



Department for the

Economy

An Roinn

Geilleagair

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Dear Peter

Insolvency (Amendment) Bill: Delegated Powers

Insolvency (Amendment) Bill – Response to the queries raised by the Committee for the Economy following a briefing about the legislation making powers in the Bill provided by the Examiner of Statutory Rules on 22 October 2025

Further to your letter dated 24 October 2025, about information requested by the Committee following the Examiner's briefing. Please see response below which has been cleared by Minister Archibald. This information is not disclosable as it relates to the development of government policy.

The Committee has enquired about the Assembly procedure in the case of two of the powers to make subordinate legislation.

Officials have taken legal advice, and this is quoted for the Committee's information at Appendix A.

The Committee first of all enquired why clause 119, which gives the Department power to make consequential amendments by order, provides for some orders to require Assembly approval while others are to be subject to negative procedure.

This approach was taken in the interests of making best use of the Assembly's time. The aim was to ensure a graduated and proportionate system of control, with use of the most stringent form of Assembly procedure, affirmative procedure, only being required in the case of orders which repeal, revoke or amend primary legislation.

Our legal adviser has identified a number of previous Assembly Acts in which a similar approach has been taken when creating a power to make consequential amendments. An example is subsections (4) and (5) of section 16 of the Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016, reproduced for the Committee's convenience at Appendix B.

The Committee's enquiry about clause 119 has proved beneficial in that it prompted officials to take a fresh look at the clause, and they have discovered a gap in subsection (3). The intention is that the requirement under subsection (3) to lay orders in draft before the Assembly and to seek the Assembly's approval should apply in the case of orders which repeal or amend any form of primary legislation.

Acts of Parliament at Westminster are primary legislation and the Assembly could make consequential amendments to them, if required, albeit that any such amendments would only extend to this jurisdiction.

To ensure that subsection (3) applies comprehensively to all forms of primary legislation our Minister has therefore agreed that an amendment should be made to subsection (3) to provide for it to also apply in the case of Acts of Parliament. It is intended that this amendment will be tabled in the Assembly at consideration or further consideration stage. The amendment is of a minor nature and does not involve any change to policy.

The Committee also enquired about modified Article 23 of the Company Directors Disqualification Order 2002 ("the 2002 Order") inserted into Schedule 8 to the Insolvent Partnerships Order (Northern Ireland) 1995 ("the 1995 Order") by paragraph 93 of Schedule 4 to the Bill.

We should first of all explain that two separate and distinct pieces of legislation already exist.

The 2002 Order is primary legislation and enables company directors to be disqualified. Article 23 of the 2002 Order makes provision about the admissibility as evidence in subsequent criminal proceedings of statements previously made by the defendant pursuant to various provisions in the 2002 order itself, or rules made for the purposes of that order.

The 1995 Order is subordinate legislation. It provides for the application of specified provisions in the Insolvency (Northern Ireland) Order 1989 to provide mechanisms

for dealing with partnership insolvency. Article 16 of the 1995 Order currently applies provisions in the 2002 Order to enable members of partnerships which have been wound up as unregistered companies to be disqualified from acting as company directors if there is evidence that they engaged in misconduct while they were partners. The substitution of Article 16 made by clause 115 of the Bill will result in it also being possible to take disqualification action where a partnership has entered administration.

The 2002 Order applies in the case of company directors, and some its provisions require modification to work in the case of partnerships. Where this is the case modified versions of the provisions to apply in the case of partnerships are set out in schedule 8 to the 1995 Order.

The Bill creates, at paragraph 93 of Schedule 4, a modified version of Article 23 of the 2002 Order, to be inserted into schedule 8 to the 1995 Order.

The intention is that two versions of Article 23 will exist, an original in the 2002 Order to apply in the case of disqualification arising from company insolvency and a modified version in the 1995 Order to apply in the case of disqualification arising from partnership insolvency.

The Committee's query is about the version to apply in the case of disqualification arising from partnership insolvency.

Paragraph (3)(a) of this version will make it possible for offences created by rules made for the purposes of the 2002 Order to be "designated" either by the rules themselves or by regulations.

Designation would allow the use, as evidence, in criminal proceedings relating to the designated offence, of statements previously made by the defendant pursuant to requirements under specified provisions in the 2002 Order, or existing in rules made for the purposes of the 2002 Order, which would otherwise be inadmissible because they would be self-incriminatory.

The Committee has enquired as to the reason for paragraph (4) of modified Article 23 providing that regulations designating offences only have to be laid before the Assembly, with no requirement for them to be subject to any form of Assembly control.

The key point is that the requirement under paragraph (4) in the modified version of the Article for regulations under paragraph (3)(a)(ii) to be laid before the Assembly is exactly the same as exists under paragraph (4) in the original Article. And indeed, it mirrors the requirement under subsection (4) of the corresponding section of the Company Directors Disqualification Act 1986 ("the CDDA") applying in GB for

regulations made under subsection (3)(a)(ii) to be laid before each House of Parliament. The original version of Article 23 in the 2002 Order, the modified version to be inserted into the 1995 Order and section 20 of the CDDA are all included at Appendix C so that the Committee can see the way in which the paragraphs and the subsection referred to line up. The Insolvent Partnerships Order 1994 applying in England and Wales does not include a modified version of section 20 of the CDDA.

Legal advice is that it would be legally and administratively extremely inconvenient if the Assembly procedures applying in the case of regulations made under paragraph (4) of the modified version of Article 23 applying in the case of insolvent partnerships were to be different from those applying in the case of regulations made under paragraph (4) of the existing version of Article 23 which applies in the case of insolvent companies. Two different sets of regulations would have to be made and there would be a risk of this giving rise to different rules applying to different statements. Legal advice is to maintain consistency between the procedures required under the two versions.

It is the view of officials that it would be perverse and illogical if the Assembly procedure for regulations made under paragraph (3)(a)(ii) in the version of Article 23 to apply in the case of partnerships were to be different from that required for regulations made under paragraph (3)(a)(ii) in the version which applies in the case of companies.

Finally, it may be worth pointing out that under the law as it stands, the only type of criminal proceedings in which evidence can be given, or questions asked, in relation to statements made pursuant to requirements under the legislative provisions referred to in paragraph (1) of both the original and modified versions of Article 23, are proceedings under Article 10 of the Perjury (Northern Ireland) Order 1979.

No offences created by rules, or by regulations made under a power in rules, have ever been designated for the purposes of paragraph (3) of Article 23. Neither have any offences created by rules, or by regulations made under a power in rules, ever been designated for the purposes of subsection (3) of section (20) of the Company Directors Disqualification Act 1986.

Yours sincerely



Departmental Assembly Liaison Officer

Appendix A

“The decision of which Assembly procedure applies to any particular subordinate legislation reflects a judgement made by the Assembly about the degree of oversight which is appropriate for the content of the subordinate legislation in question. Whilst it may appear desirable that in an ideal world the Assembly would exercise the highest degree of oversight over every item of legislation, the availability of different procedures is a recognition that in practice this is not possible and that lower degrees of oversight are appropriate in certain cases. Of course, even in cases where there is no statutory procedure for Assembly control there is nothing to prevent the Assembly or its committees from subjecting the exercise of delegated power to scrutiny as a matter of practice.

Clause 119 confers a power to make subordinate legislation containing provision which is *consequential* on the provision made by the Bill. The first point to note is that this does not confer a power to *make new policy*. The provision that may be made under clause 119 must be necessary or desirable *as a result of* the provision which is made by the Bill (and which, accordingly, will have been approved by the Assembly in the making of the Act). The purpose of the power, therefore, is to enable the effect of the Assembly’s policy (as expressed in the Bill) to be put into full effect. Some consequential amendments need to take the form of amendments to primary legislation; other consequential amendments can be given effect without amending primary legislation – for example, by amending secondary legislation (which may itself have been subject to the negative resolution procedure) or by not amending legislation at all – for example, amending references in non-statutory documents or free-standing provision (that is make changes to the law which do not take the form of amendments to documents). Clause 119 provides that amendments which are to be made to primary legislation (see the definition of “Northern Ireland legislation” in section 98 of the [Northern Ireland Act 1998](#)) are subject to the high degree of oversight required by the draft affirmative procedure; whereas other consequential amendments are subject to the lower degree of oversight required by the negative resolution procedure. This method of striking a balance between the need for oversight and the need for the Assembly to focus its resources on the most important provisions has been established in previous Acts of the Assembly over

many years. Recent examples may be found at: ss.302(3)(d) and 303(3) of the Mental Capacity Act (NI) 2016; s.11 of the Insolvency (Amendment) Act (NI) 2016; ss.6(2) and 102(1) and (7)(b) of the Justice Act (NI) 2015; s.16 of the Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016; ss.28(2) and 60(5)(b) of the Justice Act (NI) 2016. It is of course open to the Assembly to require that all consequential amendments, even the most minor ones, are subject to the highest degree of Assembly oversight, if it wishes to deploy its resources accordingly. It will, however, mean that some legislation takes longer to reach the statute book, whilst going through the more time-consuming Assembly procedure.

Paragraph 93 of Schedule 4 to the Bill inserts into Schedule 8 to the Insolvent Partnerships (NI) Order 1995 a modified version of Article 23 of the Company Directors Disqualification (Northern Ireland) Order 2002. This version of Article 23 applies (along with the other modified provisions of the 2002 Order) where an insolvent partnership is being wound up as an unregistered company or enters administration. (Of course, in other cases, such as where *an insolvent company* is being wound up or enters administration, the 2002 Order applies in its original unmodified form.) A comparison of the modified version of Article 23 found in paragraph 93 with the unmodified version (here: [The Company Directors Disqualification \(Northern Ireland\) Order 2002](#)) shows that the only differences lie in Article 23(1) – the list of requirements is modified to reflect the other Articles that apply for the purposes of proceedings on insolvent partnerships. Articles 23(2) to (4) are unchanged. (As a matter of drafting, it may have been possible merely to set out the modification in Article 23(1) and to state that the other provisions applied without modification, but it is more helpful to set out the whole of the Article.) In short, the Article 23(4) in the Bill that applies in the case of insolvency partnerships is identical to the version which applies in other cases. Article 23(4) of the 2002 Order is, in turn, modelled on – and in this respect is effectively identical to – section 20(4) of the Company Directors Disqualification Act 1986 (here: [Company Directors Disqualification Act 1986](#)).

Regulations under Article 23(3)(a)(ii) have a limited function. The effect of Article 23(1), (2) and (3) taken together is that statements made under the powers of compulsion in the provisions listed in Article 23(1) cannot be used in criminal

proceedings (Art 23(2)), except in proceedings for perjury (Art 23(3)(c)). This is in accordance with the principle against self-incrimination. Article 23(3) confers a power to expand the exception (ie, to widen the category of cases in which statements can be used) but only in a very limited way - to include an offence which is created under the Insolvency Rules and designated by either (i) those Rules or (ii) regulations under Article 23(3)(a)(ii) for this purpose. So the regulations have the sole purpose of designating, for the purposes of Article 23(3), an offence created under the Insolvency Rules.

As noted above, Article 23 applies in different versions in different contexts (eg, insolvent companies and insolvent partnerships); but it is anticipated that *designation* would be intended to be effective for all criminal proceedings, regardless of the context in which the statement in question was made. It would be legally and administratively extremely inconvenient to have different Assembly procedures applying to regulations under different versions of Article 23(4), depending on whether the statement was made in insolvent company proceedings or insolvent partnership proceedings. This would require two different sets of regulations to be made, and risk different rules applying to different statements, depending on which kind of proceedings the statements were made in.

It is submitted that the most appropriate policy here is to maintain consistency with the pattern established in 1986 and continued in 2002, in comparable insolvency proceedings.”

Appendix B

Minor and consequential amendments

16—(1) Schedule 1 is comprised as follows—

- (a) Part 1 contains amendments consequential on the provision made by section 1;
 - (b) Part 2 contains amendments consequential on the provision made by section 8;
 - (c) Part 3 contains general minor and consequential amendments;
 - (d) Part 4 contains amendments that remove obsolete material etc.
- (2) The Department may by regulations make such other amendments of statutory provisions as it considers appropriate in consequence of any provision made by this Act.
- (3) Regulations under subsection (2) may contain incidental, transitional, transitory or saving provision.
- (4) Regulations under subsection (2) that amend or repeal a provision of an Act of Parliament or Northern Ireland legislation must not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
- (5) Other regulations under subsection (2) are subject to negative resolution.

Appendix C

Original Article 23 in the Company Directors Disqualification (Northern Ireland) Order 2002

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.

The modified version of Article 23 in the Company Directors Disqualification (Northern Ireland) Order 2002 to be inserted into the Insolvent Partnerships Order (Northern Ireland) 1995 by paragraph 93 of Schedule 4 to the Bill

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.

Section 20 of the Company Directors Disqualification Act 1986

20 Admissibility in evidence of statements

(1) In any proceedings (whether or not under this Act), any statement made in pursuance of a requirement imposed by or under sections 5A, 6 to 10, 12C, 15 to 15C or 19(c) of, or Schedule 1 to, this Act, or by or under rules made for the purposes of this Act under the Insolvency Act 1986 or under the 1989 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 subsection 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) Subsection (2) applies to any offence other than—

(a) an offence which is—

(i) created by rules made for the purposes of this Act under the Insolvency Act 1986, and

(ii) designated for the purposes of this subsection by such rules or by regulations made by the Secretary of State;

(b) an offence which is—

(i) created by regulations made under any such rules, and

(ii) designated for the purposes of this subsection by such regulations;

(c) an offence under section 5 of the Perjury Act 1911 (false statements made otherwise than on oath); . . .

(d) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath); or

(e) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (SI 1979/1714 (NI 19)) (false statements made otherwise than on oath).

(4) Regulations under subsection (3)(a)(ii) shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.

(5) In subsection (1), “the 1989 Order” means the Insolvency (Northern Ireland) Order 1989 (SI 1989/2405 (NI 19)).



Northern Ireland
Assembly

Committee for the Economy

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Our Ref: **EC2025: 525**

24 October 2025

Dear DALO,

Insolvency (Amendment) Bill: Delegated Powers

At its meeting of 22 October 2025, the Committee received a briefing from the Assembly's Examiner of Statutory Rules in respect of the regulation making powers in the Insolvency (Amendment) Bill.

The Committee considered Clause 119 of the Bill which includes powers to make consequential provisions. The Committee noted that where such provisions amend Northern Ireland legislation, draft affirmative resolution shall apply. However, Clause 119(4) indicates that any other regulations will be subject to negative resolution.

The Committee felt that draft affirmative resolution should probably apply to all of the delegated legislation powers associated with Clause 119. The Committee therefore agreed to write to the Department to seek an explanation as to the reasoning for the application of negative resolution to Clause 119(4) only.

The Committee also considered paragraph 93 of Schedule 4, which inserts a new modified Article 23 into the 2002 Order. The Committee understood that the new Article 23(4) requires that regulations need only be laid in the Assembly and would not be subject to any form of Assembly resolution.

The Committee felt that negative resolution should probably apply to the delegated legislation powers associated with the new Article 23(4). The Committee therefore agreed to write to the Department to seek an explanation of the reasoning for the application of no form of Assembly resolution to the new Article 23(4).



A written response at your earliest convenience would be greatly appreciated. Your response and further feedback from the Examiner of Statutory Rules will likely inform the Committee's decision in respect of related amendments.

If you require further information or clarification in respect of the above, please do not hesitate to contact me.

Yours sincerely,

Peter McCallion

Peter McCallion

Clerk to the Committee for the Economy