be wound up under Part VI of the Order as an unregistered company is itself a member of an insolvent partnership being so wound up, Articles 8 and 10 shall apply in relation to the latter insolvent partnership as though the former body were a corporate member of that partnership.

#### **13.— Deposit on petitions**

(1) Where an order under Article 361(2) of the Order (security for fees) provides for any sum to be deposited on presentation of a winding-up or bankruptcy petition, that sum shall, in the case of petitions presented by virtue of Articles 8 and 10, only be required to be deposited in respect of the petition for winding up the partnership, but shall be treated as a deposit in respect of all those petitions.

(2) Production of evidence as to the sum deposited on presentation of the petition for winding up the partnership shall suffice for the filing in the High Court of an insolvency petition against a member.

#### **14. Meaning of “act as insolvency practitioner”**

Article 3(3) of the Order is modified so as to read as follows—

“(3) A person acts as an insolvency practitioner in relation to an insolvent partnership by acting—

(a) as its liquidator, provisional liquidator or administrator, or

(b) as trustee of the partnership under Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995, or

(c) as supervisor of a voluntary arrangement approved in relation to it under Part II.”.

#### **15.— Supplemental powers of Court**

(1) Article 143 of the Order is modified by the addition, at the end, of the following paragraphs—

“(5A) Where at any time after a winding-up petition has been presented to the High Court against any person (including an insolvent partnership or other body which may be wound up under Part VI of the Order as an unregistered company), whether by virtue of the provisions of the Insolvent Partnerships Order (Northern Ireland) 1995 or not, the attention of the Court is drawn to the fact that the person in question is a member of an insolvent partnership, the Court may make an order as to the future conduct of the insolvency

proceedings and any such order may apply any provisions of that Order with any necessary modifications.

(5B) Any order or directions under paragraph (5A) may be made or given on the application of the official receiver, any responsible insolvency practitioner, the trustee of the partnership or any other interested person and may include provisions as to the administration of the joint estate of the partnership, and in particular how it and the separate estate of any member are to be administered.

(5C) Where the High Court makes an order for the winding up of an insolvent partnership under—

(a) section 73(1)(a) of the Financial Services Act 1986;

(b) section 92(3)(a) of the Banking Act 1987; or

(c) section 367(3) of the Financial Services and Markets Act 2000,

the Court may make an order as to the future conduct of the winding up proceedings, and any such order may apply any provisions of the Insolvent Partnerships Order (Northern Ireland) 1995 with any necessary modifications.”.

(2) Article 276 of the Order is modified by the addition, at the end, of the following paragraphs—

“(2A) Where at any time after a bankruptcy petition has been presented to the High Court against any person, whether under the provisions of the Insolvent Partnerships Order (Northern Ireland) 1995 or not, the attention of the Court is drawn to the fact that the person in question is a member of an insolvent partnership, the Court may make an order as to the future conduct of the insolvency proceedings and any such order may apply any provisions of that Order with any necessary modifications.

(2B) Where a bankruptcy petition has been presented against more than one individual in the circumstances mentioned in paragraph (2A), the High Court may give such directions for consolidating the proceedings, or any of them, as it thinks just.

(2C) Any order or directions under paragraph (2A) or (2B) may be made or given on the application of the official receiver, any responsible insolvency practitioner, the trustee of the partnership, or any other interested person and may include provisions as to the administration of the joint estate of the partnership, and in particular how it and the separate estate of any member are to be administered.”.

## PART VII

### DISQUALIFICATION

#### ~~16. Application of the Company Directors Disqualification (Northern Ireland) Order 2002~~

~~Where an insolvent partnership is wound up as an unregistered company under Part VI of the Order the provisions of Articles 3, 4, 9–14, 18, 19, 21 and 23 of, and Schedule 1 to, the Company Directors Disqualification (Northern Ireland) Order 2002 shall apply, certain of those provisions being modified in such manner that, after modification, they are as set out in Schedule 8.~~

16.—(1) Where—

(a) an insolvent partnership is wound up as an unregistered company under Part 6 of the Order,

(b) an insolvent partnership enters administration, or

(c) the business of an insolvent partnership is wound up as mentioned in Article 11 (without the partnership being wound up as an



unregistered company),  
the following provisions of the Company Directors Disqualification (Northern Ireland) Order 2002 (“the 2002 Order”) apply, certain of those provisions being modified in such manner that, after modification, they are as set out in Schedule 8.

(2) The provisions are—

(a) Articles 9 to 10A, 11A to 11C, 12, 14, 17A to 20 and 22 to 23A and Schedule 1, and

(b) Articles 3 and 4 in so far as they have effect for the purposes of the provisions listed in sub-paragraph (a) (and Article 21 in so far as it has effect for the purposes of Articles 3(1)(a) and 4(1)(a)).

(3) Any expression that is—

(a) defined for the purposes of this Order, and

(b) used in the provisions of the 2002 Order as applied by this Article, has the same meaning in those provisions as it does in this Order.

## **PART VIII**

### **MISCELLANEOUS**

#### **17. Forms**

The forms contained in Schedule 9 shall be used in and in connection with proceedings by virtue of this Order.

#### **18.— Application of subordinate legislation**

(1) The subordinate legislation specified in Schedule 10 shall apply as from time to time in force and with such modifications as the context requires for the purpose of giving effect to the provisions of the Order and of the Company Directors Disqualification (Northern Ireland) Order 2002 which are applied by this Order.

(2) In the case of any conflict between any provision of the subordinate legislation applied by paragraph (1) and any provision of this Order, the latter provision shall prevail.

#### **19. Supplemental and transitional provisions**

(1) This Order does not apply in relation to any case in which a winding-up or a bankruptcy order was made under the Insolvent Partnerships Order (Northern Ireland) 1991 in relation to a partnership or an insolvent member of a partnership, and where this Order does not apply the law in operation immediately before this Order came into operation continues to have effect.

(2) Where winding-up or bankruptcy proceedings commenced under the provisions of the Insolvent Partnerships Order (Northern Ireland) 1991 were pending in relation to a partnership or a member of a partnership immediately before this Order came into operation either—

(a) those proceedings shall be continued, after the coming into operation of this Order, in accordance with the provisions of this Order, or

(b) if the High Court so directs, they shall be continued under the provisions of the 1991 Order, in which case the law in operation immediately before this Order came into operation continues to have effect.

(3) For the purpose of paragraph (2), winding-up or bankruptcy proceedings are pending if a statutory or written demand has been served or a winding-up or a bankruptcy petition has been presented.

(4) Nothing in this Order is to be taken as preventing a petition being presented against an insolvent partnership under **section 367 of the Financial Services and Markets Act 2000** or any other statutory provision except where paragraph 23 of Schedule A1 to the Order, as applied by this Order, has the effect of preventing a petition being so presented.

(5) Nothing in this Order is to be taken as preventing any creditor or creditors owed one or more debts by an insolvent partnership from presenting a petition under the Order against one or more members of the partnership liable for that debt or those debts (as the case may be) without including the others and without presenting a petition for the winding up of the partnership as an unregistered company.

(6) Bankruptcy proceedings may be consolidated by virtue of Article 15(2) irrespective of whether they were commenced under the Bankruptcy Acts (Northern Ireland) 1857 to 1980, or the Order or by virtue of the Insolvent Partnerships Order (Northern Ireland) 1991 or this Order, and the High Court shall, in the case of proceedings commenced under or by virtue of different enactments, make provision for the manner in which the Consolidated proceedings are to be conducted.

## **20. Revocation**

The Insolvent Partnerships Order (Northern Ireland) 1991 is hereby revoked.

*The Department of Economic Development hereby concurs with the foregoing Order.  
Mackay of Clashfern, C.*

Dated 22nd May 1995

*Sealed with the Official Seal of the Department of Economic Development on 30th May 1995.*  
*A. L. Brown*  
Assistant Secretary

## **SCHEDULE 1**

### **Modified Provisions of Part II of the Order (Company Voluntary Arrangements) as applied by Article 4**

#### **Article 4**

#### **PART I**

#### **MODIFIED PROVISIONS OF ARTICLES 14 TO 20B OF THE ORDER**

Articles 14 to 20B of the Order are modified to read as follows:—

#### **“PART II**

#### **PARTNERSHIP VOLUNTARY ARRANGEMENTS**

The proposal

#### **14.— Those who may propose an arrangement**



- (1) The members of an insolvent partnership (other than one which is in administration, or which is being wound up as an unregistered company, or in respect of which an order has been made by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995) may make a proposal under this Part to the partnership's creditors for a composition in satisfaction of the debts of the partnership or a scheme of arrangement of its affairs (from here on referred to, in either case, as a "voluntary arrangement").
- (2) A proposal under this Part is one which provides for some person ("the nominee") to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation; and the nominee must be a person who is qualified to act as an insolvency practitioner ~~or authorised to act as nominee~~, in relation to the voluntary arrangement.
- (3) Such a proposal may also be made—
- (a) where the partnership is in administration, by the administrator,
  - (b) where the partnership is being wound up as an unregistered company, by the liquidator, and
  - (c) where an order has been made by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995, by the trustee of the partnership.
- (4)

#### **14A.— Moratorium**

- (1) Where the members of an eligible insolvent partnership intend to make a proposal for a voluntary arrangement, they may take steps to obtain a moratorium for the insolvent partnership.
- (2) Subject to paragraphs (3), (4), (5), (6) and (7), the provisions of Schedule A1 to this Order have effect with respect to—
- (a) insolvent partnerships eligible for a moratorium under this Article,
  - (b) the procedure for obtaining such a moratorium,
  - (c) the effects of such a moratorium, and
  - (d) the procedure applicable (in place of Articles 15 to 19 and 20) in relation to the approval and implementation of a voluntary arrangement where such a moratorium is or has been in force.
- (3) Certain of the provisions applied in relation to insolvent partnerships by virtue of paragraph (2) are modified in their application in relation to insolvent partnerships in such manner that, after modification, they are as set out in Part II of Schedule 1 to the Insolvent Partnerships Order (Northern Ireland) 1995.
- (4) Paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18(4), 19(8), 24, 42(7), 44(2), 51(5), 53 and 55 of Schedule A1 to this Order shall not apply.
- (5) An insolvent partnership shall not to be treated as having committed an offence under paragraphs 27(2), 28(3), 32 or 33(1) of Schedule A1 to the Order.
- (6) Notwithstanding paragraph (5) an officer of an insolvent partnership may be liable to imprisonment or a fine under the paragraphs referred to in that paragraph in the same manner as an officer of a company.
- (7) In the application of Schedule A1, and the application of the entries in Schedule 7 relating to offences under Schedule A1, to insolvent partnerships—
- (a) references to the directors or members of a company shall be construed as references to the members of an insolvent partnership,
  - (b) references to officers of a company shall be construed as references to the officers of an insolvent partnership, and
  - (c) references to a meeting of a company shall be construed as references

to a meeting of the members of an insolvent partnership.

**15.— Procedure where nominee is not the liquidator, administrator or trustee**

(1) This Article applies where the nominee under Article 14 is not the liquidator, administrator or trustee of the insolvent partnership and the members of the partnership do not propose to take steps to obtain a moratorium under Article 14A for the insolvent partnership.

(2) The nominee shall, within 28 days (or such longer period as the High Court may allow) after he is given notice of the proposal for a voluntary arrangement, submit a report to the Court stating—

(a) whether, in his opinion, the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,

~~(b) whether, in his opinion, meetings of the members of the partnership and of the partnership's creditors should be summoned to consider the proposal, and~~

~~(c) if in his opinion such meetings should be summoned, the date on which, and time and place at which, he proposes the meetings should be held.~~

(b) whether, in his opinion, the proposal should be considered by a meeting of the members of the partnership and by the partnership's creditors, and

(c) if in his opinion it should, the date on which, and time and place at which, he proposes a meeting should be held.

(3) The nominee shall also state in his report whether there are in existence any insolvency proceedings in respect of the insolvent partnership or any of its members.

(4) For the purposes of enabling the nominee to prepare his report, the person intending to make the proposal shall submit to the nominee—

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

(b) a statement of the partnership's affairs containing

(i) such particulars of the partnership's creditors and of the partnership's debts and other liabilities and of the partnership property as may be prescribed, and

(ii) such other information as may be prescribed.

(5) The High Court may—

(a) on an application made by the person intending to make the proposal, in a case where the nominee has failed to submit the report required by this Article or has died, or

(b) on an application made by that person 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.

**~~16.— Summoning of meetings~~**

~~(1) Where the nominee under Article 14 is not the liquidator, administrator or trustee of the insolvent partnership, and it has been reported to the High Court that such meetings as are mentioned in Article 15(2) should be summoned, the person making the report shall (unless the Court otherwise directs) summon those meetings for the time, date and place proposed in the report.~~

~~(2) Where the nominee is the liquidator, administrator or trustee of the insolvent~~

~~partnership, he shall summon meetings of the members of the partnership and of the partnership's creditors to consider the proposal for such a time, date and place as he thinks fit.~~

~~(3) The persons to be summoned to a creditors' meeting under this Article are every creditor of the partnership of whose claim and address the person summoning the meeting is aware.~~

### *Summoning of meetings*

16.—(1) Where the nominee under Article 14 is not the liquidator, administrator or trustee of the insolvent partnership, and it has been reported to the High Court under Article 15(2) that the proposal should be considered by a meeting of the members of the partnership and by the partnership's creditors, the person making the report must (unless the Court otherwise directs)—

- (a) summon a meeting of the members of the partnership, for the time, date and place proposed in the report, for the purpose of considering the proposal, and
- (b) seek a decision from the partnership's creditors as to whether they approve the proposal.

(2) Where the nominee is the liquidator, administrator or trustee of the insolvent partnership, the nominee must—

- (a) summon a meeting of the members of the partnership, for such time, date and place as the nominee thinks fit, for the purpose of considering the proposal, and
- (b) seek a decision from the partnership's creditors as to whether they approve the proposal.

(3) A decision of the partnership's creditors as to whether they approve the proposal is to be made by a qualifying decision procedure.

(4) Notice of the qualifying decision procedure must be given to every creditor of the partnership of whose claim and address the person summoning the meeting is aware.

### Consideration and implementation of proposal

### **17.— ~~Decisions of meetings~~ Decisions of the members of the partnership and its creditors.**

~~(1) The meetings under Article 16 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).~~

(1) This Article applies where under Article 16—

- (a) a meeting of the members of the partnership is summoned to consider the proposed voluntary arrangement, and
- (b) the partnership's creditors are asked to decide whether to approve the proposed voluntary arrangement.

(1A) The members of the partnership and its creditors may 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, but they shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in Article 14.

~~(3) A meeting so summoned shall not~~ **Neither the members of the partnership nor its creditors** **may** approve any proposal or modification which affects the right of a secured creditor of the partnership to enforce his security, except with the concurrence of the creditor concerned.

~~(4) A meeting so summoned shall not~~ Neither the members of the partnership nor its creditors may, except with the concurrence of the creditor concerned, approve any proposal or modification under which—

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

(aa) any ordinary preferential debt of the partnership is to be paid otherwise than in priority to any secondary preferential debts that it may have,

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

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

(d) in the case of a company which is a relevant financial institution (see Article 347A), any non-preferential debt is to be paid otherwise than in accordance with the rules in Article 150ZZA(2) or (3).

(5) Subject to paragraphs (3) and (4), ~~each of the meetings~~ the meeting of the members of the partnership and the qualifying decision procedure shall be conducted in accordance with the rules.

(6) After the conclusion of ~~either meeting~~ the meeting of the members of the partnership 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 all those who were sent notice of the meeting in accordance with the rules.

(7) After paragraph (6) insert—

(6A) After the partnership's creditors have decided whether to approve the proposed voluntary arrangement, the person who sought the decision must—

(a) report the creditors' decision to the High Court, and

(b) immediately after reporting to the Court, give notice of the creditors' decision to everyone who was invited to consider the proposal or to whom notice of a decision procedure or meeting was given.

(7) In this Article "preferential debt", "ordinary preferential debt", and "secondary preferential debt" each has the meaning given by Article 346; and "preferential creditor" is to be construed accordingly.

### **17A.— Approval of arrangement**

(1) This Article applies to a decision, under Article 17, with respect to the approval of a proposed voluntary arrangement.

~~(2) The decision has effect if, in accordance with the rules—~~

~~(a) it has been taken by both meetings summoned under Article 16, or~~

~~(b) (subject to any order made under paragraph (6)) it has been taken by the creditors' meeting summoned under that Article.~~

(2) The decision has effect if, in accordance with the rules—

(a) it has been taken by the meeting of the members of the partnership summoned under Article 16 and by the partnership's creditors pursuant to that Article, or

(b) (subject to any order made under paragraph (6)) it has been taken by the partnership's creditors pursuant to that Article.

- (3) If the decision taken by the ~~creditors' meeting~~ partnership's creditors differs from that taken by the meeting of the members of the partnership, a member of the partnership may apply to the High Court.
- (4) An application under 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~~ partnership's creditors, or
  - (b) where the decision of the meeting of the members of the partnership was taken on a later day, that day.
- (5) Where a member of an insolvent partnership which is regulated applies to the High Court under paragraph (3), ~~the Financial Services Authority is entitled to be heard on the application~~ the following persons are entitled to be heard on the application—
- (a) where the partnership is a PRA-regulated partnership, the Prudential Regulation Authority and the Financial Conduct Authority;
  - (b) in any other case, the Financial Conduct Authority.
- (6) On an application under paragraph (3), the High Court may—
- (a) order the decision of the meeting of the members of the partnership to have effect instead of the decision of the ~~creditors' meeting~~ partnership's creditors, or
  - (b) make such other order as it thinks fit.
- (7) In this Article “regulated” in relation to an insolvent partnership means a person who—
- (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.
- (8) In this Article a “PRA-regulated partnership” is a partnership that—
- (a) is or has been, a PRA-authorised person (within the meaning 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, whose principal (or one of whose principals) is, or was, a PRA-authorised person, or
  - (c) is carrying on, or has carried on, a PRA-regulated activity (within the meaning of that Act) in contravention of the general prohibition under section 19 of that Act.

## **18.— Effect of approval**

- (1) This Article applies where a decision approving a voluntary arrangement has effect under Article 17A.
- (2) The voluntary arrangement—
- (a) takes effect as if made by the members of the partnership ~~at the creditors' meeting, and~~—
  - (i) at the time the creditors decided to approve the voluntary arrangement, or
  - (ii) where the decision has effect as a result of an order of the High Court under Article 17A(6)(a), at the time the meeting of the members of the partnership decided to approve the voluntary

arrangement, 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)~~ in the qualifying decision procedure by which the creditors decided on whether to approve the arrangement, or

(ii) would have been so entitled if he had had notice of ~~that procedure~~, as if he were a party to the voluntary arrangement.

(2A) If—

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

(b) the arrangement did not come to an end prematurely, the insolvent partnership shall at that time become liable to pay to that person the amount payable under the arrangement.

(3) Subject to paragraph (4), if the partnership is being wound up as an unregistered company, or is in administration or an order by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995 is in force, the High Court may do one or both of the following, namely—

(a) by order—

(i) stay all proceedings in the winding up or in the proceedings under the order made by virtue of the said Article 11 (as the case may be), including any related insolvency proceedings of a member of the partnership in his capacity as such, or

(ii) provide for the appointment of the administrator to cease to have effect ;

(b) give such directions as it thinks appropriate for facilitating the implementation of the voluntary arrangement with respect to—

(i) the conduct of the winding up, the proceedings by virtue of the said Article 11 or the administration (as the case may be), and

(ii) the conduct of any related insolvency proceedings as referred to in sub-paragraph (a)(i).

(4) The High Court shall not make an order under paragraph (3)(a)—

~~(a) at any time before the end of the period of 28 days beginning with the first day on which each of the reports required by Article 17(6) has been made to the Court, or~~

(a) at any time before the end of the period of 28 days beginning with the day on which the reporting requirement in Article 17 is met, or

(b) at any time when an application under Article 19 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.

(5) For the purposes of paragraph (4)(a), the day on which the reporting requirement is met is—

(a) if the reports required by Article 17(6) and (6A) are made to the High Court on the same day, that day;

(b) if those reports are made on different days, the later of them.

## 19.— Challenge of decisions

(1) Subject to this Article, an application to the High Court may be made, by any of the persons specified in paragraph (2), on one or both of the following grounds,

namely—

(a) that a voluntary arrangement which has effect under Article 17A unfairly prejudices the interests of a creditor, member or contributory of the partnership;

(b) that there has been some material irregularity at or in relation to ~~either of the meetings~~ **the meeting of the members of the partnership**, or in relation to the relevant qualifying decision procedure.

(1A) In this Article—

(a) the “relevant qualifying decision procedure” means the qualifying decision procedure in which the partnership’s creditors decide whether to approve a voluntary arrangement;

(b) references to a decision made in the relevant qualifying decision procedure include any other decision made in that qualifying decision procedure.

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

(a) a person entitled, in accordance with the rules, to vote at ~~either of the meetings~~ **the meeting of the members of the partnership or in the relevant qualifying decision procedure**;

(b) a person who would have been entitled, in accordance with the rules, to vote ~~at the creditors’ meeting~~ **in the relevant qualifying decision procedure** if he had had notice of it;

(c) the nominee or any person who has replaced him under Article 15(5) or 17(2); and

(d) if the partnership is being wound up as an unregistered company or [ is in administration or an ] in order by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995 is in force, the liquidator, administrator or trustee of the partnership.

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

~~(a) after the end of the period of 28 days beginning with the first day on which each of the reports required by Article 17(6) has been made to the High Court, or~~

**(a) after the end of the period of 28 days beginning with the day on which the reporting requirement in Article 17 is met, or**

**(b) in the case of a person who was not given notice of the ~~creditors’ meeting~~, relevant qualifying decision procedure after the end of the period of 28 days beginning with the day on which he became aware that ~~the meeting~~ the relevant qualifying decision procedure had taken place,**

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

**(3A) For the purposes of paragraph (3)(a), the day on which the reporting requirement is met is—**

**(a) if the reports required by Article 17(6) and (6A) are made to the High Court on the same day, that day;**

**(b) if those reports are made on different days, the later of them.**

(4) Where on such an application the High Court is satisfied as to either of the grounds mentioned in paragraph (1), it may do ~~one or both~~ **any** of the following, namely—

(a) revoke or suspend any decision approving the voluntary arrangement which has effect under Article 17A or, in a case falling within paragraph

(1)(b), any decision taken by the meeting ~~in question~~ **of the members of the**



partnership, or in the relevant qualifying decision procedure which has effect under that Article;

(b) give a direction to any person for the summoning of ~~further meetings~~ **a further meeting of the members of the partnership** to consider any revised proposal the person who made the original proposal may make or, in a case falling within paragraph (1)(b), ~~a further meeting of the members of the partnership or (as the case may be) of the partnership's creditors~~ **and relating to the meeting of the members of the partnership, a further meeting of the members of the partnership** to reconsider the original proposal.

(c) direct any person—

(i) to seek a decision from the partnership's creditors (using a qualifying decision procedure) as to whether they approve any revised proposal the person who made the original proposal may make, or

(ii) in a case falling within paragraph (1)(b) and relating to the relevant qualifying decision procedure, to seek a decision from the partnership's creditors (using a qualifying decision procedure) as to whether they approve the original proposal.

(5) Where at any time after giving a direction under paragraph (4)(b) ~~for the summoning of meetings to consider~~ **or (c) in relation to** a revised proposal the High Court is satisfied that the person who made the original proposal does 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 Article 17A.

(6) In a case where the High Court, on an application under this Article with respect to any meeting **or relevant qualifying decision procedure—**

(a) gives a direction under paragraph (4)(b) **or (c)**, or

(b) revokes or suspends an approval under paragraph (4)(a) or (5), the Court may give such supplemental directions as it thinks fit, and, in particular, directions with respect to things done under the voluntary arrangement since it took effect.

~~(7) Except in pursuance of the preceding provisions of this Article, a decision taken at a meeting summoned under Article 16 is not invalidated by any irregularity at or in relation to the meeting.~~

**(7) Except in pursuance of the preceding provisions of this Article—**

**(a) a decision taken at a meeting of the members of the partnership summoned under Article 16 is not invalidated by any irregularity at or in relation to the meeting, and**

**(b) a decision of the creditors of the partnership made in the relevant qualifying decision procedure is not invalidated by any irregularity in relation to the relevant qualifying decision procedure.**

### **19A.— False representations, etc.**

(1) If, for the purpose of obtaining the approval of the members or creditors of an insolvent partnership or of the members or creditors of any of its members to a proposal for a voluntary arrangement in relation to the partnership or any of its members, a person who is an officer of the partnership or an officer (which for this purpose includes a shadow director) of a corporate member in relation to which a voluntary arrangement is proposed—

(a) makes a false representation, or

(b) fraudulently does, or omits to do, anything, he shall be guilty of an offence.

(2) Paragraph (1) applies even if the proposal is not approved.



## **20.— Implementation of proposal**

(1) This Article applies where a voluntary arrangement has effect under Article 17A.

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

- (a) on the nominee by virtue of the approval ~~given at one or both of the meetings summoned under~~ **of the voluntary arrangement by the members of the partnership or its creditors (or both) pursuant to** Article 16, or
  - (b) by virtue of Article 15(5) or 17(2) on a person other than the nominee,
- shall be known as the supervisor of the voluntary arrangement.

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

(4) 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 partnership as an unregistered company or for an administration order to be made in relation to it.

(5) 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.

(6) The power conferred by paragraph (5) 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.

## **20A.— Prosecution of delinquent officers of partnership**

(1) This Article applies where a moratorium under Article 14A has been obtained for an insolvent partnership or the approval of a voluntary arrangement in relation to an insolvent partnership has taken effect under Article 17A or paragraph 46 of Schedule A1.

(2) If it appears to the nominee or supervisor that any past or present officer of the insolvent partnership has been guilty of any offence in connection with the moratorium or, as the case may be, voluntary arrangement for which such officer is criminally liable, the nominee or supervisor shall forthwith—

- (a) report the matter to the Department, and
- (b) provide the Department with such information and give the Department such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the nominee or supervisor and relating to the matter in question) as the Department requires.

(3) Where the Director of Public Prosecutions for Northern Ireland institutes criminal

proceedings following any report under paragraph (2), the nominee or supervisor, and every officer and agent of the insolvent partnership past or present (other than the defendant), shall give the Director all assistance in connection with the prosecution which he is reasonably able to give.

For this purpose “agent” includes any banker or solicitor of the insolvent partnership and any person employed by the insolvent partnership as auditor, whether that person is or is not an officer of the insolvent partnership.

(4) The High Court may, on the application of the Director of Public Prosecutions for Northern Ireland, direct any person referred to in paragraph (3) to comply with that paragraph if he has failed to do so.

### **20B. Arrangements coming to an end prematurely**

For the purposes of this Part, a voluntary arrangement the approval of which has taken effect under Article 17 A or paragraph 46 of Schedule A1 comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement by virtue of Article 18(2)(b)(i) or, as the case may be, paragraph 47(2)(b)(i) of Schedule A1.”.

## **PART II MODIFIED PROVISIONS OF SCHEDULE A1 TO THE ORDER**

The following provisions of Schedule A1 to the Order are modified so as to read as follows:

### **“3.—**

(1) An insolvent partnership 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 tax year of the insolvent partnership which ended last before that date.

(2) For the purposes of sub-paragraph (1) the qualifying conditions are met by an insolvent partnership in a period if, in that period, it satisfies two or more of the requirements set out in sub paragraph (3).

(3) The qualifying conditions referred to in this paragraph are—

- (a) turnover of not more than £5.6 million,
- (b) assets of not more than £2.8 million, and
- (c) no more than 50 employees.

(4) For the purposes of sub-paragraph (3)—

(a) the total of turnover is the amount which is or would be, as the case may be, entered as turnover in the partnership's tax return,

(b) the total of assets is the amount which—

(i) in the case of the period referred to in paragraph 3(1)(a), is entered in the partnership's statement of affairs which must be filed with the High Court under paragraph 18(1)(b), or

(ii) in the case of the period referred to in paragraph 3(1)(b), would be entered in the partnership's statement of affairs had it prepared such a statement on the last day of the period to which the amount for turnover is calculated for the purposes of paragraph 3(4)(a),

(c) the number of employees is the average number of persons employed by the insolvent partnership—

- (i) in the case of the period referred to in paragraph 3(1)(a), in the period ending with the date of filing,
- (ii) in the case of the period referred to in paragraph 3(1)(b), in the period to which the amount for turnover is calculated for the purposes of paragraph 3(4)(a).
- (5) Where the period covered by the qualifying conditions in respect of the insolvent partnership is not a year the total of turnover referred to in paragraph 3(3)(a) shall be proportionately adjusted.
- (6) The average number of persons employed by the insolvent partnership shall be calculated as follows—
  - (a) by ascertaining the number of persons employed by it under contracts of service for each month of the year (whether throughout the month or not),
  - (b) by adding those figures together, and
  - (c) by dividing the resulting figure by the number of months during which persons were so employed by it during the year.
- (7) In this paragraph—
  - “tax return” means a return under section 12AA of the Taxes Management Act 1970,
  - “tax year” means the 12 months beginning with 6th April in any year.

#### **4.—**

- (1) An insolvent partnership is excluded from being eligible for a moratorium if, on the date of filing—
  - (a) [ the partnership is in administration,
  - (b) the insolvent partnership is being wound up as an unregistered company,
  - (c) a voluntary arrangement has effect in relation to the insolvent partnership,
  - (d) there is a provisional liquidator of the insolvent partnership,
  - (e) a moratorium has been in force for the insolvent partnership at any time during the period of 12 months ending with the date of filing and—
    - (i) no voluntary arrangement had effect at the time at which the moratorium came to an end, or
    - (ii) a voluntary arrangement which had effect at any time in that period has come to an end prematurely,
  - (f) a voluntary arrangement in relation to the insolvent partnership 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, or
  - (g) an order has been made by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995.
- (2) Sub-paragraph (1)(b) does not apply to an insolvent partnership which, by reason of a winding-up order made after the date of filing, is treated as being wound up on that date.

Effect on creditors, etc.

#### **23.—**

- (1) During the period for which a moratorium is in force for an insolvent partnership
  - (a) no petition may be presented for the winding-up of the insolvent partnership as an unregistered company,
  - (b) no meeting of the members of the partnership 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) no order may be made for the winding-up of the insolvent partnership as an unregistered company,

(d) no administration application may be made in respect of the partnership,

(da) no administrator of the partnership may be appointed under paragraph 23 of Schedule B1

(e) no landlord or other person to whom rent is payable may exercise any rights of forfeiture by peaceable re-entry in relation to premises forming part of the partnership property or let to one or more officers of the partnership in their capacity as such in respect of a failure by the partnership or one or more officers of the partnership to comply with any term or condition of the tenancy of such premises, except with the leave of the High Court and subject to such terms as the Court may impose,

(f) no other steps may be taken to enforce any security over the partnership property, or to repossess goods in the possession, under any hire-purchase agreement, of one or more officers of the partnership in their capacity as such, except with the leave of the High Court and subject to such terms as the Court may impose,

(g) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the insolvent partnership or the partnership property except with the leave of the High Court and subject to such terms as the Court may impose,

(h) no petition may be presented, and no order may be made, by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995, and

(i) no application or order may be made under section 35 of the Partnership Act 1890<sup>17</sup> in respect of the insolvent partnership.

(2) Where a petition, other than an excepted petition, for the winding-up of the insolvent partnership has been presented before the beginning of the moratorium, Article 107 shall not apply in relation to any disposition of partnership property, any transfer of an interest in the insolvent partnership or alteration in status of a member of the partnership 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 7(1) of the Insolvent Partnerships (Northern Ireland) Order 1995 presented by the Department on the grounds mentioned in sub-paragraphs

(c), (cc), (d) and (e) of paragraph (1) of Article 104A,

(b) section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in subsection (3)(b) of that section.

## Disposals and payments

### 29.—

(1) Subject to sub-paragraph (2), the insolvent partnership may only dispose of any of its property if—

(a) there are reasonable grounds for believing that the disposal will benefit

the partnership, 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 insolvent partnership's business.

(3) If the insolvent partnership makes a disposal in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the High Court any officer of the insolvent partnership who authorised or permitted the contravention, without reasonable excuse, shall be guilty of an offence.

### **30.—**

(1) Subject to sub-paragraph (2), the insolvent partnership may only make any payment in respect of any debt or other liability of the insolvent partnership in existence before the beginning of the moratorium if—

(a) there are reasonable grounds for believing that the payment will benefit the partnership, 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(5).

(3) If the insolvent partnership makes a payment in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the High Court any officer of the insolvent partnership who authorised or permitted the contravention, without reasonable excuse, shall be guilty of an offence.

### **Disposal of charged property, etc**

### **31.—**

(1) This paragraph applies where—

(a) any partnership property of the insolvent partnership is subject to a security, or

(b) any goods are in possession of one or more officers of the partnership in their capacity as such under a hire-purchase agreement.

(2) If the holder of the security consents, or the High Court gives leave, the insolvent partnership 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 insolvent partnership may dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the members of the partnership.

(4) Sub-paragraph (5) 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, or

(b) any goods in the possession of one or more officers of the partnership in their capacity as such under a hire-purchase agreement.

(5) 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.

(6) Where a condition imposed in pursuance of sub-paragraph (5) relates to 2 or more securities, that condition requires—

(a) the net proceeds of the disposal, and

(b) where paragraph (b) of sub-paragraph (5) applies, the sums mentioned in that paragraph, to be applied towards discharging the sums secured by those securities in the order of their priorities.

#### 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 members of the partnership 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 insolvent partnership 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 insolvent partnership as an unregistered company or a petition by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995, 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) 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.

#### Challenge of actions of officers of insolvent partnership

##### **50.—**

(1) This paragraph applies in relation to acts or omissions of the officers of a partnership during a moratorium.

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

(a) that the partnership's affairs and business and partnership property are being or have been managed by the officers of the partnership 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 officers of the partnership 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 officers of the partnership of the partnership's affairs and business and partnership property during the remainder of the moratorium,

(b) require the officers of the partnership 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 of the partnership 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 insolvent partnership in good faith and for value.

(7) Sub-paragraph (8) applies where—

(a) the appointment of an administrator has effect in relation to the insolvent partnership and the appointment took effect before the moratorium came into force, or

(b) the insolvent partnership is being wound up as an unregistered company or an order by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995 has been made, 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 insolvent partnership; but such an application may be made instead by the administrator (or as the case may be) the liquidator.

## **52.—**

(1) If, for the purpose of obtaining a moratorium, or an extension of a moratorium, for an insolvent partnership or any of its members (a moratorium meaning in the case of an individual the effect of an application for, or the making of, an interim order under Part VIII of the Order), a person who is an officer of an insolvent partnership or an officer (which for this purpose includes a shadow director) of a corporate member in relation to which a voluntary arrangement is proposed—

(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.”.

## **SCHEDULE 2**

### **PROVISIONS OF THE ORDER WHICH APPLY WITH MODIFICATIONS FOR THE PURPOSES OF ARTICLE 6 TO ADMINISTRATION IN RELATION TO INSOLVENT PARTNERSHIPS**

~~1.~~

~~The following provisions of Schedule B1 and Schedule 1 to the Order are modified as follows.~~

1. Paragraphs 2 to 56 set out modified provisions of Schedule B1 to the Order; and paragraph 57 sets out modified Schedule 1 to the Order.

#### *Modifications of Schedule B1*

2.

Paragraph 1 is modified so as to read as follows—

“1.—

(1) In this Schedule—

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

~~“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,

“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,

“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 Articles 186, 187, and 188.

(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.”.

3.

Paragraph 3 is modified so as to read as follows—

“3.

A person may be appointed as administrator of a partnership—

(a) by administration order of the High Court under paragraph 11, or

(b) by the members of the insolvent partnership in their capacity as such under paragraph 23.”.

4.

Paragraph 8 is modified so as to read as follows—

“8.

A person may not be appointed as administrator of a partnership which is in administration (subject to the provisions of paragraphs 91, 92, 94, 96, 98, and 101 to 104 about replacement and additional administrators).”.



**5.**

Paragraph 9 is modified so as to read as follows—

**“9.—**

- (1) A person may not be appointed as administrator of a partnership after—
  - (a) an order has been made in relation to it by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995; or
  - (b) an order has been made for it to be wound up by the High Court as an unregistered company.
- (2) Sub-paragraphs (1)(a) and (1)(b) are subject to paragraph 39.”.

**6.**

Paragraph 12 is modified so as to read as follows—

**“12.**

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

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

**7.**

Paragraph 13 is modified so as to read as follows—

**“13.—**

- (1) An application to the High Court for an administration order in respect of a partnership (“an administration application”) shall be by application in Form 1 in Schedule 9 to the Insolvent Partnerships Order (Northern Ireland) 1995 and may be made only by—
  - (a) the members of the insolvent partnership in their capacity as such;
  - (b) one or more creditors of the partnership; or
  - (c) a combination of persons listed in paragraphs (a) and (b).
- (2) As soon as is reasonably practicable after the making of an administration application the applicant shall notify such 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).”.

**8.**

Paragraph 14 is modified so as to read as follows—

**“14.—**

- (1) On hearing an administration ~~applicable~~ 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 officers of the partnership;
  - (b) make provision conferring a discretion on the Court or on a person qualified to act as an insolvency practitioner in relation to the partnership.”.

**9.**

Omit paragraphs 15 to 22.

**10.**

Paragraph 23 is modified so as to read as follows—

**“23.**

The members of the insolvent partnership may appoint an administrator.”.

**11.**

Paragraph 24 is modified so as to read as follows—

**“24.—**

(1) This paragraph applies where an administrator of a partnership is appointed—

- (a) under paragraph 23, or
  - (b) on an administration application made by the members of the partnership.
- (2) An administrator of the partnership 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.”.

**12.**

Paragraph 26 is modified so as to read as follows—

**“26.**

An administrator of a partnership may not be appointed under paragraph 23 if—

- (a) a petition for the winding up of the partnership has been presented and is not yet disposed of, or
- (b) an administration application has been made and is not yet disposed of.”.

12A. Paragraph 26A is modified to read as follows—

**“26A.—(1) Paragraph 26(a) does not prevent the appointment of an administrator of a partnership if the petition for the winding up of the partnership was presented after the person proposing to make the appointment filed the notice of intention to appoint with the High Court under paragraph 28.**

**(2) But sub-paragraph (1) does not apply if the petition was presented under a provision mentioned in paragraph 43(5).”**

**13.**

Paragraph 27 is modified so as to read as follows—

**“27.—**

- (1) A person who proposes to make an appointment under paragraph 23 shall give such notice as may be prescribed to such persons as may be prescribed.
- (2) A notice under this paragraph must—
  - (a) identify the proposed administrator, and
  - (b) be in Form 1A in Schedule 9 to the Insolvent Partnerships Order (Northern Ireland) 1995.”.

**14.**

Paragraph 28 is modified so as to read as follows—

**“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—

(a) that the partnership is unable to pay its debts,

(b) that the partnership 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.”.

**15.**

Paragraph 29 is modified so as to read as follows—

**“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.

(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).”.

**16.**

Paragraph 30 is modified so as to read as follows—

**“30.—**

(1) A person who appoints an administrator of a partnership 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 members of the partnership (unless he has reason to doubt its accuracy).
- (5) The notice of appointment must be in Form 1B in Schedule 9 to the Insolvent Partnerships Order (Northern Ireland) 1995 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.”.

**17.**

Paragraph 31 is modified so as to read as follows—

**“31.**

In a case in which no person is entitled to notice of intention to appoint under paragraph 27 (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.”.

**18.**

Paragraph 34 is modified so as to read as follows—

**“34.**

If before the requirements of paragraph 30 are satisfied the partnership enters administration by virtue of an administration order—

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

**19.**

Omit paragraphs 36 to 38.

**20.**

Omit paragraph 40.

**21.**

Paragraph 41 is modified so as to read as follows—

**“41.—**

(1) A petition for the winding up of a partnership shall be dismissed on the making of an administration order in respect of the partnership.

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

~~(a) Article 104A (public interest), or~~

~~(b) section 367 of the Financial Services and Markets Act 2000 (e.g. (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.”.~~

**21A. Omit paragraph 42.**

**22.**

Paragraph 43 is modified so as to read as follows—

**“43.—**

- (1) This paragraph applies to a partnership in administration.
- (2) No order may be made for the winding up of the partnership.
- (3) No order may be made by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995 in respect of the partnership.
- (4) No order may be made under section 35 of the Partnership Act 1890 in respect of the partnership.
- (5) Sub-paragraph (2) does not apply to an order made on a petition presented under—
  - (a) Article 104A (public interest); or
  - (b) section 367 of the Financial Services and Markets Act 2000 (c.8) (petition by ~~Financial Services Authority~~ **Financial Conduct Authority or Prudential Regulation Authority**).
- (6) If a petition presented under a provision referred to in sub-paragraph (5) comes to the attention of the administrator, he shall apply to the High Court for directions under paragraph 64.”.

**23.**

Paragraph 44 is modified so as to read as follows—

**“44.—**

- (1) This paragraph applies to a partnership in administration.
- (2) No step may be taken to enforce security over the partnership 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 partnership's possession under a hire-purchase agreement except—
  - (a) with the consent of the administrator, or
  - (b) with the permission of the High Court.
- (4) A landlord may not exercise a right of forfeiture by peaceable re-entry in relation to premises forming part of the partnership property or let to one or more officers of the partnership in their capacity as such except—
  - (a) with the consent of the administrator, or
  - (b) with the permission of the Court.
- (5) No legal process (including legal proceedings, **application to enforce judgment** and distress) may be instituted or continued against the partnership or partnership property except—
  - (a) with the consent of the administrator, or
  - (b) with the permission of the Court.
- (6) 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.
- (7) In this paragraph “landlord” includes a person to whom rent is payable.”.

**24.**

Paragraph 45 is modified so as to read as follows—

**“45.—**

- (1) This paragraph applies where an administration application in respect of a partnership 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 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.
- (3) The provisions of paragraph 43 and 44 shall apply (ignoring any reference to the consent of the administrator).
- (4) This paragraph does not prevent or require the permission of the High Court for the presentation of a petition for the winding up of a partnership under a provision mentioned in paragraph 43(5).”.

## **25.**

Paragraph 47 is modified so as to read as follows—

**“47.—**

- (1) This paragraph applies where a person becomes the administrator of a partnership.
- (2) As soon as is reasonably practicable the administrator shall—
  - (a) send a notice of his appointment to the partnership,
  - (b) publish a notice of his appointment in the prescribed manner.
- (3) As soon as is reasonably practicable the administrator shall—
  - (a) obtain a list of the creditors of the partnership, 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 such persons as may be prescribed before the end of the prescribed period beginning with the date specified in sub-paragraph (5).
- (5) The date for the purpose of sub-paragraph (4) is—
  - (a) in the case of an administrator appointed by administration order, the date of the order, and
  - (b) in the case of an administrator appointed under paragraph 23, the date on which he receives notice under paragraph 33.
- (6) The High Court may direct that sub-paragraph 3(b) or (4)—
  - (a) shall not apply, or
  - (b) shall apply with the substitution of a different period.
- (7) A notice under this paragraph must—
  - (a) contain the prescribed information, and
  - (b) be in the prescribed form.
- (8) An administrator commits an offence if he fails without reasonable excuse to comply with a requirement of this paragraph.”.

## **26.**

Paragraph 48 is modified so as to read as follows—

**“48.—**

- (1) As soon as is reasonably practicable after appointment the administrator of a partnership 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 partnership.
- (2) The statement must—
  - (a) be verified by affidavit,
  - (b) be in the prescribed form,

- (c) give particulars of the partnership property, debts and liabilities,
- (d) give the names and addresses of the creditors of the partnership,
- (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 partnership,
  - (b) a person who took part in the formation of the partnership during the period of one year ending with the date on which the partnership enters administration,
  - (c) a person employed by the partnership during that period, and
  - (d) a person who is or has been during that period an officer or employee of a partnership which is or has been during that year an officer of the partnership.
- (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.”.

## 27.

Paragraph 50 is modified so as to read as follows—

### “50.—

- (1) The administrator of a partnership shall make a statement setting out proposals for achieving the purpose of administration.
- (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.
- (3) Proposals under this paragraph may include a proposal for a voluntary arrangement under Part II of this Order (although this paragraph is without prejudice to Article 17(3)).
- (4) The administrator shall send a copy of the statement of his proposals—
  - (a) to the High Court,
  - (b) to every creditor of the partnership, **other than an opted-out creditor**, of whose claim and address he is aware, and
  - (c) to every member of the partnership of whose address he is aware.
- (5) The administrator shall comply with sub-paragraph (4)—
  - (a) as soon as is reasonably practicable after the partnership enters administration, and
  - (b) in any event, before the end of the period of 8 weeks beginning with the day on which the partnership 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 partnership 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.”.

## 28.

Paragraph 53 is modified so as to read as follows—

### “53.—

- (1) Paragraph 52(1) shall not apply where the statement of proposals states that the administrator thinks—
  - (a) that the partnership has sufficient property to enable each creditor of the partnership to be paid in full,

- (b) that the partnership has insufficient property to enable a distribution to be made to unsecured creditors, 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 creditor's meeting if it is requested~~ seek a decision from the partnership's creditors as to whether they approve the proposals set out in the statement made under paragraph 50(1) if requested to do so—
- (a) by creditors of the partnership whose debts amount to at least 10 per cent. of the total debts of the partnership,
- (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.~~
- (3) Where a decision is sought by virtue of sub-paragraph (2) the initial decision date (as defined in paragraph 52(3)) must be within the prescribed period.
- (4) The period prescribed under sub-paragraph (3) may be varied in accordance with paragraph 108.”.

## 29.

Paragraph 56 is modified so as to read as follows—

### “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.~~

(1) This paragraph applies where an administrator—

- (a) reports to the High Court under paragraph 54 that a partnership's creditors have failed to approve the administrator's proposals, or
- (b) reports to the Court under paragraph 55 that a partnership's creditors have failed to approve a revision of the administrator's proposals.

(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 any other order (including an order making consequential provision) that the Court thinks appropriate.”.

## 30.

Paragraph 62 is modified so as to read as follows—

### “62.

The administrator of a partnership—

- (a) may prevent any person from taking part in the management of the partnership business, and
- (b) may appoint any person to be a manager of that business.”.

## 31.



Paragraph 66 is modified so as to read as follows—

**“66.—**

(1) The administrator of a partnership may make a distribution to a creditor of the partnership.

(2) [ Article 149(1), (1A), (1B), and (3) and Article 150ZZA ] 2 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 partnership who is neither secured nor preferential unless the High Court gives permission.”.

**32.**

Paragraph 70 is modified so as to read as follows:—

**“70.—**

(1) Subject to sub-paragraph (2), in exercising his function under this Schedule the administrator of a partnership acts as the agent of the members of the partnership in their capacity as such.

(2) An officer of the partnership shall not, unless he otherwise consents, be personally liable for the debts and obligations of the partnership incurred during the period when the partnership is in administration.”.

**33.**

Omit paragraph 71.

**34.—**

(1) In the cross-heading to paragraph 72 omit the words: “non-floating charge”.

(2) Paragraph 72 is modified so as to read as follows—

**“72.—**

(1) The High Court may by order enable the administrator of a partnership to dispose of property which is subject to a security 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 partnership.

(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 any order under this paragraph relates to more than one security, application of money under sub-paragraph (3) shall be in the order of the priority of the securities.”.

**35.**

Paragraph 74 is modified so as to read as follows—

**“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 partnership to enforce his security,

(b) would result in a preferential debt of the partnership being paid otherwise than in priority to its non-preferential debts,

- (bb) would result in an ordinary preferential debt of the partnership being paid otherwise than in priority to its secondary preferential debts,
  - (c) would result in one preferential creditor of the partnership being paid a smaller proportion of an ordinary preferential debt than another,
  - (d) would result in one preferential creditor being paid a smaller proportion of a secondary preferential debt than another, or
  - (e) if the company is a relevant financial institution (see Article 347A), any non-preferential debt is to be paid otherwise than in accordance with the rules in Article 150ZZA(2) or (3).
- (2) Sub-paragraph (1) does not apply to—
- (a) action to which the relevant creditor consents, or
  - (b) a proposal for a voluntary arrangement under Part II of this Order (although this sub-paragraph is without prejudice to Article 17(3)).
- (3) The reference to a statement of proposals in sub-paragraph (1) includes a reference to a statement as revised or modified.”.

### 36.

Paragraph 75 is modified so as to read as follows—

“75.—

- (1) A creditor or member of a partnership 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).
- (2) A creditor or member of a partnership in administration may apply to the Court claiming that the administrator is not performing his functions as quickly or as ~~effectively~~ **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;~~
  - (c) require a decision of the partnership's creditors to be sought on a matter;**
  - (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, or
- (b) 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.”.

**37.**

Paragraph 81 is modified so as to read as follows—

**“81.—**

- (1) This paragraph applies where an administrator of a partnership is appointed under paragraph 23.
- (2) If the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the partnership he may file a notice in the prescribed form with the High Court.
- (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 partnership, **other than an opted-out creditor**, 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.”.

**38.**

Paragraph 83 is modified so as to read as follows—

**“83.—**

- (1) This paragraph applies where a winding-up order is made for the winding up of a partnership in administration on a petition presented under—
  - (a) Article 104A (public interest),
  - (b) section 367 of the Financial Services and Markets Act 2000 (c.8) (petition by ~~Financial Services Authority~~ **Financial Conduct Authority or Prudential Regulation Authority**).
- (2) This paragraph also applies where a provisional liquidator of a partnership in administration is appointed following the presentation of a petition under either of the provisions listed in sub-paragraph (1).
- (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.”.

**39.**

Omit paragraph 84.

**40.**

Paragraph 85 is modified so as to read as follows—

**“85.—**

(1) If the administrator of a partnership thinks that the partnership has no property which might permit a distribution to its creditors, he shall file a notice to that effect with the High Court.

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

(3) On the filing of a notice in respect of a partnership under sub-paragraph (1) the appointment of an administrator of the partnership shall cease to have effect.

(4) If an administrator files a notice under sub-paragraph (1) he shall as soon as is reasonably practicable send a copy of the notice to each creditor, **other than an opted-out creditor**, of whose claim and address he is aware.

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

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

(a) extend the period specified in sub-paragraph (5);

(b) suspend that period; or

(c) disapply sub-paragraph (5).

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

**41.**

Paragraph 88 is modified to read as follows—

**“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 ~~or~~ **to** the High Court, or

(b) in the case of an administrator appointed under paragraph 23, by notice in writing to the members of the insolvent partnership.”.

**42.**

Paragraph 90 is modified so as to read as follows—

**“90.—**

(1) The administrator of a partnership shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the partnership.

(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, or

(b) in the case of an administrator appointed under paragraph 23, to the members of the insolvent partnership.

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

**43.**

Paragraph 91 is modified so as to read as follows—

**“91.**

Paragraphs 92, 94 and 96 apply where an administrator—

- (a) dies,
- (b) resigns,
- (c) is removed from office under paragraph 89, or
- (d) vacates office under paragraph 90.”.

**44.**

Paragraph 92 is modified so as to read as follows—

**“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 partnership,
- (b) the members of the partnership,
- (c) one or more creditors of the partnership, or
- (d) 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) and (c) only where—

- (a) there is no creditors' committee of the partnership,
- (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.”.

**45.**

Omit paragraph 93.

**46.**

Paragraph 94 is modified so as to read as follows—

**“94.**

Where the administrator was appointed under paragraph 23 by the members of the partnership, they may replace the administrator.”.

**47.**

Omit paragraph 95.

**48.**

Paragraph 96 is modified so as to read as follows—

**“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 paragraph 94 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.”.

**49.**

Omit paragraph 97.

**50.**

Paragraph 98 is modified so as to read as follows—

**“98.—**

(1) This paragraph applies where an administrator of a partnership is appointed by the members of the partnership under paragraph 23.

~~(2) A creditor's meeting may replace the administrator.~~

~~(3) A creditors' 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."~~

(2) The administrator may be replaced by a decision of the creditors made by a qualifying decision procedure.

(3) The decision has effect only if, before the decision is made, the new administrator has consented to act in writing."

## 51.

Paragraph 99 is modified so as to read as follows—

**"99.—**

(1) Where a person ceases to be the administrator of a partnership (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 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 partnership,~~

~~(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 partnership, and~~

~~(ii) preferential creditors whose debts amount to more than 50 per cent. of the preferential debts of the partnership, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.~~

(1A) The discharge provided by sub-paragraph (1) takes effect in accordance with sub-paragraphs (2) to (2C).

(2) In the case of an administrator who dies, the discharge takes effect on the filing with the High Court of notice of his or her death.

(2A) In the case of an administrator who was appointed under paragraph 23 and who has not made a statement under paragraph 53(1)(b), the discharge takes effect at a time appointed—

(a) by resolution of the creditors' committee, or

(b) if there is no such committee, by ~~resolution~~ decision of the creditors.

(2B) In the case of an administrator who was appointed under paragraph 23 and who has made a statement under paragraph 53(1)(b), the discharge takes effect at a time decided by the relevant creditors (as to which, see sub-paragraphs (3) and (3A)).

(2C) In any case, the discharge takes effect at such time as may be specified by the Court.

(3) For the purposes of sub-paragraph (2B), the "relevant creditors" are the secured creditors of the partnership, unless sub-paragraph (3A) applies.

(3A) If the administrator has made a distribution to preferential creditors, or thinks that a distribution may be made to preferential creditors, the “relevant creditors” are—

- (a) the secured creditors of the partnership, and
- (b) the preferential creditors of the partnership.

(3B) In a case where the administrator is removed from office, a decision of the creditors for the purposes of sub-paragraph (2A)(b), or of the preferential creditors for the purposes of sub-paragraph (2B), must be made by a qualifying decision procedure.

(4) Discharge—

- (a) applies to liability accrued before the discharge takes effect,
- (b) does not prevent the exercise of the High Court's powers under paragraph 76.”.

## 52.

Paragraph 100 is modified so as to read as follows—

“100.—

(1) This paragraph applies where a person ceases to be the administrator of a partnership (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 partnership's administrator.

(3) The former administrator's remuneration and expenses shall be charged on and payable out of property of which he had custody or control immediately before cessation.

(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.”.

**53.**

Paragraph 102 is modified so as to read as follows—

**“102.—**

- (1) This paragraph applies where two or more persons are appointed to act jointly as the administrator of a partnership.
- (2) A reference to the administrator of a partnership is a reference to those persons acting jointly.
- (3) But a reference to the administrator of a partnership in paragraphs 88 to 92, 94, 96 and 98 to 100 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 partnership, this paragraph applies only in relation to those functions.”.

**54.**

Paragraph 104 is modified so as to read as follows—

**“104.—**

- (1) Where a partnership 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 partnership.
- (2) Where a partnership 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 (c), or
  - (b) the person or persons acting as the administrator of the partnership.
- (3) Where a partnership entered administration by virtue of an appointment under paragraph 23, 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 partnership or by the members of the partnership.
- (4) An appointment under sub-paragraph (1) may be made only with the consent of the person or persons acting as the administrator of the partnership.”.

**55.**

Omit paragraph 106.

**56.**

Paragraph 107 is modified so as to read as follows—

**“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 33,
  - (b) paragraph 47,
  - (c) paragraph 49,
  - (d) paragraph 50,
  - (e) paragraph 52,



- (f) paragraph 54,
- (g) paragraph 55,
- (h) paragraph 57,
- (i) paragraph 79,
- (j) paragraph 81,
- (k) paragraph 85, and
- (l) paragraph 90.”.

*Modified Schedule 1*

**57.**

Schedule 1 is modified to read as follows:—

**“SCHEDULE 1**

**POWERS OF ADMINISTRATOR**

**Paragraph 61 of Schedule B1**

**1.**

Power to take possession of, collect and get in the partnership property and, for that purpose, to take such proceedings as may seem to him expedient.

**2.**

Power to sell or otherwise dispose of the partnership property, including the goodwill and book debts of any business.

**3.**

*Without prejudice to Article 28 or 30 of the Property (Northern Ireland) Order 1997*, 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 partnership property.

**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 any member of the partnership in his capacity as such or of the partnership.

**7.**

Power to refer to arbitration any question affecting the partnership.

**8.**

Power to effect and maintain insurances in respect of the partnership business and property.

**9.**

Power to do all acts and execute, in the name and on behalf of the partnership or of any member of the partnership in his capacity as such, any deed, receipt or other document.

**10.**

Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of any member of the partnership in his capacity as such or of the partnership.

**11.**

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.

**12.**

Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the partnership property.

**13.**

Power to make any payment which is necessary or incidental to the performance of his functions.

**14.**

Power to carry on the business of the partnership.

**15.**

Power to establish subsidiary undertakings of the partnership.

**16.**

Power to transfer to subsidiary undertakings of the partnership the whole or any part of the business of the partnership or of the partnership property.

**17.**

Power to grant or accept a surrender of a lease or tenancy of any of the partnership property, and to take a lease or tenancy of any property required or convenient for the business of the partnership.

**18.**

Power to make any arrangement or compromise on behalf of the partnership or of its members in their capacity as such.

**19.**

Power to rank and claim in the bankruptcy, insolvency or liquidation of any person indebted to the partnership and to receive dividends, and to accede to trust deeds for the creditors of any such person.

**20.**

Power to present or defend a petition for the winding up of the partnership under the Insolvent Partnerships Order (Northern Ireland) 1995.

21.

Power to do all other things incidental to the exercise of the foregoing powers.”.”

### SCHEDULE 3

#### **Provisions of the Order which apply with Modifications for the Purposes of Article 7 to Winding up of Insolvent Partnership on Petition of Creditor etc. where no Concurrent Petition Presented against Member**

#### **Article 7**

1.

Articles 184 to 188 of the Order are set out as modified in Part I, **Articles 116, 117, 142, 143, 146 and 148 are modified in accordance with Part 2**, and Articles 111, 113, **118, 120, 164** and 198 of and Schedule 2 to the Order are set out as modified in Part II.

### **PART I**

#### **MODIFIED PROVISIONS OF PART VI OF THE ORDER**

#### **2. Article 184: Meaning of “unregistered company”**

Article 184 is modified so as to read as follows—

**“184.**

For the purposes of this Part, the expression “unregistered company” includes any insolvent partnership.”.

#### **3. Article 185: Winding up of unregistered companies**

Article 185 is modified so as to read as follows—

**“185.—**

(1) Subject to paragraphs (2) and (3) and to the provisions of this Part, any insolvent partnership may be wound up under this Order if it has, or at any time had, in Northern Ireland either—

(a) a principal place of business, or

(b) a place of business at which business is or has been carried on in the course of which the debt (or part of the debt) arose which forms the basis of the petition for winding up the partnership.

(2) Subject to paragraph (3), an insolvent partnership shall not be wound up under this Order if the business of the partnership has not been carried on in Northern Ireland at any time in the period of 3 years ending with the day on which the winding-up petition is presented.

(3) If an insolvent partnership has a principal place of business situated in England and Wales or Scotland, the High Court shall not have Jurisdiction to wind up the partnership unless it had a principal place of business in Northern Ireland—

(a) in the case of a partnership with a principal place of business in England and Wales, at any time in the period of 3 years, or

(b) in the case of a partnership with a principal place of business in Scotland, at any time in the period of 1 year, ending with the day on which the winding-up petition is presented.

(3A) The preceding paragraphs are subject to Article 3 of the ~~EC Regulation~~ **EU Regulation** (jurisdiction under the ~~EC Regulation~~ **EU Regulation**).

(4) No insolvent partnership shall be wound up under this Order voluntarily.

(5) To the extent that they are applicable to the winding up of a company by the High Court on the petition of a creditor or of the Department, all the provisions of this Order ~~and the Companies Order~~ about winding up apply to the winding up of an insolvent partnership as an unregistered company—

(a) with the exceptions and additions mentioned in paragraphs (6), (7) and (8) and in Article 185A, and

(b) with the modifications specified in Part II of Schedule 3 to the Insolvent Partnerships Order (Northern Ireland) 1995.

(6) Articles 8, 60(1), 61(2)(a) to (d) and (3), ~~62~~ **63** to 65, 69, 102, 150A, 167 to 169 shall not apply.

(7) The circumstances in which an insolvent partnership may be wound up as an unregistered company are as follows—

(a) if the partnership is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(b) if the partnership is unable to pay its debts;

(c) if the High Court is of the opinion that it is just and equitable that the partnership should be wound up;

(d) at the time at which a moratorium for the insolvent partnership under Article 14A comes to an end, no voluntary arrangement approved under Part II of this Order has effect in relation to the insolvent partnership.

(7A) A winding-up petition on the ground set out in Article 185(7)(d) may only be presented by one or more creditors.

(8) Every petition for the winding up of an insolvent partnership under Part VI shall be verified by affidavit in Form 2 in Schedule 9 to the Insolvent Partnerships Order (Northern Ireland) 1995.

#### **185A.— Petition by liquidator, administrator, trustee or supervisor to wind up insolvent partnership as unregistered company**

(1) A petition in Form 3 in Schedule 9 to the Insolvent Partnerships Order (Northern Ireland) 1995 for winding up an insolvent partnership may be presented by—

(a) the liquidator or administrator of a corporate member or of a former corporate member, or

(b) the administrator of the partnership, or

(c) the trustee of an individual member's, or of a former individual member's, estate, or

(d) the supervisor of a voluntary arrangement approved under Part II in relation to a corporate member or the partnership, or under Chapter 11 of Part VIII in relation to an individual member,

if the ground of the petition is one of the circumstances set out in Article 185(7).

(2) In this Article “petitioning insolvency practitioner” means a person who has presented a petition under paragraph (1).

(3) If the ground of the petition presented under paragraph (1) is that the partnership is unable to pay its debts and the petitioning insolvency practitioner is able to satisfy the High Court that an insolvency order has been made against the member whose liquidator or trustee he is because of that member's inability to pay a joint debt, that order shall, unless it is proved otherwise to the satisfaction of the Court, be proof for the purposes of Article 185(7) that the partnership is unable to pay its debts.

- (4) Where a winding-up petition is presented under paragraph (1), the High Court may appoint the petitioning insolvency practitioner as provisional liquidator of the partnership under Article 115 (appointment and powers of provisional liquidator).
- (5) Where a winding-up order is made against an insolvent partnership after the presentation of a petition under paragraph (1), the High Court may appoint the petitioning insolvency practitioner as liquidator of the partnership; and where the Court makes an appointment under this paragraph, Article 119(3) (official receiver not to become liquidator) applies as if an appointment had been made under that Article.
- (6) Where a winding-up petition is presented under paragraph (1), in the event of the partnership property being insufficient to satisfy the costs of the petitioning insolvency practitioner the costs may be paid out of the assets of the corporate or individual member, as the case may be, as part of the expenses of the liquidation, administration, bankruptcy or voluntary arrangement of that member, in the same order of priority as expenses properly chargeable or incurred by the practitioner in getting in any of the assets of the member.”.

#### **4. Article 186: Inability to pay debts: unpaid creditor for £750 or more**

Article 186 is modified so as to read as follows—

##### **“186.—**

(1) An insolvent partnership is deemed (for the purposes of Article 185) unable to pay its debts if there is a creditor, by assignaient or otherwise, to whom the partnership is indebted in a sum exceeding £750 then due and—

(a) the creditor has served on the partnership, in the manner specified in paragraph

(2), a written demand in the prescribed form requiring the partnership to pay the sum so due, and

(b) the partnership has for 3 weeks after the service of the demand neglected to pay the sum or to secure or Compound for it to the creditor's satisfaction.

(2) Service of the demand referred to in paragraph (1)(a) shall be effected—

(a) by leaving it at a principal place of business of the partnership in Northern Ireland, or

(b) by leaving it at a place of business of the partnership in Northern Ireland at which business is carried on in the course of which the debt (or part of the debt) referred to in paragraph (1) arose, or

(c) by delivering it to an officer of the partnership, or

(d) by otherwise serving it in such manner as the High Court may approve or direct.

(3) The money sum for the time being specified in paragraph (1) is subject to increase or reduction by order under Article 362(1)(a) but no increase in the sum so specified affects any case in which the winding-up petition was presented before the coming into operation of the increase.”.

#### **5. Article 187: inability to pay debts: debt remaining unsatisfied after action brought**

Article 187 is modified so as to read as follows—

##### **“187.—**

(1) An insolvent partnership is deemed (for the purposes of Article 185) unable to pay its debts if an action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the partnership, or from him in his character of member, and—

(a) notice in writing of the institution of the action or proceeding has been served on the partnership in the manner specified in paragraph (2), and

(b) the partnership has not within 3 weeks from service of the notice paid, secured

or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him because of it.

(2) Service of the notice referred to in paragraph (1)(a) shall be effected—

(a) by leaving it at a principal place of business of the partnership in Northern Ireland, or

(b) by leaving it at a place of business of the partnership in Northern Ireland at which business is carried on in the course of which the debt or demand (or part of the debt or demand) referred to in paragraph (1) arose, or

(c) by delivering it to an officer of the partnership, or

(d) by otherwise serving it in such manner as the High Court may approve or direct.”.

## **6. Article 188: Inability to pay debts: other cases**

Article 188 is modified so as to read as follows—

“**188.—**

(1) An insolvent partnership is deemed (for the purposes of Article 185) unable to pay its debts—

(a) if, in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the partnership or any member of it in his character as such under Article 19 of the Judgments Enforcement (Northern Ireland) Order 1981;

(b) if, in England and Wales, execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the partnership, or any member of it in his character as such, is returned unsatisfied;

(c) if, in Scotland, the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;

(d) it is otherwise proved to the satisfaction of the High Court that the partnership is unable to pay its debts as they fall due.

(2) An insolvent partnership is also deemed unable to pay its debts if it is proved to the satisfaction of the High Court that the value of the partnership's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.”.

## **PART II**

### **OTHER MODIFIED PROVISIONS OF THE ORDER ABOUT WINDING UP BY THE HIGH COURT**

## **7. Article 111: Statement of affairs of insolvent partnership**

Article 111 is modified so as to read as follows—

“**111.—**

(1) Where the High Court has, by virtue of Article 7 of the Insolvent Partnerships Order (Northern Ireland) 1995, made a winding-up order or appointed a provisional liquidator in respect of an insolvent partnership, the official receiver may require some or all of the persons mentioned in paragraph (3) to make out and submit to him a statement in the prescribed form as to the affairs of the partnership.

(2) The statement shall be verified by affidavit by the persons required to submit it and shall show—

- (a) particulars of the debts and liabilities of the partnership and of the partnership property;
  - (b) the names and addresses of the partnership's creditors;
  - (c) the securities held by them respectively;
  - (d) the dates when the securities were respectively given; and
  - (e) such further or other information as may be prescribed or as the official receiver may require.
- (3) The persons referred to in paragraph (1) are—
- (a) those who are or have been officers of the partnership;
  - (b) those who have taken part in the formation of the partnership at any time within one year before the relevant date;
  - (c) those who are in the employment of the partnership, or have been in its employment within that year, and are in the official receiver's opinion capable of giving the information required;
  - (d) those who are or have been within that year officers of, or in the employment of, a company which is, or within that year was, an officer of the partnership.
- (4) Where any persons are required under this Article to submit a statement of affairs to the official receiver, they shall do so (subject to paragraph (5)), before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the official receiver.
- (5) The official receiver, if he thinks fit, may—
- (a) at any time release a person from an obligation imposed on him under paragraph (1) or (2); or
  - (b) either when giving the notice mentioned in paragraph (4) or subsequently, extend the period so mentioned;
- and where the official receiver has refused to exercise a power conferred by this paragraph, the High Court, if it thinks fit, may exercise it.
- (6) In this Article—
- “employment” includes employment under a contract for services; and
- “the relevant date” means—
- (a) in a case where a provisional liquidator is appointed, the date of his appointment; and
  - (b) in a case where no such appointment is made, the date of the winding-up order.
- (7) If a person without reasonable excuse fails to comply with any obligation imposed under this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.”.

## **8. Article 113: Public examination of officers of insolvent partnership**

Article 113 is modified so as to read as follows—

### **“113.—**

- (1) Where an insolvent partnership is being wound up by virtue of Article 7 of the Insolvent Partnerships Order (Northern Ireland) 1995, the official receiver may at any time before the winding up is complete apply to the High Court for the public examination of any person who—
  - (a) is or has been an officer of the partnership; or
  - (b) has acted as liquidator or administrator of the partnership or as receiver or manager of its property; or
  - (c) not being a person falling within sub-paragraph (a) or (b), is or has been

concerned, or has taken part, in the formation of the partnership.

(2) Unless the High Court otherwise orders, the official receiver shall make an application under paragraph (1) if he is requested in accordance with the rules to do so by one-half, in value, of the creditors of the partnership.

(3) On an application under paragraph (1), the High Court shall direct that a public examination of the person to whom the application relates shall be held on a day appointed by the Court; and that person shall attend on that day and be publicly examined as to the formation or management of the partnership or as to the conduct of its business and affairs, or his conduct or dealings in relation to the partnership.

(4) The following may take part in the public examination of a person under this Article and may question that person concerning the matters mentioned in paragraph (3), namely—

(a) the official receiver;

(b) the liquidator of the partnership;

(c) any person who has been appointed as special manager of the partnership's property or business;

(d) any creditor of the partnership who has tendered a proof in the winding up.”.

*Article 116: Functions of official receiver in relation to office of responsible insolvency practitioner*

8A. Article 116 has effect as if, in each place that it occurs, “and contributories” were omitted.

*Article 117: Appointment of responsible insolvency practitioner by Department*

8B. Article 117 has effect as if—

(a) in paragraph (2), “and contributories” were omitted;

(b) after paragraph (3), there were inserted—

“(3A) If, on an application under paragraph (1) or a reference made in pursuance of a decision under paragraph (2), no appointment is made, the official receiver continues to be responsible insolvency practitioner of the partnership, but without prejudice to his power to make a further application or reference.”.

*Article 118: Rules applicable to decision-making*

8C. Article 118 is modified so as to read as follows—

“118.—(1) This Article applies where an insolvency order is made in respect of an insolvent partnership by virtue of Article 7 of the Insolvent Partnerships Order (Northern Ireland) 1995.

(2) The rules relating to decision making on the winding up of a company are to apply (with the necessary modifications) to decisions sought from creditors of the partnership.”.

*Article 120: Liquidation committee*

8D. Article 120 is modified so as to read as follows—

“120.—(1) This Article applies where an insolvency order is made in respect of an insolvent partnership by virtue of Article 7 of the Insolvent Partnerships Order (Northern Ireland) 1995.

(2) If the creditors of the partnership decide that a liquidation committee



should be established, a liquidation committee is to be established in accordance with the rules.

(3) A “liquidation committee” is a committee having such functions as are conferred on it by or under this Order.

(4) The responsible insolvency practitioner must seek a decision from the creditors of the partnership as to whether a liquidation committee should be established if requested, in accordance with the rules, to do so by one-tenth in value of the creditors.

(5) Paragraph (4) does not apply where the responsible insolvency practitioner is the official receiver.

(6) The liquidation committee is not to be able or required to carry out its functions at any time when the official receiver is the responsible insolvency practitioner; but at any such time its functions are vested in the Department except to the extent that the rules otherwise provide.

(7) Where there is for the time being no liquidation committee, and the responsible insolvency practitioner is a person other than the official receiver, the functions of such a committee are vested in the Department except to the extent that the rules otherwise provide.”.

#### *Article 142: Liquidator’s powers on winding up*

8E. Article 142(1) has effect as if for “Parts 1 to 3” there were substituted “Parts 1 and 2”.

#### *Article 143: Liquidator’s supplementary powers*

8F. Article 143 has effect as if for paragraph (2) there were substituted—  
“(2) The responsible insolvency practitioner may seek a decision on any matter from the creditors of the partnership; and must seek a decision on a matter if requested to do so by one-tenth in value of the creditors.”.

#### *Article 146: Removal, etc (winding up by the High Court)*

8G. Article 146 has effect as if—

- (a) in paragraph (3)(a), “or contributories” were omitted;
- (b) in paragraph (6), for “in the prescribed circumstances” there were substituted “with the leave of the High Court (or, if appointed by the Department, with the leave of the Court or the Department)”.

#### *Article 148: Release (winding up by the High Court)*

8H. Article 148 has effect as if—

- (a) in paragraph (2)(a), “or contributories” were omitted;
- (b) in paragraph (4E), for “with effect from such time as may be prescribed.” there were substituted “—
  - (a) if he was appointed by the Department, with effect from such time as may be directed by the High Court or as the Department may, on the application of the person, determine, or
  - (b) in any other case, with effect from such time as may be directed by the Court.”.

#### *Article 164: High Court’s powers to ascertain wishes of creditors*

8I. Article 164 is modified so as to read as follows—

“164.—(1) The High Court may—

(a) as to all matters relating to the winding up of an insolvent partnership, have regard to the wishes of the creditors (as proved to it by any sufficient evidence), and

(b) if it thinks fit, for the purposes of ascertaining those wishes, direct qualifying decision procedures to be instigated or the deemed consent procedure to be used in accordance with any directions given by the Court, and appoint a person to report the result to the Court.

(2) In having regard to the wishes of the creditors, the Court must have regard to the value of each creditor's debt.”.

## **9. Article 198: Getting in the partnership property**

Article 198 is modified so as to read as follows—

“198.—

(1) This Article applies where, by virtue of Article 7 of the Insolvent Partnerships Order (Northern Ireland) 1995—

(a) an insolvent partnership is being wound up, or

(b) a provisional liquidator of an insolvent partnership is appointed;

and “the office-holder” means the liquidator or the provisional liquidator, as the case may be.

(2) Any person who is or has been an officer of the partnership, or who is an executor or administrator of the estate of a deceased officer of the partnership, shall deliver up to the office-holder, for the purposes of the exercise of the office-holder's functions under this Order and (where applicable) the Company Directors Disqualification (Northern Ireland) Order 2002, possession of any partnership property which he holds for the purposes of the partnership.

(3) Where any person has in his possession or control any property, books, papers or records to which the partnership appears to be entitled, the High Court may require that person forthwith (or within such period as the Court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the office-holder or as the Court may direct.

(4) Where the office-holder—

(a) seizes or disposes of any property which is not partnership property, and

(b) at the time of seizure or disposal believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the High Court or otherwise) to seize or dispose of that property,

paragraph (5) has effect.

(5) In that case the office-holder—

(a) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the office-holder's own negligence, and

(b) has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.”.

**10.**

Schedule 2 is modified so as to read as follows—

## **“SCHEDULE 2**

### **Powers of Liquidator in a Winding up**

**Article 142**

#### **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 partnership, or whereby the partnership may be rendered liable.

**3.**

Power to compromise, on such terms as may be agreed—

(a) 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 partnership and a contributory or alleged contributory or other debtor or person apprehending liability to the partnership, and  
(b) all questions in any way relating to or affecting the partnership property or the winding up of the partnership,

and take any security for the discharge of such debt, liability or claim and give a complete discharge in respect of it.

**3A.**

Power to bring legal proceedings under Article 177, 178, 202, 203 or 367.

**4.**

Power to bring or defend any action or other legal proceeding in the name and on behalf of any member of the partnership in his capacity as such or of the partnership.

**5.**

Power to carry on the business of the partnership so far as may be necessary for its beneficial winding up.

#### **PART II**

##### **~~POWERS EXERCISABLE WITHOUT SANCTION~~**

**6.**

Power to sell any of the partnership property.

**7.**

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.

**8.**

Power to do all acts and execute, in the name and on behalf of the partnership or of any member of the partnership in his capacity as such, all deeds, receipts and other documents.

**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 any member of the partnership in his capacity as such or of the partnership, with the same effect with respect to the liability of the partnership or of any member of the partnership in his capacity as such as if the bill or note had been drawn, accepted, made or endorsed in the course of the partnership's business.

**11.**

Power to raise on the security of the partnership property any money requisite.

**12.—**

(1) Power to take out in his official name 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 partnership:

(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 partnership's affairs and distributing its property”.

#### **SCHEDULE 4**

**Provisions of the Order which apply with Modifications for the Purposes of Article 8 to Winding up of Insolvent Partnership on Creditor's Petition where Concurrent Petitions are presented against one or more Members**

**Article 8**

1.—

(1) Articles 184 to 186 of the Order are set out as modified in Part I, **Article 142 is modified in accordance with Part 2**, and the provisions of the Order specified in sub-paragraph (2) are set out as modified in Part II.

(2) The provisions referred to in sub-paragraph (1) are Articles 11, 102 to 105, 111, 113, 116 to 121, 124, 125, 143, 146, 148, 149, 160, **164**, 175, 194, 195, 198, **208ZE, 208ZF**, 238, 239, 241, 242, 245, 256A, 257, 261, 265 to 269, 271 to 276, 278, 286A, 287, 300, 304 ~~and 327~~, **327, 345A and 345B**, Schedule 2 and certain

## PART I

### MODIFIED PROVISIONS OF PART VI OF THE ORDER

#### 2. Article 184: Meaning of “unregistered company”

Article 184 is modified so as to read as follows—

##### “184.

For the purposes of this Part, the expression “unregistered company” includes any insolvent partnership.”.

#### 3. Article 185: Winding up of unregistered companies

Article 185 is modified so as to read as follows—

##### “185.—

(1) Subject to paragraphs (2) and (3) and to the provisions of this Part, any insolvent partnership may be wound up under this Order if it has, or at any time had, in Northern Ireland either—

(a) a principal place of business, or

(b) a place of business at which business is or has been carried on in the course of which the debt (or part of the debt) arose which forms the basis of the petition for winding up the partnership.

(2) Subject to paragraph (3), an insolvent partnership shall not be wound up under this Order if the business of the partnership has not been carried on in Northern Ireland at any time in the period of 3 years ending with the day on which the winding-up petition is presented.

(3) If an insolvent partnership has a principal place of business situated in England and Wales or Scotland, the High Court shall not have jurisdiction to wind up the partnership unless it had a principal place of business in Northern Ireland—

(a) in the case of a partnership with a principal place of business in England and Wales, at any time in the period of 3 years, or

(b) in the case of a partnership with a principal place of business in Scotland, at any time in the period of 1 year, ending with the day on which the winding-up petition is presented.

(3A) The preceding paragraphs are subject to Article 3 of the ~~EC Regulation~~ **EU Regulation** (jurisdiction under the ~~EC Regulation~~ **EU Regulation**).

(4) No insolvent partnership shall be wound up under this Order voluntarily.

(5) To the extent that they are applicable to the winding up of a company by the High Court on a creditor's petition, all the provisions of this Order ~~and the Companies Order~~ about winding up apply to the winding up of an insolvent partnership as an unregistered company—

(a) with the exceptions and additions mentioned in paragraphs (6) to (9), and

(b) with the modifications specified in Part II of Schedule 4 to the Insolvent Partnerships Order (Northern Ireland) 1995.

(6) Articles 8, 60(1), 61(2)(a) to (d) and (3), ~~62~~ 63 to 65, 69, 132, 150A and 167 to 169 shall not apply.

(7) Unless the contrary intention appears, a member of a partnership against whom an insolvency order has been made by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995 shall not be treated as a contributory for the purposes of this Order.

(8) The circumstances in which an insolvent partnership may be wound up as an unregistered company are as follows—

(a) the partnership is unable to pay its debts,

(b) at the time at which a moratorium for the insolvent partnership under Article 14A comes to an end, no voluntary arrangement approved under Part II of this Order has effect in relation to the insolvent partnership.

(9) Every petition for the winding up of an insolvent partnership under Part VI shall be verified by affidavit in Form 2 in Schedule 9 to the Insolvent Partnerships Order (Northern Ireland) 1995.”.

#### **4. Article 186: Inability to pay debts: unpaid creditor for £750 or more**

Article 186 is modified so as to read as follows—

##### **“186.—**

(1) An insolvent partnership is deemed (for the purposes of Article 185) unable to pay its debts if there is a creditor, by assignment or otherwise, to whom the partnership is indebted in a sum exceeding £750 then due and—

(a) the creditor has served on the partnership, in the manner specified in paragraph (2), a written demand in Form 4 in Schedule 9 to the Insolvent Partnerships Order (Northern Ireland) 1995 requiring the partnership to pay the sum so due,

(b) the creditor has also served on any one or more members or former members of the partnership liable to pay the sum due (in the case of a corporate member by leaving it at its registered office and in the case of an individual member by serving it in accordance with the rules) a demand in Form 4 in Schedule 9 to that Order, requiring that member or those members to pay the sum so due, and

(c) the partnership and its members have for 3 weeks after the service of the demands, or the service of the last of them if served at different times, neglected to pay the sum or to secure or compound for it to the creditor's satisfaction.

(2) Service of the demand referred to in paragraph (1)(a) shall be effected—

(a) by leaving it at a principal place of business of the partnership in Northern Ireland, or

(b) by leaving it at a place of business of the partnership in Northern Ireland at which business is carried on in the course of which the debt (or part of the debt) referred to in paragraph (1) arose, or

(c) by delivering it to an officer of the partnership, or

(d) by otherwise serving it in such manner as the High Court may approve or direct.

(3) The money sum for the time being specified in paragraph (1) is subject to increase or reduction by order under Article 362(1)(a); but no increase in the sum so specified affects any case in which the winding-up petition was presented before the coming into force of the increase.”.

## **PART II**

## **OTHER MODIFIED PROVISIONS OF THE ORDER ABOUT WINDING UP BY THE HIGH COURT AND BANKRUPTCY OF INDIVIDUALS**

### **5. Article 11: Definition of individual member's estate**

Article 11 is modified so as to read as follows—

**“11.—**

(1) Subject to the following provisions of this Article, the estate of an individual member for the purposes of this Order comprises—

(a) all property belonging to or vested in the individual member at the commencement of the bankruptcy, and

(b) any property which by virtue of any of the provisions of this Order or Article 88(3) or 90(3) of the Judgments Enforcement (Northern Ireland) Order 1981, (effect of bankruptcy or winding up on enforcement of judgments and proceeds of such enforcement) is comprised in that estate or is treated as falling within sub-paragraph

(a).

(2) Subject to Article 281 (certain excluded property reclaimable by trustee), paragraph (1) does not apply to—

(a) such tools, books, vehicles and other items of equipment as are not partnership property and as are necessary to the individual member for use personally by him in his employment, business or vocation;

(b) such clothing, bedding, furniture, household equipment and provisions as are not partnership property and as are necessary for satisfying the basic domestic needs of the individual member and his family.

(3) Paragraph (1) does not apply to property held by the individual member on trust for any other person.

(4) References in any provision of this Order to property, in relation to an individual member, include references to any power exercisable by him over or in respect of property except in so far as the power is exercisable over or in respect of property not for the time being comprised in the estate of the individual member and—

(a) is so exercisable at a time after either the official receiver has had his release in respect of that estate under Article 148(3) or ~~a meeting summoned by the trustee of that estate under Article 124 has been held~~ **the trustee of that estate has vacated office under Article 146(6),** or

(b) cannot be so exercised for the benefit of the individual member;

and a power exercisable over or in respect of property is deemed for the purposes of any provision of this Order to vest in the person entitled to exercise it at the time of the transaction

or event by virtue of which it is exercisable by that person (whether or not it becomes so exercisable at that time).

(5) For the purposes of any such provision of this Order, property comprised in an individual member's estate is so comprised subject to the rights of any person other than the individual member (whether as a secured creditor of the individual member or otherwise) in relation thereto, but disregarding any rights which have been given up in accordance with the rules.

(6) This Article has effect subject to the provisions of any statutory provision not contained in this Order under which any property is to be excluded from a bankrupt's estate.”.

**6.— Circumstances in which members of insolvent partnerships may be wound up or made bankrupt by the High Court:—Article 102 — corporate member; Articles 239 and 241—individual member**

(1) Article 102 is modified so as to read as follows—

**“102.**

A corporate member or former corporate member of an insolvent partnership may be wound up by the High Court if—

- (a) it is unable to pay its debts,
- (b) there is a creditor, by assignment or otherwise, to whom the insolvent partnership is indebted and the corporate member or former corporate member is liable in relation to that debt and at the time at which a moratorium for the insolvent partnership under Article 14A comes to an end, no voluntary arrangement approved under Part II of this Order has effect in relation to the insolvent partnership.”.

(2) Article 239 is modified so as to read as follows—

**“239.**

The High Court has Jurisdiction to make a bankruptcy order against an individual member, or former individual member, of a partnership against which a petition has been presented by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995 if it has Jurisdiction in respect of the partnership.”.

(3) Article 241 is modified so as to read as follows—

**“241.—**

(1) Where a petition for the winding up of an insolvent partnership has been presented to the High Court by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995 a creditor's petition against any individual member or former individual member of that partnership by virtue of that Article must be in respect of one or more joint debts owed by the insolvent partnership, and the petitioning creditor or each of the petitioning creditors must be a person to whom the debt or (as the case may be) at least one of the debts is owed.

(2) Subject to [ paragraph (2A) and ] 2 Article 242, a creditor's petition may be presented to the High Court in respect of a joint debt or debts only if, at the time the petition is presented—

(a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the bankruptcy level,

(b) the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, immediately, and is unsecured,

(c) the debt, or each of the debts, is a debt for which the individual member or former member is liable and which he appears to be unable to pay, and

(d) there is no outstanding application to set aside a statutory demand served (under Article 242) in respect of the debt or any of the debts.

(2A) A creditor's petition may be presented to the High Court in respect of a joint debt or debts if at the time at which a moratorium for the insolvent partnership under Article 14A comes to an end, no voluntary arrangement approved under Part II of this Order has effect in relation to the insolvent partnership.

(3) “The bankruptcy level” is ~~£750~~ **£5,000**; but the Department may by order subject to affirmative

resolution Substitute any amount specified in the order for that amount or (as the case may be) for the amount which by virtue of such an order is for the time being the amount of the bankruptcy level.”.



**7.— Definition of inability to pay debts: Article 103 — corporate member; Article 242 —individual member**

(1) Article 103 is modified so as to read as follows—

**“103.—**

(1) A corporate member or former member is deemed unable to pay its debts if there is a creditor, by assignment or otherwise, to whom the partnership is indebted in a sum exceeding £750 then due for which the member or former member is liable and—

(a) the creditor has served on that member or former member and the partnership, in the manner specified in paragraph (2), written demand in Form 4 in Schedule 9 to the Insolvent Partnerships Order (Northern Ireland) 1995 requiring that member or former member and the partnership to pay the sum so due, and

(b) the corporate member or former member and the partnership have for 3 weeks after the service of the demands, or the service of the last of them if served at different times, neglected to pay the sum or to secure or Compound for it to the creditor's satisfaction.

(2) Service of the demand referred to in paragraph (1)(a) shall be effected, in the case of the corporate member or former corporate member, by leaving it at its registered office, and, in the case of the partnership—

(a) by leaving it at a principal place of business of the partnership in Northern Ireland, or

(b) by leaving it at a place of business of the partnership in Northern Ireland at which business is carried on in the course of which the debt (or part of the debt) referred to in paragraph (1) arose, or

(c) by delivering it to an officer of the partnership, or

(d) by otherwise serving it in such manner as the High Court may approve or direct.

(3) The money sum for the time being specified in paragraph (1) is subject to increase or reduction by order under Article 362(1)(a).”.

(2) Article 242 is modified so as to read as follows—

**“242.—**

(1) For the purposes of Article 241(2)(c), an individual member or former individual member appears to be unable to pay a joint debt for which he is liable if the debt is payable immediately and the petitioning creditor to whom the insolvent partnership owes the joint debt has served—

(a) on the individual member or former individual member in accordance with the rules a demand (known as “the statutory demand”), in Form 4 in Schedule 9 to the Insolvent Partnerships Order (Northern Ireland) 1995, and

(b) on the partnership in the manner specified in paragraph (2) a demand (known as “the written demand”) in the same form, requiring the member or former member and the partnership to pay the debt or to secure or Compound for it to the creditor's satisfaction, and at least 3 weeks have elapsed since the service of the demands, or the service of the last of them if served at different times, and neither demand has been complied with nor the demand against the member set aside in accordance with the rules.

- (2) Service of the demand referred to in paragraph (1)(b) shall be effected—
- (a) by leaving it at a principal place of business of the partnership in Northern Ireland, or
  - (b) by leaving it at a place of business of the partnership in Northern Ireland at which business is carried on in the course of which the debt (or part of the debt) referred to in paragraph (1) arose, or
  - (c) by delivering it to an officer of the partnership, or
  - (d) by otherwise serving it in such manner as the High Court may approve or direct.”.

## **8. Articles 104 and 238: Applications to wind up insolvent partnership and to wind up or bankrupt member**

Articles 104 and 238 are modified so as to read as follows—

### **“104.—**

(1) An application to the High Court by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995 for the winding up of an insolvent partnership as an unregistered company and the winding up or bankruptcy (as the case may be) of at least one of its members or former members shall—

- (a) in the case of the partnership, be by petition in Form 5 in Schedule 9 to that Order,
- (b) in the case of a corporate member or former corporate member, be by petition in Form 6 in that Schedule, and
- (c) in the case of an individual member or former individual member, be by petition in Form 7 in that Schedule.

(2) Each of the petitions mentioned in paragraph (1) may be presented by ~~a liquidator (within the meanings of Article 2(b) of the EC Regulation) appointed in proceedings by virtue of Article 3(1) of the EC Regulation, a temporary administrator (within the meaning of Article 38 of the EC Regulation)~~ or any creditor or creditors to whom the partnership and the member or former member in question is indebted in respect of a liquidated sum payable immediately.

(3) The petitions mentioned in paragraph (1)—

- (a) shall, except as the High Court otherwise permits or directs, be presented on the same day, and
- (b) except in the case of the petition mentioned in paragraph (1)(c), shall be advertised in Form 8 in the said Schedule 9.

(3A) The preceding paragraphs are subject to Article 3 of the EC Regulation (jurisdiction under the EC Regulation).

(4) At any time after presentation of a petition under this Article the petitioner may, with the leave of the High Court obtained on application and on such terms as it thinks just, add other members or former members of the partnership as parties to the proceedings in relation to the insolvent partnership.

(5) Each petition presented under this Article shall contain particulars of other petitions being presented in relation to the partnership, identifying the partnership and members concerned.

(6) The hearing of the petition against the partnership fixed by the High Court shall be in advance of the hearing of any petition against an insolvent member.

(7) On the day appointed for the hearing of the petition against the partnership, the petitioner shall, before the commencement of the hearing, hand to the High Court Form 9 in Schedule 9 to the Insolvent Partnerships Order (Northern Ireland) 1995, duly completed.

(8) Any member of the partnership or any person against whom a winding-up or bankruptcy petition has been presented in relation to the insolvent partnership is entitled to appear and to be heard on any petition for the winding up of the partnership.

(9) A petitioner under this Article may at the hearing withdraw a petition if—  
(a) subject to paragraph (10), he withdraws at the same time every other petition which he has presented under this Article; and  
(b) he gives notice to the High Court at least 3 days before the date appointed for the hearing of the relevant petition of his intention to withdraw the petition.

(10) A petitioner need not comply with the provisions of paragraph (9)(a) in the case of a petition against an insolvent member if the High Court is satisfied on application made to it by the petitioner that, because of difficulties in serving the petition or for any other reason, the continuance of that petition would be likely to prejudice or delay the proceedings on the petition which he has presented against the partnership or on any petition which he has presented against any other insolvent member.

(11) Where notice is given under paragraph (9)(b), the High Court may, on such terms as it thinks just, Substitute as petitioner, both in respect of the partnership and in respect of each insolvent member against whom a petition has been presented, any creditor of the partnership who in its opinion would have a right to present the petitions, and if the Court makes such a substitution the petitions in question will not be withdrawn.

(12) Reference in paragraph (11) to substitution of a petitioner includes reference to change of carriage of the petition in accordance with the rules.”.

## **9. Articles 105 and 245: Powers of High Court on hearing of petitions against insolvent partnership and members**

Articles 105 and 245 are modified so as to read as follows—

### **“105.—**

(1) Subject to the provisions of Article 105A, on hearing a petition under Article 104 against an insolvent partnership or any of its insolvent members, the High Court may dismiss it, or adjourn the hearing conditionally or unconditionally or make any other order that it thinks fit; but the Court shall not refuse to make a winding-up order against the partnership or a corporate member on the ground only that the partnership property or (as the case may be) the member's assets have been mortgaged to an amount equal to or in excess of that property or those assets, or that the partnership has no property or the member no assets.

(2) An order under paragraph (1) in respect of an insolvent partnership may contain directions as to the future conduct of any insolvency proceedings in existence against any insolvent member in respect of whom an insolvency order has been made.

**105A.— Hearing of petitions against members**

(1) On the hearing of a petition against an insolvent member the petitioner shall draw the High Court's attention to the result of the hearing of the winding-up petition against the partnership and paragraph (2) to (8) shall apply.

(2) If the High Court has neither made a winding-up order, nor dismissed the winding-up petition, against the partnership the Court may adjourn the hearing of the petition against the member until either event has occurred.

(3) Subject to paragraph (4), if a winding-up order has been made against the partnership, the High Court may make a winding-up order against the corporate member in respect of which, or (as the case may be) a bankruptcy order against the individual member in respect of whom, the insolvency petition was presented.

(4) If no insolvency order is made under paragraph (3) against any member within 28 days of the making of the winding-up order against the partnership, the proceedings against the partnership shall be conducted as if the winding-up petition against the partnership had been presented by virtue of Article 7 of the Insolvent Partnerships Order (Northern Ireland) 1995 and the proceedings against any member shall be conducted under this Order without the modifications made by that Order (other than the modifications made to Articles 143 and 276 by Article 15 of that Order).

(5) If the High Court has dismissed the winding-up petition against the partnership, the Court may dismiss the winding-up petition against the corporate member or (as the case may be) the bankruptcy petition against the individual member. However, if an insolvency order is made against a member, the proceedings against that member shall be conducted under this Order without the modifications made by the Insolvent Partnerships Order (Northern Ireland) 1995 (other than the modifications made to Articles 143 and 276 by Article 15 of that Order).

(6) The High Court may dismiss a petition against an insolvent member if it considers it just to do so because of a change in circumstances since the making of the winding-up order against the partnership.

(7) The High Court may dismiss a petition against an insolvent member who is a limited partner, if—

(a) the member lodges in Court for the benefit of the creditors of the partnership sufficient money or security to the Court's satisfaction to meet his liability for the debts and obligations of the partnership; or

(b) the member satisfies the Court that he is no longer under any liability in respect of the debts and obligations of the partnership.

(8) Nothing in this Article nor in Articles 105, 241 and 242 prejudices the power of the High Court, in accordance with the rules, to authorise a creditor's petition to be amended by the omission of any creditor or debt and to be proceeded with as if things done for the purposes of those Articles had been done only by or in relation to the remaining creditors or debts.”.

## **10. Articles 111 and 261: Statements of affairs — Insolvent partnership; corporate members; individual members**

Articles 111 and 261 are modified so as to read as follows—

**“111.—**

(1) This Article applies where the High Court has, by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995—

- (a) made a winding-up order or appointed a provisional liquidator in respect of an insolvent partnership, or
- (b) made a winding-up order or appointed a provisional liquidator in respect of any corporate member of that partnership, or
- (c) made a bankruptcy order in respect of any individual member of that partnership.

(2) The official receiver may require some or all of the persons mentioned in paragraph (4) to make out and submit to him a statement as to the affairs of the partnership or member in the prescribed form—

(3) The statement shall be verified by affidavit by the persons required to submit it and shall show—

- (a) particulars of the debts and liabilities of the partnership or of the member (as the case may be), and of the partnership property and member's assets;
- (b) the names and addresses of the creditors of the partnership or of the member (as the case may be);
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed or as the official receiver may require.

(4) The persons referred to in paragraph (2) are—

- (a) those who are or have been officers of the partnership;
- (b) those who are or have been officers of the corporate member;
- (c) those who have taken part in the formation of the partnership or of the corporate member at any time within one year before the relevant date;
- (d) those who are in the employment of the partnership or of the corporate member, or have been in such employment within that year, and are in the official receiver's opinion capable of giving the information required;
- (e) those who are or have been within that year officers of, or in the employment of, a company which is, or within that year was, an officer of the partnership or an officer of the corporate member.

(5) Where any persons are required under this Article to submit a statement of affairs to the official receiver, they shall do so (subject to paragraph (6)), before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the official receiver.

(6) The official receiver, if he thinks fit, may—

- (a) at any time release a person from an obligation imposed on him under paragraph (2) or (3); or
- (b) either when giving the notice mentioned in paragraph (5) or subsequently, extend

the period so mentioned;  
and where the official receiver has refused to exercise a power conferred by this paragraph, the High Court, if it thinks fit, may exercise it.

(7) In this Article—

“employment” includes employment under a contract for services; and

“the relevant date” means—

(a) in a case where a provisional liquidator is appointed, the date of his appointment; and

(b) in a case where no such appointment is made, the date of the winding-up order.

(8) If a person without reasonable excuse fails to comply with any obligation imposed under this Article (other than, in the case of an individual member, an obligation in respect of his own statement of affairs), shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

(9) Any individual member who without reasonable excuse fails to comply with any obligation imposed under this Article in respect of his own statement of affairs, is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).”.

## **11. Article 113: Public examination of officers of insolvent partnership**

Article 113 is modified so far as insolvent partnerships are concerned so as to read as follows—

**“113.—**

(1) Where an insolvent partnership is being wound up by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995, the official receiver may at any time before the winding up is complete apply to the High Court for the public examination of any person who—

(a) is or has been an officer of the partnership; or

(b) has acted as liquidator or administrator of the partnership or as receiver or manager, or

(c) not being a person falling within sub-paragraph (a) or (b), is or has been concerned, or has taken part, in the formation of the partnership.

(2) Unless the High Court otherwise orders, the official receiver shall make an application under paragraph (1) if he is requested in accordance with the rules to do so by one-half, in value, of the creditors of the partnership.

(3) On an application under paragraph (1), the High Court shall direct that a public examination of the person to whom the application relates shall be held on a day appointed by the Court; and that person shall attend on that day and be publicly examined as to the formation or management of the partnership or as to the conduct of its business and affairs, or his conduct or dealings in relation to the partnership.

(4) The following may take part in the public examination of a person under this Article and may question that person concerning the matters mentioned in paragraph (3), namely—

- (a) the official receiver;
- (b) the liquidator of the partnership;
- (c) any person who has been appointed as special manager of the partnership's property or business;
- (d) any creditor of the partnership who has tendered a proof in the winding up.

(5) On an application under paragraph (1), the High Court may direct that the public examination of any person under this Article in relation to the affairs of an insolvent partnership be combined with the public examination of any person under this Order in relation to the affairs of a corporate member of that partnership against which, or an individual member of the partnership against whom, an insolvency order has been made.”.

## **12. Articles 116, 266 and 267: Functions of official receiver in relation to office of responsible insolvency practitioner**

Articles 116, 266 and 267 are modified so as to read as follows—

### **“116.—**

(1) The following provisions of this Article ~~and of Article 116A~~ have effect, subject to Article 119, where insolvency orders are made in respect of an insolvent partnership and one or more of its insolvent members by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995.

(2) The official receiver, by virtue of his office, becomes the responsible insolvency practitioner of the partnership and of any insolvent member and continues in office until another person becomes responsible insolvency practitioner under the provisions of this Part.

(3) The official receiver is, by virtue of his office, the responsible insolvency practitioner of the partnership and of any insolvent member during any vacancy.

(4) At any time when he is the responsible insolvency practitioner of the insolvent partnership and of any insolvent member, the official receiver may ~~summon a combined meeting of~~ **in accordance with the rules seek nominations from** the creditors of the partnership and the creditors of such member, for the purpose of choosing a person to be responsible insolvency practitioner in place of the official receiver.

**(5) It is the duty of the official receiver—**

- (a) as soon as practicable in the period of 12 weeks beginning with the day on which the insolvency order was made, to decide whether to exercise his power under paragraph (4),**
- (b) if in pursuance of sub-paragraph (a) he decides not to exercise that power, to give notice of his decision, before the end of that period, to the High Court and to the creditors of the partnership and the creditors of any insolvent member against whom an insolvency order has been made, and**
- (c) (whether or not he has decided to exercise that power) to exercise his power under paragraph (4) if he is at any time requested, in accordance with the rules, to do so by one-quarter, in value, of either—**
  - (i) the partnership’s creditors, or**

(ii) the creditors of any insolvent member against whom an insolvency order has been made.

(6) A notice under paragraph (5)(b) to the creditors must contain an explanation of the creditors' power under paragraph (5)(c) to require the official receiver to seek nominations from the creditors of the partnership and of any insolvent member.

(7) Where the creditors exercise their power under paragraph (5)(c) before the official receiver has performed the duty under paragraph (5)(a), the duties under paragraph (5)(a) and (b) no longer apply.

(8) Where the creditors exercise their power under paragraph (5)(c) after the official receiver has performed the duty under paragraph (5)(a) but before he has performed the duty under paragraph (5)(b), the duty under paragraph (5)(b) no longer applies.

(9) Where—

(a) a person has been chosen in accordance with paragraph (4) to be the responsible insolvency practitioner of an insolvent partnership, and

(b) an insolvency order is subsequently made against another insolvent member by virtue of Article 8 of the Insolvent Partnerships Order

(Northern Ireland) 1995,

that practitioner is also to be the responsible insolvency practitioner of that other member.”

#### **~~116A.—Duty of official receiver to summon meetings~~**

~~(1) It is the duty of the official receiver—~~

~~(a) as soon as practicable in the period of 12 weeks beginning with the day on which the insolvency order was made against the partnership, to decide whether to exercise his power under Article 116(4) to summon a meeting, and~~

~~(b) if in pursuance of sub-paragraph (a) he decides not to exercise that power, to give notice of his decision, before the end of that period, to the High Court and to the creditors of the partnership and the creditors of any insolvent member against whom an insolvency order has been made, and~~

~~(c) (whether or not he has decided to exercise that power) to exercise his power to summon a meeting under Article 116(4) if he is at any time requested to do so in accordance with the rules by one-quarter, in value, of either—~~

~~(i) the partnership's creditors, or~~

~~(ii) the creditors of any insolvent member against whom an insolvency order has been made,~~

~~and accordingly, where the duty imposed by sub-paragraph (c) arises before the official receiver has performed a duty imposed by sub-paragraph (a) or (b), he is not required to perform the latter duty.~~

~~(2) A notice given under paragraph (1)(b) to the creditors shall contain an explanation of the creditors' power under paragraph (1)(c) to require the official receiver to summon a combined meeting of the creditors of the partnership and of any insolvent member.~~

~~(3) If the official receiver, in pursuance of paragraph (1)(a), has decided to exercise his power under Article 116(4) to summon a meeting, he shall hold that meeting in the period of 4 months beginning with the day on which the insolvency order was made against the partnership.~~



~~(4) If (whether or not he has decided to exercise that power) the official receiver is requested, in accordance with the provisions of paragraph (1)(e), to exercise his power under Article 116(4) to summon a meeting, he shall hold that meeting in accordance with the rules.~~  
~~(5) Where a meeting of creditors of the partnership and of any insolvent member has been held under Article 116(4), and an insolvency order is subsequently made against a further insolvent member by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995—~~  
~~(a) any person chosen at that meeting to be responsible insolvency practitioner in place of the official receiver shall also be the responsible insolvency practitioner of the member against whom the subsequent order is made, and~~  
~~(b) paragraph (1) of this Article shall not apply.”~~

### **13. Articles 117, 268, 269 and 273: Appointment of responsible insolvency practitioner by Department**

Articles 117, 268, 269 and 273 are modified so as to read as follows—

#### **“117.—**

(1) This Article and Article 117A apply where the High Court has made insolvency orders in respect of an insolvent partnership and one or more of its insolvent members by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995.

(2) The official receiver may, at any time when he is the responsible insolvency practitioner of the partnership and of any insolvent member, apply to the Department for the appointment of a person as responsible insolvency practitioner of both the partnership and of such member in his place.

(3) If ~~a meeting is held in pursuance of a decision under Article 116A(1)(a)~~ **a nomination is sought from the creditors of the partnership and of any insolvent member**, but no person is chosen to be responsible insolvency practitioner ~~as a result of that meeting by the creditors~~, it is the duty of the official receiver to decide whether to refer the need for an appointment to the Department.

#### **117A.— Consequences of Article 117 application**

(1) On an application under Article 117(2), or a reference made in pursuance of a decision under Article 117(3), the Department shall either make an appointment or decline to make one.

(2) If on an application under Article 117(2), or a reference made in pursuance of a decision under Article 117(3), no appointment is made, the official receiver shall continue to be responsible insolvency practitioner of the partnership and its insolvent member or members, but without prejudice to his power to make a further application or reference.

(3) Where a responsible insolvency practitioner has been appointed by the Department under paragraph (1), and an insolvency order is subsequently made against a further insolvent member by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995, then the practitioner so appointed shall also be responsible insolvency practitioner of the member against whom the subsequent order is made.

(4) Where a responsible insolvency practitioner has been appointed by the Department

under paragraph (1), or has become responsible insolvency practitioner of a further insolvent member under paragraph (3), that practitioner shall give notice of his appointment or further appointment (as the case may be) to the creditors of the insolvent partnership and the creditors of the insolvent member or members against whom insolvency orders have been made or, if the High Court so allows, shall advertise his appointment in accordance with the directions of the Court.

(5) Subject to paragraph (6), in that notice or advertisement the responsible insolvency practitioner shall—

~~(a) state whether he proposes to summon, under Article 120, a combined meeting of the creditors of the insolvent partnership and of the insolvent member or members against whom insolvency orders have been made, for the purpose of determining whether a creditors' committee should be established under that Article, and~~  
~~(b) if he does not propose to summon such a meeting, set out the power under that Article of the creditors of the partnership and of the insolvent member or members to require him to summon one~~ **must explain the procedure for establishing a liquidation committee under Article 120.**

~~(6) Where in a case where paragraph (3) applies a meeting has already been held under Article 120, the responsible insolvency practitioner shall state in the notice or advertisement whether a creditors' committee was established at that meeting and—~~

~~(a) if such a committee was established, shall state whether he proposes to appoint additional members of the committee under Article 120A(3) and~~  
~~(b) if such a committee was not established, shall set out the power under Article 120 of the creditors of the partnership and of the insolvent member or members to require him to summon a meeting for the purpose of determining whether a creditors' committee should be established under that Article.”.~~

**(6) In a case where paragraph (3) applies, in the notice or advertisement the responsible insolvency practitioner must—**

**(a) if a liquidation committee has been established under Article 120, state whether he proposes to appoint additional members of the committee under Article 120A(3), or**  
**(b) if such a committee has not been established, explain the procedure for establishing one.”**

#### **14. Article 118: Rules applicable to ~~meetings of creditors~~ decision-making**

Article 118 is modified so as to read as follows—

**“118.—**

**(1) This Article applies where the High Court has made insolvency orders against an insolvent partnership and one or more of its insolvent members by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995.**

~~(2) Subject to paragraph (4), the rules relating to the requisitioning, summoning, holding and conducting of meetings on the winding up of a company are to apply (with the necessary modifications) to the requisitioning, summoning, holding and conducting of—~~

~~(a) separate meetings of the creditors of the partnership or of any corporate member against which an insolvency order has been made, and~~

~~(b) combined meetings of the creditors of the partnership and the creditors of the insolvent member or members.~~

~~(3) The rules relating to the requisitioning, summoning, holding and conducting of meetings on the bankruptcy of an individual are to apply (with the necessary modifications) to the requisitioning, summoning, holding and conducting of separate meetings of the creditors of any individual member against whom an insolvency order has been made.~~

~~(4) Any combined meeting of creditors shall be conducted as if the creditors of the partnership and of the insolvent member or members were a single set of creditors.”~~

(2) Subject to paragraph (4), the rules relating to decision making on the winding up of a company are to apply (with the necessary modifications) to—

(a) decisions sought from creditors of the partnership,

(b) decisions sought from creditors of any corporate members against which an insolvency order has been made, and

(c) decisions sought from creditors of any insolvent member where the decision is one to be made with creditors of the partnership.

(3) Subject to paragraph (4), the rules relating to decision making on the bankruptcy of an individual are to apply (with the necessary modifications) to decisions sought from creditors of any individual member against whom an insolvency order has been made (unless paragraph (2)(c) applies).

(4) Any decision to be made by the creditors of the partnership and of the insolvent member or members must be taken as if they were a single set of creditors.

## **15. Article 119: Appointment by the High Court following administration or voluntary arrangement**

Article 119 is modified so as to read as follows—

### **“119.—**

(1) This Article applies where insolvency orders are made in respect of an insolvent partnership and one or more of its insolvent members by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995.

(2) Where the orders referred to in paragraph (1) are made immediately upon the appointment of an administrator in respect of the partnership ceasing to have effect the High Court may appoint as responsible insolvency practitioner the person whose appointment as administrator has ceased to have effect.

(3) Where the orders referred to in paragraph (1) are made at a time when there is a supervisor of a voluntary arrangement approved in relation to the partnership under Part II, the High Court may appoint as responsible insolvency practitioner the person who is the supervisor at the time when the winding-up order against the partnership is made.

(4) Where the High Court makes an appointment under this Article, the official receiver does not become the responsible insolvency practitioner as otherwise provided by Article 116(2), and ~~he has no duty under Article 116A(1)(a) or (c) in respect of the summoning of the creditors' meeting.”~~ **Article 116(5)(a) and (b) do not apply.**

(5) Where—

(a) a person has been appointed under this Article to be the responsible insolvency practitioner of an insolvent partnership, and

(b) an insolvency order is subsequently made against another insolvent member by virtue of Article 8 of the Insolvent Partnerships Order

(Northern Ireland) 1995,

that practitioner is also to be the responsible insolvency practitioner of that other member.”

## **16. Articles 120, 274 and 275: Creditors' Committee: Insolvent partnership and members**

Article 120, 274 and 275 are modified so as to read as follows—

### **~~“120.—~~**

~~(1) This Article applies where—~~

~~(a) insolvency orders are made in respect of an insolvent partnership and one or more of its insolvent members by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995, and~~

~~(b) a combined meeting of creditors has been summoned for the purpose of choosing a person to be responsible insolvency practitioner of the partnership and of any such insolvent member or members.~~

~~(2) The meeting of creditors may establish a committee (“the creditors' committee”) which shall consist of creditors of the partnership or creditors of any insolvent member against whom an insolvency order has been made, or both.~~

~~(3) The responsible insolvency practitioner of the partnership and of its insolvent member or members (not being the official receiver) may at any time, if he thinks fit, summon a combined general meeting of the creditors of the partnership and of such member or members for the purpose of determining whether a creditors' committee should be established and, if it is so determined, of establishing it.~~

~~(4) The responsible insolvency practitioner (not being the official receiver) shall summon such a meeting if he is requested, in accordance with the rules, to do so by one-tenth, in value, of either—~~

~~(a) the partnership's creditors, or~~

~~(b) the creditors of any insolvent member against whom an insolvency order has been made.~~

### ***“Liquidation committee***

**120.—**(1) This Article applies where insolvency orders are made in respect of an insolvent partnership and one or more of its insolvent members by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995.

(2) If the creditors of the partnership and the creditors of any insolvent members (together as if they were a single set of creditors) decide that a liquidation committee should be established, a liquidation committee is to be established in accordance with the rules.

(3) A “liquidation committee” is a committee having such functions as

are conferred on it by or under this Order.

(4) The responsible insolvency practitioner must seek a decision from the creditors of the partnership and the creditors of any insolvent members (together as if they were a single set of creditors) as to whether a liquidation committee should be established if requested, in accordance with the rules, to do so by one-tenth in value of the creditors.

(5) Paragraph (4) does not apply where the responsible insolvency practitioner is the official receiver.”

#### **120A.— Functions and membership of creditors' committee**

(1) The committee established under Article 120 shall act as liquidation committee for the partnership and for any corporate member against which an insolvency order has been made, and as creditors' committee for any individual member against whom an insolvency order has been made, and shall as appropriate exercise the functions conferred on liquidation and creditors' committees in a winding up or bankruptcy by or under this Order.

(2) The rules relating to liquidation committees are to apply (with the necessary modifications and with the exclusion of all references to contributories) to a committee established under Article 120.

(3) Where the appointment of the responsible insolvency practitioner also takes effect in relation to a further insolvent member under ~~Article 116A(5)~~ **Article 116(9)** or 117A(3), the practitioner may appoint any creditor of that member (being qualified under the rules to be a member of the committee) to be an additional member of any ~~creditors' committee~~ **liquidation committee** already established under Article 120, provided that the creditor concerned consents to act.

(4) The High Court may at any time, on application by a creditor of the partnership or of any insolvent member against whom an insolvency order has been made, appoint additional members of the ~~creditors' committee~~ **liquidation committee**.

(5) If additional members of the ~~creditors' committee~~ **liquidation committee** are appointed under paragraph (3) or

(4), the limit on the maximum number of members of the committee specified in the rules shall be increased by the number of additional members so appointed.

(6) The ~~creditors' committee~~ **liquidation committee** is not to be able or required to carry out its functions at any time when the official receiver is responsible insolvency practitioner of the partnership and of its insolvent member or members; but at any such time its functions are vested in the Department except to the extent that the rules otherwise provide.

(7) Where there is for the time being no ~~creditors' committee~~ **liquidation committee**, and the responsible insolvency practitioner is a person other than the official receiver, the functions of such a committee are vested in the Department except to the extent that the rules otherwise provide.”.

#### **17. Articles 121, 143(4) and 278: General functions of responsible insolvency practitioner**

Articles 121, 143(4) and 278 are modified so as to read as follows—

**“121.—**

(1) The functions of the responsible insolvency practitioner of an insolvent partnership and of its insolvent member or members against whom insolvency orders have been made by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995, are to secure that the partnership property and the assets of any such corporate member, and the estate of any such individual member, are got in, realised and distributed to their respective creditors and, if there is a surplus of such property or assets or in such estate, to the persons entitled to it.

(2) In the carrying out of those functions, and in the management of the partnership property and of the assets of any corporate member and of the estate of any individual member, the responsible insolvency practitioner is entitled, subject to the provisions of this Order, to use his own discretion.

(3) It is the duty of the responsible insolvency practitioner, if he is not the official receiver—

(a) to furnish the official receiver with such information,

(b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records, and

(c) to give the official receiver such other assistance,

as the official receiver may reasonably require for the purposes of carrying out his functions in relation to the winding up of the partnership and any corporate member or the bankruptcy of an individual member.

(4) The official name of the responsible insolvency practitioner in his capacity as trustee of an individual member shall be “the trustee of the estate of . . . .a bankrupt” (inserting the name of the individual member); but he may be referred to as “the trustee in bankruptcy” of the particular member.”.

**18. Articles 124 and 304: Duty to summon final meeting of creditors**

Articles 124 and 304 are modified so as to read as follows—

**~~“124.—~~**

~~(1) This Article applies, subject to paragraph (3) and Article 305, if it appears to the responsible insolvency practitioner of an insolvent partnership which is being wound up by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995 and of its insolvent member or members that the winding up of the partnership or of any corporate member, or the administration of any individual member's estate, is for practical purposes complete and the practitioner is not the official receiver.~~

~~(2) The responsible insolvency practitioner shall summon a final general meeting of the creditors of the partnership or of the insolvent member or members (as the case may be) or a combined final general meeting of the creditors of the partnership and of the insolvent member or members which—~~

~~(a) shall as appropriate receive the practitioner's report of the winding up of the insolvent partnership or of any corporate member or of the administration of the estate of any individual member, and~~

~~(b) shall determine whether the practitioner should have his release under Article 148 in respect of the winding up of the partnership or of the corporate member, or~~

~~the administration of the individual member's estate (as the case may be).~~

~~(3) The responsible insolvency practitioner may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice of any final distribution of the partnership property or the property of the insolvent member or members; but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the practitioner is able to report to the meeting that the winding up of the partnership or of any corporate member, or the administration of any individual member's estate, is for practical purposes complete.~~

~~(4) In the carrying out of his functions in the winding up of the partnership and of any corporate member and the administration of any individual member's estate, it is the duty of the responsible insolvency practitioner to retain sufficient sums from the partnership property and the property of any such insolvent member to cover the expenses of summoning and holding any meeting required by this Article."~~

#### *"Final account*

124.—(1) This Article applies if it appears to the responsible insolvency practitioner of an insolvent partnership which is being wound up by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995 and of its insolvent member or members that the winding up of the partnership or of any corporate member, or the administration of any individual member's estate, is for practical purposes complete and the practitioner is not the official receiver.

(2) The responsible insolvency practitioner must make up an account of the winding-up or administration, showing how it has been conducted and the property disposed of.

(3) The responsible insolvency practitioner must—

(a) send a copy of the account to the creditors of the partnership, other than opted-out creditors, and

(b) give the partnership's creditors, other than opted-out creditors, a notice explaining the effect of Article 148(4E) and how they may object to the liquidator's release.

(4) The liquidator must during the relevant period send to the High Court and, in the case of a corporate member, send to the registrar—

(a) a copy of the account, and

(b) a statement of whether any of the partnership's creditors objected to the liquidator's release.

(5) The relevant period is the period of 7 days beginning with the day after the last day of the period prescribed by the rules as the period within which the creditors may object to the responsible practitioner's release."

### **19. Article 125: Power of High Court to stay proceedings**

Article 125 is modified so far as insolvent partnerships are concerned, so as to read as follows—

#### **"125.—**

(1) The High Court may, at any time after an order has been made by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995 for winding up an insolvent partnership, on the application either of the responsible insolvency practitioner or the official

receiver or any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in the winding up of the partnership ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

(2) If, in the course of hearing an insolvency petition presented against a member of an insolvent partnership, the High Court is satisfied that an application has been or will be made under paragraph (1) in respect of a winding-up order made against the partnership, the Court may adjourn the petition against the insolvent member, either conditionally or unconditionally.

(3) Where the High Court makes an order under paragraph (1) staying all proceedings on the order for winding up an insolvent partnership—

(a) the Court may, on hearing any insolvency petition presented against an insolvent member of the partnership, dismiss that petition; and

(b) if any insolvency order has already been made by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995 in relation to an insolvent member of the partnership, the Court may make an order annulling or rescinding that insolvency order, or may make any other order that it thinks fit.

(4) The High Court may, before making any order under this Article, require the official receiver to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application.”.

#### *Article 142: Liquidator’s powers on winding up*

19A. Article 142(1) has effect as if for “Parts 1 to 3” there were substituted “Parts 1 and 2”.

#### **20. Articles 143(1) to (3) and (5), 276 and 287(8) and (9): Supplementary powers of responsible insolvency practitioner**

Articles 143(1) to (3) and (5), 276 and 287(8) and (9) are modified so as to read as follows—

##### **“143.—**

(1) This Article applies where the High Court has made insolvency orders in respect of an insolvent partnership and one or more of its insolvent members by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995.

~~(2) The responsible insolvency practitioner of the partnership and of such member or members may at any time summon either separate or combined general meetings of—~~

~~(a) the creditors or contributories of the partnership, and~~

~~(b) the creditors or contributories of the member or members, for the purpose of ascertaining their wishes.~~

~~(3) It is the duty of the responsible insolvency practitioner—~~

~~(a) to summon separate meetings at such times as the creditors of the partnership or of the member (as the case may be), or the contributories of any corporate member, by resolution (either at the meeting appointing the responsible insolvency practitioner or otherwise) may direct, or whenever requested in writing to do so by one-tenth in value of such creditors or contributories (as the case may be); and~~



~~(b) to summon combined meetings at such times as the creditors of the partnership and of the member or members by resolution (either at the meeting appointing the responsible insolvency practitioner or otherwise) may direct, or whenever requested in writing to do so by one-tenth in value of such creditors.~~

(2) The responsible insolvency practitioner may seek a decision on any matter from the creditors of the partnership or of any insolvent member; and must seek a decision on a matter if requested to do so by one-tenth in value of the creditors.

(4) The responsible insolvency practitioner may apply to the High Court (in the prescribed manner) for directions in relation to any particular matter arising in the winding up of the insolvent partnership or in the winding up or bankruptcy of an insolvent member.

(5) If any person is aggrieved by an act or decision of the responsible insolvency practitioner, that person may apply to the High Court; and the Court may confirm, reverse or modify the act or decision complained of, and make such order in the case as it thinks just.”.

## **21. Articles 146 and 271; Removal etc. of responsible insolvency practitioner or of provisional liquidator**

Articles 146 and 271 are modified so as to read as follows—

### **“146.—**

(1) This Article applies with respect to the removal from office and vacation of office of—

(a) the responsible insolvency practitioner of an insolvent partnership which is being wound up by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995 and of its insolvent member or members against whom insolvency orders have been made, or

(b) a provisional liquidator of an insolvent partnership, and of any corporate member of that partnership, against which a winding-up petition is presented by virtue of that Article,

and, subject to paragraphs (6) and (7), any removal from or vacation of office under this Article relates to all offices held in the proceedings relating to the partnership.

~~(2) Subject to paragraph (3), the responsible insolvency practitioner or provisional liquidator may be removed from office only by an order of the High Court.~~

(2) Subject to paragraph (3), the responsible insolvency practitioner may be removed from office only by—

(a) an order of the High Court, or

(b) a decision, made by a creditors’ decision procedure instigated specially for that purpose in accordance with the rules, of the creditors of the partnership and the creditors of any insolvent member against whom an insolvency order has been made.

(3) If appointed by the Department, the responsible insolvency practitioner may be removed from office by a direction of the Department.

(3A) The provisional liquidator may be removed from office only by an order of the High Court.

(4) A responsible insolvency practitioner or provisional liquidator, not being the official

receiver, shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the insolvent partnership or any insolvent member of it against whom an insolvency order has been made.

(5) The responsible insolvency practitioner may, with the leave of the High Court (or, if appointed by the Department, with the leave of the Court or the Department), resign his office by giving notice of his resignation to the Court.

~~(6) Where a final meeting has been held under Article 124 (final meeting of creditors of insolvent partnership or of insolvent members), the responsible insolvency practitioner whose report was considered at the meeting shall vacate office as liquidator of the insolvent partnership or of any corporate member or as trustee of the estate of any individual member (as the case may be) as soon as he has given notice to the High Court (and, in the case of a corporate member, to the registrar) that the meeting has been held and of the decisions (if any) of the meeting.~~

(6) A responsible insolvency practitioner who, under Article 124, has produced an account of the winding-up of the partnership or of any corporate member, or an account of the administration of an individual member's estate, vacates office in relation to the partnership, that corporate member or that individual member's estate immediately upon complying with the requirements of Article 124(4) in relation to the partnership, the corporate member or (as the case may be) the estate.

(7) The responsible insolvency practitioner shall vacate office as trustee of the estate of an individual member if the insolvency order against that member is annulled.”.

## **22. Articles 148 and 272: Release of responsible insolvency practitioner or of provisional liquidator**

Articles 148 and 272 are modified so as to read as follows—  
“148.—

(1) This Article applies with respect to the release of—

- (a) the responsible insolvency practitioner of an insolvent partnership which is being wound up by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995 and of its insolvent member or members against whom insolvency orders have been made, or
- (b) a provisional liquidator of an insolvent partnership, and of any corporate member of that partnership, against which a winding-up petition is presented by virtue of that Article.

(2) Where the official receiver has ceased to be the responsible insolvency practitioner and a person is appointed in his stead, the official receiver has his release with effect from the following time, that is to say—

- (a) in a case where that person was nominated by ~~a combined general meeting of~~ **the** creditors of the partnership and of any insolvent member or members, or was appointed by the Department, the time at which the official receiver gives notice to the High Court that he has been replaced;

(b) in a case where that person is appointed by the Court, such time as the Court may determine.

(3) If the official receiver while he is a responsible insolvency practitioner gives notice to the Department that the winding up of the partnership or of any corporate member or the administration of the estate of any individual member is for practical purposes complete, he has his release as liquidator or trustee (as the case may be) with effect from such time as the Department may determine.

~~(4) A person other than the official receiver who has ceased to be a responsible insolvency practitioner has his release with effect from the following time, that is to say—~~

~~(a) in the case of a person who has died, the time at which notice is given to the High Court in accordance with the rules that that person has ceased to hold office;~~

~~(b) in the case of a person who has been removed from office by the Court or by the Department, or who has vacated office under Article 146(4), such time as the Department may, on an application by that person, determine;~~

~~(c) in the case of a person who has resigned, such time as may be directed by the Court (or, if he was appointed by the Department, such time as may be directed by the Court or as the Department may, on an application by that person, determine);~~

~~(d) in the case of a person who has vacated office under Article 146(6)—~~

~~(i) if the final meeting referred to in that paragraph has resolved against that person's release, such time as the Department may, on an application by that person, determine; and~~

~~(ii) if that meeting has not so resolved, the time at which that person vacated office.~~

(4) A person other than the official receiver who has ceased to be a responsible insolvency practitioner has his release in accordance with paragraphs (4A) to (4E).

(4A) Where the person has died, the person has his release with effect from the time at which notice is given to the High Court in accordance with the rules that the person has ceased to hold office.

(4B) Where the person has been removed from office by the High Court or by the Department, the person has his release with effect from such time as the Department may, on the application of the person, determine.

(4C) Where the person has vacated office under Article 146(4), the person has his release with effect from such time as the Department may, on the application of the person, determine.

(4D) Where the person has resigned—

(a) if the person was appointed by the Department, the person has his release with effect from such time as may be directed by the High Court or as the Department may, on an application by the person, determine;

(b) if the person was appointed otherwise than by the Department, the person has his release with effect from such time as may be directed by the High Court.

(4E) Where the person has vacated office under Article 146(6)—

(a) if any of the creditors of the partnership or of any insolvent member objected to the person's release before the end of the period for so objecting prescribed by the rules, the person has his release with effect from such time as the Department may, on the application of the person, determine;

(b) otherwise, the person has his release with effect from the time at which the person vacated office.

(5) A person who has ceased to hold office as a provisional liquidator has his release with effect from such time as the High Court may, on an application by him, determine.

(6) Where a bankruptcy order in respect of an individual member is annulled, the responsible insolvency practitioner at the time of the annulment has his release with effect from such time as the High Court may determine.

(7) Where the responsible insolvency practitioner or provisional liquidator (including in both cases the official receiver when so acting) has his release under this Article, he is, with effect from the time specified in the preceding provisions of this Article, discharged from all liability both in respect of acts or omissions of his in the winding up of the insolvent partnership or any corporate member or the administration of the estate of any individual member (as the case may be) and otherwise in relation to his conduct as responsible insolvency practitioner or provisional liquidator.

(8) Nothing in this Article prevents the exercise, in relation to a person who has had his release under this Article, of the High Court's powers under Article 176 (summary remedy against delinquent directors, liquidators, etc.) or Article 277 (liability of trustee).”.

### **23. Articles 149 and 300(1) to (3) and (6): Priority of expenses and debts**

Articles 149, 150ZZA and 300(1) to (3) and (6) ] 1 are modified so as to read as follows—

#### **“149.— Priority of expenses**

(1) The provisions of this Article shall apply in a case where Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995 applies, as regards priority of expenses incurred by a responsible insolvency practitioner of an insolvent ~~partnerships~~ **partnership**, and of any insolvent member of that partnership against whom an insolvency order has been made.

(2) The joint estate of the partnership shall be applicable in the first instance in payment of the joint expenses and the separate estate of each insolvent member shall be applicable in the first instance in payment of the separate expenses relating to that member.

(3) Where the joint estate is insufficient for the payment in full of the joint expenses, the unpaid balance shall be apportioned equally between the separate estates of the insolvent members against whom insolvency orders have been made and shall form part of the expenses to be paid out of those estates.

(4) Where any separate estate of an insolvent member is insufficient for the payment in full of the separate expenses to be paid out of that estate, the unpaid balance shall form part of the expenses to be paid out of the joint estate.

(5) Where after the transfer of any unpaid balance in accordance with paragraph (3) or (4) any estate is insufficient for the payment in full of the expenses to be paid out of that estate, the balance then remaining unpaid shall be apportioned equally between the other estates.

(6) Where after an apportionment under paragraph (5) one or more estates are insufficient

for the payment in full of the expenses to be paid out of those estates, the total of the unpaid balances of the expenses to be paid out of those estates shall continue to be apportioned equally between the other estates until provision is made for the payment in full of the expenses or there is no estate available for the payment of the balance finally remaining unpaid, in which case it abates in equal proportions between all the estates.

(7) Without prejudice to paragraphs (3) to (6), the responsible insolvency practitioner may, with the sanction of any creditors' committee established under Article 120 or with the leave of the High Court obtained on application—

(a) pay out of the joint estate as part of the expenses to be paid out of that estate any expenses incurred for any separate estate of an insolvent member; or

(b) pay out of any separate estate of an insolvent member any part of the expenses incurred for the joint estate which affects that separate estate.

#### **149A.— Priority of debts in joint estate**

(1) The provisions of this Article and Article 149B (which are subject to the provisions of section 9 of the Partnership Act 1890<sup>2</sup> as respects the liability of the estate of a deceased member) shall apply as regards priority of debts in a case where Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995 applies.

(2) After payment of expenses in accordance with Article 149 and, subject to Article 149C(2), the joint debts of the partnership shall be paid out of its joint estate in the following order of priority—

(a) the ordinary preferential debts;

(aa) the secondary preferential debts;

(b) the ordinary non-preferential debts;

(ba) the secondary non-preferential debts;

(bb) the tertiary non-preferential debts;

(c) interest under Article 160 on the joint debts (other than postponed debts);

(d) the postponed debts;

(e) interest under Article 160 on the postponed debts.

(3) The responsible insolvency practitioner shall adjust the rights among themselves of the members of the partnership as contributories and shall distribute any surplus to the members or, where applicable, to the separate estates of the members, according to their respective rights and ~~interest~~ **interests** in it.

(4) The debts referred to in each of sub-paragraphs (a) to (ba) of paragraph (2) rank equally between themselves, and in each case if the joint estate is insufficient for meeting them, they abate in equal proportions between themselves.

(5) Where the joint estate is not sufficient for the payment of the joint debts in accordance with sub-paragraphs (a), (aa) and (b) of paragraph (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

(a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and

(b) shall rank equally with the debts of the member referred to in Article 300B(1)(b).

(5A) Where the joint estate is not sufficient for the payment of the secondary non-preferential debts in accordance with sub-paragraph (ba) of paragraph (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

(a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and

(b) shall rank equally with the debts of the member referred to in Article 149B(1)(ba);

(5B) Where the joint estate is not sufficient for the payment of the tertiary non-preferential debts in accordance with sub-paragraph (bb) of paragraph (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and the aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

(a) shall be a debt payable by the responsible insolvency practitioner in each such estate, and

(b) shall rank as a debt of the member in accordance with Article 149B(1)(bc).

(6) Where the joint estate is sufficient for the payment of the joint debts in accordance with sub-paragraphs (a) to (bb) of paragraph (2) but not for the payment of interest under sub-paragraph (c) of that paragraph, the responsible insolvency practitioner shall aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

(a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and

(b) shall rank equally with the interest on the separate debts referred to in Article 149(1)(c).

(7) Where the joint estate is not sufficient for the payment of the postponed joint debts in accordance with sub-paragraph (d) of paragraph (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

(a) shall be a debt provable by the responsible insolvency practitioner in each such estate; and

(b) shall rank equally with the postponed debts of the member referred to in ~~Article 149B(1)(b)~~ Article 149B(1)(d).

(8) Where the joint estate is sufficient for the payment of the postponed joint debts in accordance with sub-paragraph (d) of paragraph (2) but not for the payment of interest under sub-paragraph (e) of that paragraph, the responsible insolvency practitioner shall aggregate the value of that interest to the extent that it has not been satisfied or is not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

(a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and

(b) shall rank equally with the interest on the postponed debts referred to in Article

149B(1)(e).

(9) Where the responsible insolvency practitioner receives any distribution from the separate estate of a member in respect of a debt referred to in **sub-paragraph (a) of paragraph (5), (5A), (5B), (6), (7) or**

(8), that distribution shall become part of the joint estate and shall be distributed in accordance with the order of priority set out in paragraph (2).

**149B.— Priority of debts in separate estate**

(1) The separate estate of each member of the partnership against whom an insolvency order has been made shall be applicable, after payment of expenses in accordance with Article 149 and subject to Article 149C(2), in payment of the separate debts of that member in the following order of priority—

- (a) the ordinary preferential debts;
- (aa) the secondary preferential debts;
- (b) the ordinary non-preferential debts (including any debt referred to in Article 149A(5)(a));
- (ba) the secondary non-preferential debts (including any debt referred to in Article 149A(5A)(a));
- (bb) the tertiary non-preferential debts;
- (bc) the debt referred to in Article 149A(5B)(a);
- (c) interest under Article 160 on the separate debts and under Article 149A(6);
- (d) the postponed debts of the member (including any debt referred to in Article 149A(7)(a));
- (e) interest under Article 160 on the postponed debts of the member and under Article 149A(8).

(2) The debts referred to in each of sub-paragraphs (a) to (ba) of paragraph (2) rank equally between themselves, and in each case if the separate estate is insufficient for meeting them, they abate in equal proportions between themselves.

(3) Where the responsible insolvency practitioner receives any distribution from the joint estate or from the separate estate of another member of the partnership against whom an insolvency order has been made, that distribution shall become part of the separate estate and shall be distributed in accordance with the order of priority set out in paragraph (1).

**149C.— Provisions generally applicable in distribution of joint and separate estates**

(1) Distinct accounts shall be kept of the joint estate of the partnership and of the separate estate of each member of that partnership against whom an insolvency order is made.

(2) No member of the partnership shall prove for a joint or separate debt in competition with the joint creditors, unless the debt has arisen—

- (a) as a result of fraud, or
- (b) in the ordinary course of a business carried on separately from the partnership business.

(3) For the purposes of establishing the value of any debt referred to in Article 149A(5)(a), (5A)(a), (5B)(a) or (7)(a), that value may be estimated by the responsible insolvency practitioner in accordance with Article 295 or (as the case may be) in accordance with the rules.



(4) Interest under Article 160 on preferential debts ranks equally with interest on ordinary non-preferential debts, secondary non-preferential debts and tertiary non-preferential debts.

(5) Article 149A and 149B are without prejudice to any provision of this Order or of any other statutory provision concerning the ranking between themselves of postponed debts and interest thereon, but in the absence of any such provision postponed debts and interest thereon rank equally between themselves.

(6) If any two or more members of an insolvent partnership constitute a separate partnership, the creditors of such separate partnership shall be deemed to be a separate set of creditors and subject to the same statutory provisions as the separate creditors of any member of the insolvent partnership.

(7) Where any surplus remains after the administration of the estate of a separate partnership, the surplus shall be distributed to the members or, where applicable, to the separate estates of the members of that partnership according to their respective rights and interests in it.

(8) Neither the official receiver, the Department nor a responsible insolvency practitioner shall be entitled to remuneration or fees under the Insolvency Rules (Northern Ireland) 1991, ~~the Insolvency Regulations (Northern Ireland) 1991 or the Insolvency (Fees) Order (Northern Ireland) 1991~~ **the Insolvency Regulations (Northern Ireland) 1996 or the Insolvency (Fees) Order (Northern Ireland) 2006** for his services in connection with—

(a) the transfer of a surplus from the joint estate to a separate estate under Article 149A(3),

(b) a distribution from a separate estate to the joint estate in respect of a claim referred to in [ Article 149A(5), (5A), (5B), (6), (7) or (8),

(c) a distribution from the estate of a separate partnership to the separate estates of the members of that partnership under paragraph (7).”.

#### **24. Articles 160 and 300(4) and (5): Interest on debts**

Articles 160 and 300(4) and (5) are modified so as to read as follows—

##### **“160.—**

(1) In the winding up of an insolvent partnership or the winding up or bankruptcy (as the case may be) of any of its insolvent members interest is payable in accordance with this Article, in the order of priority laid down by Articles 149A and 149B, on any debt proved in the winding up or bankruptcy, including so much of any such debt as represents interest on the remainder.

(2) Interest under this Article is payable on the debts in question in respect of the periods during which they have been outstanding since the winding up order was made against the partnership or any corporate member (as the case may be) or the bankruptcy order was made against any individual member.

(3) The rate of interest payable under this Article in respect of any debt (“the official rate” for the purposes of any provision of this Order in which that expression is used) is whichever is the greater of—

(a) the rate applicable to a money judgment of the High Court on the day on which the winding-up or bankruptcy order (as the case may be) was made, and



(b) the rate applicable to that debt apart from the winding up or bankruptcy.”.

*Article 164: High Court’s powers to ascertain wishes of creditors*

24A. Article 164 is modified so as to read as follows—

“164.—(1) The High Court may—

(a) as to all matters relating to the winding up of an insolvent partnership, have regard to the wishes of the creditors (as proved to it by any sufficient evidence), and

(b) if it thinks fit, for the purposes of ascertaining those wishes, direct qualifying decision procedures to be instigated or the deemed consent procedure to be used in accordance with any directions given by the Court, and appoint a person to report the result to the Court.

(2) In having regard to the wishes of the creditors, the Court must have regard to the value of each creditor’s debt.”

**25. Articles 175 and 327(3)(d): False representations to creditors**

Articles 175 and 327(3)(d) are modified so as to read as follows—

“175.—

(1) This Article applies where insolvency orders are made against an insolvent partnership and any insolvent member or members of it by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995.

(2) Any person, being a past or present officer of the partnership or a past or present officer (which for these purposes includes a shadow director) of a corporate member against which any insolvency order has been made—

(a) commits an offence if he makes any false representation or commits any other fraud for the purpose of obtaining the consent of the creditors of the partnership (or any of them) or of the creditors of any of its members (or any of such creditors) to an agreement with reference to the affairs of the partnership or of any of its members or to the winding up of the partnership or of a corporate member, or the bankruptcy of an individual member, and

(b) is deemed to have committed that offence if, prior to the winding up or bankruptcy (as the case may be), he has made any false representation, or committed any other fraud, for that purpose.”.

**26. Articles 194, 195 and 265: Appointment to office of responsible insolvency practitioner or provisional liquidator**

Articles 194, 195 and 265 are modified so as to read as follows—

“194.—

(1) This Article applies with respect to the appointment of—

(a) the responsible insolvency practitioner of an insolvent partnership which is being wound up by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995 and of one or more of its insolvent members, or

(b) a provisional liquidator of an insolvent partnership, or of any of its corporate members, against which a winding-up petition is presented by virtue of that Article,

but is without prejudice to any statutory provision under which the official receiver is to be, or may be, responsible insolvency practitioner or ~~provision~~ **provisional** liquidator.

(2) No person may be appointed as responsible insolvency practitioner unless he is, at the time of the appointment, qualified to act as an insolvency practitioner both in relation to the insolvent partnership and to the insolvent member or members.

(3) No person may be appointed as provisional liquidator unless he is, at the time of the appointment, qualified to act as an insolvency practitioner both in relation to the insolvent partnership and to any corporate member in respect of which he is appointed.

(4) If the appointment or nomination of any person to the office of responsible insolvency practitioner or provisional liquidator relates to more than one person, or has the effect that the office is to be held by more than one person, then paragraph (5) applies.

(5) The appointment or nomination shall declare whether any act required or authorised under any statutory provision to be done by the responsible insolvency practitioner or by the provisional liquidator is to be done by all or ~~any one~~ **any one** or more of the persons for the time being holding the office in question.

(6) The appointment of any person as responsible insolvency practitioner takes effect only if that person accepts the appointment in accordance with the rules. Subject to this, the appointment of any person as responsible insolvency practitioner takes effect at the time specified in his certificate of appointment.

#### **194A.— Conflicts of interest**

(1) If the responsible insolvency practitioner of an insolvent partnership being wound up by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995 and of one or more of its insolvent members is of the opinion at any time that there is a conflict of interest between his functions as liquidator of the partnership and his functions as responsible insolvency practitioner of any insolvent member, or between his functions as responsible insolvency practitioner of two or more insolvent members, he may apply to the High Court for directions.

(2) On an application under paragraph (1), the High Court may, without prejudice to the generality of its power to give directions, appoint one or more insolvency practitioners either in place of the applicant to act as responsible insolvency practitioner of both the partnership and its insolvent member or members or to act as joint responsible insolvency practitioner with the applicant.”.

### **27. Article 198: Getting in the partnership property**

Article 198 is modified, so far as insolvent partnerships are concerned, so as to read as follows—

#### **“198.—**

(1) This Article applies where—

(a) insolvency orders are made by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995 in respect of an insolvent partnership and its insolvent member or members, or

(b) a provisional liquidator of an insolvent partnership and any of its corporate

members is appointed by virtue of that Article;  
and “the office-holder” means the liquidator or the provisional liquidator, as the case may be.

(2) Any person who is or has been an officer of the partnership, or who is an executor or administrator of the estate of a deceased officer of the partnership, shall deliver up to the office-holder, for the purposes of the exercise of the office-holder's functions under this Order and (where applicable) [ the Company Directors Disqualification (Northern Ireland) Order 2002, possession of any partnership property which he holds for the purposes of the partnership.

(3) Where any person has in his possession or control any property, books, papers or records to which the partnership appears to be entitled, the High Court may require that person forthwith (or within such period as the Court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the office-holder or as the Court may direct.

(4) Where the office-holder—

(a) seizes or disposes of any property which is not partnership property, and  
(b) at the time of seizure or disposal believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the High Court or otherwise) to seize or dispose of that property,  
paragraph (5) has effect.

(5) In that case the office-holder—

(a) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the office-holder's own negligence, and  
(b) has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.”.

#### *Article 208ZE: Decisions by creditors: general*

27ZA. Article 208ZE and Article 345A are modified so as to read as follows—

“208ZE.—(1) This Article applies where, for the purposes of this Order, a person (“P”) seeks a decision about any matter from—

(a) the creditors of a partnership,  
(b) the creditors of a corporate member against which an insolvency order has been made,  
(c) the creditors of an individual member against whom an insolvency order has been made, or  
(d) the creditors of a partnership and of any insolvent members (together as if they were a single set of creditors).

(2) The decision may be made by any relevant decision procedure P thinks fit, except that it may not be made by a creditors’ meeting unless paragraph (3) applies.

(3) This paragraph applies if at least the minimum number of creditors make a request to P in writing that the decision be made by a creditors’ meeting.

- (4) If paragraph (3) applies, P must summon a creditors' meeting.
- (5) Paragraph (2) is subject to any provision of this Order, the rules or any other legislation, or any order of the High Court—
- (a) requiring a decision to be made, or prohibiting a decision from being made, by a particular relevant decision procedure (other than a creditors' meeting);
  - (b) permitting or requiring a decision to be made by a creditors' meeting.
- (6) Article 208ZF provides that in certain cases the deemed consent procedure may be used instead of a relevant decision procedure.
- (7) For the purposes of paragraph (3) the "minimum number" of creditors is any of the following—
- (a) 10% in value of the creditors;
  - (b) 10% in number of the creditors;
  - (c) 10 creditors.
- (8) The references in paragraph (7) to creditors are to creditors of any class, even where a decision is sought only from creditors of a particular class.
- (9) In this Article references to a meeting are to a meeting where the creditors are invited to be present together at the same place (whether or not it is possible to attend the meeting without being present at that place).
- (10) Except as provided by paragraph (8), references in this Article to creditors include creditors of a particular class.
- (11) In this Order—
- "relevant decision procedure" means—
- (a) in the case of a decision sought only from the creditors of an individual member against whom an insolvency order has been made, creditors' decision procedure, and
  - (b) in any other case mentioned in paragraph (1), qualifying decision procedure;
- "qualifying decision procedure" means a procedure prescribed or authorised under paragraph 8A of Schedule 5;
- "creditors' decision procedure" means a procedure prescribed or authorised under paragraph 9A of Schedule 6."

*Article 208ZF: Deemed consent procedure*

27ZB. Article 208ZF and Article 345B are modified so as to read as follows—

- "208ZF.—(1) The deemed consent procedure may be used instead of a relevant decision procedure where any of the following are to make a decision about any matter—
- (a) the creditors of a partnership,
  - (b) the creditors of a corporate member against which an insolvency order has been made,
  - (c) the creditors of an individual member against whom an insolvency order has been made, or
  - (d) the creditors of a partnership and of any insolvent members (together as if they were a single set of creditors),
- unless paragraph (2) applies.
- (2) This paragraph applies where—

- (a) a decision about the matter is required by virtue of this Order, the rules or any other legislation to be made by a relevant decision procedure, or
- (b) the High Court orders that a decision about the matter is to be made by a relevant decision procedure.
- (3) If the rules provide for the creditors of a partnership, the creditors of a corporate member against which an insolvency order has been made, the creditors of an individual member against whom an insolvency order has been made or the creditors of a partnership and of any insolvent members to make a decision about the remuneration of any person, they must provide that the decision is to be made by a relevant decision procedure.
- (4) The deemed consent procedure is that the relevant creditors other than opted-out creditors are given notice of—
  - (a) the matter about which they are to make a decision,
  - (b) the decision that the person giving the notice proposes should be made (the “proposed decision”),
  - (c) the effect of paragraphs (5) and (6), and
  - (d) the procedure for objecting to the proposed decision.
- (5) If less than the appropriate number of relevant creditors object to the proposed decision in accordance with the procedure set out in the notice, the creditors are to be treated as having made the proposed decision.
- (6) Otherwise—
  - (a) the creditors are to be treated as not having made a decision about the matter in question, and
  - (b) if a decision about that matter is again sought from the creditors it must be sought using a relevant decision procedure.
- (7) For the purposes of paragraph (5) the “appropriate number” of relevant creditors is 10% in value of those creditors.
- (8) “Relevant creditors” means the creditors who, if the decision were to be made by a relevant decision procedure, would be entitled to vote in the procedure.
- (9) In this Article references to creditors include creditors of a particular class.”.

## **27A.**

Article 256A: Individual member's home ceasing to form part of estate  
Article ~~256A~~ 256A is modified so as to read as follows:—

### **“256A.—**

- (1) This Article applies where property comprised in the estate of an individual member consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—
  - (a) the individual member;
  - (b) the individual member's spouse or civil partner, or
  - (c) a former spouse or former civil partner of the individual member.
- (2) At the end of the period of 3 years beginning with the date of the bankruptcy the interest mentioned in paragraph (1) shall—
  - (a) cease to be comprised in the individual member's estate, and
  - (b) vest in the individual member (without conveyance, assignment or transfer).

(3) Paragraph (2) shall not apply if during the period mentioned in that paragraph—

- (a) the trustee realises the interest mentioned in paragraph (1),
- (b) the trustee applies for an order for sale in respect of the dwelling-house,
- (c) the trustee applies for an order for possession of the dwelling-house,
- (d) the trustee applies for an order under Article 286 in Chapter IV in respect of that interest, or
- (e) the trustee and the individual member agree that the individual member shall incur a specified liability to his estate (with or without the addition of interest from the date of the agreement) in consideration of which the interest mentioned in paragraph (1) shall cease to form part of the estate.

(4) Where an application of a kind described in paragraph (3)(b) to (d) is made during the period mentioned in paragraph (2) and is dismissed, unless the High Court orders otherwise the interest to which the application relates shall on the dismissal of the application—

- (a) cease to be comprised in the individual member's estate, and
- (b) vest in the individual member (without conveyance, assignment or transfer).

(5) If the individual member does not inform the trustee or the official receiver of his interest in a property before the end of the period of 3 months beginning with the date of the bankruptcy, the period of 3 years mentioned in paragraph (2)—

- (a) shall not begin with the date of the bankruptcy, but
- (b) shall begin with the date on which the trustee or official receiver becomes aware of the individual member's interest.

(6) The High Court may substitute for the period of 3 years mentioned in paragraph (2) a longer period—

- (a) in prescribed circumstances, and
- (b) in such other circumstances as the Court thinks appropriate.

(7) The rules may make provision for this Article to have effect with the substitution of a shorter period for the period of 3 years mentioned in paragraph (2) in specified circumstances (which may be described by reference to action to be taken by a trustee in bankruptcy).

(8) The rules may also, in particular, make provision—

- (a) requiring or enabling the trustee of an individual member's estate to give notice that this Article applies or does not apply;
- (b) about the effect of a notice under sub-paragraph (a);
- (c) requiring the trustee of an individual member's estate to make an application to the Land Registry or the Registry of Deeds.

(9) Rules under paragraph (8)(b) may, in particular—

- (a) disapply this Article;
- (b) enable the High Court to disapply this Article;
- (c) make provision in consequence of a disapplication of this Article;
- (d) enable the Court to make provision in consequence of a disapplication of this Article;
- (e) make provision (which may include provision conferring jurisdiction on a court or tribunal) about compensation.”.

## **28. Article 257: Individual member: Restrictions on dispositions of property**

Article 257 is modified so as to read as follows—

### **“257.—**

(1) Where an individual member is adjudged bankrupt by virtue of Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995, any disposition of property made by that member in the period to which this Article applies is void except to the extent that it is or was made with the consent of the High Court, or is or was subsequently ratified by the Court.

(2) Paragraph (1) applies to a payment (whether in cash or otherwise) as it applies to a disposition of property and, accordingly, where any payment is void by virtue of that paragraph, the person paid shall hold the sum paid for the individual member as part of his estate.

(3) This Article applies to the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting, under Articles 278 to 308, of the individual member's estate in a trustee.

(4) The preceding provisions of this Article do not give a remedy against any person—

(a) in respect of any property or payment which he received before the commencement of the bankruptcy in good faith, for value and without notice that the petition had been presented, or

(b) in respect of any interest in property which derives from an interest in respect of which there is, by virtue of this paragraph, no remedy.

(5) Where after the commencement of his bankruptcy the individual member has incurred a debt to a banker or other person by reason of the making of a payment which is void under this Article, that debt is deemed for the purposes of any provision of this Order to have been incurred before the commencement of the bankruptcy unless—

(a) that banker or person had notice of the bankruptcy before the debt was incurred, or

(b) it is not reasonably practicable for the amount of the payment to be recovered from the person to whom it was made.

(6) A disposition of property is void under this Article notwithstanding that the property is not or, as the case may be, would not be comprised in the individual member's estate; but nothing in this Article affects any disposition made by a person of property held by him on trust for any other person other than a disposition made by an individual member of property held by him on trust for the partnership.”.

### **28A.**

Article 286A: Low value home: application for sale, possession or charge

Article 286A is modified so as to read as follows:—

### **“286A.—**

(1) This Article applies where—

(a) property comprised in the individual member's estate consists of an interest in

a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

- (i) the individual member,
  - (ii) the individual member's spouse or civil partner, or
  - (iii) a former spouse or former civil partner of the individual member, and
- (b) the trustee applies for an order for the sale of the property, for an order for possession of the property or for an order under Article 286 in respect of the property.

(2) The High Court shall dismiss the application if the value of the interest is below such amount as may for the time being be specified for the purposes of this paragraph by Order under Article 362(1)(b).

(3) In determining the value of an interest for the purposes of this Article the High Court shall disregard any matter which it is required to disregard by the order which specifies the amount for the purposes of paragraph (2).”.

**29.**

Schedule 2 is modified so as to read as follows—

**“SCHEDULE 2**

**Powers of Liquidator in a Winding up**

**Article 142**

**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 partnership, or whereby the partnership may be rendered liable.

**3.**

Power to compromise, on such terms as may be agreed—

- (a) 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 partnership and a contributory or alleged contributory or other debtor or person apprehending liability to the partnership, and
  - (b) all questions in any way relating to or affecting the partnership property or the winding up of the partnership
- and take any security for the discharge of any such debt, liability or claim and give a complete discharge in respect of it.



**3A.**

Power to bring legal proceedings under Article 177, 178, 202, 203 or 367.

**4.**

Power to bring or defend any action or other legal proceeding in the name and on behalf of any member of the partnership in his capacity as such or of the partnership.

**5.**

Power to carry on the business of the partnership so far as may be necessary for its beneficial winding up.

**PART II**

**~~POWERS EXERCISABLE WITHOUT SANCTION~~**

**6.**

Power to sell any of the partnership property.

**7.**

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.

**8.**

Power to do all acts and execute, in the name and on behalf of the partnership or of any member of the partnership in his capacity as such, all deeds, receipts and other documents.

**9.**

Power to prove, rank and claim in the bankruptcy or insolvency of any contributory for any balance against his estate, and to receive dividend 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 any member of the partnership in his capacity as such or of the partnership, with the same effect with respect to the liability of the partnership or of any member of the partnership in his capacity as such as if the bill or note had been drawn, accepted, made or endorsed in the course of the partnership's business.

**11.**

Power to raise on the security of the partnership property any money requisite.

**12.—**

(1) Power to take out in his official name 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 partnership.

(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 partnership's affairs and distributing its property.”

**30.**

The entry in Schedule 7 in relation to an offence under Article 111(7) is modified so as to read as follows—

“111(8)	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.”.
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**31.**

The entry in Schedule 7 in relation to an offence under Article 175(1) is modified so as to read as follows—

“175(2)	False representation or fraud for purpose of obtaining creditors' consent to an agreement in connection with winding up or bankruptcy.	1. On indictment. 2. Summary	7 years or a fine or both. 6 months or the statutory maximum, or both.”.	
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## **SCHEDULE 5**

### **Provisions of the Order which apply with modifications for the purposes of Article 9 to Winding up of Insolvent Partnership on Member's petition where no Concurrent Petition presented against Member**

#### **Article 185: Winding up of unregistered companies**

Article 185 is modified so as to read as follows—

**“185.—**

(1) Subject to paragraphs (2) and (3) and to the provisions of this Part, any insolvent partnership which has, or at any time had, a principal place of business in Northern Ireland may be wound up under this Order.

(2) Subject to paragraph (3), an insolvent partnership shall not be wound up under this Order if the business of the partnership has not been carried on in Northern Ireland at any time in the period of 3 years ending with the day on which the winding-up petition is presented.

(3) If an insolvent partnership has a principal place of business situated in England and Wales or Scotland, the High Court shall not have jurisdiction to wind up the partnership unless it had a principal place of business in Northern Ireland—

(a) in the case of a partnership with a principal place of business in England or Wales, at any time in the period of 3 years, or

(b) in the case of a partnership with a principal place of business in Scotland, at any time in the period of 1 year, ending with the day on which the winding-up petition is presented.

(3A) The preceding paragraphs are subject to Article 3 of the ~~EC Regulation~~ **EU Regulation** (jurisdiction under the ~~EC Regulation~~ **EU Regulation**).

(4) No insolvent partnership shall be wound up under this Order voluntarily.

(5) To the extent that they are applicable to the winding up of a company by the High Court on a member's petition or on a petition by the company, all the provisions of this Order ~~and the Companies Order~~ about winding up apply to the winding up of an insolvent partnership as an unregistered company.

(a) with the exceptions and additions mentioned in paragraphs (6), (7) and (8) and in Article 185A, and

(b) with the modifications specified in Part II of Schedule 3 to the Insolvent Partnerships Order (Northern Ireland) 1995.

(6) Articles 8, 60(1), 61(2)(a) to (d) and (3), ~~62~~ **63** to 65, 69, 102, 103, 104(2) ~~to (4)~~ and **(3)**, 150A and 167 to 169 shall not apply.

(7) The circumstances in which an insolvent partnership may be wound up as an unregistered company are as follows—

(a) if the partnership is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(b) if the partnership is unable to pay its debts;

(c) if the High Court is of the opinion that it is just and equitable that the partnership should be wound up.

(8) Every petition for the winding up of an insolvent partnership under Part VI shall be verified by affidavit in Form 2 in Schedule 9 to the Insolvent Partnerships Order (Northern Ireland) 1995.

#### **185A.— Who may present petition**

(1) A petition for winding up an insolvent partnership may be presented by any member of the partnership if the partnership consists of not less than 8 members.

(2) A petition for winding up an insolvent partnership may also be presented by any member of it with the leave of the High Court (obtained on his application) if the Court is satisfied that—

(a) the member has served on the partnership, by leaving at a principal place of business of the partnership in Northern Ireland, or by delivering to an officer of the partnership, or by otherwise serving in such manner as the Court may approve or direct, a written demand in Form 10 in Schedule 9 to the Insolvent Partnerships Order (Northern Ireland) 1995 in respect of a joint debt or debts exceeding £750

then due from the partnership but paid by the member, other than out of partnership property;

(b) the partnership has for 3 weeks after the service of the demand neglected to pay the sum or to secure or Compound for it to the member's satisfaction; and

(c) the member has obtained a judgment, decree or order of any court against the partnership for reimbursement to him of the amount of the joint debt or debts so paid and all reasonable steps (other than insolvency proceedings) have been taken by the member to enforce that judgment, decree or order.

(3) Paragraph (2)(a) is deemed included in the list of provisions specified in paragraph (1) of Article 362 for the purposes of the Department's order-making power under that Article.”.

## **SCHEDULE 6**

### **Provisions of the Order which apply with modifications for the purposes of Article 10 to Winding up of Insolvent Partnership on Member's Petition where Concurrent Petitions are presented against all the Members**

#### **Article 10**

#### **1. Articles 104, 238 and 246: Applications to wind up insolvent partnership and to wind up or bankrupt members**

Articles 104, 238 and 246 are modified so as to read as follows—

##### **“104.—**

(1) An application to the High Court by a member of an insolvent partnership by virtue of Article 10 of the Insolvent Partnerships Order (Northern Ireland) 1995 for the winding up of the partnership as an unregistered company and the winding up or bankruptcy (as the case may be) of all its members shall—

(a) in the case of the partnership, be by petition in Form 11 in Schedule 9 to that Order,

(b) in the case of a corporate member, be by petition in Form 12 in that Schedule, and

(c) in the case of an individual member, be by petition in Form 13 in that Schedule.

(2) Subject to paragraph (3), a petition under paragraph (1)(a) may only be presented by a member of the partnership on the grounds that the partnership is unable to pay its debts and if—

(a) petitions are at the same time presented by that member for insolvency orders against every member of the partnership (including himself or itself); and

(b) each member is willing for an insolvency order to be made against him or it and the petition against him or it contains a statement to this effect.

(3) If the High Court is satisfied, on application by any member of an insolvent partnership, that presentation of petitions under paragraph (1) against the partnership and every member of it would be impracticable, the Court may direct that petitions be presented against the partnership and such member or members of it as are specified by the Court.

(4) The petitions mentioned in paragraph (1)—

(a) shall, except as the High Court otherwise permits or directs, be presented on the

same day, and

(b) except in the case of the petition mentioned in paragraph (1)(c) shall be advertised in Form 8 in the said Schedule 9.

(5) Each petition presented under this Article shall contain particulars of the other petitions being presented in relation to the partnership, identifying the partnership and members concerned.

(6) The hearing of the petition against the partnership fixed by the High Court shall be in advance of the hearing of the petitions against the insolvent members.

(7) On the day appointed for the hearing of the petition against the partnership, the petitioner shall, before the commencement of the hearing, hand to the High Court Form 9 in Schedule 9 to the Insolvent Partnerships Order (Northern Ireland) 1995, duly completed.

(8) Any person against whom a winding-up or bankruptcy petition has been presented in relation to the insolvent partnership is entitled to appear and to be heard on any petition for the winding up of the partnership.

(9) A petitioner under this Article may at the hearing withdraw the petition if—

(a) subject to paragraph 10, he withdraws at the same time every other petition which he has presented under this Article; and

(b) he gives notice to the High Court at least 3 days before the date appointed for the hearing of the relevant petition of his intention to withdraw the petition.

(10) A petitioner need not comply with the provisions of paragraph (9)(a) in the case of a petition against a member, if the High Court is satisfied on application made to it by the petitioner that, because of difficulties in serving the petition or for any other reason, the continuance of that petition would be likely to prejudice or delay the proceedings on the petition which he has presented against the partnership or on any petition which he has presented against any other insolvent member.”.

## **2. Articles 105 and 245: Powers of High Court on hearing of petitions against insolvent partnership and members**

Articles 105 and 245 are modified so as to read as follows—

### **“105.—**

(1) Subject to the provisions of Article 105A, on hearing a petition under Article 104 against an insolvent partnership or any of its insolvent members, the High Court may dismiss it, or adjourn the hearing conditionally or unconditionally or make any other order that it thinks fit; but the Court shall not refuse to make a winding-up order against the partnership or a corporate member on the ground only that the partnership property or (as the case may be) the member's assets have been mortgaged to an amount equal to or in excess of that property or those assets, or that the partnership has no property or the member no assets.

(2) An order under paragraph (1) in respect of an insolvent partnership may contain directions as to the future conduct of any insolvency proceedings in existence against any insolvent member in respect of whom an insolvency order has been made.

### **105A.— Hearing of petitions against members**

(1) On the hearing of a petition against an insolvent member the petitioner shall draw the High Court's attention to the result of the hearing of the winding-up petition against the partnership and paragraphs (2) to (7) shall apply.

(2) If the High Court has neither made a winding-up order, nor dismissed the winding-up petition against the partnership the Court may adjourn the hearing of the petition against the member until either event has occurred.

(3) Subject to paragraph (4), if a winding-up order has been made against the partnership, the High Court may make a winding-up order against the corporate member in respect of which, or (as the case may be) a bankruptcy order against the individual member in respect of whom, the insolvency petition was presented.

(4) If no insolvency order is made under paragraph (3) against any member within 28 days of the making of the winding-up order against the partnership, the proceedings against the partnership shall be conducted as if the winding-up petition against the partnership had been presented by virtue of Article 7 of the Insolvent Partnerships Order (Northern Ireland) 1995 and the proceedings against any member shall be conducted under this Order without the modifications made by that Order (other than the modification made to Articles 143 and 276 by Article 15 of that Order).

(5) If the High Court has dismissed the winding-up petition against the partnership, the Court may dismiss the winding-up petition against the corporate member or (as the case may be) the bankruptcy petition against the individual member. However, if an insolvency order is made against a member, the proceedings against that member shall be conducted under this Order without the modifications made by the Insolvent Partnerships Order (Northern Ireland) 1995 (other than the modifications made to Articles 143 and 176 by Article 15 of that Order).

(6) The High Court may dismiss a petition against an insolvent member if it considers it just to do so because of a change in circumstances since the making of the winding-up order against the partnership.

(7) The High Court may dismiss a petition against an insolvent member who is a limited partner, if—

(a) the member lodges in Court for the benefit of the creditors of the partnership sufficient money or security to the Court's satisfaction to meet his liability for the debts and obligations of the partnership; or

(b) the member satisfies the Court that he is no longer under any liability in respect of the debts and obligations of the partnership.”.

### **3. Article 185: Winding up of unregistered companies**

Article 185 is modified so as to read as follows—

#### **“185.—**

(1) Subject to paragraphs (2) and (3) and to the provisions of this Part, any insolvent partnership which has, or at any time had, a principal place of business in Northern Ireland may be wound up under this Order.

(2) Subject to paragraph (3), an insolvent partnership shall not be wound up under this Order if the business of the partnership has not been carried on in Northern Ireland at any time in the period of 3 years ending with the day on which the winding-up petition is presented.

(3) If an insolvent partnership has a principal place of business situated in England and Wales or Scotland, the High Court shall not have jurisdiction to wind up the partnership unless it had a principal place of business in Northern Ireland—

(a) in the case of a partnership with a principal place of business in England and Wales, at any time in the period of 3 years, or

(b) in the case of a partnership with a principal place of business in Scotland, at any time in the period of 1 year ending with the day on which the winding-up petition is presented.

(3A) The preceding paragraphs are subject to Article 3 of the ~~EC Regulation~~ **EU Regulation** (jurisdiction under the ~~EC Regulation~~ **EU Regulation**).

(4) No insolvent partnership shall be wound up under this Order voluntarily.

(5) To the extent that they are applicable to the winding up of a company by the High Court on a member's petition, all the provisions of this Order ~~and the Companies Order~~ about winding up apply to the winding up of an insolvent partnership as an unregistered company—

(a) with the exceptions and additions mentioned in paragraphs (6) to (9), and

(b) with the modifications specified in Part II of Schedule 4 to the Insolvent Partnerships Order (Northern Ireland) 1995.

(6) Articles 8, 60(1), 61(2)(a) to (d) and (3), ~~62~~ **63** to 65, 69, 104(2) ~~to (4)~~ **and (3)**, 132, 150A, 167

to 169 shall not apply.

(7) Unless the contrary intention appears, the members of the partnership against whom insolvency orders are made by virtue of Article 10 of the Insolvent Partnerships Order (Northern Ireland) 1995 shall not be treated as contributories for the purposes of this Order.

(8) The circumstances in which an insolvent partnership may be wound up as an unregistered company are that the partnership is unable to pay its debts.

(9) Every petition for the winding up of an insolvent partnership under Part VI shall be verified by affidavit in Form 2 in Schedule 9 to the Insolvent Partnerships Order (Northern Ireland) 1995.”.

## **SCHEDULE 7**

**Provisions of the Order which apply with modifications for the purposes of Article 11 where Joint Bankruptcy Petition is presented by Individual Members without Winding up Partnership as Unregistered Company**

### **Article 11**

**1.—**

(1) The provisions of the Order specified in sub-paragraph (2), are set out as modified in this

Schedule.

(2) The provisions referred to in sub-paragraph (1) are Articles 11, 238 to 240, 246, 256A, 257, 263, ~~265 to 274~~ 265, 269, 271 to 274, 278, 285, 286A, 300, 304 and 347.

## **2. Article 11: Definition of member's estate**

Article 11 is modified so as to read as follows—

**“11.—**

(1) Subject to the following provisions of this Article, a member's estate for the purposes of this Order comprises—

(a) all property belonging to or vested in the member at the commencement of the bankruptcy, and

(b) any property which by virtue of any of the provisions of this Order or Article 88(3) or 90(3) of the Judgments Enforcement (Northern Ireland) Order 1981, (effect of bankruptcy or winding up on enforcement of judgments and proceeds of such enforcement) is comprised in that estate or is treated as falling within sub-paragraph (a);

(2) Subject to Article 281 (certain excluded property reclaimable by trustee), paragraph (1) does not apply to—

(a) such tools, books, vehicles and other items of equipment as are not partnership property and as are necessary to the member for use personally by him in his employment, business or vocation;

(b) such clothing, bedding, furniture, household equipment and provisions as are not partnership property and as are necessary for satisfying the basic domestic needs of the member and his family.

(3) Paragraph (1) does not apply to property held by the member on trust for any other person.

(4) References in any provision of this Order to property, in relation to a member, include references to any power exercisable by him over or in respect of property except in so far as the power is exercisable over or in respect of property not for the time being comprised in the member's estate and—

(a) is so exercisable at a time after either the official receiver has had his release in respect of that estate under Article 272(2) or ~~a meeting summoned by the trustee of that estate under Article 304 has been held~~ the trustee of that estate has vacated office under Article 271(6), or

(b) cannot be so exercised for the benefit of the member;  
and a power exercisable over or in respect of property is deemed for the purposes of any provision of this Order to vest in the person entitled to exercise it at the time of the transaction or event by virtue of which it is exercisable by that person (whether or not it becomes so exercisable at that time).

(5) For the purposes of any such provision of this Order, property comprised in a member's estate is so comprised subject to the rights of any person other than the member (whether as a secured creditor of the member or otherwise) in relation thereto, but disregarding any rights which have been given up in accordance with the rules.



(6) This Article has effect subject to the provisions of any statutory provision not contained in this Order under which any property is to be excluded from a bankrupt's estate.”.

Sch. 7 para. 2: Northern Ireland

### **3. Article 238: Presentation of joint bankruptcy petition**

Article 238 is modified so as to read as follows—

**“238.—**

(1) Subject to Article 240(1), a joint bankruptcy petition may be presented to the High Court by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995 by all the members of an insolvent partnership in their capacity as such provided that all the members are individuals and none of them is a limited partner.

(2) A petition may not be presented under paragraph (1) by the members of an insolvent partnership if the partnership—

(a) has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits, other than such a permission only for the purpose of carrying on another regulated activity in accordance with that permission, or

(b) continues to have a liability in respect of a deposit which was held by it in accordance with the Banking Act 1979 or the Banking Act 1987.

(3) The petition—

(a) shall be in Form 14 in Schedule 9 to the Insolvent Partnerships Order (Northern Ireland) 1995; and

(b) shall contain a request that the trustee shall wind up the partnership business and administer the partnership property without the partnership being wound up as an unregistered company under Part VI.

(4) The petition shall either—

(a) be accompanied by an affidavit in Form 15 in Schedule 9 to the Insolvent Partnerships Order (Northern Ireland) 1995 made by the member who signs the petition, showing that all the members are individual members (and that none of them is a limited partner) and concur in the presentation of the petition, or

(b) contain a statement that all the members are individual members and be signed by all the members.

(5) On presentation of a petition under this Article, the High Court may make orders in Form 16 in Schedule 9 to the Insolvent Partnerships Order (Northern Ireland) 1995 for the bankruptcy of the members and the winding up of the partnership business and administration of its property.”.

### **4. Article 239: Conditions to be satisfied in respect of members**

Article 239 is modified so as to read as follows—

**“239.—**

~~(1) Subject to the provisions of this Article, a joint bankruptcy petition by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995 may be presented to the~~

~~High Court if the partnership has, or at any time had, a principal place of business in Northern Ireland.~~

~~(2) A joint bankruptcy petition shall not be presented to the High Court by virtue of the said Article 11 unless the business of the partnership has been carried on in Northern Ireland at any time in the period of 3 years ending with the day on which the joint bankruptcy petition is presented.”~~

239.—(1) A joint bankruptcy petition may be presented to the High Court by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995 only if—

- (a) the centre of the partnership’s main interests is in Northern Ireland,
- (b) the centre of the partnership’s main interests is in a member State of the European Union other than Denmark and the partnership has an establishment in Northern Ireland, or
- (c) the test in paragraph (2) is met.

(2) The test is that the partnership has carried on business in Northern Ireland at any time in the period of three years ending with the day on which the petition is presented.

(3) The reference in paragraph (2) to the partnership carrying on business includes the carrying on of business by an agent or manager for the partnership.

(4) In this Article—

- (a) references to the centre of the partnership’s main interests have the same meaning as in Article 3 of the EU Regulation;
- (b) “establishment” has the same meaning as in Article 2(10) of the EU Regulation.

## **5. Article 240: Other preliminary conditions**

Article 240 is modified so as to read as follows—

**“240.—**

(1) If the High Court is satisfied, on application by any member of an insolvent partnership, that the presentation of the petition under Article 238(1) by all the members of the partnership

would be impracticable, the Court may direct that the petition be presented by such member or members as are specified by the Court.

(2) A joint bankruptcy petition shall not be withdrawn without the leave of the High Court.

(3) The High Court has a general power, if it appears to it appropriate to do so on the grounds that there has been a contravention of the rules or for any other reason, to dismiss a joint bankruptcy petition or to stay proceedings on such a petition; and, where it stays proceedings on a petition, it may do so on such terms and conditions as it thinks fit.”.

## **6. Article 246: Grounds of joint bankruptcy petition**

Article 246 is modified so as to read as follows—

**“246.—**

(1) A joint bankruptcy petition may be presented to the High Court by the members of a partnership only on the grounds that the partnership is unable to pay its debts.

(2) The petition shall be accompanied by—

(a) a statement of each member's affairs in Form 17 in Schedule 9 to the Insolvent Partnerships Order (Northern Ireland) 1995, and

(b) a statement of the affairs of the partnership in Form 18 in that Schedule, sworn by one or more members of the partnership.

(3) The Statements of affairs required by paragraph (2) shall contain—

(a) particulars of the member's or (as the case may be) partnership's creditors, debts and other liabilities and of their assets, and

(b) such other information as is required by the relevant form.”.

## **6A.**

Article 256A: Individual member's home ceasing to form part of estate

Article 256A is modified so as to read as follows:—

### **“256A.—**

(1) This Article applies where property comprised in the estate of an individual member consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

(a) the individual member;

(b) the individual member's spouse or civil partner, or

(c) a former spouse or former civil partner of the individual member.

(2) At the end of the period of 3 years beginning with the date of the bankruptcy the interest mentioned in paragraph (1) shall—

(a) cease to be comprised in the individual member's estate, and

(b) vest in the individual member (without conveyance, assignment or transfer).

(3) Paragraph (2) shall not apply if during the period mentioned in that paragraph—

(a) the trustee realises the interest mentioned in paragraph (1),

(b) the trustee applies for an order for sale in respect of the dwelling-house,

(c) the trustee applies for an order for possession of the dwelling-house;

(d) the trustee applies for an order under Article 286 in Chapter IV in respect of that interest, or

(e) the trustee and the individual member agree that the individual member shall incur a specified liability to his estate (with or without the addition of interest from the date of the agreement) in consideration of which the interest mentioned in paragraph (1) shall cease to form part of the estate.

(4) Where an application of a kind described in paragraph (3)(b) to (d) is made during the period mentioned in paragraph (2) and is dismissed, unless the High Court orders otherwise the interest to which the application relates shall on the dismissal of the application—

(a) cease to be comprised in the individual member's estate, and

(b) vest in the individual member (without conveyance, assignment or transfer).

(5) If the individual member does not inform the trustee or the official receiver of his interest

in a property before the end of the period of 3 months beginning with the date of the bankruptcy, the period of 3 years mentioned in paragraph (2)—

(a) shall not begin with the date of the bankruptcy, but

(b) shall begin with the date on which the trustee or official receiver becomes aware of the individual member's interest.

(6) The High Court may substitute for the period of 3 years mentioned in paragraph (2) a longer period—

(a) in prescribed circumstances, and

(b) in such other circumstances as the Court thinks appropriate.

(7) The rules may make provision for this Article to have effect with the substitution of a shorter period for the period of 3 years mentioned in paragraph (2) in specified circumstances (which may be described by reference to action to be taken by a trustee in bankruptcy).

(8) The rules may also, in particular, make provision—

(a) requiring or enabling the trustee of an individual member's estate to give notice that this Article applies or does not apply;

(b) about the effect of a notice under sub-paragraph (a);

(c) requiring the trustee of an individual member's estate to make an application to the Land Registry or the Registry of Deeds.

(9) Rules under paragraph (8)(b) may, in particular—

(a) disapply this Article;

(b) enable the High Court to disapply this Article;

(c) make provision in consequence of a disapplication of this Article;

(d) enable the Court to make provision in consequence of a disapplication of this Article;

(e) make provision (which may include provision conferring jurisdiction on a court or tribunal) about compensation.”.

## **7. Repealed**

## **8. Article 257: Restrictions on dispositions of property**

Article 257 is modified so as to read as follows—

### **“257.—**

(1) Where a member is adjudged bankrupt on a joint bankruptcy petition, any disposition of property made by that member in the period to which this Article applies is void except to the extent that it is or was made with the consent of the High Court, or is or was subsequently ratified by the Court.

(2) Paragraph (1) applies to a payment (whether in cash or otherwise) as it applies to a disposition of property and, accordingly, where any payment is void by virtue of that paragraph, the person paid shall hold the sum paid for the member as part of his estate.

(3) This Article applies to the period beginning with the day of the presentation of the joint bankruptcy petition and ending with the vesting, under Articles 278 to 308, of the member's estate in a trustee.

(4) The preceding provisions of this Article do not give a remedy against any person—  
(a) in respect of any property or payment which he received before the commencement of the bankruptcy in good faith, for value, and without notice that the petition had been presented, or  
(b) in respect of any interest in property which derives from an interest in respect of which there is, by virtue of this paragraph, no remedy.

(5) Where after the commencement of his bankruptcy the member has incurred a debt to a banker or other person by reason of the making of a payment which is void under this Article, that debt is deemed for the purposes of any provision of this Order to have been incurred before the commencement of the bankruptcy unless—

(a) that banker or person had notice of the bankruptcy before the debt was incurred, or  
(b) it is not reasonably practicable for the amount of the payment to be recovered from the person to whom it was made.

(6) A disposition of property is void under this Article notwithstanding that the property is not or, as the case may be, would not be comprised in the member's estate; but nothing in this Article affects any disposition made by a person of property held by him on trust for any other person other than a disposition made by a member of property held by him on trust for the partnership.”.

## **9. Article 263: Public examination of member**

Article 263 is modified so as to read as follows—

### **“263.—**

(1) Where orders have been made against the members of an insolvent partnership on a joint bankruptcy petition, the official receiver may at any time before the discharge of any such member apply to the High Court for the public examination of that member.

(2) Unless the High Court otherwise orders, the official receiver shall make an application under paragraph (1) if notice requiring him to do so is given to him, in accordance with the rules, by one of the creditors of the member concerned with the concurrence of not less than one-half, in value, of those creditors (including the creditor giving notice).

(3) On an application under paragraph (1), the High Court shall direct that a public examination of the member shall be held on a day appointed by the Court; and the member shall attend on that day and be publicly examined as to his affairs, dealings and property and as to those of the partnership.

(4) The following may take part in the public examination of the member and may question him concerning the matters mentioned in paragraph (3), namely—

(a) the official receiver,  
(b) the trustee of the member's estate, if his appointment has taken effect,  
(c) any person who has been appointed as special manager of the member's estate or business or of the partnership property or business,  
(d) any creditor of the member who has tendered a proof in the bankruptcy.

(5) On an application under paragraph (1), the High Court may direct that the public examination of a member under this Article be combined with the public examination of any other person.

(6) If a member without reasonable excuse fails at any time to attend his public examination under this Article he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).”.

#### **~~10. Article 265: Power to appoint trustee~~ Article 265: Appointment of trustees: general provision**

Article 265 is modified so as to read as follows—

##### **“265.—**

~~(1) The power to appoint a person as both trustee of the estates of the members of an insolvent partnership against whom orders are made on a joint bankruptcy petition and as trustee of the partnership is exercisable—~~

~~(a) by a combined general meeting of the creditors of the members and of the partnership;~~

~~(b) under Articles 268(2), 269(2) or 273(3) by the Department.~~

**(1) This Article applies to any appointment of a person (other than the official receiver) as both trustee of the estates of the members of an insolvent partnership and trustee of the partnership.**

(2) No person may be appointed as trustee of the members' estates and as trustee of the partnership unless he is, at the time of the appointment, qualified to act as an insolvency practitioner both in relation to the insolvent partnership and to each of the members.

(3) Any power to appoint a person as trustee of the members' estates and of the partnership includes power to appoint two or more persons as joint trustees; but such an appointment must make provision as to the circumstances in which the trustees must act together and the circumstances in which one or more of them may act for the others.

(4) The appointment of any person as trustee of the members' estates and of the partnership takes effect only if that person accepts the appointment in accordance with the rules. Subject to this, the appointment of any person as trustee takes effect at the time specified in his certificate of appointment.

~~(5) This Article is without prejudice to the provisions of this Chapter under which the official receiver is, in certain circumstances, to be trustee of the members' estates and of the partnership.~~

##### **265A.— Conflicts of interest**

(1) If the trustee of the members' estates and of the partnership is of the opinion at any time that there is a conflict of interest between his functions as trustee of the members' estates and his functions as trustee of the partnership, or between his functions as trustee of the estates of two or more members, he may apply to the High Court for directions.

(2) On an application under paragraph (1), the High Court may, without prejudice to the

generality of its power to give directions, appoint one or more insolvency practitioners either in place of the applicant to act both as trustee of the members' estates and as trustee of the partnership, or to act as joint trustee with the applicant.”.

#### **~~11. Article 266 and 267: Summoning of meeting to appoint trustee~~**

~~Articles 266 and 267 are modified so as to read as follows—~~

##### **~~“266.—~~**

~~(1) Where orders are made by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995, the official receiver, by virtue of his office, becomes the trustee of the estates of the members and the trustee of the partnership and continues in office until another person becomes trustee under the provisions of this Part.~~

~~(2) The official receiver is, by virtue of his office, the trustee of the estates of the members and the trustee of the partnership during any vacancy.~~

~~(3) At any time when he is trustee, the official receiver may summon a combined meeting of the creditors of the members and the creditors of the partnership, for the purpose of appointing a trustee in place of the official receiver.~~

~~(4) It is the duty of the official receiver—~~

~~(a) as soon as practicable in the period of 12 weeks beginning with the day on which the first order was made by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995, to decide whether to exercise his power under paragraph (3) to summon a meeting, and~~

~~(b) if in pursuance of sub-paragraph (a) he decides not to exercise that power, to give notice of his decision, before the end of that period, to the High Court and to those creditors of the members and those of the partnership who are known to the official receiver or identified in a statement of affairs submitted under Article 246, and~~

~~(c) (whether or not he has decided to exercise that power) to exercise his power to summon a meeting under paragraph (3) if he is at any time requested to do so by one-quarter, in value, of either—~~

~~(i) the creditors of any member against whom an insolvency order has been made, or~~

~~(ii) the partnership's creditors,~~

~~and accordingly, where the duty imposed by sub-paragraph (c) arises before the official receiver has performed a duty imposed by sub-paragraph (a) or (b), he is not required to perform the latter duty.~~

~~(5) A notice given under paragraph (4)(b) to the creditors shall contain an explanation of the creditors' power under paragraph (4)(c) to require the official receiver to summon a combined meeting of the creditors of the partnership and of the members, against whom insolvency orders have been made.~~

~~(6) If the official receiver, in pursuance of paragraph (4)(a), has decided to exercise his power under paragraph (3) to summon a meeting, he shall hold that meeting in the period of 4 months beginning with the day on which the first order was made by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995.~~

~~(7) If (whether or not he has decided to exercise that power) the official receiver is requested, in accordance with the provisions of paragraph (4)(c), to exercise his power under paragraph (3) to summon a meeting, he shall hold that meeting in accordance with the rules.~~

~~(8) Where a meeting of creditors of the partnership and of the members has been held, and an insolvency order is subsequently made against a further insolvent member by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995—~~

~~(a) any person chosen at the meeting to be responsible insolvency practitioner in place of the official receiver shall also be the responsible insolvency practitioner of the member against whom the subsequent order is made, and~~

~~(b) paragraph (4) shall not apply.”.~~

## **~~12. Article 268: Failure of meeting to appoint trustee~~**

~~Article 268 is modified so as to read as follows—~~

### **~~“268.—~~**

~~(1) If a meeting of creditors summoned under Article 266 is held but no appointment of a person as trustee is made, it is the duty of the official receiver to decide whether to refer the need for an appointment to the Department.~~

~~(2) On a reference made in pursuance of that decision, the Department shall either make an appointment or decline to make one.~~

~~(3) If—~~

~~(a) the official receiver decides not to refer the need for an appointment to the Department, or~~

~~(b) on such a reference the Department declines to make an appointment, the official receiver shall give notice of his decision or, as the case may be, of the Department's decision to the High Court.”.~~

## **13. Article 269: Appointment of trustee by Department**

Article 269 is modified so as to read as follows—

### **“269.—**

(1) At any time when the official receiver is the trustee of the members' estates and of the partnership by virtue of any provision of this Chapter he may apply to the Department for the appointment of a person as trustee instead of the official receiver.

(2) On an application under paragraph (1) the Department shall either make an appointment or decline to make one.

(3) Such an application may be made notwithstanding that the Department has declined to make an appointment either on a previous application under paragraph (1) or on a reference ~~under Article 268 or~~ under Article 273(2).

(4) Where a trustee has been appointed by the Department under paragraph (2), and an insolvency order is subsequently made against a further insolvent member by virtue of



Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995, then the trustee so appointed shall also be the trustee of the member against whom the subsequent order is made.

(5) Where the trustee of the members' estates and of the partnership has been appointed by the Department (whether under this Article or otherwise) or has become trustee of a further insolvent member under paragraph (4), the trustee shall give notice of his appointment or further appointment (as the case may be) to the creditors of the members and the creditors of the partnership or, if the High Court so allows, shall advertise his appointment in accordance with the Court's directions.

~~(6) Subject to paragraph (7), in that notice or advertisement the trustee shall—  
(a) state whether he proposes to summon a combined general meeting of the creditors of the members and of the creditors of the partnership for the purpose of establishing a creditors' committee under Article 274, and  
(b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.~~

~~(7) Where in a case where paragraph (4) applies a meeting referred to in paragraph (6)(a) has already been held, the trustee shall state in the notice or advertisement whether a creditors' committee was established at that meeting and—  
(a) if such a committee was established, shall state whether he proposes to appoint additional members of the committee under Article 274A(3), and  
(b) if such a committee was not established, shall set out the power of the creditors to require him to summon a meeting for the purpose of determining whether a creditors' committee should be established.”.~~

(6) In that notice or advertisement the trustee must explain the procedure for establishing a creditors' committee under Article 274, except in a case where such a committee has already been formed, in which case the notice or advertisement must state whether the trustee proposes to appoint additional members of the committee under Article 274A(3).”

#### **~~14. Article 270: Rules applicable to meetings of creditors~~**

~~Article 270 is modified so as to read as follows—~~

##### **~~“270.—~~**

~~(1) This Article applies where the High Court has made orders by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995.~~

~~(2) Subject to paragraph (3), the rules relating to the requisitioning, summoning, holding and conducting of meetings on the bankruptcy of an individual are to apply (with the necessary modifications) to the requisitioning, summoning, holding and conducting of separate meetings of the creditors of each member and of combined meetings of the creditors of the partnership and the creditors of the members.~~

~~(3) Any combined meeting of creditors shall be conducted as if the creditors of the members and of the partnership were a single set of creditors.”.~~

## 15. Article 271: Removal of trustee; vacation of office

Article 271 is modified so as to read as follows—

“271.—

(1) Subject to paragraph (2), the trustee of the estates of the members and of the partnership may be removed from office only by an order of the High Court **or by a decision of the creditors of the members and of the partnership made by a creditors’ decision procedure instigated specially for that purpose in accordance with the rules.**

**(1A) Where the official receiver is trustee or a trustee is appointed by the Department or by the High Court, a creditors’ decision procedure may be instigated for the purpose of removing the trustee only if—**

**(a) the trustee thinks fit,**

**(b) the High Court so directs, or**

**(c) one of the creditors of the members or the partnership so requests, with the concurrence of not less than one-quarter, in value, of the creditors (including the creditor making the request).**

**(1B) Where the creditors of the members and the partnership decide to remove a trustee, they may in accordance with the rules appoint another person as trustee in his place.**

**(1C) Where the decision to remove a trustee is made under paragraph (1A), the decision does not take effect until the creditors of the members and the partnership appoint another person as trustee in his place.**

(2) If the trustee was appointed by the Department, he may be removed by a direction of the Department.

(3) The trustee (not being the official receiver) shall vacate office if he ceases to be a person who is for the time being qualified to act as an insolvency practitioner in relation to any member or to the partnership.

(4) The trustee may, with the leave of the High Court (or, if appointed by the Department, with the leave of the Court or the Department) resign his office by giving notice of his resignation to the Court.

(5) Subject to paragraphs (6) and (7), any removal from or vacation of office under this Article relates to all offices held in the proceedings by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995.

~~(6) The trustee shall vacate office on giving notice to the High Court that a final meeting has been held under Article 304 (final meeting of creditors of insolvent partnership or of members) and of the decision (if any) of that meeting.~~

**(6) A trustee who, under Article 304, has produced an account of the winding up of a partnership business and administration of the partnership property, or an account of the administration of a member’s estate, vacates office in relation to the partnership, or that member’s estate, immediately upon complying with the requirements of Article 304(3) in relation to the partnership or (as the case may be) the estate.**

(7) The trustee shall vacate office as trustee of a member if the order made by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995 in relation to that member, is annulled.”.

## 16. Article 272: Release of trustee

Article 272 is modified so as to read as follows—

“272.—

(1) Where the official receiver has ceased to be the trustee of the members' estates and of the partnership and a person is appointed in his stead, the official receiver shall have his release with effect from the following time, that is to say—

(a) where that person is appointed by ~~a combined general meeting of creditors of the members and of the partnership~~ **the creditors of the members and the partnership** or by the Department, the time at which the official receiver gives notice to the High Court that he has been replaced, and

(b) where that person is appointed by the Court, such time as the Court may determine.

(2) If the official receiver while he is the trustee gives notice to the Department that the administration of the estate of any member, or the winding up of the partnership business and administration of its affairs, is for practical purposes complete, he shall have his release as trustee of any member or as trustee of the partnership (as the case may be) with effect from such time as the Department may determine.

~~(3) A person other than the official receiver who has ceased to be the trustee of the estate of any member or of the partnership shall have his release with effect from the following time, that is to say—~~

~~(a) in the case of a person who has died, the time at which notice is given to the High Court in accordance with the rules that that person has ceased to hold office;~~

~~(b) in the case of a person who has been removed from office by the Court or by the Department, or who has vacated office under Article 271(3), such time as the Department may, on an application by that person, determine;~~

~~(c) in the case of a person who has resigned, such time as may be directed by the Court (or, if he was appointed by the Department, such time as may be directed by the Court or as the Department may, on an application by that person, determine);~~

~~(d) in the case of a person who has vacated office under Article 271(6) —~~

~~(i) if the final meeting referred to in that paragraph has resolved against that person's release, such time as the Department may, on an application by that person, determine; and~~

~~(ii) if that meeting has not so resolved, the time at which the person vacated office.~~

**(3) A person other than the official receiver who has ceased to be the trustee of the estate of any member or of the partnership has his release in accordance with paragraphs (3A) to (3E).**

**(3A) Where the person has died, the person has his release with effect from the time at which notice is given to the High Court in accordance with the rules that the person has ceased to hold office.**

**(3B) Where the person has been removed from office by the High Court**

or by the Department, the person has his release with effect from such time as the Department may, on an application by the person, determine.

(3C) Where the person has vacated office under Article 271(3), the person has his release with effect from such time as the Department may, on an application by the person, determine.

(3D) Where the person has resigned—

(a) if the person was appointed by the Department, the person has his release with effect from such time as may be directed by the High Court or as the Department may, on an application by the person, determine;

(b) if the person was appointed otherwise than by the Department, the person has his release with effect from such time as may be directed by the High Court.

(3E) Where the person has vacated office under Article 271(6)—

(a) if any of the creditors of the members and of the partnership objected to the person's release before the end of the period for so objecting prescribed by the rules, the person has his release with effect from such time as the Department may, on an application by that person, determine;

(b) otherwise, the person has his release with effect from the time at which the person vacated office.

(4) Where an order by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995 is annulled in so far as it relates to any member, the trustee at the time of the annulment has his release in respect of that member with effect from such time as the High Court may determine.

(5) Where the trustee (including the official receiver when so acting) has his release under this Article, he shall, with effect from the time specified in paragraphs (1) to (4), be discharged from all liability both in respect of acts or omissions of his in the administration of the estates of the members and in the winding up of the partnership business and administration of its affairs and otherwise in relation to his conduct as trustee.

(6) Nothing in this Article prevents the exercise, in relation to a person who has had his release under this Article, of the High Court's powers under Article 277 (liability of trustee).”.

## **17. Article 273: Vacancy in office of trustee**

Article 273 is modified so as to read as follows—

**“273.—**

(1) This Article applies where the appointment of any person as trustee of the members' estates and of the partnership fails to take effect or, such an appointment having taken effect, there is otherwise a vacancy in the office of trustee.

(2) The official receiver may refer the need for an appointment to the Department and shall be trustee until the vacancy is filled.

(3) On a reference to the Department under paragraph (2) the Department shall either make an appointment or decline to make one.

(4) If on a reference under paragraph (2) no appointment is made, the official receiver shall continue to be trustee, but without prejudice to his power to make a further reference.

(5) References in this Article to a vacancy include a case where it is necessary, in relation to any property which is or may be comprised in a member's estate, to revive the trusteeship of that estate after the ~~holding of a final meeting summoned under Article 304~~ **vacation of office by the trustee under Article 271(6)** or the giving by the official receiver of notice under Article 272(2).”.

## **18. Article 274: Creditors' committee**

Article 274 is modified so as to read as follows—

### **“274.—**

(1) Subject to paragraph (2), ~~a combined general meeting of the creditors of the members and of the partnership (whether summoned under the preceding provisions of this Chapter or otherwise) may~~ **the creditors of the members and of the partnership may, in accordance with the rules,** establish a committee (known as “the creditors' committee”) to exercise the functions conferred on it by or under this Order.

(2) ~~A combined general meeting of~~ the creditors of the members and of the partnership shall not establish such a committee, or confer any functions on such a committee, at any time when the official receiver is the trustee, except in connection with ~~an appointment made by that meeting~~ **the appointment** of a person to be trustee instead of the official receiver.

### **274A.— Functions and membership of creditors' committee**

(1) The committee established under Article 274 shall act as creditors' committee for each member and as liquidation committee for the partnership, and shall as appropriate exercise the functions conferred on creditors' and liquidation committees in a bankruptcy or winding up by or under this Order.

(2) The rules relating to liquidation committees are to apply (with the necessary modifications and with the exclusion of ail references to contributories) to a committee established under Article 274.

(3) Where the appointment of the trustee also takes effect in relation to a further insolvent member under Article ~~266(8) or~~ 269(4), the trustee may appoint any creditor of that member (being qualified under the rules to be a member of the committee) to be an additional member of any creditors' committee already established under Article 274, provided that the creditor concerned consents to act.

(4) The High Court may at any time, on application by a creditor of any member or of the partnership, appoint additional members of the creditors' committee.

(5) If additional members of the creditors' committee are appointed under paragraph (3) or (4), the limit on the maximum number of members of the committee specified in the rules shall be increased by the number of additional members so appointed.”.

## **19. Article 278: General functions and powers of trustee**

Article 278 is modified so as to read as follows—

**“278.—**

- (1) The function of the trustee of the estates of the members and of the partnership is to get in, realise and distribute the estates of the members and the partnership property in accordance with the following provisions of this Chapter.
- (2) The trustee shall have all the functions and powers in relation to the partnership and the partnership property that he has in relation to the members and their estates.
- (3) In the carrying out of his functions and in the management of the members' estates and the partnership property the trustee is entitled, subject to the following provisions of this Chapter, to use his own discretion.
- (4) It is the duty of the trustee, if he is not the official receiver—
  - (a) to furnish the official receiver with such information,
  - (b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records, and
  - (c) to give the official receiver such other assistance,as the official receiver may reasonably require for the purpose of enabling him to carry out his functions in relation to the bankruptcy of the members and the winding up of the partnership business and administration of its property.
- (5) The official name of the trustee in his capacity as trustee of a member shall be “the trustee of the estate of ..... a bankrupt” (inserting the name of the member concerned); but he may be referred to as “the trustee in bankruptcy” of the particular member.
- (6) The official name of the trustee in his capacity as trustee of the partnership shall be “the trustee of ..... a partnership” (inserting the name of the partnership concerned).”.

**20. Article 285: Obligation to surrender control to trustee**

Article 285 is modified so as to read as follows—

**“285.—**

- (1) This Article applies where orders are made by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995 and a trustee is appointed.
- (2) Any person who is or has been an officer of the partnership in question, or who is an executor or administrator of the estate of a deceased officer of the partnership, shall deliver up to the trustee of the partnership, for the purposes of the exercise of the trustee's functions under this Order, possession of any partnership property which he holds for the purposes of the partnership.
- (3) Without prejudice to the general duties of the members as bankrupts under Article 306, each member shall deliver up to the trustee possession of any property, books, papers or other records of which he has possession or control and of which the trustee is required to take possession.
- (4) If any of the following is in possession of any property, books, papers or other records of which the trustee is required to take possession, namely—
  - (a) the official receiver,

(b) a person who has ceased to be a trustee of a member's estate,  
(c) a person who has been the administrator of the partnership or supervisor of a voluntary arrangement approved in relation to the partnership under Part II,  
(d) a person who has been the supervisor of a voluntary arrangement approved in relation to a member under Chapter II of Part VIII,  
the official receiver or, as the case may be, that person shall deliver up possession of the property, books, papers or records to the trustee.

(5) Any banker or agent of a member or of the partnership, or any other person who holds any property to the account of, or for, a member or the partnership shall pay or deliver to the trustee all property in his possession or under his control which forms part of the member's estate or which is partnership property and which he is not by law entitled to retain as against the member, the partnership or the trustee.

(6) If any person without reasonable excuse fails to comply with any obligation imposed by this Article, he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).”.

## **20A.**

Article 286A: Low value home: application for sale, possession or charge

Article 286A is modified so as to read as follows:—

### **“286A.—**

(1) This Article applies where—

(a) property comprised in the individual member's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

(i) the individual member,

(ii) the individual member's spouse or civil partner, or

(iii) a former spouse or former civil partner of the individual member, and

(b) the trustee applies for an order for the sale of the property, for an order for possession of the property or for an order under Article 286 in respect of the property.

(2) The High Court shall dismiss the application if the value of the interest is below such amount as may for the time being be specified for the purposes of this paragraph by Order under Article 362(1)(b).

(3) In determining the value of an interest for the purposes of this Article the High Court shall disregard any matter which it is required to disregard by the order which specifies the amount for the purposes of paragraph (2).”.

## **21. Article 300: Priority of expenses and debts**

Article 300 is modified so as to read as follows—

### **“300.— Priority of expenses**

(1) The provisions of this Article shall apply in a case where Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995 applies, as regards priority of expenses incurred

by a person acting as trustee of the estates of the members of an insolvent partnership and as trustee of that partnership.

(2) The joint estate of the partnership shall be applicable in the first instance in payment of the joint expenses and the separate estate of each insolvent member shall be applicable in the first instance in payment of the separate expenses relating to that member.

(3) Where the joint estate is insufficient for the payment in full of the joint expenses, the unpaid balance shall be apportioned equally between the separate estates of the insolvent members against whom insolvency orders have been made and shall form part of the expenses to be paid out of those estates.

(4) Where any separate estate of an insolvent member is insufficient for the payment in full of the separate expenses to be paid out of that estate, the unpaid balance shall form part of the expenses to be paid out of the joint estate.

(5) Where after the transfer of any unpaid balance in accordance with paragraph (3) or (4) any estate is insufficient for the payment in full of the expenses to be paid out of that estate, the balance then remaining unpaid shall be apportioned equally between the other estates.

(6) Where after an apportionment under paragraph (5) one or more estates are insufficient for the payment in full of the expenses to be paid out of those estates, the total of the unpaid balances of the expenses to be paid out of those estates shall continue to be apportioned equally between the other estates until provision is made for the payment in full of the expenses or there is no estate available for the payment of the balance finally remaining unpaid, in which case it abates in equal proportions between all the estates.

(7) Without prejudice to paragraphs (3) to (6), the trustee may, with the sanction of any creditors' committee established under Article 274 or with the leave of the High Court obtained on application—

(a) pay out of the joint estate as part of the expenses to be paid out of that estate any expenses incurred for any separate estate of an insolvent member; or

(b) pay out of any separate estate of an insolvent member any part of the expenses incurred for the joint estate which affects that separate estate.

### **300A.— Priority of debts in joint estate**

(1) The provisions of this Article and Article 300B (which are subject to the provisions of section 9 of the Partnership Act 1890, as respects the liability of the estate of a deceased member) shall apply as regards priority of debts in a case where Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995 applies.

(2) After payment of expenses in accordance with Article 300 and subject to Article 300C(2), the joint debts of the partnership shall be paid out of its joint estate in the following order of priority—

(a) the ordinary preferential debts;

(aa) the secondary preferential debts;

(b) the ordinary non-preferential debts;

(ba) the secondary non-preferential debts;

(bb) the tertiary non-preferential debts;

(c) interest under Article 300D on the joint debts (other than postponed debts);



- (d) the postponed debts;
- (e) interest under Article 300D on the postponed debts.

(3) The responsible insolvency practitioner shall adjust the rights among themselves of the members of the partnership as contributories and shall distribute any surplus to the members or, where applicable, to the separate estates of the members, according to their respective rights and interests in it.

(4) The debts referred to in each of sub-paragraphs (a) to (ba) of paragraph (2) rank equally between themselves, and in each case if the joint estate is insufficient for meeting them, they abate in equal proportions between themselves.

(5) Where the joint estate is not sufficient for the payment of the joint debts in accordance with sub-paragraphs (a), (aa) and (b) of paragraph (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

(a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and

(b) shall rank equally with the debts of the member referred to in Article 300B(1)(b).

(5A) Where the joint estate is not sufficient for the payment of the secondary non-preferential debts in accordance with sub-paragraph (ba) of paragraph (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

(a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and

(b) shall rank equally with the debts of the member referred to in Article 300B(1)(ba).

(5B) Where the joint estate is not sufficient for the payment of the tertiary non-preferential debts in accordance with paragraph (bb) of paragraph (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

(a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and

(b) shall rank as a debt of the member in accordance with Article 300B(1)(bc).

(6) Where the joint estate is sufficient for the payment of the ~~postponed~~ joint debts in accordance with sub-paragraphs (a) to (bb) of paragraph (2) but not for the payment of interest under sub-paragraph (c) of that paragraph, the responsible insolvency practitioner shall aggregate the value of that interest to the extent that it has not been satisfied or is not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

- (a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and
- (b) shall rank equally with the interest on the separate debts referred to in Article 300B(1)(c).

(7) Where the joint estate is not sufficient for the payment of the postponed joint debts in accordance with sub-paragraph (d) of paragraph (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

- (a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and
- (b) shall rank equally with the postponed debts of the member referred to in Article 300B(1)(d).

(8) Where the joint estate is sufficient for the payment of the postponed joint debts in accordance with sub-paragraph (d) of paragraph (2) but not for the payment of interest under sub-paragraph (e) of that paragraph, the responsible insolvency practitioner shall aggregate the value of that interest to the extent that it has not been satisfied or is not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

- (a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and
- (b) shall rank equally with the interest on the postponed debts referred to in Article 300B(1)(e).

(9) Where the responsible insolvency practitioner receives any distribution from the separate estate of a member in respect of a debt referred to in sub-paragraph (a) of paragraph (5), (5A), (5B), (6), (7) or (8), that distribution shall become part of the joint estate and shall be distributed in accordance with the order of priority set out in paragraph (2).

### **300B.— Priority of debts in separate estate**

(1) The separate estate of each member of the partnership against whom an insolvency order has been made shall be applicable, after payment of expenses in accordance with Article 300 and subject to Article 300C(2), in payment of the separate debts of that member in the following order of priority—

- (a) the ordinary preferential debts;
- (aa) the secondary preferential debts;
- (b) the ordinary non-preferential debts (including any debt referred on in Article 300A(5)(a));
- (ba) the secondary non-preferential debts (including any debt referred to in Article 300A(5A)(a));
- (bb) the tertiary non-preferential debts;
- (bc) the debt referred to in Article 300A(5B)(a);
- (c) interest under Article 300D on the separate debts and under Article 300A(6);
- (d) the postponed debts of the member (including any debt referred to in Article 300A(7)(a));
- (e) interest under Article 300D on the postponed debts of the member and under Article 300A(8).

(2) The debts referred to in each of [ sub-paragraphs (a) to (bb) of paragraph (2) rank equally between themselves, and in each case if the separate estate is insufficient for meeting them, they abate in equal proportions between themselves.

(3) Where the responsible insolvency practitioner receives any distribution from the joint estate or from the separate estate of another member of the partnership against whom an insolvency order has been made, that distribution shall become part of the separate estate and shall be distributed in accordance with the order of priority set out in paragraph (1).

**300C.— Provisions generally applicable in distribution of joint and separate estates**

(1) Distinct accounts shall be kept of the joint estate of the partnership and of the separate estate of each member of that partnership against whom an insolvency order is made.

(2) No member of the partnership shall prove for a joint or separate debt in competition with the joint creditors, unless the debt has arisen—

(a) as a result of fraud, or

(b) in the ordinary course of a business carried on separately from the partnership business.

(3) For the purpose of establishing the value of any debt referred to in Article 300A(5)(a), (5A)(a), (5B)(a) or (7)(a), that value may be estimated by the responsible insolvency practitioner in accordance with Article 295 ~~or (as the case may be) in accordance with the Rules.~~

(4) Interest under Article 300D on preferential debts ranks equally with interest on ordinary non-preferential debts, secondary non-preferential debts and tertiary non-preferential debts.

(5) Articles 300A and 300B are without prejudice to any provision of this Order or of any other statutory provision concerning the ranking between themselves of postponed debts and interest thereon, but in the absence of any such provision postponed debts and interest thereon rank equally between themselves.

(6) If any two or more members of an insolvent partnership constitute a separate partnership, the creditors of such separate partnership shall be deemed to be a separate set of creditors and subject to the same statutory provisions as the separate creditors of any member of the insolvent partnership.

(7) Where any surplus remains after the administration of the estate of a separate partnership, the surplus shall be distributed to the members or, where applicable, to the separate estates of the members of that partnership according to their respective rights and interests in it.

(8) Neither the official receiver, the Department nor a responsible insolvency practitioner shall be entitled to remuneration or fees under the Insolvency Rules (Northern Ireland) 1991, ~~the Insolvency Regulations (Northern Ireland) 1991 or the Insolvency (Fees) Order (Northern Ireland) 1991~~

~~(Northern Ireland) 1991~~ **the Insolvency Regulations (Northern Ireland) 1996 or the Insolvency (Fees) Order (Northern Ireland) 2006** for his services in connection with—

(a) the transfer of a surplus from the joint estate to a separate estate under Article 300A(3),

(b) a distribution from a separate estate to the joint estate in respect of a claim

referred to in [ Article 300A(5), (5A), (5B), (6), (7) or (8), or  
(c) a distribution from the estate of a separate partnership to the separate estates of the members of that partnership under paragraph (7).

### **300D.— Interest on debts**

(1) In the bankruptcy of each of the members of an insolvent partnership and in the winding up of that partnership's business and administration of its property, interest is payable in accordance with this Article, in the order of priority laid down by Articles 300A and 300B, on any debt proved in the bankruptcy including so much of any such debt as represents interest on the remainder.

(2) Interest under this Article is payable on the debts in question in respect of the periods during which they have been outstanding since the relevant order was made by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995.

(3) The rate of interest payable under this Article in respect of any debt (“the official rate” for the purposes of any provision of this Order in which that expression is used) is whichever is the greater of—

(a) the rate applicable to a money judgment of the High Court on the day on which the relevant order was made, and

(b) the rate applicable to that debt apart from the bankruptcy or winding up.”.

### **~~22. Article 304: Final meeting~~**

~~Article 304 is modified so as to read as follows—~~

#### **~~“304.—~~**

~~(1) Subject to the provisions of this Article and to Article 305, this Article applies where—~~

~~(a) it appears to the trustee of the estates of the members and of the partnership that the administration of any member's estate or the winding up of the partnership business and administration of the partnership property is for practical purposes complete, and~~

~~(b) the trustee is not the official receiver.~~

~~(2) The trustee shall summon a final general meeting of the creditors of any such member or of the partnership (as the case may be) or a combined final general meeting of the creditors of any such members or (as the case may be) the creditors of any such members and of the partnership which—~~

~~(a) shall as appropriate receive the trustee's report of the administration of the estate of the member or members or of the winding up of the partnership business and administration of the partnership property, and~~

~~(b) shall determine whether the trustee should have his release under Article 272 in respect (as the case may be) of the administration of the estate of the member or members, or of the winding up of the partnership business and administration of the partnership property.~~

~~(3) The trustee may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice under Article 303(1); but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the trustee is able to report that the administration of the estate of the member or members~~

~~or the winding up of the partnership business and administration of the partnership property is for practical purposes complete.~~

~~(4) In the administration of the members' estates and the winding up of the partnership business and administration of the partnership property it is the trustee's duty to retain sufficient sums from the property of the members and of the partnership to cover the expenses of summoning and holding any meeting required by this Article."~~

#### *Article 304: Final account*

22. Article 304 is modified so as to read as follows—

“304.—(1) This Article applies where—

(a) it appears to the trustee of the estates of the members and of the partnership that the administration of any member's estate or the winding up of the partnership business and administration of the partnership property is for practical purposes complete, and

(b) the trustee is not the official receiver;  
but this is subject to Article 305.

(2) The trustee must—

(a) give the creditors of the members and of the partnership, other than opted-out creditors, notice that it appears to the trustee that the administration of the member's estate or the winding up of the partnership business and administration of the partnership property is for practical purposes complete,

(b) make up an account of the administration or winding up, showing how it has been conducted and the property disposed of,

(c) send a copy of the account to the creditors of the members and of the partnership, other than opted-out creditors, and

(d) give the creditors of the members and of the partnership, other than opted-out creditors, a notice explaining the effect of Article 272(3E) and how they may object to the trustee's release.

(3) The trustee must during the relevant period send to the High Court and, in the case of a corporate member, send to the registrar—

(a) a copy of the account, and

(b) a statement of whether any of the creditors of the members and of the partnership objected to the trustee's release.

(4) The relevant period is the period of 7 days beginning with the day after the last day of the period prescribed by the rules as the period within which the creditors may object to the trustee's release.”

#### **23. Article 347: The “relevant date”**

Article 347 is modified so as to read as follows—

##### **“347.**

Where an order has been made in respect of an insolvent partnership by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995, references in Schedule 4 to the relevant date (being the date which determines the existence and amount of a preferential debt) are to the date on which the said order was made.”.

## **SCHEDULE 8**

## PROVISIONS OF THE COMPANY DIRECTORS DISQUALIFICATION (NORTHERN IRELAND) ORDER 2002

### Article 16

The following provisions of the Company Directors Disqualification (Northern Ireland) Order 2002 are modified so as to read as follows –

#### ~~“9.—Duty of High Court to disqualify unfit officers of insolvent partnership~~

~~(1) The High Court shall make a disqualification order against a person in any case where, on an application under this Article, it is satisfied—~~

~~(a) that he is or has been an officer of a partnership which has at any time become insolvent (whether while he was an officer or subsequently); and~~

~~(b) that his conduct as an officer of that partnership (either taken alone or taken together with his conduct as an officer of any other partnership or partnerships, or as a director of any company or companies) makes him unfit to be concerned in the management of a company.~~

~~(2) For the purposes of this Article and Article 10—~~

~~(a) a partnership becomes insolvent if—~~

~~(i) the High Court makes an order for it to be wound up as an unregistered company at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up; or~~

~~(ii) the partnership enters administration; and~~

~~(b) a company becomes insolvent if—~~

~~(i) the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up; or~~

~~(ii) the company enters administration;~~

~~(iii)~~

~~(3) For the purposes of this Article and Article 10 references to a person's conduct as an officer of any partnership or partnerships, or as a director of any company or companies, include, where the partnership or company concerned or any of the partnerships or companies concerned has become insolvent, that person's conduct in relation to any matter connected with or arising out of the insolvency of that partnership or company.~~

~~(4) In this Article and in Article 10 “director” includes a shadow director.~~

~~(5) Under this Article the minimum period of disqualification is 2 years, and the maximum period is 15 years.~~

### *Disqualification for unfitness*

#### **Duty of High Court to disqualify unfit officers of insolvent partnership**

**9.—(1) The High Court must make a disqualification order against a person (“P”) in any case where, on an application under this Article, it is satisfied—**

**(a) that P is or has been an officer of a partnership which has at any time become insolvent (whether while P was an officer or**

subsequently), and

(b) that P's conduct as an officer of that partnership (either taken alone or taken together with P's conduct as an officer of one or more relevant entities or relevant overseas entities) makes P unfit to be concerned in the management of a company.

(1A) Paragraphs (1B) to (1E) apply for the purposes of paragraph (1).

(1B) "Relevant entity" means—

(a) any partnership (other than the one mentioned in paragraph (1)(a));

(b) any limited liability partnership;

(c) any company.

(1C) "Relevant overseas entity" means—

(a) any overseas partnership;

(b) any overseas limited liability partnership;

(c) any overseas company.

(1D) "Officer" means—

(a) in relation to a partnership or an overseas partnership, an officer;

(b) in relation to a limited liability partnership or an overseas limited liability partnership, a member;

(c) in relation to a company or an overseas company, a director (including a shadow director).

(1E) For those purposes—

(a) the reference to P's conduct as an officer of the partnership mentioned in paragraph (1)(a) includes a reference to P's conduct in relation to any matter connected with or arising out of the partnership's insolvency, and

(b) the reference to P's conduct as an officer of any relevant entity or relevant overseas entity includes, where that entity has become insolvent, a reference to P's conduct in relation to any matter connected with or arising out of the insolvency.

(2) Article 9A makes further provision concerning the interpretation of this Article.

(3) Under this Article the minimum period of disqualification is 2 years and the maximum period is 15 years.

### **Interpretation of Article 9**

9A.—(1) In Article 9—

"limited liability partnership" means a limited liability partnership formed under the Limited Liability Partnerships Act 2000;

"overseas limited liability partnership" means—

(a) an "overseas limited liability partnership" as defined in section 14(3) of the Limited Liability Partnerships Act 2000, or

(b) any other entity which is incorporated or otherwise established under the law of a country or territory outside the United Kingdom and is similar in nature to a limited liability partnership;

"overseas partnership" means any entity which is established under the law of a country or territory outside Northern Ireland (whether or not as a legal person under that law) and is similar in nature to a partnership under the law of Northern Ireland.

(2) The partnership mentioned in Article 9(1)(a) or a relevant entity becomes insolvent if—

(a) a relevant insolvency event occurs in relation to it (see paragraph

(4)),

- (b) it enters administration, or
- (c) in the case of a limited liability partnership or a company, an administrative receiver is appointed.
- (3) A relevant overseas entity becomes insolvent if it enters into insolvency proceedings of any description (including interim proceedings) in any jurisdiction.
- (4) A “relevant insolvency event” occurs—
  - (a) in relation to a partnership, when the High Court—
    - (i) makes an order for the partnership to be wound up at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up, or
    - (ii) makes an order for the business of the partnership to be wound up (without the partnership being wound up as an unregistered company) at a time when the assets of the business are insufficient for the payment of its debts and other liabilities and the expenses of the winding up;
  - (b) in relation to a limited liability partnership, when the High Court makes an order for it to be wound up at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up;
  - (c) in relation to a company, when the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

#### **~~10.—Disqualification order or undertaking and reporting provisions~~**

- ~~(1) If it appears to the Department that it is expedient in the public interest that a disqualification order under Article 9 should be made against any person, an application for the making of such an order against that person may be made—
  - ~~(a) by the Department, or~~
  - ~~(b) if the Department so directs in the case of a person who is or has been an officer of a partnership which is being, or has been, wound up by the High Court as an unregistered company, by the official receiver.~~~~
- ~~(2) Except with the leave of the High Court, an application for the making under Article 9 of a disqualification order against any person shall not be made after the expiration of 2 years from the day on which the partnership of which that person is or has been an officer became insolvent.~~
- ~~(3) If it appears to the Department that the conditions mentioned in Article 9(1) are satisfied as respects any person who has offered to give the Department a disqualification undertaking, the Department may accept the undertaking if it appears to the Department that it is expedient in the public interest that the Department should do so (instead of applying, or proceeding with an application, for a disqualification order).~~
- ~~(4) If it appears to the office holder responsible under this Article, that is to say—
  - ~~(a) in the case of a partnership which is being wound up by the High Court as an unregistered company, the official receiver, or~~
  - ~~(b) in the case of a partnership which is in administration, the administrator,~~that the conditions mentioned in Article 9(1) are satisfied as respects a person who is or has been an officer of that partnership, the office holder shall forthwith report the matter to the Department.~~



~~(5) The Department or the official receiver may require any of the persons mentioned in paragraph (6) —~~

~~(a) to furnish the Department or, as the case may be, the official receiver with such information with respect to any person's conduct as an officer of a partnership or as a director of a company, and~~

~~(b) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such an officer or director, as the Department or the official receiver may reasonably require for the purpose of determining whether to exercise, or of exercising, any function under this Article.~~

~~(6) The persons referred to in paragraph (5) are —~~

~~(a) the liquidator or administrator, or former liquidator or administrator of the partnership,~~

~~(b) the liquidator, administrator or administrative receiver, or former liquidator, administrator or administrative receiver of the company.~~

### **Disqualification orders under Article 9: applications and acceptance of undertakings**

10.—(1) If it appears to the Department that it is expedient in the public interest that a disqualification order under Article 9 should be made against any person, an application for the making of such an order against that person may be made—

(a) by the Department, or

(b) if the Department so directs in the case of a person who is or has been—

(i) an officer of a partnership which is being, or has been, wound up by the High Court, or

(ii) an officer of a partnership the business of which is being, or has been, wound up by the High Court (without the partnership being wound up as an unregistered company),

by the official receiver.

(2) Except with the leave of the High Court, an application for the making under Article 9 of a disqualification order against any person may not be made after the expiration of 3 years from the day on which the partnership of which that person is or has been an officer became insolvent.

(3) If it appears to the Department that the conditions mentioned in Article 9(1) are satisfied as respects any person who has offered to give the Department a disqualification undertaking, the Department may accept the undertaking if it appears to the Department that it is expedient in the public interest that the Department should do so (instead of applying, or proceeding with an application, for a disqualification order).

(5) The Department or the official receiver may require any person (“A”)—

(a) to furnish the Department or, as the case may be, the official receiver with such relevant information, and

(b) to produce and permit inspection of such relevant records, as the Department or the official receiver may reasonably require for the purpose of determining whether to exercise, or of exercising, any function under this Article.

(5A) In paragraph (5)(a), “relevant information” is information with respect to the conduct of A, or another person, as an officer of the partnership mentioned in Article 9(1)(a) or a relevant entity or relevant

overseas entity that has become insolvent.

(5B) In paragraph (5)(b), “relevant records” are books, papers and other records that are considered by the Department or (as the case may be) the official receiver to be relevant to the conduct of A, or another person, as an officer of the partnership mentioned in Article 9(1)(a) or a relevant entity or relevant overseas entity that has become insolvent.

(5C) For the purposes of paragraphs (5A) and (5B), it does not matter whether the partnership, relevant entity or relevant overseas entity became insolvent while A or (as the case may be) the other person was an officer or subsequently.

(6) Article 9(1B) to (1E) and Article 9A(2) to (4) apply for the purposes of this Article as they apply for the purposes of Article 9(1).

### **Office-holder’s report on conduct of officers of the partnership**

10A.—(1) The office-holder in respect of a partnership which is insolvent must prepare a report (a “conduct report”) about the conduct of each person who was an officer of the partnership—

(a) on the insolvency date, or

(b) at any time during the period of 3 years ending with that date.

(2) For the purposes of this Article a partnership is insolvent if—

(a) the partnership is in liquidation and at the time it went into liquidation its assets were insufficient for the payment of its debts and other liabilities and the expenses of the winding up, or

(b) the partnership enters administration,

and paragraph (1E) of Article 9 applies for the purposes of this Article as it applies for the purposes of Article 9(1).

(3) A conduct report must, in relation to each person, describe any conduct of the person which may assist the Department in deciding whether to exercise the power under Article 10(1) or (3) in relation to the person.

(4) The office-holder must send the conduct report to the Department before the end of—

(a) the period of 3 months beginning with the insolvency date, or

(b) such other longer period as the Department considers appropriate in the particular circumstances.

(5) If new information comes to the attention of an office-holder, the office-holder must send that information to the Department as soon as reasonably practicable.

(6) “New information” is information which an office-holder considers should have been included in a conduct report prepared in relation to the partnership, or would have been so included had it been available before the report was sent.

(7) If there is more than one office-holder in respect of a partnership at any particular time (because the partnership is insolvent by virtue of falling within both sub-paragraphs of paragraph (2) at that time), paragraph (1) applies only to the first of the office-holders to be appointed.

(9) The “office-holder” in respect of a partnership which is insolvent is—

(a) in the case of a partnership being wound up by the High Court, the official receiver;

(b) in the case of a partnership in administration, the administrator.

(10) The “insolvency date”—

- (a) in the case of a partnership being wound up by the High Court, means the date on which the Court makes the winding-up order (see Article 105 of the Insolvency (Northern Ireland) Order 1989);
- (b) in the case of a partnership which has entered administration, means the date the partnership did so.

#### **~~11. Disqualification after investigation~~**

~~(1) If it appears to the Department from—~~

~~(a) a report made by an inspector or person appointed to conduct an investigation under a provision mentioned in paragraph (1A), or~~

~~(b) information or documents obtained under a provision mentioned in paragraph (1B),~~

~~that it is expedient in the public interest that a disqualification order should be made against any person who is or has been an officer of an insolvent partnership, it may apply to the High Court for such an order to be made against that person.~~

~~(2) The provisions are—~~

~~(a) Article 430 of the Companies Order,~~

~~(b) section 167, 168, 169(1)(b) or 284 of the Financial Services and Markets Act 2000, or~~

~~(c) regulations made as a result of section 262(2)(k) of that Act.~~

~~(2A) The provisions are—~~

~~(a) Articles 440 or 441 of the Companies Order,~~

~~(b) section 2 of the Criminal Justice Act 1987,~~

~~(c) section 28 of the Criminal Law (Consolidation) (Scotland) Act 1995,~~

~~(d) section 83 of the Companies Act 1989, or~~

~~(e) section 171 or 173 of the Financial Services and Markets Act 2000.~~

~~(3) The provisions are—~~

~~(a) Article 440 or 441 of the Companies Order,~~

~~(b) section 2 of the Criminal Justice Act 1987,~~

~~(c) section 28 of the Criminal Law (Consolidation) (Scotland) Act 1995,~~

~~(d) section 83 of the Companies Act 1989, or~~

~~(e) section 171 or 173 of the Financial Services and Markets Act 2000.~~

~~(4) Where it appears to the Department from such report, information or documents that, in the case of a person who has offered to give the Department a disqualification undertaking—~~

~~(a) the conduct of the person in relation to an insolvent partnership of which the person is or has been an officer makes him unfit to be concerned in the management of a company, and~~

~~(b) it is expedient in the public interest that the Department should accept the undertaking (instead of applying, or proceeding with an application, for a disqualification order), the Department may accept the undertaking.~~

~~(5) The High Court may make a disqualification order against a person where, on an application under this Article, it is satisfied that his conduct in relation to the partnership makes him unfit to be concerned in the management of a company.~~

~~(6) The maximum period of disqualification under this Article is 15 years.~~

*Persons instructing unfit officers*

**Persons instructing unfit officers**

11A.—(1) The High Court may make a disqualification order against a person (“P”) if, on an application under Article 11B, it is satisfied—

(a) either—

(i) that a disqualification order under Article 9 has been made against a person who is or has been an officer of a partnership, or

(ii) that the Department has accepted a disqualification undertaking from such a person under Article 10(3), and

(b) that P exercised the requisite amount of influence over the person. That person is referred to in this Article as “the main transgressor”.

(2) For the purposes of this Article, P exercised the requisite amount of influence over the main transgressor if any of the conduct—

(a) for which the main transgressor is subject to the order made under Article 9, or

(b) in relation to which the undertaking was accepted from the main transgressor under Article 10(3),

was the result of the main transgressor acting in accordance with P’s directions or instructions.

(3) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.

(4) Under this Article the minimum period of disqualification is 2 years and the maximum period is 15 years.

**Application for order under Article 11A**

11B.—(1) If it appears to the Department that it is expedient in the public interest that a disqualification order should be made against a person under Article 11A, the Department may—

(a) make an application to the court for such an order, or

(b) in a case where an application for an order under Article 9 against the main transgressor has been made by the official receiver, direct the official receiver to make such an application.

(2) Except with the leave of the High Court, an application for a disqualification order under Article 11A must not be made after the end of the period of 3 years beginning with the day on which the partnership in question became insolvent (within the meaning given by paragraphs (2) and (4) of Article 9A).

(3) Paragraph (5) of Article 10 applies for the purposes of this Article as it applies for the purposes of that Article.

**Disqualification undertaking instead of an order under Article 11A**

11C.—(1) If it appears to the Department that it is expedient in the public interest to do so, the Department may accept a disqualification undertaking from a person (“P”) if—

(a) any of the following is the case—

(i) a disqualification order under Article 9 has been made against a person who is or has been an officer of a partnership,

(ii) the Department has accepted a disqualification undertaking

from such a person under Article 10(3), or  
(iii) it appears to the Department that such an undertaking could be accepted from such a person (if one were offered), and  
(b) it appears to the Department that P exercised the requisite amount of influence over the person.

That person is referred to in this Article as “the main transgressor”.

(2) For the purposes of this Article, P exercised the requisite amount of influence over the main transgressor if any of the conduct—

(a) for which the main transgressor is subject to the disqualification order made under Article 9,

(b) in relation to which the disqualification undertaking was accepted from the main transgressor under Article 10(3), or

(c) which led the Department to the conclusion set out in paragraph (1)(a)(iii),

was the result of the main transgressor acting in accordance with P’s directions or instructions.

(3) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.

(4) Paragraph (5) of Article 10 applies for the purposes of this Article as it applies for the purposes of that Article.

#### *Further provision about disqualification undertakings*

#### **Variation etc of disqualification undertaking**

12.—(1) The High Court may, on the application of a person who is subject to a disqualification undertaking—

(a) reduce the period for which the undertaking is to be in force, or

(b) provide for it to cease to be in force.

(2) On the hearing of an application under paragraph (1), the Department must appear and call the attention of the Court to any matters which seem to the Department to be relevant, and may give evidence or call witnesses.

#### **~~13. Matters for determining unfitness of officers of partnership~~**

~~(1) This Article applies where it falls to the High Court to determine whether a person's conduct as an officer of a partnership (either taken alone or taken together with his conduct as an officer of any other partnership or partnerships or as a director of any company or companies) makes him unfit to be concerned in the management of a company.~~

~~(2) The High Court shall, as respects that person's conduct as an officer of that partnership or each of those partnerships or as a director of that company or each of those companies, have regard in particular—~~

~~(a) to the matters mentioned in Part I of Schedule 1, and~~

~~(b) where the partnership or company (as the case may be) has become insolvent, to the matters mentioned in Part II of that Schedule; and references in that Schedule to the officer and the partnership or, as the case may be, to the director and the company are to be read accordingly.~~

~~(3) In determining whether it may accept a disqualification undertaking from any person the Department shall, as respects the person's conduct as an officer of any partnership or a~~

~~director of any company concerned, have regard in particular—~~  
~~(a) to the matters mentioned in Part I of Schedule 1, and~~  
~~(b) where the partnership or the company (as the case may be) has become insolvent,~~  
~~to the matters mentioned in Part II of that Schedule;~~  
~~and references in that Schedule to the officer and the partnership or, as the case may be, to~~  
~~the director and the company are to be read accordingly.~~

~~(4) Article 9(2) and (3) applies for the purposes of this Article and Schedule 1 as it applies~~  
~~for the purposes of Article 9 and 10, and in this Article and that Schedule “director” includes~~  
~~a shadow director.~~

~~(5) Subject to paragraph (6), any reference in Schedule 1 to a statutory provision contained~~  
~~in the Companies Order or the Insolvency Order includes, in relation to any time before the~~  
~~coming into operation of that statutory provision, the corresponding statutory provision in~~  
~~force at that time.~~

~~(6) The Department may by order subject to affirmative resolution modify any of the~~  
~~provisions of Schedule 1; and such an order may contain such transitional provisions as~~  
~~may appear to the Department necessary or expedient.~~

### **Participation in wrongful trading**

14.—(1) Where the High Court makes a declaration under Article 177 or 178 of the Insolvency (Northern Ireland) Order 1989 that a person is liable to make a contribution to a partnership’s assets, then, whether or not an application for such an order is made by any person, the Court may, if it thinks fit, also make a disqualification order against the person to whom the declaration relates.

(2) The maximum period of disqualification under this Article is 15 years.

(3) In this Article “partnership” includes overseas partnership within the meaning given by Article 9A(1).

### **Determining unfitness etc: matters to be taken into account**

17A.—(1) This Article applies where the High Court must determine—

(a) whether a person’s conduct as an officer of a partnership (either taken alone or taken together with that person’s conduct as an officer of one or more relevant entities or relevant overseas entities) makes the person unfit to be concerned in the management of a company;

(b) where the court is required to make an order under Article 9, what the period of disqualification should be.

(2) This Article also applies where the Department must determine—

(a) whether a person’s conduct as an officer of a partnership (either taken alone or taken together with that person’s conduct as an officer of one or more relevant entities or relevant overseas entities) makes the person unfit to be concerned in the management of a company;

(b) whether to exercise any discretion the Department has to accept a disqualification undertaking under Article 10.

(3) In making any such determination in relation to a person, the High Court or the Department must have regard in particular to the matters set

out in paragraphs 1 to 7 of Schedule 1.

(4) Article 9(1B) to (1E) and Article 9A(1) apply for the purposes of this Article as they apply for the purposes of Article 9(1).

## **18. Offences**

If a person acts in contravention of a disqualification order or disqualification undertaking, he shall be guilty of an offence and shall be liable –

- (a) on conviction on indictment, to imprisonment for not more than 2 years or a fine, or both; and
- (b) on summary conviction, to imprisonment for not more than 6 months or a fine not exceeding the statutory maximum, or both.

## **19.— Personal liability for company's debts where person acts while disqualified**

(1) A person is personally responsible for all the relevant debts of a company if at any time

- 
- (a) in contravention of a disqualification order or disqualification undertaking he is involved in the management of the company, or
- (b) as a person who is involved in the management of the company, he acts or is willing to act on instructions given without the leave of the High Court by a person whom he knows at that time to be—
  - (i) the subject of a disqualification order or disqualification undertaking,
  - (ii) the subject of a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986, or
  - (iii) an undischarged bankrupt.

(2) Where a person is personally responsible under this Article for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under this Article or otherwise, is so liable.

(3) For the purposes of this Article the relevant debts of a company are—

- (a) in relation to a person who is personally responsible under paragraph (1)(a), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company, and
- (b) in relation to a person who is personally responsible under paragraph (1)(b), such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in that paragraph.

(4) For the purposes of this Article, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.

(5) For the purposes of this Article a person who, as a person involved in the management of a company, has at any time acted on instructions given without the leave of the High Court by a person whom he knew at that time to be—

- (a) the subject of a disqualification order or disqualification undertaking, or
  - (b) the subject of a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986, or
  - (c) an undischarged bankrupt;
- is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.

## *“Compensation orders and undertakings*

### **Compensation orders and undertakings**

19A.—(1) The High Court may make a compensation order against a person on the application of the Department if the Court is satisfied that the conditions mentioned in paragraph (3) are met.

(2) If it appears to the Department that the conditions mentioned in paragraph (3) are met in respect of a person who has offered to give the Department a compensation undertaking, the Department may accept the undertaking instead of applying for, or proceeding with an application for, a compensation order.

(3) The conditions are that—

(a) the person is subject to a disqualification order or disqualification undertaking under this Order, and

(b) conduct for which the person is subject to the order or undertaking has caused loss to one or more creditors of an insolvent partnership of which the person has at any time been an officer.

(4) An “insolvent partnership” is a partnership that is or has been insolvent; and a partnership becomes insolvent if—

(a) the partnership goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up, or

(b) the partnership enters administration.

(5) The Department may apply for a compensation order at any time before the end of the period of 2 years beginning with the date on which the disqualification order referred to in paragraph (3)(a) was made, or the disqualification undertaking referred to in that paragraph was accepted.

(6) In the case of a person subject to a disqualification order under Article 11A, or a disqualification undertaking under Article 11C, the reference in paragraph (3)(b) to conduct is a reference to the conduct of the main transgressor in relation to which the person has exercised the requisite amount of influence.

### **Amounts payable under compensation orders and undertakings**

19B.—(1) A compensation order is an order requiring the person against whom it is made to pay an amount specified in the order—

(a) to the Department for the benefit of—

(i) a creditor or creditors specified in the order;

(ii) a class or classes of creditor so specified;

(b) as a contribution to the assets of a partnership so specified.

(2) A compensation undertaking is an undertaking to pay an amount specified in the undertaking—

(a) to the Department for the benefit of—

(i) a creditor or creditors specified in the undertaking;

(ii) a class or classes of creditor so specified;

(b) as a contribution to the assets of a partnership so specified.

(3) When specifying an amount the High Court (in the case of an order) and the Department (in the case of an undertaking) must in particular have regard to—

(a) the amount of the loss caused;

(b) the nature of the conduct mentioned in Article 19A(3)(b);



(c) whether the person has made any other financial contribution in recompense for the conduct (whether under a statutory provision or otherwise).

(4) An amount payable by virtue of paragraph (2) under a compensation undertaking is recoverable as if payable under a court order.

(5) An amount payable under a compensation order or compensation undertaking is provable as a bankruptcy debt.

### *Supplementary provisions*

#### **Application for disqualification order**

20.—(1) A person intending to apply for the making of a disqualification order by the High Court must give not less than 10 days' notice of that person's intention to the person against whom the order is sought; and on the hearing of the application the last-mentioned person may appear and himself or herself give evidence or call witnesses.

(3) On the hearing of an application made by a person falling within paragraph (4) the applicant must appear and call the attention of the High Court to any matters which seem to be relevant, and may give evidence or call witnesses.

(4) The following fall within this paragraph—

(a) the Department;

(b) the official receiver.

#### **21. Application for leave under an order or undertaking**

On the hearing of an application for leave for the purposes of Article 3(1)(a) or 4(1)(a), the Department shall appear and call the attention of the High Court to any matters which seem to the Department to be relevant, and may give evidence or call witnesses.

#### **Register of disqualification orders and undertakings**

22.—(1) Where—

(a) a disqualification order is made, or

(b) any action is taken by a court in consequence of which such an order or a disqualification undertaking is varied or ceases to be in force, or

(c) leave is granted by the High Court for a person subject to such an order to do any thing which otherwise the order prohibits the person from doing, or

(d) leave is granted by the High Court for a person subject to such an undertaking to do anything which otherwise the undertaking prohibits that person from doing,

the clerk of the court must furnish to the Department and to the Secretary of State such particulars as may be prescribed and regulations may prescribe the time within which, and the form and manner in which, such particulars are to be furnished.

(2) The Department must, from the particulars so furnished, continue to maintain the register of disqualification orders and of cases in which leave has been granted as mentioned in paragraph (1)(c).

(3) The Department must include in the register such particulars as it considers appropriate of—

(a) disqualification undertakings accepted by it under Article 10 or 11C;

(c) cases in which leave has been granted as mentioned in paragraph (1)(d).

(4) When an order or undertaking of which entry is made in the register ceases to be in force, the Department must delete the entry from the register and all particulars relating to it which have been furnished to the Department under this Article or any previous corresponding provision and, in the case of a disqualification undertaking, any other particulars the Department has included in the register.

(5) The register must be open to inspection on payment of such fee as may be prescribed.

(6) The Department may furnish to the Secretary of State such particulars as the Department considers appropriate of disqualification undertakings accepted by it under Article 10.

(7) Regulations under this Article may extend the preceding provisions of this Article, to such extent and with such modifications as may be specified in the regulations, to disqualification orders made and disqualification undertakings accepted under the Company Directors Disqualification Act 1986 as applied by Article 16 of the Insolvent Partnerships Order 1994.

### **Admissibility in evidence of statements**

23.—(1) In any proceedings (whether or not under this Order), any statement made in pursuance of a requirement imposed by or under Articles 9 to 10A, 11A to 11C, 12, 14 or 19 to 19C or Schedule 1 or by or under rules made for the purposes of this Order under the Insolvency (Northern Ireland) Order 1989, may be used in evidence against any person making or concurring in making the statement.

(2) However, in criminal proceedings in which any such person is charged with an offence to which this paragraph applies—

(a) no evidence relating to the statement may be adduced, and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Paragraph (2) applies to any offence other than—

(a) an offence which is—

(i) created by rules made for the purposes of this Order under the Insolvency (Northern Ireland) Order 1989, and

(ii) designated for the purposes of this paragraph by such rules or by regulations;

(b) an offence which is—

(i) created by regulations made under any such rules, and

(ii) designated for the purposes of this paragraph by such regulations; or

(c) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (false statements made otherwise than on oath).

(4) Regulations under paragraph (3)(a)(ii) must after being made be laid before the Assembly.

### **Legal professional privilege**

23A. In proceedings against a person for an offence under Article 18 nothing in this Order is to be taken to require any person to disclose any

information that he is entitled to refuse to disclose on grounds of legal professional privilege.

## **~~SCHEDULE 1~~**

### **~~MATTERS FOR DETERMINING UNFITNESS OF OFFICERS OF PARTNERSHIP~~**

#### **~~Article 13~~**

### **~~PART I~~**

#### **~~MATTERS APPLICABLE IN ALL CASES~~**

##### **~~1.~~**

~~Any misfeasance or breach of any fiduciary or other duty by the officer in relation to the partnership or, as the case may be, by the director in relation to the company.~~

##### **~~2.~~**

~~Any misapplication or retention by the officer or the director of, or any conduct by the officer or the director giving rise to an obligation to account for, any money or other property of the partnership or, as the case may be, of the company.~~

##### **~~3.~~**

~~The extent of the officer's or the director's responsibility for the partnership or, as the case may be, the company entering into any transaction liable to be set aside under Article 367 to 369 of the Insolvency Order (provisions against debt avoidance).~~

##### **~~4.—~~**

~~(1) The extent of the director's responsibility for any failure by the company to comply with any of the following provisions of the Companies Order, namely—~~

- ~~(a) Article 229 (companies to keep accounting records);~~
- ~~(b) Article 230 (where and for how long records to be kept);~~
- ~~(c) Article 296 (register of directors and secretaries);~~
- ~~(d) Article 360 (obligation to keep and enter up register of members);~~
- ~~(e) Article 361 (location of register of members);~~
- ~~(f) Article 371 (duty of company to make annual returns); and~~
- ~~(g) Articles 405 and 652D (duty of company to deliver particulars of charges on its property).~~

~~(2) Until the day appointed by order under Article 1 of the Companies (No. 2) (Northern Ireland) Order 1990, for the coming into operation of paragraph 2 of Schedule 2 to that Order, sub-paragraph (1) shall have effect as if for paragraph (g) there were substituted—  
“(g) Article 406 (company's duty to register charges it creates).”~~

##### **~~5.~~**

~~The extent of the director's responsibility for any failure by the directors of the company to comply with—~~

- ~~(a) Articles 234 or 235 of the Companies Order (duty to prepare annual accounts);~~
- ~~or~~
- ~~(b) Article 241 of that Order (approvals and signing of accounts).~~

~~6.~~

~~Any failure by the officer to comply with any obligation imposed on him by or under any of the following provisions of the Limited Partnerships Act 1907—~~

~~(a) section 8 (registration of particulars of limited partnership);~~

~~(b) section 9 (registration of changes in particulars);~~

~~(c) section 10 (advertisement of general partner becoming limited partner and of assignment of share of limited partner).~~

## **~~PART II~~**

### **~~MATTERS APPLICABLE WHERE PARTNERSHIP OR COMPANY HAS BECOME INSOLVENT~~**

~~7.~~

~~The extent of the officer's or the director's responsibility for the causes of the partnership or (as the case may be) the company becoming insolvent.~~

~~8.~~

~~The extent of the officer's or the director's responsibility for any failure by the partnership or (as the case may be) the company to supply any goods or services which have been paid for (in whole or in part).~~

~~9.~~

~~The extent of the officer's or the director's responsibility for the partnership or (as the case may be) the company entering into any transaction or giving any preference, being a transaction or preference liable to be set aside under Article 107 or Articles 202 to 204 of the Insolvency Order.~~

~~10.~~

~~The extent of the director's responsibility for any failure by the directors of the company to comply with Article 84 of the Insolvency Order (duty to call creditors' voluntary winding up).~~

~~11.~~

~~Any failure by the director to comply with any obligation imposed on him by or under any of the following provisions of the Insolvency Order—~~

~~(a) Article 57 (company's statement of affairs to administrative receiver);~~

~~(b) Article 85 (directors' duty to attend meeting; statement of affairs in creditors voluntary winding up).~~

~~12.~~

~~Any failure by the officer or the director to comply with any obligation imposed on him by or under any of the following provisions of the Insolvency Order (both as they apply in relation to companies and as they apply in relation to insolvent partnerships by virtue of the provisions of the Insolvent Partnerships Order (Northern Ireland) 1995).~~

~~(a) paragraph 49 of Schedule B1 (company's statement of affairs in administration);~~

~~(b) Article 111 (statement of affairs in winding up by the High Court);~~

~~(c) Article 198 (duty of anyone with company's property to deliver it up);~~

~~(d) Article 199 (duty to co-operate with liquidator, etc.).”~~

## SCHEDULE 1

### Article 17A

#### DETERMINING UNFITNESS ETC: MATTERS TO BE TAKEN INTO ACCOUNT

##### *Matters to be taken into account*

1. The extent to which the person was responsible for the causes of any material contravention, by the partnership mentioned in Article 9(1)(a), a relevant entity or a relevant overseas entity, of any applicable legislative or other requirement.
2. The extent to which the person was responsible for the causes of the partnership mentioned in Article 9(1)(a) becoming insolvent.
3. Where applicable, the extent to which the person was responsible for the causes of a relevant entity or relevant overseas entity becoming insolvent.
4. The nature and extent of any loss or harm caused, or any potential loss or harm which could have been caused, by the person's conduct as an officer of the partnership mentioned in Article 9(1)(a), a relevant entity or a relevant overseas entity.
5. Any misfeasance or breach of any fiduciary or other duty by the person in relation to the partnership mentioned in Article 9(1)(a) or a relevant entity or relevant overseas entity.
6. Any material breach of any legislative or other obligation of the person which applies as a result of being an officer of the partnership mentioned in Article 9(1)(a) or a relevant entity or relevant overseas entity.
7. The frequency of conduct of the person which falls within paragraphs 1 to 3, 5 or 6.

##### *Interpretation*

8. Article 9(1B) to (1E) and Article 9A(1) to (4) apply for the purposes of this Schedule as they apply for the purposes of Article 9(1).

## SCHEDULE 9

### Forms

### Article 17

#### **Form No. Description**

1. Administration application.
  - 1A. Notice of intention to appoint an administrator by the members of the partnership.
  - 1B. Notice of an appointment of an administrator by the members of the partnership (where a notice of intention to appoint has not been issued).
2. Affidavit verifying petition to wind up partnership.
3. Petition to wind up partnership by liquidator, administrator, trustee or supervisor.
4. Written/statutory demand by creditor.

5. Creditor's petition to wind up partnership (presented in conjunction with petitions against members).
6. Creditor's petition to wind up corporate member (presented in conjunction with petition against partnership).
7. Creditor's bankruptcy petition against individual member (presented in conjunction with petition against partnership).
8. Advertisement of winding-up petition(s) against partnership (and any corporate members).
9. Notice to court of progress on petitions presented.
10. Demand by member.
11. Members' petition to wind up partnership (presented in conjunction with petitions against members).
12. Members' petition to wind up corporate member (presented in conjunction with petition against partnership).
13. Member's bankruptcy petition against individual member (presented in conjunction with petition against partnership).
14. Joint bankruptcy petition against individual members.
15. Affidavit of individual member(s) as to concurrence of all members in presentation of joint bankruptcy petition against individual members.
16. Bankruptcy orders on joint bankruptcy petition presented by individual members.
17. Statement of affairs of member of partnership.
18. Statement of affairs of partnership.

## **SCHEDULE 10**

### **Subordinate legislation applied**

#### **Article 18**

The Insolvency Practitioners (Recognised Professional Bodies) Order (Northern Ireland) 1991  
 The Insolvency Rules (Northern Ireland) 1991  
 The Insolvency Regulations (Northern Ireland) 1996  
 The Insolvency (Monetary Limits) Order (Northern Ireland) 1991  
**The Preferential Payments (Monetary Limits) Order (Northern Ireland) 1991**  
 The Administration of Insolvent Estates of Deceased Persons Order (Northern Ireland) 1991  
 The Companies (Disqualification Orders) Regulations (Northern Ireland) 2003  
 The Insolvent Companies (Reports on Conduct of Directors) Rules (Northern Ireland) 2003  
 The Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules (Northern Ireland) 2003  
 The Insolvency Practitioners Regulations (Northern Ireland) 2006  
 The Insolvency Practitioners and Insolvency Account (Fees) Order (Northern Ireland) 2006 ;  
 The Insolvency (Fees) Order (Northern Ireland) 2006 ;  
 The Insolvency (Deposits) Order (Northern Ireland) 2006

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## Equality Screening Template – Section 75 of Northern Ireland Act 1998

**Please complete the coversheet details below:**

**Policy title:** The Insolvency (Amendment) (Northern Ireland) Bill

**Decision (delete as appropriate)**

Policy screened out **without** mitigation or an alternative policy adopted

**Contact:** [REDACTED]

**Date of completion:** 10 June 2022

**For Equality Unit Completion:**

**Amendments requested?** Yes / No

**Date returned to Business Area:**

**Date final version received:**

### Content

**Part 1. Policy scoping** – asks public authorities to provide details about the policy, procedure, practice and/or decision being screened and what available evidence you have gathered to help make an assessment of the likely impact on equality of opportunity and good relations.

**Part 2. Screening questions** – asks about the extent of the likely impact of the policy on groups of people within each of the Section 75 categories. Details of the groups consulted and the level of assessment of the likely impact. This includes consideration of multiple identity and good relations issues.

**Part 3. Screening decision** – guides the public authority to reach a screening decision as to whether or not there is a need to carry out an

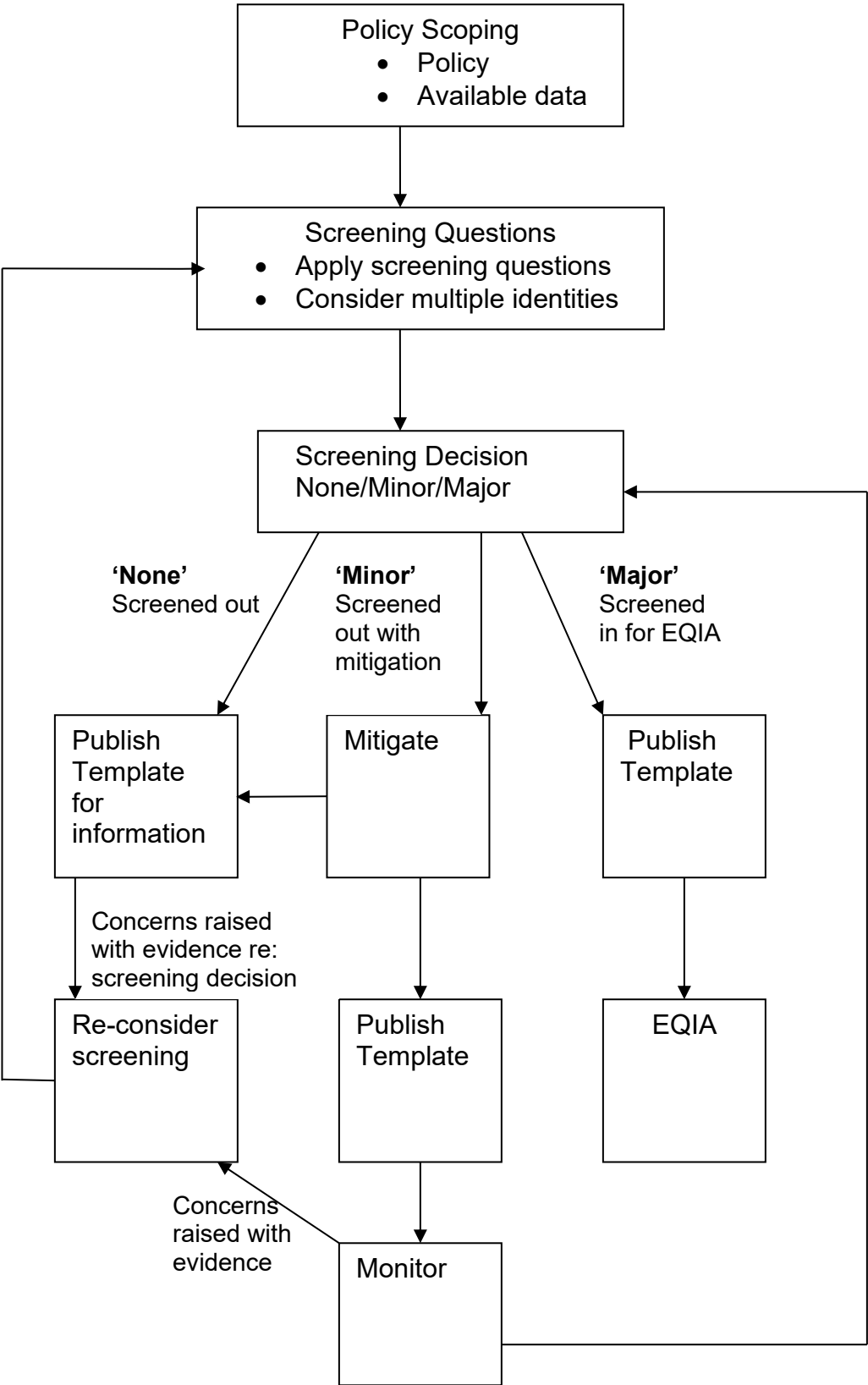
equality impact assessment (EQIA), or to introduce measures to mitigate the likely impact, or the introduction of an alternative policy to better promote equality of opportunity and/or good relations.

**Part 4. Monitoring** – provides guidance to public authorities on monitoring for adverse impact and broader monitoring.

**Part 5. Approval and authorisation** – verifies the public authority's approval of a screening decision by a senior manager responsible for the policy.



Flowchart for the equality screening process and decision.



## **Part 1. Policy scoping**

The first stage of the screening process involves scoping the policy under consideration. The purpose of policy scoping is to help prepare the background and context and set out the aims and objectives for the policy, being screened. At this stage, scoping the policy will help identify potential constraints as well as opportunities and will help the policy maker work through the screening process on a step by step basis.

Public authorities should remember that the Section 75 statutory duties apply to internal policies (relating to people who work for the authority), as well as external policies (relating to those who are, or could be, served by the authority).

### **Information about the policy**

#### **Name of the policy**

The Insolvency (Amendment) (Northern Ireland) Bill.

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#### **Is this an existing, revised or a new policy?**

A new policy.

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#### **What is it trying to achieve? (intended aims/outcomes)**

It is policy to maintain Northern Ireland legislation dealing with insolvency and director disqualification in parity with that applying in England and Wales.

Amendments have been made to insolvency legislation in England and Wales by the Enterprise and Regulatory Reform Act 2013, the Deregulation Act 2015 and the Small Business, Enterprise and Employment Act 2015 and in keeping with our policy of maintaining parity an Assembly Bill to make corresponding changes to Northern Ireland insolvency legislation is needed. The Bill will also replicate an amendment to company director disqualification legislation made by the Deregulation Act 2015 and make amendments to update a piece of subordinate legislation, the Insolvent Partnerships (Northern Ireland) Order 1995.

Salient amendments to insolvency legislation include,

- Provision aimed at ensuring continuity of supply of essential goods and services to businesses which are being kept open post-insolvency to facilitate rescue.

- Doing away with the requirement for a statement of affairs to be provided in all bankruptcies.
- Provision to enable administrators to take action for fraudulent or wrongful trading.
- Removing the need for trustees and liquidators to obtain sanction from creditors or the Department to undertake certain actions.
- Doing away with physical meetings as a way of making decisions unless a specified percentage of creditors insist on a meeting.
- Enabling creditors to opt out of receiving correspondence.
- Allowing dividends to be paid in respect of debts under a certain figure without the creditor having to submit a claim.

The amendment to company director disqualification legislation will,

- Allow the Department for the Economy to obtain information about a person's conduct as director of an insolvent company directly from anyone capable of providing the information, including the directors themselves, without having to go through the insolvency office-holder.

The amendments to the Insolvent Partnerships Order (Northern Ireland) 1995 will include providing for creditors to make decisions using procedures which do not involve having to attend a physical meeting.

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**Are there any Section 75 categories which might be expected to benefit from the intended policy? Yes.**

**If so, explain how.**

The legislation to implement the policy will be of a technical nature and will apply equally to everyone using it or affected by it, irrespective of which of the section 75 categories they fall into. The emphasis on decision-taking by creditors, in ways which do not involve physical meetings, could potentially benefit any creditor who happens to be elderly (age), has a disability, or who has dependants.

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**Who initiated or wrote the policy?**

The Department for the Economy

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**Who owns and who implements the policy?**

The policy is owned and is being implemented by the Insolvency Service which is a branch of the Department for the Economy. However the policy is based on similar measures which have already been implemented by the Insolvency Service for England and Wales; it is policy to maintain parity of legislation with that applying in England and Wales.

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### Implementation factors

**Are there any factors which could contribute to/detract from the intended aim/outcome of the policy/decision?** No.

### Main stakeholders affected

**Who are the internal and external stakeholders (actual or potential) that the policy will impact upon? (please delete as appropriate)**

**staff-** the proposals will affect the Official Receiver and his staff and other staff in the Insolvency Service, especially those in the Director Disqualification Unit.

**service users** – some of the proposals will have an impact on bankrupts and directors of companies which have been wound up by the High Court.

**other public sector organisations** – one of the proposals will make a slight alteration to the High Court's jurisdiction to make bankruptcy orders.

#### **other, please specify**

The policy will impact on private sector insolvency practitioners by altering some of the procedures they are required to follow and by changing the way in which they interact with creditors and company shareholders in the course of insolvency proceedings. It will affect anyone owed money by individuals who, or companies which have, entered insolvency proceedings. It could potentially also affect electricity, gas, water, sewerage and electronic and IT service providers in that it obliges them to maintain supplies to businesses which are being kept open post-insolvency.

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### Other policies with a bearing on this policy

- **what are they?** None.
- **who owns them?** N/A

## Available evidence

Evidence to help inform the screening process may take many forms. Public authorities should ensure that their screening decision is informed by relevant data. The Commission has produced this guide to [signpost to S75 data](#).

What evidence/information (both qualitative and quantitative) have you gathered to inform this policy? Specify details for each of the Section 75 categories.

\*No evidence has been gathered and it would not be possible, or meaningful to attempt to gather any. The policy consists of a multiplicity of disparate changes to existing insolvency procedures, each of which is minor and technical in nature. The sole criterion determining their applicability is whether or not insolvency proceedings are to be taken or are in progress. Entry into insolvency proceedings is on the basis of insolvency, not membership of any section 75 category. Nearly half of the proposed changes will be to corporate insolvency procedures. The changes to individual insolvency procedures will not alter the make-up, in terms of section 75 characteristics, of those subject to such procedures.

Some of the changes are to the way in which meetings of creditors and company members take place during insolvency proceedings. The fact that virtual meetings will be the default position should benefit section 75 groups such as the elderly, those with a disability and those with dependants. However, there is no way of knowing who is going to be a creditor, or member of a company subject to insolvency proceedings in the future, so that it would not be possible to gather data on which section 75 groups they will fall into.

**Religious belief** evidence / information: N/A – See above \*

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**Political Opinion** evidence / information: N/A – See above \*

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**Racial Group** evidence / information: N/A – See above \*

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**Age** evidence / information: N/A – See above \*

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**Marital Status** evidence / information: N/A – See above \*

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**Sexual Orientation** evidence / information: N/A – See above \*

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**Men & Women generally** evidence / information: N/A – See above \*

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**Disability** evidence / information: N/A – See above \*

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**Dependants** evidence / information: N/A – See above \*

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### **Needs, experiences and priorities**

**Taking into account the information referred to above, what are the different needs, experiences and priorities of each of the following categories, in relation to the particular policy/decision?**

**Specify details of the needs, experiences and priorities for each of the Section 75 categories below:**

**Religious belief** The planned changes to insolvency and director disqualification legislation are not of a nature which could be expected to give rise to differing needs, experiences and priorities for this category.

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**Political Opinion** The planned changes to insolvency and director disqualification legislation are not of a nature which could be expected to give rise to differing needs, experiences and priorities for this category.

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**Racial Group** The planned changes to insolvency and director disqualification legislation are not of a nature which could be expected to give rise to differing needs, experiences and priorities for this category.

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**Age** The fact that meetings will now take place virtually will assist older people who may be less able to travel to a physical meeting. It will allow them to take part without having to incur the cost of travelling to a physical meeting. Older people, as a group, are less likely to have access to computers or similar devices. However, insolvency practitioners convening meetings will be expected to deal with this by providing alternative means of taking part, such as telephone conferencing.

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**Marital status** The planned changes to insolvency and director disqualification legislation are not of a nature which could be expected to give rise to differing needs, experiences and priorities for this category.

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**Sexual orientation** The planned changes to insolvency and director disqualification legislation are not of a nature which could be expected to give rise to differing needs, experiences and priorities for this category.

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**Men and Women Generally** The planned changes to insolvency and director disqualification legislation are not of a nature which could be expected to give rise to differing needs, experiences and priorities for men and women.

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**Disability** The fact that meetings will now take place virtually should assist people with disabilities who may be less able to travel to a physical meeting.

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**Dependants** The fact that meetings will now take place virtually should assist people with dependants who would need to make arrangements to have those dependants looked after if they were to attend a physical meeting.

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## **Part 2. Screening questions**

### **Introduction**

In making a decision as to whether or not there is a need to carry out an equality impact assessment, the public authority should consider its answers to the Screening Questions 1-4, which follow.

If the public authority's conclusion is **none** in respect of all of the Section 75 equality of opportunity and/or good relations categories, then the public authority may decide to screen the policy out. If a policy is 'screened out' as having no relevance to equality of opportunity or good relations, a public authority should give details of the reasons for the decision taken.

If the public authority's conclusion is **major** in respect of one or more of the Section 75 equality of opportunity and/or good relations categories, then consideration should be given to subjecting the policy to the equality impact assessment procedure.

If the public authority's conclusion is **minor** in respect of one or more of the Section 75 equality categories and/or good relations categories, then consideration should still be given to proceeding with an equality impact assessment, or to:

- measures to mitigate the adverse impact; or
- the introduction of an alternative policy to better promote equality of opportunity and/or good relations.

### **In favour of a 'major' impact**

- a) The policy is significant in terms of its strategic importance;
- b) Potential equality impacts are unknown, because, for example, there is insufficient data upon which to make an assessment or because they are complex, and it would be appropriate to conduct an equality impact assessment in order to better assess them;
- c) Potential equality and/or good relations impacts are likely to be adverse or are likely to be experienced disproportionately by groups of people including those who are marginalised or disadvantaged;
- d) Further assessment offers a valuable way to examine the evidence and develop recommendations in respect of a policy about which there are



concerns amongst affected individuals and representative groups, for example in respect of multiple identities;

- e) The policy is likely to be challenged by way of judicial review;
- f) The policy is significant in terms of expenditure.

### **In favour of 'minor' impact**

- a) The policy is not unlawfully discriminatory and any residual potential impacts on people are judged to be negligible;
- b) The policy, or certain proposals within it, are potentially unlawfully discriminatory, but this possibility can readily and easily be eliminated by making appropriate changes to the policy or by adopting appropriate mitigating measures;
- c) Any asymmetrical equality impacts caused by the policy are intentional because they are specifically designed to promote equality of opportunity for particular groups of disadvantaged people;
- d) By amending the policy there are better opportunities to better promote equality of opportunity and/or good relations.

### **In favour of none**

- a) The policy has no relevance to equality of opportunity or good relations.
- b) The policy is purely technical in nature and will have no bearing in terms of its likely impact on equality of opportunity or good relations for people within the equality and good relations categories.

Taking into account the evidence presented above, consider and comment on the likely impact on equality of opportunity and good relations for those affected by this policy, in any way, for each of the equality and good relations categories, by applying the screening questions given overleaf and indicate the level of impact on the group i.e. minor, major or none.

## Screening questions

### 1. What is the likely impact on equality of opportunity for those affected by this policy, for each of the Section 75 equality categories?

Please provide details of the likely policy impacts and determine the level of impact for each S75 categories below i.e. either minor, major or none.

Details of the likely policy impacts on **Religious belief**:

None.

What is the level of impact? None

Details of the likely policy impacts on **Political Opinion**:

None.

What is the level of impact? None

Details of the likely policy impacts on **Racial Group**:

None.

What is the level of impact? None

Details of the likely policy impacts on **Age**:

Being able to participate in meetings, without having to travel to them, should benefit older people.

What is the level of impact? Minor positive.

Details of the likely policy impacts on **Marital Status**:

None.

What is the level of impact? None

Details of the likely policy impacts on **Sexual Orientation**:

None.

What is the level of impact? None

Details of the likely policy impacts on **Men and Women**:

None.

What is the level of impact? None

Details of the likely policy impacts on **Disability**:

No longer having to travel to attend meetings should make it easier for individuals with disabilities to participate in meetings.

What is the level of impact? Minor positive.

Details of the likely policy impacts on **Dependants**:

No longer having to travel to attend meetings should make it easier for individuals with caring responsibilities to participate in meetings.

What is the level of impact? Minor positive.

**2. Are there opportunities to better promote equality of opportunity for people within the Section 75 equalities categories? No**

Detail opportunities of how this policy could promote equality of opportunity for people within each of the Section 75 Categories below:

**Religious Belief –**

No, the policy is purely technical in nature and does not lend itself to promoting equality of opportunity for this category.

**Political Opinion –**

No, the policy is purely technical in nature and does not lend itself to promoting equality of opportunity for this category.

**Racial Group –**

No, the policy is purely technical in nature and does not lend itself to promoting equality of opportunity for this category.

**Age –**

No, the policy is purely technical in nature and does not lend itself to promoting equality of opportunity for this category.

**Marital Status –**

No, the policy is purely technical in nature and does not lend itself to promoting equality of opportunity for this category.

**Sexual Orientation –**

No, the policy is purely technical in nature and does not lend itself to promoting equality of opportunity for this category.

**Men and Women generally –**

No, the policy is purely technical in nature and does not lend itself to promoting equality of opportunity for this category.

**Disability –**

No, the policy is purely technical in nature and does not lend itself to promoting equality of opportunity for this category.

**Dependants –**

No, the policy is purely technical in nature and does not lend itself to promoting equality of opportunity for this category.

**3. To what extent is the policy likely to impact on good relations between people of different religious belief, political opinion or racial group?**

Please provide details of the likely policy impact and determine the level of impact for each of the categories below i.e. either minor, major or none.

Details of the likely policy impacts on **Religious belief**:

The policy is for companies which are, or individuals who are, insolvent. The policy will have no impact whatsoever on relations between people with different religious beliefs.

What is the level of impact? None.

Details of the likely policy impacts on **Political Opinion**:

The policy is for companies which are, or individuals who are, insolvent. The policy will have no impact whatsoever on relations between people with different political opinions.

What is the level of impact? None

Details of the likely policy impacts on **Racial Group**:

The policy is for companies which are, or individuals who are, insolvent. The policy will have no impact whatsoever on relations between different racial groups.

What is the level of impact? None

**4. Are there opportunities to better promote good relations between people of different religious belief, political opinion or racial group?**

Detail opportunities of how this policy could better promote good relations for people within each of the Section 75 Categories below:

**Religious Belief –**

No, the policy relates solely to administration of corporate and individual insolvency. It is objective and impersonal, it does not involve any interaction between people with different religious beliefs and it would not lend itself to any adjustment to promote better relations between them.

**Political Opinion –**

No, the policy relates solely to administration of corporate and individual insolvency. It is objective and impersonal. It does not involve any interaction between people with different political opinions and it would not lend itself to any adjustment to promote better relations between them.

**Racial Group –**

No, the policy relates solely to administration of corporate and individual insolvency. It is objective and impersonal. It does not involve any interaction between different races and it would not lend itself to any adjustment to promote better relations between them.

## Additional considerations

### ***Multiple identity***

Generally speaking, people can fall into more than one Section 75 category. Taking this into consideration, are there any potential impacts of the policy/decision on people with multiple identities?

*(For example; disabled minority ethnic people; disabled women; young Protestant men; and young lesbians, gay and bisexual people).*

No. The policy deals with proposals to make amendments to insolvency and director disqualification legislation. These amendments will be of a technical nature and will comprise laws which will apply equally and without bias to all those responsible for the conduct of insolvency proceedings or who are affected by such proceedings. The amendments will have a neutral effect on people with multiple identities.

Provide details of data on the impact of the policy on people with multiple identities. Specify relevant Section 75 categories concerned.

No such data is available and the impact on such people will be neutral.

### Part 3. Screening decision

If the decision is not to conduct an equality impact assessment, please provide details of the reasons.

The decision is not to carry out an equality impact assessment as the planned legislation will not have a negative impact on any of the section 75 groups.

The policy is purely technical in nature. By its nature it will apply impartially and without bias. Only one aspect of the policy will have any impact on people in terms of the equality and good relations categories. It is that enacting legislation obliging insolvency practitioners not to use physical meetings when complying with legislative requirements to seek decisions from creditors can be expected to benefit anyone who happens to be elderly (age), has a disability or who has dependants by saving them having to travel to a central venue. The impact is expected to be both positive, and minor in terms of the numbers involved.

If the decision is not to conduct an equality impact assessment the public authority should consider if the policy should be mitigated or an alternative policy be introduced - please provide details.

The policy does not adversely affect any of the section 75 groups so that mitigation is not necessary or appropriate.

If the decision is to subject the policy to an equality impact assessment, please provide details of the reasons.

N/A

All public authorities' equality schemes must state the authority's arrangements for assessing and consulting on the likely impact of policies adopted or proposed to be adopted by the authority on the promotion of equality of opportunity. The Commission recommends screening and equality impact assessment as the tools to be utilised for such assessments. Further advice on equality impact assessment may be found in a separate Commission publication: Practical Guidance on Equality Impact Assessment.

**This document will be made available for comment as part of a public policy consultation. Any feedback will be considered as part of the review of the consultation responses.**

## Mitigation

When the public authority concludes that the likely impact is 'minor' and an equality impact assessment is not to be conducted, the public authority may consider mitigation to lessen the severity of any equality impact, or the introduction of an alternative policy to better promote equality of opportunity or good relations.

Can the policy/decision be amended or changed or an alternative policy introduced to better promote equality of opportunity and/or good relations? N/A.

If so, **give the reasons** to support your decision, together with the proposed changes/amendments or alternative policy.



## **Timetabling and prioritising**

Factors to be considered in timetabling and prioritising policies for equality impact assessment.

If the policy has been ‘**screened in**’ for equality impact assessment, then please answer the following questions to determine its priority for timetabling the equality impact assessment.

On a scale of 1-3, with 1 being the lowest priority and 3 being the highest, assess the policy in terms of its priority for equality impact assessment.

### **Priority criterion – Rating (1-3)**

Effect on equality of opportunity and good relations -  
Social need -

Effect on people’s daily lives -

Relevance to a public authority’s functions –

Note: The Total Rating Score should be used to prioritise the policy in rank order with other policies screened in for equality impact assessment. This list of priorities will assist the public authority in timetabling. Details of the Public Authority’s Equality Impact Assessment Timetable should be included in the quarterly Screening Report.

Is the policy affected by timetables established by other relevant public authorities?

No.

## **Part 4. Monitoring**

Public authorities should consider the guidance contained in the Commission’s Monitoring Guidance for Use by Public Authorities (July 2007).

The Commission recommends that where the policy has been amended or an alternative policy introduced, the public authority should monitor more broadly than for adverse impact (See Benefits, P.9-10, paras 2.13 – 2.20 of the Monitoring Guidance).

Effective monitoring will help the public authority identify any future adverse impact arising from the policy which may lead the public authority to conduct an

equality impact assessment, as well as help with future planning and policy development.

This screening will be issued as part of a public consultation on the policy and any feedback will be taken into account.

The changes to legislation resulting from the policy will be in parity with changes already made to the legislation applying in England and Wales.

Given that the policy deals with a range of disparate measures, and that none of them will have a major impact, Post Project Appraisal would not be appropriate.

However if further changes are made to the legislation applying in England and Wales consideration will be given to making similar changes to that applying in Northern Ireland.

## **Part 5 - Approval and authorisation**

Screened by: [REDACTED]

Position/Job Title: Deputy Principal

Business Area/ Branch: Management Services and Regulatory Group

Date: 22/3/2023

Approved by: [REDACTED]

Position/Job Title: Director of Insolvency

Business Area/Branch: Insolvency Service

Date: 22/3/2023

Note: A copy of the Screening Template, for each policy screened should be 'signed off' and approved by a senior manager responsible for the policy, made easily accessible on the public authority's website as soon as possible following completion and made available on request.



Northern Ireland  
Assembly

## Committee for the Economy

Departmental Assembly Liaison Officer  
Department for the Economy  
[abu@economy-ni.gov.uk](mailto:abu@economy-ni.gov.uk)

Our Ref: **EC2025:358**

20 June 2025

Dear DALO,

### **Insolvency (Amendment) Bill**

Please accept the Committee's thanks for the oral and written evidence, provided by a Departmental official at the meeting on 18 June 2025 in respect of the Insolvency (Amendment) Bill.

The Committee agreed to write to the Department, seeking, following the introduction of the Bill:

- the Keeling Schedule for the Bill;
- the Equality Impact Assessment or screening document; and
- the Delegated Powers Memorandum.

A written response on or before 1 September 2025 would be greatly appreciated. The Committee would also greatly appreciate any related background policy information that you can provide including further oral evidence sessions as appropriate.

If you require further information or clarification in respect of the above, please do not hesitate to contact me.

Yours sincerely,

*Peter McCallion*

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**Peter McCallion**

Clerk to the Committee for the Economy