INSOLVENCY (AMENDMENT) BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial memorandum has been prepared by the Department for the Economy ("the Department") in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So, where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. Legislation in Northern Ireland dealing with insolvency and director disqualification is kept as far as possible in parity with that applying in England and Wales.

4. The main piece of primary legislation dealing with insolvency in Great Britain is the Insolvency Act 1986 (c.45) and the main piece dealing with director disqualification is the Company Directors Disqualification Act 1986 (c.46).

5. These two Acts have been amended by other Acts passed at Westminster,

    - the Enterprise and Regulatory Reform Act 2013
    - the Deregulation Act 2015
    - the Small Business, Enterprise and Employment Act 2015
    - The Corporate Insolvency and Governance Act 2020
    - The Economic Crime and Corporate Transparency Act 2023.

6. Amendments corresponding to ones made to the Insolvency Act 1986 and the Company Directors Disqualification Act 1986 by the first three of these Acts need to be made to the main primary legislation applying to insolvency in Northern Ireland, the Insolvency (Northern Ireland) Order 1989 (NI 19) ("the Insolvency Order") and to the main primary legislation dealing with director disqualification, the Company Directors Disqualification (Northern Ireland) Order 2002 ("the Disqualification Order"). Amendments to the Insolvency and Disqualification Orders were included in the last two Acts with the consent of the Northern Ireland Assembly.

7. There is a need to amend the Insolvent Partnerships Order (Northern Ireland) 1995 to reflect the changes to the Insolvency and Disqualification Orders.

8. The amendments will achieve a number of policy objectives aimed at improving the administration of insolvencies and making it more streamlined and efficient.

9. One objective is to make it possible for directors of companies in administration to be held personally liable for fraudulent or wrongful trading.

10. A second objective is to enable administrators and liquidators to assign rights of action, for example, for fraudulent or wrongful trading, to third parties.

11. A third objective is to ensure that the proceeds of certain categories of claim, such as actions for fraudulent or wrongful trading, go to ordinary unsecured creditors, not floating charge holders.

12. A fourth objective is to remove the need for liquidators and trustees in bankruptcy to obtain sanction from creditors or the Department before taking certain actions.

13. A fifth objective is to ensure that engagement with creditors, and, in the case of companies, contributories, normally takes place in ways which do not involve a physical meeting.

14. A sixth objective is to give creditors in corporate and individual insolvency proceedings the right to opt out of receiving routine communications from the office-holder.

15. A seventh objective is to put in place provision to establish when the liquidator is to have their release if a winding-up order is rescinded.

16. An eighth objective is to increase the period by which an administrator's appointment can be extended with consent from 6 months to one year.

17. A ninth objective is to enable payments to be made to unsecured creditors out of the "prescribed part" in administration without court permission.

18. A tenth objective is to enable the making of subordinate legislation which would allow a dividend to be paid without the creditor having to submit a claim where the debt is below a prescribed amount.

19. An eleventh objective is to provide for the Official Receiver to become trustee, directly on the making of a bankruptcy order without any period as receiver and manager.

20. A twelfth objective is to abolish fast-track voluntary arrangements, administered by the Official Receiver, for bankrupts.

21. A thirteenth objective is to strengthen existing legislative provision aimed at ensuring that businesses which are allowed to trade during insolvency proceedings have continued access to essential goods and services.

22. A fourteenth objective is to ensure that the Enforcement of Judgments Office is notified of the presentation and passing of resolutions for the voluntary winding up of a company.

23. A fifteenth objective is to ensure that the appointment of an administrator cannot be obstructed by the presentation of a winding up petition.

24. A sixteenth objective is to repeal provision allowing the High Court to order debts due to companies which are being compulsorily wound up to be paid into a bank appointed by the Court instead of to the liquidator.

25. A seventeenth objective is to enable the Department and the Official Receiver to obtain information and records relating to the conduct of directors of insolvent companies directly from the person who has the information or records instead of having to go through the insolvency office-holder.

26. An eighteenth objective is to enable insolvency practitioners, as well as the Official Receiver, to be appointed to act as interim receiver, in the period between presentation of a bankruptcy petition and the making of a bankruptcy order.

27. A nineteenth objective is to provide that a statement of affairs will no longer have to be submitted in creditor petition bankruptcies unless the Official Receiver asks for one.

28. A twentieth objective is to provide that, in company administrations, the ordinary unsecured creditors, are not to be involved in deciding whether the administrator is to be granted release unless that there are funds available, other than from the prescribed part of the proceeds of any assets subject to floating charges, to enable a distribution to be made to the ordinary unsecured creditors.

29. A twenty-first objective is to do away with the requirement to send notice of intention to appoint an administrator to prescribed persons in cases where the circumstances of the case are such that the appointment cannot be challenged.

30. A twenty-second objective is to update the Insolvent Partnerships Order (Northern Ireland) 1995.

CONSULTATION

31. The Department carried out a public consultation on its proposals to bring in legislation to amend the Insolvency and Disqualification Orders and the Insolvent Partnerships Order (Northern Ireland) 1995 during the period 6 November 2024 to 1 January 2025. A letter was sent to around 800 individuals and organisations referring to a consultation document and list of questions on the Department's website. The consultation was also advertised in three Northern Ireland newspapers.

32. Four responses were received. Three were in favour of the proposals. The Northern Ireland Law Society expressed concerns about the proposal that individuals made bankrupt on a creditor's petition should no longer have to submit a statement of affairs unless the Official Receiver asks for one. The Society felt that this could dilute the significance of the document and that it was likely that a statement of affairs would still be requested in the majority of cases because of the opportunity it provides to understand the bankrupt's circumstances, including what assets and liabilities they have and their financial history.

33. The Department's view is that submission of a statement of affairs is unnecessary in the majority of cases because the same information is available from a preliminary examination questionnaire which all bankrupts are required to complete.

OPTIONS CONSIDERED

34. Nearly all of the amendments which the Bill will make to the Insolvency Order mirror ones already made by three Westminster Acts to the Insolvency Act 1986 applying in England and Wales. All of the amendments to the Insolvency and Disqualification Orders need to be mandatory and to carry the force of law. This leaves only two options, either to include them in an Assembly Bill or to do nothing.

35. Doing nothing would mean that insolvency and company director disqualification legislation applying in Northern Ireland would remain out of step with that applying in England and Wales. The amendments made to the primary legislation applying in England and Wales were made with the aim of improving that legislation and making the administration of insolvencies faster, more efficient and therefore cheaper. Not legislating for corresponding amendments to Northern Ireland legislation would deny to those using it, or affected by its operation, the same efficiencies and improvements as enjoyed by their counterparts in England and Wales. They would also be denied the benefit of the small number of improvements specific to Northern Ireland.

36. The amendments to the Insolvent Partnerships Order (Northern Ireland) 1995 could have been made by an amending order in the form of subordinate legislation. Including them in the Bill will allow them to be brought in earlier. This is because many of the amendments are to reflect changes made to primary legislation to be made by the Bill and including them in the same instrument as amends the primary legislation will enable them to be brought into operation at the same time instead of the inevitable time lag which would result if a separate piece of subordinate legislation had to be made after the amendments to the primary legislation were in operation.

OVERVIEW

37. The Bill consists of 121 clauses and 4 Schedules.

COMMENTARY ON CLAUSES

Clause 1: Introductory

Clause 1 provides information about the origins of Parts 2 to 10 of the Bill and about the amendments made by Parts 11 and 12.

Clause 2: Power for administrator to bring claim for fraudulent or wrongful trading

In Clause 2, paragraph (1) inserts new Articles 208ZA, 208ZB and 208ZC into the Insolvency Order.

Article 208ZA

Article 208ZA enables an administrator to bring an action in the High Court seeking a contribution to the assets of the company in administration from any person who appears to have knowingly been party to its business being carried on fraudulently.

Article 208ZA mirrors Article 177 applying in the case of liquidations.

Article 208ZB

Article 208ZB enables an administrator to bring an action in the High Court seeking a contribution to the assets of the company in administration from its current or former directors if they have engaged in wrongful trading.

Paragraph (1) of Article 208ZB provides that an application to have a director held liable to make such a contribution can be made if it appears that paragraph (2) applies but that the right to make the application is subject to paragraph (3).

For paragraph (2) to apply the company must be in insolvent administration and the director must have been a director at a time when they knew or ought to have concluded that there was no reasonable prospect of the company avoiding going into either insolvent administration or insolvent liquidation.

Paragraph (3) forbids the High Court declaring a person liable to make a contribution to the assets of the company if it is satisfied that the person did everything they should have done to minimise the loss to creditors.

Paragraph (4) sets out factors which are to be taken into account in deciding what facts the person should have known or ascertained, what conclusions they should have reached and what steps they should have taken.

Paragraph (5) clarifies that a reference in paragraph (4) to the functions carried out by the director includes functions which are entrusted to, but not carried out by, the director.

Paragraph (6) provides definitions of “insolvent administration” and “insolvent liquidation”.

Paragraph (7) defines “director” as including a shadow director.

Paragraph (8) provides that Article 208ZB is without prejudice to Article 208ZA.

Article 208ZB mirrors Article 178 applying in the case of liquidations.

Article 208ZC

Article 208ZC applies Article 179 (Proceedings under Articles 177 and 178) for the purposes of an application under Article 208ZA or 208ZB.

Subsection (2) of Clause 2 amends Article 178, which establishes the High Court’s power to order directors to make a contribution to the company’s assets in cases of

wrongful trading, so that it applies where a company has entered insolvent administration as well as where a company has entered insolvent liquidation.

Subsection (3) of Clause 2 is a transitional provision.

Clause 3: Power for liquidator or administrator to assign causes of action

Clause 3 inserts new Article 208ZD into the Insolvency Order. Article 208ZD gives a liquidator or administrator ("the office-holder") the right to assign to a third party any of six causes of action which can arise on a company going into liquidation or administration.

The six causes of action already exist under insolvency law (or are introduced by clause 2) and enable liquidators and administrators to take action on behalf of the body of creditors to recover monies or reverse certain transactions where directors or others have acted in a way that has caused harm to creditors.

Office-holders may prefer not to bring actions themselves, because, for example, of the risk of incurring substantial costs if the action is not successful. Article 208ZD enables the office-holder to assign the right to bring the action to a third party. The company which is in liquidation or administration benefits from whatever payment is made by the assignee to acquire the right of action. The proceeds of the action are included in the assignment.

Clause 4: Application of proceeds of office-holder claims

Clause 4 inserts new Article 150ZB into the Insolvency Order. Article 150ZB codifies the legal position established by case law by providing that the proceeds of certain claims brought or assigned by administrators and liquidators do not form part of the company's property which is available to satisfy debts secured by floating charges.

Paragraph (1) of Article 150ZB provides that Article 150ZB applies where a company is in administration or liquidation, the company has property which is subject to a floating charge, and the administrator or liquidator ("the office-holder") has either brought a claim under a provision listed in paragraph (3) or has assigned the right to do so.

Paragraph (2) exempts the proceeds of the claim from being treated as part of the company's net property available for satisfying claims from creditors with security in the form of a floating charge.

Paragraph (3) lists five categories of claim under a total of seven provisions in the Insolvency Order.

Paragraph (4) provides that the exemption for the proceeds of the listed categories of claim from being treated as part of the company' net property available for satisfying claims from creditors with security in the form of a floating charge can be disapplied by a voluntary arrangement or a compromise or arrangement under Part 26 or 26A of the Companies Act 2006.

Clause 5: Exercise of powers by liquidator: removal of need for sanction

This clause amends Articles 140 and 142 of and Schedule 2 to the Insolvency Order. The amendments give liquidators in both voluntary and compulsory liquidations the right to exercise any of the powers contained in Schedule 2 without the need to obtain sanction (approval) from either the High Court or a creditors' committee (or where there is no creditors' committee, the Department or a meeting of creditors).

Subsections (4) and (5)(a) in clause 5 taken together have the effect of relocating paragraph 7A in Schedule 2 to become paragraph 3 of that Schedule. This relocation has been made possible by the fact that with the abolition of any requirement for sanction it is no longer necessary for this paragraph to be contained in Part 3 of Schedule 2 which was the Part listing powers which could be exercised without sanction in any winding up.

Removing the requirement to obtain sanction brings the provisions for liquidations into line with administration, as administrators do not need sanction for any of the acts which if undertaken by a liquidator would have required sanction.

Clause 6: Exercise of powers by trustee in bankruptcy: removal of need for sanction

This clause amends Article 287 of and Schedule 3 to the Insolvency Order. The amendments give trustees in bankruptcy the right to exercise any of the powers contained in Schedule 3 and Article 287(2) without the need to obtain sanction (approval) from either the High Court or a creditors' committee (or where there is no creditors' committee, the Department).

Paragraph (2) of Article 287 allows a trustee in bankruptcy to appoint the bankrupt to carry out certain functions, including carrying on their business for the benefit of their creditors.

Subsection (3) of clause 6 revokes words at the beginning of paragraph (2) of Article 287. The effect of this revocation is that trustees in bankruptcy will no longer need permission from the creditors' committee or the High Court before making such an appointment.

Subsection (4) revokes paragraphs (3) to (5) of Article 287, which are no longer relevant following the removal of the requirement for sanction.

The amendments mirror for bankruptcy, the amendments made to the liquidation regime by clause 5 (see above).

Clause 7: Abolition of requirements to hold meetings: company insolvency

Clause 7 inserts new Articles 208ZE, 208ZF and 208ZG into the Insolvency Order.

Article 208ZE

Heretofore decisions by creditors in corporate insolvency proceedings have always been made at physical meetings. Attendees were able to vote on proposals and give the office holder approval to take certain actions. They could, for example, approve a proposal for a voluntary arrangement, an office-holder's release from office, or an office-holder's remuneration. Physical meetings of contributories, that is current or former shareholders of a company who are liable to contribute to its assets, could also take place in corporate insolvency proceedings.

The effect of Article 208ZE is to provide that physical meetings will no longer be the default mechanism for seeking decisions from creditors and contributories in corporate insolvency proceedings.

Paragraph (1) of Article 208ZE provides that Article 208ZE is to apply where any decision is sought from a company's creditors or contributories for the purposes of Parts 1A to 7 of the Insolvency Order. Parts 1A to 7 contain the full range of insolvency procedures which it is possible for a company to enter under the Insolvency Order.

Paragraph (2) provides that the decision has to be made by what is termed a qualifying decision procedure. The person seeking the decision, who will usually be the office-holder, is allowed to choose the type of procedure, but it can only be a meeting if paragraph (3) applies.

Paragraph (3) applies if what is termed the minimum number of creditors or contributories have submitted a written request to whoever is seeking the decision asking for a meeting. Paragraph (4) provides that if this happens, a meeting must be called.

Paragraph (5) provides that the requirements under paragraph (2) for decisions to be made using qualifying decision procedures other than meetings can be altered or overridden by legislation or High Court order.

Paragraph (6) introduces Article 208ZF, which provides a deemed consent procedure which can be used as an alternative to a qualifying procedure in certain instances.

Paragraph (7) establishes that the minimum number of creditors or contributories as referred to in paragraph (3) is 10% of the total by value, 10% of the total number, or an absolute number of 10.

Paragraph (8) clarifies that the references to creditors in paragraph (7) are to be treated as references to all of the creditors, even if a decision is being sought from only one class of creditor.

Paragraph (9) defines what is meant by a meeting for the purposes of Article 208ZE.

Paragraph (10) applies Article 208ZE where decisions are to be made by creditors of a particular class.

Paragraph (11) provides a definition of the term "qualifying decision procedure".

Article 208ZF

Article 208ZF sets out a deemed consent procedure, whereby anyone seeking a decision from a company's creditors or contributories will be able to write to them with a proposal, and, unless 10% of more of the creditors or contributories by value object, the proposal will be deemed to have been accepted.

Paragraph (1) of Article 208ZF provides that deemed consent can be used by a company's creditors or contributories as an alternative to a qualifying decision procedure. This is subject to two exceptions. A deemed consent procedure cannot be used if it is stated in legislation, or the High Court orders, that a decision has to be made using a qualifying decision procedure.

Paragraph (2) makes a further exception. Any requirement in the rules for a decision by a company's creditors or contributories on a person's remuneration must state that the decision can only be taken by a qualifying decision procedure.

Paragraph (3) sets out the information which must be provided to what are termed the relevant creditors, other than opted-out creditors, or to what are termed the relevant contributories, as part of the deemed consent process. They must be told what they are being asked to make a decision about, what the proposed decision is, the effect of paragraphs (4) and (5) of Article 208ZF and how to object to the proposed decision.

Paragraph (4) provides that the proposed decision is to be treated as having been made if less than the appropriate number of relevant creditors or contributories object.

Paragraph (5) provides that the proposed decision is be treated as not having been made if the appropriate number of relevant creditors or contributories do object and that any future decision about the same matter will have to be made using a qualifying decision procedure.

Paragraph (6) establishes that the appropriate number of relevant creditors or contributories for the purposes of paragraph (4) is 10% by value.

Paragraph (7) defines "relevant creditors" and paragraph (8) defines "relevant contributories".

Paragraph (9) applies Article 208ZF in the case of creditors of a particular class.

Article 208ZG

Article 208ZG gives the Department power to make changes by regulation to the maximum number of creditors and contributories as referred to in Article 208ZE and the appropriate number of relevant creditors and contributories as referred to in Article 208ZF.

Subsection (2) of clause 7 inserts provision into Schedule 5 to the Insolvency Order setting out matters which can be included in company insolvency rules dealing with decision making by creditors and contributories. It will be possible for rules to prescribe the use of particular procedures but permit the use of other methods if they meet prescribed requirements. A range of provisions which can be included is set out,

including provision as to creditors' and contributories' right to vote and how they may request that a meeting be held.

Clause 8: Abolition of requirements to hold meetings: individual insolvency

Clause 8 inserts new Articles 345A, 345B and 345C into the Insolvency Order.

Article 345A

Heretofore decisions by creditors in individual insolvency proceedings have always been made at physical meetings. Attendees were able to vote on proposals and give the office holder approval to take certain actions. They could, for example, approve a proposal for a voluntary arrangement, an office-holder's release from office, or an office-holder's remuneration.

The effect of Article 345A is to provide that physical meetings will no longer be the default mechanism for seeking decisions from creditors in individual insolvency proceedings.

Paragraph (1) of Article 345A provides that Article 345A is to apply where any decision is sought from an individual's creditors for the purposes of Parts 7A to 10 of the Insolvency Order. Parts 7A to 10 contain the full range of insolvency procedures which it is possible for an individual to enter under the Insolvency Order.

Paragraph (2) provides that the decision has to be made by what is termed a creditors' decision procedure. The person seeking the decision, who will usually be the office-holder is allowed to choose the type of procedure, but it can only be a meeting if paragraph (3) applies.

Paragraph (3) applies if what is termed the minimum number of creditors have submitted a written request to whoever is seeking the decision asking for a meeting. Paragraph (4) provides that if this happens, a meeting must be called.

Paragraph (5) provides that the requirements under paragraph (2) for decisions to be made using creditors' decision procedures other than meetings can be altered or overridden by legislation or High Court order.

Paragraph (6) introduces Article 345B, which provides a deemed consent procedure which can be used as an alternative to a creditors' decision procedure in certain instances.

Paragraph (7) establishes that the minimum number of creditors as referred to in paragraph (3) is 10% of the total by value, 10% of the total number, or an absolute number of 10.

Paragraph (8) clarifies that the references to creditors in paragraph (7) are to be treated as references to all of the creditors, even if a decision is being sought from only one class of creditor.

Paragraph (9) defines what is meant by a meeting for the purposes of Article 345A.

Paragraph (10) applies Article 345A where decisions are to be made by creditors of a particular class.

Paragraph (11) provides a definition of the term "creditors' decision procedure".

Article 345B

Article 345B sets out a deemed consent procedure, whereby anyone seeking a decision from an individual's creditors will be able to write to them with a proposal, and, unless 10% of more of the creditors by value object, the proposal will be deemed to have been accepted.

Paragraph (1) of Article 345B provides that deemed consent can be used by an individual's creditors as an alternative to a creditors' decision procedure. This is subject to two exceptions. A deemed consent procedure cannot be used if it is stated in legislation, or the High Court orders, that a decision has to be made using a creditors' decision procedure.

Paragraph (2) makes a further exception. Any requirement in the rules for a decision by an individual's creditors on a person's remuneration must state that the decision can only be taken by a creditors' decision procedure.

Paragraph (3) sets out the information which must be provided to what are termed the relevant creditors, other than opted-out creditors, as part of the deemed consent process. They must be told what they are being asked to make a decision about, what the proposed decision is, the effect of paragraphs (4) and (5) of Article 345B and how to object to the proposed decision.

Paragraph (4) provides that the proposed decision is to be treated as having been made if less than the appropriate number of relevant creditors object.

Paragraph (5) provides that the proposed decision is be treated as not having been made if the appropriate number of relevant creditors do object and that any future decision about the same matter will have to be made using a creditors' decision procedure.

Paragraph (6) establishes that the appropriate number of relevant creditors for the purposes of paragraph (4) is 10% by value.

Paragraph (7) defines "relevant creditors".

Paragraph (8) applies Article 345B in the case of creditors of a particular class.

Article 345C

Article 345C gives the Department power to make changes by regulation to the minimum number of creditors as referred to in Article 345A and the appropriate number of relevant creditors as referred to in Article 345B.

Subsection (2) of clause 8 inserts provision into Schedule 6 to the Insolvency Order setting out matters which can be included in individual insolvency rules dealing with

decision making by creditors. It will be possible for rules to prescribe the use of particular procedures, but permit the use of other methods if they meet prescribed requirements. A range of provisions which can be included is set out, including provision as to creditors' right to vote and how they may request that a meeting be held.

Clause 9: Ability for creditors to opt not to receive certain notices: company insolvency

Subsection (1) of clause 9 inserts new Article 208ZJ into the Insolvency Order.

Paragraph (1) of Article 208ZJ makes it possible for it to be stated in rules which include a requirement for an office-holder to give notice to a company's creditors that the requirement does not apply in the case of opted-out creditors.

Paragraph (2) provides that such a statement may not be made in the case of rules which require notice of a dividend or proposed dividend to be given to creditors and that where such a statement is made it can be overruled by the High Court which can order that a notice is to be given to all creditors, or to all creditors of a particular category.

Paragraph (3) clarifies that unless the rules provide otherwise, a creditor who has not received notice of a decision- making procedure because they have opted out can take part and vote in the procedure if they do find out about it.

Paragraph (4) includes a definition of "office-holder" for the purpose of Article 208ZJ.

Subsection (2) of clause 9 inserts a new Article 8A into the Insolvency Order.

Article 8A includes a definition of "opted-out creditor" for the purposes of Parts 2 to 7 of the Insolvency Order. It is apparent from this definition that a creditor who has elected to opt-out of receiving correspondence can at any time opt to resume receiving it.

Subsection (3) of clause 9 inserts provision into Schedule 5 to the Insolvency Order to enable provision in connection with electing to be, or ceasing to be, an opted-out creditor of a company to be included in company insolvency rules.

Clause 10: Ability for creditors to opt not to receive certain notices: individual insolvency

Subsection (1) of clause 10 inserts new Article 345E into the Insolvency Order.

Paragraph (1) of Article 345E makes it possible for it to be stated in rules which include a requirement for an office-holder to give notice to an individual's creditors that the requirement does not apply in the case of opted-out creditors.

Paragraph (2) provides that such a statement may not be made in the case of rules which require notice of a dividend or proposed dividend to be given to creditors and that where such a statement is made it can be overruled by the High Court which can

order that a notice is to be given to all creditors, or to all creditors of a particular category.

Paragraph (3) clarifies that unless the rules provide otherwise, a creditor who has not received notice of a decision- making procedure because they have opted out can take part and vote in the procedure if they do find out about it.

Paragraph (4) includes a definition of "office-holder" for the purpose of Article 345D.

Subsection (2) of clause 10 inserts a new Article 11A into the Insolvency Order.

Article 11A includes a definition of "opted-out creditor" for the purposes of Parts 7A to 10 of the Insolvency Order. It is apparent from this definition that a creditor who has elected to opt-out of receiving correspondence can at any time opt to resume receiving it.

Subsection (3) of clause 10 inserts provision into Schedule 6 to the Insolvency Order to enable provision in connection with electing to be, or ceasing to be, an opted-out creditor of an individual to be included in individual insolvency rules.

Clauses 11 to 20, clause 21 and Schedule 1, and clauses 22 to 24

Clauses 11 to 20, clause 21 and Schedule 1 and clauses 22 to 24 all make amendments to provisions in the Insolvency Order which are needed to apply the policy underpinning clauses 7 to 10. The amendments remove requirements to hold physical meetings of creditors and contributories and provide for requirements to send notices not to apply in the case of opted-out creditors.

Clause 25: Progress report to company

Clause 25 removes a reference to Article 88 in paragraph (1) of Article 79 of the Insolvency Order. Article 88 is repealed by clause 34.

Clause 26: Final meeting prior to dissolution

Clause 26 replaces Article 80 in the Insolvency Order with a substitute, which dispenses with the former requirement for the liquidator in a members' voluntary liquidation to call a final meeting of the company.

Paragraph (1) of substitute Article 80 places the liquidator under a duty to prepare an account of the winding up of the company's affairs as soon as this is complete.

Paragraph (2) obliges the liquidator to send a copy of the account to the company members. He has to do this within 14 days from the date to which the account is made up.

Paragraph (3) obliges the liquidator to send a copy of the account to the registrar of companies. The same deadline of 14 days from the date to which the account is made up applies and in addition the account must not be sent to the registrar of companies until the company members have been sent their copies.

Clause 27: Effect of company's insolvency

Clause 27 amends Article 81 of the Insolvency Order which sets out what the liquidator in a members' voluntary liquidation must do on discovering that the company will not be able to pays its debts in full plus interest within 12 months from the start of the winding up.

The former requirements to call a meeting of the creditors and lay a statement of the company's affairs at it are done away with.

Subsection (2) of clause 27 inserts a new paragraph (1A) into Article 81. Under new paragraph (1A) the liquidator still has to prepare a statement of the company's affairs but is no longer required to lay it a creditors' meeting. Instead the liquidator has to send it to the creditors and must do so within 7 days from the day after the day on which he or she formed the opinion that the company would not be able to pay its debts plus interest within 12 months of being wound up.

Subsection (4) of clause 27 inserts new paragraphs (4A) and (4B) into Article 81. Paragraph (4A) gives the creditors the right to, in accordance with the rules, nominate a different person to take over as liquidator. Paragraph (4B) obliges the liquidator who had been acting in the members' voluntary liquidation prior to discovering that the company would not be able to pay its debts plus interest, to give the company's creditors the opportunity to nominate another person to take over as liquidator.

Clause 28: Conversion to creditors' voluntary winding up

Clause 28 replaces Article 82 of the Insolvency Order with a substitute.

Paragraph (1) of the substitute establishes that the point at which a members' voluntary liquidation turns into a creditors' voluntary liquidation is when the creditors nominate a liquidator to replace the one who had been acting in the members' voluntary liquidation, or the procedure to enable them to do so concludes without a nomination being made.

Paragraph (2) provides that as from the date on which the liquidation turns into a creditors' voluntary liquidation, the Insolvency Order applies as if the directors had never made a statutory declaration of solvency.

Paragraph (3) clarifies that if the creditors nominate a person to act as liquidator in the creditors' winding up the liquidator is to be that person and if they do not, the liquidator is to be same liquidator as acted in the members' voluntary liquidation.

Paragraph (4) gives directors, members and creditors the right, within 7 days of a different liquidator being nominated by the creditors, to apply to the High Court for an Order which can either-

- direct that the liquidator who acted in the members' voluntary liquidation is to remain in office, either instead of or jointly with the person nominated by the creditors, or

- provide for the liquidator to be someone who is neither the person who acted as liquidator in the members' voluntary liquidation nor the person nominated by the creditors

Paragraph (5) provides that if an applicant under paragraph (4) is the holder of a qualifying floating charge, within the meaning of paragraph 15 of Schedule B1 to the Order, the High Court must grant their application unless that the Court thinks that the

particular circumstances of the case make it right to refuse the application.

Clause 29: Application of Chapter 4.

Clause 29 amends Article 83 of the Insolvency Order with effect that it is Articles 85 and 86 instead of Articles 84 and 85 which do not apply where a creditors' voluntary winding up was preceded by a members' voluntary winding up. Article 84 is repealed by clause 30.

Clause 31: Directors' statement of affairs to creditors

Clause 31 amends Article 85 of the Insolvency Order.

Article 85 places the directors of a company in creditors' voluntary liquidation, which was not preceded by a members' voluntary liquidation, under a duty to prepare a statement of affairs.

The amendments which clause 31 makes to Article 85 do away with the former requirement to lay the statement of affairs at a meeting of the creditors.

Subsection (2) of clause 31 replaces paragraph (1) of Article 85 with a substitute which provides that the directors still have to prepare a statement of the company's affairs but that they now have to send it to the creditors. They must do this within 7 days from the day after the day on which the resolution to wind the company up was passed.

Clause 32: Appointment of liquidator

Clause 32 amends Article 86 of the Insolvency Order.

Article 86 makes provision as to how a liquidator is to be appointed in a creditors' voluntary liquidation not preceded by a members' voluntary liquidation.

Clause 32 replaces paragraph (1) of Article 86 with three new paragraphs.

New paragraph (1) provides that the company's right to make its nomination is to be exercised at the meeting at which the resolution to wind the company up is passed.

New paragraph (1A) gives the creditors the right to make a nomination in accordance with the rules. It does so without stipulating the nomination is to be made at a meeting.

New paragraph (1B) places the directors under a duty to give the creditors the opportunity to nominate a person to act as liquidator.

Clause 33: Appointment of liquidation committee

Clause 33 amends Article 87 of the Insolvency Order.

Article 87 gives the creditors in a creditors' voluntary liquidation the right to appoint a liquidation committee with up to 5 members and the company the right to appoint up to a further 5 members.

Subsection (2) of clause 33 amends paragraph (1) of Article 87 so that it provides that the creditors' right to appoint a liquidation committee is to be exercised in accordance with the rules. The former requirement for the appointment to be made at a meeting is removed.

Subsection (3) makes amendments to paragraph (3) of Article 87, which gives creditors certain rights to block appointments to the committee made by the company. The amendments establish that these rights are now to be exercised by decisions made by the creditors, not by the passing of resolutions at meetings.

Clause 36: Final meeting prior to dissolution

Clause 36 replaces Article 92 of the Insolvency Order with a substitute, which dispenses with the former requirement for the liquidator to call meetings of the company and its creditors once a company in a creditors' voluntary liquidation has been fully wound up.

Paragraph (1) of substitute Article 92 places the liquidator under a duty to prepare an account of the winding up as soon as this is complete.

Paragraph (2) provides that the liquidator has to send copies of the account to the company's members. The liquidator also has to send copies of the account to the creditors, other than any who have opted out, and give them a notice explaining the effects of the provision under which they will be released and how the creditors can object to their release. All this has to be done within 14 days from the date to which the account is made up.

Paragraphs (3) and (4) oblige the liquidator to send a copy of the account and confirmation as to whether any of the creditors objected to his or her release to the registrar of companies and he or she must do so within the seven days following the expiry of the period allowed under the rules for the creditors to object to a liquidator's release.

Clause 37: Powers of directors where no liquidator appointed or nominated by company

Paragraph (2) of Article 99 of the Insolvency Order provides that the directors of a company which is in voluntary liquidation are not to exercise any of their powers during the period prior to the company appointing, or nominating, a liquidator unless sanctioned to do so by the High Court, or, in the case of a creditors' voluntary liquidation, to ensure compliance with Article 84 (creditors' meeting) and Article 85 (statement of affairs).

Clause 37 removes the reference to Article 84, which is repealed by clause 30, and inserts a reference to Article 86(1B). Article 86(1B) is inserted by clause 32 and obliges the directors to invite the company's creditors to nominate a liquidator.

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

Clause 38 makes amendments to Article 116 of the Insolvency Order to ensure that in a High Court winding up the choice of a person to replace the official receiver as liquidator

is made in ways which do not involve a physical meeting.

Subsection (2) of clause 38 amends paragraph (4) of Article 116 so that the choice of a person to take over from the official receiver as liquidator will now be made by the official receiver seeking nominations from the creditors and contributories in accordance with the rules instead of calling them to meetings.

Subsection (3) of clause 38 replaces paragraphs (5) and (6) of Article 116 with substitutes which include provision establishing that the official receiver must decide within 12 weeks of the making of a winding-up order whether to seek nominations from the creditors and contributories for a person to replace him as liquidator.

Clause 39: Appointment by Department

Subsection (2) of clause 39 amends paragraph (2) of Article 117 of the Insolvency Order. The amendments provide that in a winding-up by the High Court, the duty which the official receiver is under to decide whether to refer the need for a person to be appointed to take over from them as liquidator to the Department now arises if the creditors and contributories have been asked to nominate a person to act as liquidator but have failed to do so.

Subsection (3) of clause 39 amends paragraph (5) of Article 117 of the Insolvency Order to provide that when giving notice to creditors of their appointment or advertising it, a liquidator who has been appointed by the Department to take over from the official receiver has to explain the procedure for establishing a liquidation committee.

Clause 40: Choice of liquidator at meetings of creditors and contributories

Clause 40 makes amendments to Article 118 of the Insolvency Order.

Subsection (2) of clause 40 amends paragraph (1) of Article 118 to provide that this Article now applies where the creditors and contributories of a company being wound up by the High Court are asked to nominate a person to be liquidator.

Subsection (3) amends paragraph (2) of Article 118 so that it now provides that the creditors' and contributories' rights to nominate a person to be liquidator are to be exercised in accordance with the rules instead of at meetings.

Clause 41: Appointment of liquidator by High Court following administration or voluntary arrangement

Clause 41 amends Article 119(3) of the Insolvency Order.

The amendment simplifies the text by which Article 116(5)(a) and (b) is disapplied in cases where an administration or company voluntary arrangement ends with the administrator or supervisor of the arrangement being appointed by the High Court as liquidator.

Clause 42: Liquidation committee

Clause 42 replaces paragraphs (1) to (3) in Article 120 of the Insolvency Order with substitutes.

Substitute paragraph (1) provides that Article 120 is to apply where a winding up order has been made.

Substitute paragraph (2) provides that a liquidation committee is to be established in accordance with the rules if both the company's creditors and contributories decide that one should be established.

Substitute paragraph (3) provides that even if only one of the two groups decides that a liquidation committee should be established, a liquidation committee still has to be established unless the court decides that it need not be.

Substitute paragraph (3A) makes provision about the function of a liquidation committee.

Substitute paragraph (3B) obliges the liquidator to seek a decision as to whether a liquidation committee should be established if one-tenth by value of the company's creditors ask him to do so.

Substitute paragraph (3C) exempts the official receiver, if he is the liquidator, from the obligation under paragraph (3B).

Clause 43: Duty to summon final meeting

Clause 43 replaces Article 124 of the Insolvency Order with a substitute.

Paragraph (1) of the substitute Article sets two conditions for Article 124 to apply. They are that a company is being wound up by the High Court and the liquidator is not the official receiver.

Paragraph (2) places the liquidator under a duty to prepare an account of the winding up as soon as this appears for practical purposes to be complete.

Paragraph (3) provides that the liquidator has to send copies of the account to the creditors, other than any who have opted out, and give them a notice explaining the

effects of the provision under which he or she will be released and how they can object to his or her release.

Paragraphs (4) and (5) oblige the liquidator to send a copy of the account and confirmation as to whether any of the creditors objected to his or her release to the High Court and the registrar of companies and provide that this must be done within the seven days following the expiry of the period allowed under the rules for the creditors to object to a liquidator's release.

Clause 44: Delegation of High Court's powers to liquidator

Clause 44 replaces subparagraph (a) in paragraph (1) of Article 137 of the Insolvency Order with a substitute.

The effect of the substitution is to permit provision to be included in the rules enabling or requiring liquidators, acting under the control of the High Court, to exercise any powers or discharge any duties which the Court is under with respect to the seeking of decisions on any matter from creditors and contributories.

Clause 45: Liquidator's powers and duties in creditors' voluntary winding up

Article 141 of the Insolvency Order, as amended by clause 45, sets out what powers a liquidator nominated by a company in a creditors' voluntary liquidation has during the period prior to the creditors either nominating or failing to nominate a person as liquidator.

Subsection (2) of clause 45 amends paragraph (2) of Article 141 with effect that, unless the liquidator has sanction from the High Court, they are not to exercise any of the powers conferred on liquidators by Article 140 during the period up to when the creditors either make their nomination or the procedure to enable them to do so concludes without a nomination being made.

Subsection (4) amends paragraph (5) of Article 141 so that the duty which it places a liquidator nominated by the company in a creditors voluntary liquidation to apply to the High Court for directions now arises if the directors fail to comply with either:

- the requirement under paragraph (1) and (2) of Article 85 to prepare and send to the creditors a verified statement of affairs for the company within the 7 days following the date on which the resolution to wind it up is passed, or

- the requirement under paragraph (1B) of Article 86 to seek a nomination from the company's creditors for a person to be liquidator.

Clause 46: Liquidator's supplementary powers

Article 143 applies in the case of companies being wound up by the High Court.

Clause 46 replaces paragraph (2) of Article 143 with a substitute which gives the liquidator the right to seek a decision on any matter from the company's creditors or contributories and obliges him or her to do so if requested by one-tenth in value of either the creditors or contributories.

Clause 47: Removal of liquidator: voluntary winding up

Article 145 of the Insolvency Order applies to members' and creditors' voluntary liquidations. It establishes the procedure for removing the liquidator from office, how the liquidator can resign and when the liquidator vacates office.

Subsection (2) of clause 47 amends paragraph (2)(b) of Article 145 so that it now provides that in a creditors' voluntary winding-up the only way in which the liquidator can be removed from office otherwise than under a High Court Order is by the company's creditors deciding, in a qualifying decision procedure instigated for the purpose of removing the liquidator, that he or she should be removed.

Subsection (3) of clause 47 replaces paragraph (3) of Article 145 with two new paragraphs.

New paragraph (3) makes provision about when a general meeting of a company in members' voluntary liquidation can be summoned for the purpose of removing the liquidator if the liquidator was appointed by the High Court under Article 94.

New paragraph (3A) makes provision about when a qualifying decision procedure for the purpose of removing a liquidator can be instigated in the case of a company in a creditors' voluntary liquidation if the liquidator was appointed by the High Court under Article 94.

Subsection (4) of clause 47 replaces paragraph (6) of Article 145 with two new paragraphs which respectively provide that liquidators in members' and creditors' voluntary liquidations vacate office as soon as they have complied with the requirements they are under to send copies of their final account etc. to the registrar of companies.

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

Article 146 of the Insolvency Order includes provision establishing the procedure for removing the liquidator of a company which is being wound up by the High Court, how the liquidator can resign and when the liquidator vacates office.

Subsection (2) of clause 48 amends paragraph (2) of Article 146 so that it now provides that the liquidator can only be removed by High Court Order or as a result of a decision made by the company's creditors in a qualifying decision procedure instigated for the purpose of removing the liquidator.

Subsection (3) of clause 48 makes amendments to paragraph (3) of Article 146 consequential on the fact that any decision by the creditors to remove the liquidator is now to be made by a qualifying decision procedure instead of at a general meeting.

Subsection (4) of clause 48 replaces paragraph (7) of Article 146 with a substitute which provides that in a winding up by the High Court, the liquidator vacates office as soon as he or she has complied with the requirement to send a copy of their final account etc. to the registrar of companies and the High Court.

Clause 49: Release of liquidator: voluntary winding up

Article 147 of the Insolvency Order applies in the case of voluntary liquidations and establishes when the liquidator has his or her release.

Subsection (2) of clause 49 replaces paragraph (2) of Article 147 with a substitute which introduces new paragraphs setting out the ways in which the liquidator's time in office can end and their release take place.

Release following removal by the creditors is dealt with in new paragraph (2B). All reference to meetings and resolutions is removed. Paragraph (2B) is instead stated to apply where the creditors have decided that the liquidator should be removed from office.

How the liquidator obtains their release depends on whether or not the creditors decide against it.

If the creditors decide against the liquidator's release, the liquidator has to apply to the Department for release and it will be for the Department to decide when he or she should have it.

If the creditors do not decide against the liquidator's release the liquidator obtains their release by notifying the registrar of companies in accordance with the rules that they have ceased to hold office.

Release where vacation of office takes place under Article 145(7), that is following a final account being sent to the registrar of companies, is dealt with in new paragraph (2H).

How the liquidator obtains their release depends on whether any of the creditors object to their being released within the time-limit allowed by the rules.

If any of them do, the liquidator has to apply to the Department for release and it will be for the Department to decide when he or she should have it.

If none of them do, the liquidator obtains their release when they vacate office, which they do by sending their final account to the registrar of companies together with a statement confirming that none of the creditors objected to their release.

Although not stated in the provision itself, new paragraph (2I) applies only in paragraph (2B) cases and provides that a decision by the creditors on whether to allow the liquidator to have his or her release can only be made using a qualifying decision procedure.

Clause 50: Release of liquidator: winding up by the High Court

Article 148 of the Insolvency Order applies where a company is being wound up by order of the High Court or the Court has appointed a provisional liquidator.

Clause 50 amends provisions in Article 148 dealing with the liquidator's release in the case of winding-up by the Court.

Paragraph (2) of Article 148 establishes when the official receiver is to have his or her release if he or she has been acting as liquidator and is being replaced.

Subsection (2) of clause 50 removes a reference in subparagraph (a) of paragraph (2) to a general meeting of the creditors or contributories. Paragraph (2)(a) now provides that if the official receiver's successor as liquidator was nominated by the creditors or contributories or appointed by the Department, the official receiver obtains his or her release by giving notice to the High Court that he or she has been replaced.

Subsection (3) of clause 50 replaces paragraph (4) of Article 148 with a substitute which introduces new paragraphs which apply where the liquidator is not the official receiver and set out the ways in which that person's time in office as liquidator can end and they can have their release.

Release following removal by the creditors is dealt with in new paragraph (4A). All reference to meetings and resolutions is removed. Paragraph (4A) is instead stated to apply where the creditors have decided that the liquidator should be removed from office.

How the liquidator obtains their release depends on whether or not the creditors decide against it.

If the creditors decide against the liquidator's release, the liquidator has to apply to the Department for release and it will be for the Department to decide when he or she should have it.

If the creditors do not decide against the liquidator's release the liquidator obtains their release by notifying the High Court in accordance with the rules that they have ceased to hold office.

Release where vacation of office takes place under Article 146(7), that is following a final account being sent to the registrar of companies and the High Court, is dealt with in new paragraph (4F).

How the liquidator obtains their release depends on whether any of the creditors object to their being released within the time-limit allowed by the rules.

If any of them do, the liquidator has to apply to the Department for release and it will be for the Department to decide when he or she should have it.

If none of them do, the liquidator obtains their release when they vacate office, which they do by sending their final account to the High Court and to the registrar of companies together with a statement confirming that none of the creditors objected to their release.

Although not stated in the provision itself, new paragraph (4G) applies only in paragraph (4A) cases and provides that a decision by the creditors on whether to allow the liquidator to have his or her release can only be made using a qualifying decision procedure.

Subsection (4) of clause 50 inserts new paragraph (4H) into Article 148 which provides that when a winding-up order is rescinded, the liquidator has his or her release with effect from whatever time the court determines. This should ensure that where the High Court rescinds a winding-up order the liquidator's release is addressed at the same time, as opposed to being the subject of a subsequent, separate application to the Court. A winding-up order may be rescinded, where, for instance it is shown that the company's circumstances are markedly more favourable than they were when the winding-up order was made or where the court was not in possession of the full facts when it made the order.

Clause 52: Meetings to ascertain wishes of creditors or contributories

Paragraph (1) of Article 164 enables the High Court to take the creditors and contributories' wishes into account when dealing with the winding up of a company.

Clause 52 amends subparagraph (b) of paragraph (1) so that it now provides that the Court can direct that qualifying decision and deemed consent procedures are to be used to ascertain those wishes.

Clause 53: Dissolution: voluntary winding up

Article 166 of the Insolvency Order establishes when a company which has been voluntarily wound up is dissolved.

Following amendment by subsection (2) of clause 53, paragraph (1) of Article 166 now provides that Article 166 applies: *(i)* in the case of a members' voluntary liquidation, once the liquidator has sent their final account to the registrar of companies and *(ii)* in the case of a creditors' voluntary liquidation, once the liquidator has sent their final account and a statement of whether any of the creditors objected to their release to the registrar of companies.

Subsection (3) of clause 53 replaces paragraph (2) of Article 166 with a substitute which places the registrar under a duty to register the account or the account and statement on receipt and provides that the company is automatically dissolved at the end of three months from the date of registration.

Clause 55: Dissolution in other cases

Article 169 of the Insolvency Order establishes when a company which is being wound up by the High Court is dissolved.

Clause 55 replaces paragraph (1) of Article 169 with two new paragraphs.

New paragraph (A1) provides that in cases where the liquidator is not the official receiver application of Article 169 is triggered by the registrar of companies receiving the liquidator's final account and statement as to whether any of the creditors objected to his or her release. In cases where the official receiver is liquidator the official receiver has to send a notice to the registrar of companies that the winding up is complete and Article 169 is triggered when the registrar receives this.

New paragraph (1) places the registrar under a duty to register the account and statement or notice on receipt and provides that the company is automatically dissolved at the end of three months from the date of registration.

Clause 57: Protection of supplies of goods and services

Article 197B of the Insolvency Order renders void clauses in contracts for the supply of goods and services which either provide for automatic termination of the contract or supply, or which permit the supplier to terminate the contract or supply, in the event of a company entering any of a range of "relevant insolvency procedures". Article 197B also provides that where an event occurred before the company entered the relevant insolvency procedure, which would have entitled the supplier to terminate the supply, but the supplier did not do so, they may not terminate it during the insolvency period.

Paragraph (8) of Article 197B establishes when the insolvency period begins and ends. Subparagraph (e) of paragraph (8) establishes when it ends if the company is in liquidation.

Clause 57 amends subparagraph (e) so that it now provides that the insolvency period ends when the liquidator complies with *(i)* in the case of a members' voluntary liquidation, Article 80(2), *(ii)* in the case of a creditors' voluntary liquidation, Article 92(2) and *(iii) in* a winding up by the High Court, Article 124(3).

Clause 60: Admissibility of evidence in statement of affairs etc

Paragraph (2) of Article 375 of the Insolvency Order restricts the use which can be made of certain statements in criminal proceedings.

Paragraph (3)(a) of Article 375 disapplies paragraph (2) in the case of offences under listed Articles in the Insolvency Order. Clause 60 removes from this list a reference to Article 84(5) and replaces a reference to Article 85(3)(a) with a reference to Article 85(3). Article 84 is repealed by clause 30 and the substitution of the reference to Article 85(3) is needed as a consequence of changes made to Article 85 by clause 31.

Clause 61: Representation of corporations at meetings

Paragraph (1) of Article 384 as formerly stated made provision about how a corporation which was a creditor or debenture-holder of a company could be represented at meetings of the company's creditors.

Clause 61 replaces paragraph (1)(a) of Article 384 with a substitute which refers instead to representation in a qualifying decision procedure by which a decision is sought from the creditors of a company.

Clause 62: Provision that may be included in company insolvency rules

Clause 62 amends Schedule 5 to the Insolvency Order, which sets out provisions which can be included in company insolvency rules.

Clause 62(2) inserts a new paragraph 9A into Schedule 5 which allows for the making of rules to govern nomination of a liquidator by a company's creditors including in the case of voluntary liquidations the conferring of functions on the company's directors.

Clause 62 also amends paragraph 10 of Schedule 5 to the Insolvency Order. Amendments to subparagraph (1) of that paragraph enable procedural rules to be made in connection with the establishment of a creditors' committee in the case of administrative receiverships and administrations and of a liquidation committee in the case of creditors' voluntary liquidations and winding up by the High Court. References to meetings in subparagraph (2), which enables specified provisions in connection with the establishment of a liquidation committee in creditors' voluntary and compulsory liquidations to be included in rules, are removed.

Clause 63: Nominee's report on debtor's proposal

Clause 63 amends Article 230 of the Insolvency Order.

Article 230 applies where a debtor who intends to put a proposal for a voluntary arrangement to their creditors has obtained an interim order from the High Court giving them temporary protection against bankruptcy and other proceedings.

Article 230 obliges the nominee, to submit a report to the High Court during the interim order period, which includes an opinion on the prospects for success of the voluntary arrangement which the debtor is proposing and whether it should be considered by the creditors.

The amendments made by clause 63 remove all references in Article 230 to consideration by the creditors taking place at a meeting.

Clause 64: Debtor's proposal and nominee's report

Article 230A of the Insolvency Order applies in cases where a debtor who intends to put a proposal for a voluntary arrangement to his or her creditors has not obtained an interim order.

When making a report to the creditors under Article 230A, the nominee has to include an opinion on the prospects for success of the voluntary arrangement which the debtor is proposing and whether it should be considered by the creditors.

Clause 64 amends paragraph (3) of Article 230A so that it no longer refers to consideration by the creditors taking place at a meeting.

Clause 65: Creditors' meeting

Clause 65 amends Article 231 of the Insolvency Order.

Article 231 establishes the procedure to be used by the creditors to reach a decision on whether to approve a proposal for a voluntary arrangement.

Clause 65 replaces paragraphs (1) and (2) of Article 231 with four new paragraphs.

New paragraph (1) provides that Article 231 applies where it has been reported to the High Court or to the creditors that the debtor's proposal merits consideration by the creditors.

New paragraph (2) obliges the nominee to seek approval from the creditors for the proposal, unless, in a case in which the nominee's report was made to the High Court, the Court has directed otherwise.

New paragraph (2A) ordains that the creditors are to make their decision using a creditors' decision procedure.

New paragraph (2B) makes it mandatory to give the creditors notice of the decision procedure.

Clause 66: Decisions of creditors' meeting

Clause 66 amends Article 232 of the Insolvency Order.

Article 232 makes provision about what the creditors can and cannot do when approving a proposed voluntary arrangement.

Subsection (2) of clause 66 replaces paragraph (1) of Article 232 with a substitute which provides that Article 232 applies where the creditors are being asked to decide whether to approve a proposed voluntary arrangement.

Subsection (3) amends paragraph (2) by removing a reference to approval being at a meeting and clarifying that proposals to which there are no modifications can be approved as well as proposals to which there are modifications.

Other amendments remove references to meetings elsewhere in Article 232.

Clause 67: Report of decisions to High Court

Clause 67 amends Article 233 of the Insolvency Order, which makes provision about who the creditor's decision whether or not to approve the debtor's proposal is to be communicated to.

Subsection (2) of clause 67 replaces paragraph (1) of Article 233 with a substitute, which provides that the nominee must first report the creditors' decision to the High Court and then give notice of it to such persons as may be prescribed.

Clause 68: Effect of approval

Article 234 of the Insolvency Order establishes when an approved voluntary arrangement takes effect and sets out the consequences for creditors of its being approved.

Clause 68 amends Article 234 to reflect that approval is now by means of a creditors' decision procedure instead of at a meeting.

Clause 69: Additional effect on undischarged bankrupt

Article 235 of the Insolvency Order applies where a voluntary arrangement has been approved and the debtor is an undischarged bankrupt. Under Article 235 application can be made to the High Court to have the bankruptcy order annulled.

Clause 69 amends Article 235 to reflect that approval is now by means of a creditors' decision procedure instead of at a meeting.

Clause 70: Challenge of meeting's decision

Article 236 of the Insolvency Order gives the debtor, the creditors and certain other

interested parties the right, within specified time limits, to apply to the High Court for redress if they consider that there has been material irregularity in the procedure used to seek the approval of the creditors to a proposal for a voluntary arrangement or that a voluntary arrangement which has been approved unfairly prejudices the interests of a creditor.

Clause 70 amends Article 236 to reflect that approval is now by means of a creditors' decision procedure instead of by a meeting.

The amendments include changes to paragraph (4) of Article 236, which sets out the remedies available to the High Court if it is satisfied that there has been a material irregularity in the procedure used to seek approval for a voluntary arrangement or that a voluntary arrangement which has been approved unfairly prejudices the interests of a creditor.

Subparagraph (a) of paragraph (4) allows the Court to revoke or suspend the approval of a voluntary arrangement. Subsection (8) of clause 70 amends subparagraph (a) so that it now refers to that approval having been given by a decision of the debtor's creditors instead of by a meeting.

Subsection (9) of clause 70 replaces subparagraph (b) of paragraph (4) with a substitute. The allows the Court to give directions to any person, which can be that if the debtor comes up with a revised proposal, they are to seek a decision from the creditors as to whether they approve it or, in cases where there has been a material irregularity in the procedure used to seek the approval of the creditors to a proposal for a voluntary arrangement, that they are to seek a fresh decision from the creditors.

Clause 71: Prosecution of delinquent debtors

Article 236B of the Insolvency Order sets out what action a nominee or supervisor is required to take on discovering that a debtor appears to have been guilty of a criminal offence in connection with a voluntary arrangement which has taken effect following approval by the creditors.

Clause 71 amends Article 236B so that it now refers to approval by a decision of the debtor's creditors instead of by a creditors' meeting.

Clause 72: Arrangements coming to an end prematurely

Article 236C of the Insolvency Order establishes the circumstances in which a voluntary arrangement is to be treated as having ended prematurely.

Clause 72 amends Article 236C so that it now refers to approval by a decision of the debtor's creditors instead of by a creditors' meeting.

Clause 73: Implementation and supervision of approved voluntary arrangement

Article 237 of the Insolvency Order provides that once a voluntary arrangement takes effect the nominee is to become known as the supervisor and sets out what interventions can be made by the High Court.

Clause 73 amends Article 237 so that it now refers to approval by a decision of the debtor's creditors instead of by a creditors' meeting.

Clause 74: Definition of "bankrupt's estate"

Paragraph (4) of Article 11 of the Insolvency Order provides that for the purposes of Parts 8 to 10 of that Order any power which a bankrupt is entitled to exercise over or in respect of property is treated as part of the bankrupt's property. However, this is subject to exceptions in cases where the property over or in respect of which the bankrupt is entitled to exercise power does not form part of their estate. In such cases the power is not to be treated as part of the bankrupt's property if any of the conditions set out in subparagraphs (a) and (b) apply.

Clause 74 amends subparagraph (a) with effect that a bankrupt's right to exercise power over or in respect of property which does not form part of their estate is not to be treated as the bankrupt's property if the trustee in bankruptcy has vacated office 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.

Clause 75: Default in connection with voluntary arrangement

Article 250 of the Insolvency Order sets out conditions which must be satisfied before the High Court can make a bankruptcy order on the petition of the supervisor of a voluntary arrangement or a creditor bound by it.

Clause 75 amends paragraph (1)(b)(ii) of Article 250 so that it now provides that a bankruptcy order can be made if information made available by the debtor to their creditors in connection with the creditor's decision procedure by which the arrangement was approved is discovered to have been false or misleading in a material particular or to have contained material omissions.

Clause 76: Powers of interim receiver

Clause 76 amends paragraph (3)(c) in Article 260 of the Insolvency Order.

The amended provision gives an interim receiver appointed to safeguard a debtor's property during the period between presentation of a bankruptcy petition and the making of a bankruptcy order the right to seek a decision on any matter from the debtor's creditors and places the receiver under a duty to do so if directed by the High Court.

Clause 77: Appointment of trustee by Department

Clause 77 amends paragraph (5) of Article 269 of the Insolvency Order.

Under paragraph (4) of that Article, a person who is appointed by the Department as trustee of a bankrupt's estate has to either give notice to the creditors of their appointment, or if the High Court allows it, advertise their appointment in accordance with the Court's directions.

Following the amendment made by clause 77, paragraph (5) of Article 269 now provides that the notice or advertisement must include an explanation of how to establish a creditors' committee.

Clause 78: Trustee's vacation of office

Clause 78 amends Article 271 of the Insolvency Order. Article 271 makes provision as to how a trustee in bankruptcy can be removed from office, how they can resign, and when they vacate office.

Following amendment by subsection (3) of clause 78 paragraph (3) of Article 271 now lists the circumstances in which a creditors' decision procedure can be instigated for the purpose of

- removing the official receiver from the office of trustee if he or she occupies that office by reason of having been automatically appointed to it on the making of a bankruptcy order, or
- removing from office a trustee who has been appointed by the Department, or
- removing from office a trustee appointed by the High Court (otherwise than where the person appointed had been the supervisor of an antecedent voluntary arrangement).

The circumstances in which a creditors' decision procedure can be instigated for the purpose of removing the trustee from office are that:

- the trustee themselves thinks that it should be done
- the High Court has directed that it should be done
- a creditor has requested that it should be done and a minimum of one quarter in value of the creditors wish it to be done.

Two new paragraphs are inserted by subsection (4) of clause 78. New paragraph (3A) gives the creditors the right to appoint a replacement trustee if they decide to remove the existing one. They have to follow the rules when doing so.

New paragraph (3B) provides that where the decision to remove the existing trustee is made under paragraph (3) of Article 271, the existing trustee remains in office until such time as the creditors appoint a replacement.

Subsection (5) of clause 78 amends paragraph (7) of Article 271 so that it now provides that the trustee vacates office on giving notice to the High Court that they have given notice to the creditors that their administration of a bankrupt's estate is for practical purposes complete.

Subsection (6) of clause 78 inserts a new paragraph (7A) into Article 271. The new paragraph provides that the trustee must wait until after the period during which the

creditors can object to a trustee's release has ended before giving notice to the High Court under paragraph (7) and that the trustee has to state in that notice whether or not any of the creditors objected to the release.

Clause 79: Release of trustee

Clause 79 amends Article 272 of the Insolvency Order.

Article 272 makes provision about release, both of the official receiver when acting as trustee and of insolvency practitioner trustees.

Release of insolvency practitioner trustees is dealt with in paragraph (3).

Subsection (3) of clause 79 replaces paragraph (3) of Article 272 with a substitute and inserts new paragraphs (3A) to (3G).

The new paragraphs set out the various ways in which an insolvency practitioner trustee's involvement with a case can end and the method of release for each.

Release of a trustee who has been removed from office by a decision of the bankrupt's creditors is dealt with in paragraph (3A).

Release of a trustee who has died is dealt with in paragraph (3B).

Release of a trustee who has been removed from office by the High Court or the Department is dealt with in paragraph (3C).

Release of a trustee who has vacated office under Article 271(5) is dealt with in paragraph (3D).

Release of a trustee who has resigned is dealt with in paragraph (3E).

Release of a trustee who has vacated office under Article 271(7) is dealt with in paragraph (3F).

Paragraph (3G), which would apply only in paragraph (3A) cases provides that any decision by the creditors as to whether the trustee is to have their release has to be made using a creditors' decision procedure.

Clause 80: Vacancy in office of trustee

Clause 80 amends Article 273 of the Insolvency Order.

Article 273 establishes that in the event of the office of trustee of a bankrupt's estate becoming vacant the official receiver becomes trustee and sets out actions which the official receiver can take, or is required to take, to have the vacancy filled.

Subsection (2) of clause 80 replaces paragraph (3) of Article 273 with a substitute and inserts a new paragraph (3A).

Substitute paragraph (3) gives the official receiver the right to ask the creditors to appoint an insolvency practitioner as trustee and obliges the official receiver to do so if a minimum of one tenth in value of the creditors request it.

New paragraph (3A) gives the creditors the right to appoint an insolvency practitioner if the official receiver asks them to do so. The creditors must follow the rules when making the appointment.

Subsection (3) of clause 80 amends paragraph (4) of Article 273, so that it now provides that if the official receiver does not ask or propose to ask the creditors to appoint a person to fill a vacancy in the office of trustee within 28 days of learning of the vacancy, he or she has to refer the need for an appointment to the Department.

Subsection (4) of clause 80 amends paragraph (8) of Article 273. Paragraph (8) provides that where a situation has arisen that a trustee needs to be re-appointed to deal with property in a bankrupt's estate it is to be treated as a vacancy under Article 273. Following the amendment paragraph (8) will, in cases where the former trustee was an insolvency practitioner, be stated to apply where that trustee vacated office on giving notice to the High Court that they had notified the creditors that their administration of the bankrupt's estate is for practical purposes complete.

Clause 81: Creditors' committee

Article 274 of the Insolvency Order gives a bankrupt's creditors the right to establish a creditors' committee.

Clause 81 amends Article 274 to remove all reference to this being done in a general meeting.

Clause 82: Trustee's powers

Following amendment by clause 82, paragraph (8) of Article 287 gives a trustee in bankruptcy the right to seek a decision on any matter from the creditors and paragraph (9) obliges a trustee to seek a decision on a matter if a creditor requests it and a minimum of one tenth in value of the creditors want it done.

Clause 84: Final meeting

Clause 84 makes amendments to Article 304 which sets out the action to be taken by an insolvency practitioner trustee once it appears that the administration of a bankrupt's estate is for practical purposes complete.

Subsection (3) of clause 84 replaces paragraph (2) of Article 304 with a substitute and inserts new paragraph (2A).

Substitute paragraph (2) provides that the trustee must notify the creditors, other than any who have opted out of receiving correspondence, once it appears that the administration of the bankrupt's estate is for practical purposes complete.

New paragraph (2A) provides that the trustee's notice to the creditors:

- has to be accompanied by a report on their administration of the estate, and
- must explain what happens if any of the creditors object to the trustee's release and how they can do so.

Clause 85: Bankrupt's home

Clause 85 amends Article 305 of the Insolvency Order which applies where a bankrupt's estate includes an interest in property which the trustee has not been able to realise.

Clause 85 amends paragraph (2) of Article 305 with effect that it now prevents the trustee issuing a notice to the creditors that administration of the bankrupt's estate is for practical purposes complete unless certain actions have been taken by the High Court or the Department.

Clause 86: Offence of making false statements

Clause 86 amends paragraph (3)(c) in Article 327 of the Insolvency Order. The amended provision makes it an offence for someone who is later made bankrupt to have attempted to account for the loss of property by fictious losses or expenses,

- during the 12 months prior to presentation of the petition which resulted in their being made bankrupt if done in connection with a creditors' decision procedure or deemed consent procedure
- during the period between the presentation of the bankruptcy petition and the making of the bankruptcy order, whether in connection with a creditors' decision procedure or deemed consent procedure or otherwise.

Clause 87: Provision that may be included in individual insolvency rules

Clause 87 amends Schedule 6 to the Insolvency Order which sets out provision which can be included in individual insolvency rules.

A new paragraph 10A is inserted to enable the making of rules governing the appointment of a trustee by a bankrupt's creditors.

Paragraph 11 is amended so as to enable procedural rules to be made in connection with the establishment by a bankrupt's creditors of a creditors' committee.

Clause 88: Extension of administrator's term of office

Clause 88 amends paragraph 77(2)(b) of Schedule B1 to the Insolvency Order. The amendment increases the maximum period for which it is possible for an administration to be extended with the consent of the creditors from six months to one year.

Clause 89: Administration: payments to unsecured creditors

Clause 89 amends Schedule B1 to the Insolvency Order to establish that an administrator can make a payment out of the prescribed part of a company's property without seeking the High Court's permission and that the fact that the administrator thinks that a company is in a position to make such a payment does not trigger the option of moving to a creditors' voluntary liquidation.

When a company is in administration or is being wound up part of the value of any property it has which is subject to a floating charge is sequestered for the benefit of the ordinary unsecured creditors. This part is known as the prescribed part.

Paragraph 66(3) of Schedule B1 prohibits an administrator making any payments to ordinary unsecured creditors. The reason for this is that where there are funds left over after secured and preferential creditors have been paid, the administrator should consider whether the administration should be converted into a creditors' voluntary liquidation, as this allows for more engagement with the unsecured creditors.

An exception to this prohibition already existed in that paragraph 66(3) provided that a payment could be made to ordinary unsecured creditors if the High Court gave permission.

Subsection (2) of clause 89 amends paragraph 66(3) to create a further exception. It is that a payment can be made to the ordinary unsecured creditors if the funds to make the payment come out of the prescribed part.

Paragraph 84 of Schedule B1 gives the administrator the option of taking action to convert the administration into a creditors' voluntary liquidation if the administrator thinks that there will be sufficient funds left over after the secured and preferential creditors have been paid to enable a distribution to be made to the ordinary unsecured creditors.

Subsection (3) of clause 89 amends paragraph 84(1) of Schedule B1 with effect that this option does not exist if the payment to the ordinary unsecured creditors will come out of the prescribed part.

Clause 90: Creditors not required to prove small debts: company insolvency

Clause 90 inserts a new paragraph 13A into Schedule 5 to the Insolvency Order. The new paragraph will enable provision to be included in company insolvency rules to permit the payment of dividends to creditors who are owed less than a prescribed amount without the creditor having to submit a claim. The intention is to set this amount initially at £1,000.

The officeholder will make the payment on the basis that the sum due to the creditor is recorded in the company's statement of affairs or in their accounting records.

Where a creditor disputes the amount shown in the company's statement of affairs or accounting records, they will still be able to submit a claim and provide documentary evidence in support of it. Where the officeholder is unclear as to the amount owed, or has other doubts regarding the claim, they may still require a claim form and/or ask for documentary evidence from the creditor.

Clause 91: Creditors not required to prove small debts: individual insolvency

Clause 91 inserts a new paragraph 16A into Schedule 6 to the Insolvency Order. The new paragraph will enable provision to be included in individual insolvency rules to permit the payment of dividends to a bankrupt's creditors if they are owed less than a prescribed amount without the creditor having to submit a claim. The intention is to set this amount initially at £1,000.

The officeholder will be able to make the payment on the basis that the sum due to the creditor is recorded in the bankrupt's statement of affairs or in their accounting records.

Where a creditor disputes the amount shown in the bankrupt's statement of affairs or accounting records, they will still be able to submit a claim and provide documentary evidence in support of it. Where the officeholder is unclear as to the amount owed, or has other doubts regarding the claim, they may still require a claim form and/or ask for documentary evidence from the creditor.

Clause 92: Trustees in bankruptcy

The Insolvency Order currently provides that when the High Court makes a bankruptcy order the official receiver automatically becomes receiver and manager of the bankrupt's estate unless, as can happen only in certain special cases, the Court appoints an insolvency practitioner as trustee. This means that until such time as a trustee is appointed the official receiver's role is limited to protecting the estate, and he or she can only arrange for the realisation of assets if this needs to be done urgently because the assets are perishable or would lose value if there was a delay in selling them. In many cases it is the official receiver who is subsequently appointed as trustee and who then acquires full powers to deal with all the assets.

The initial appointment of the official receiver as receiver and manager has not been shown to have any practical benefit for the administration of bankruptcy cases and serves to delay the realisation of assets.

It is completely done away with by amendments made to Article 260 of the Insolvency Order by paragraph (2) of Schedule 2.

Subsection (1) of Clause 92 inserts a new Article 264A into the Insolvency Order, paragraph (1) of which provides for the official receiver to instead become trustee on the making of a bankruptcy order, unless that the Court appoints someone else, which it can only do if paragraphs (2) and (3) apply.

Paragraph (2) applies if the bankruptcy order is made following the submission of a report from an insolvency practitioner appointed by the Court to explore the prospects for a voluntary arrangement. The Court can, when making the bankruptcy order, appoint the insolvency practitioner as trustee.

Paragraph (3) applies if the bankrupt is in a voluntary arrangement at the time the bankruptcy order is made. The Court can, when making the bankruptcy order, appoint the supervisor as trustee.

Paragraph (4) obliges the official receiver, or an insolvency practitioner, on becoming trustee, in accordance with Article 264A, to give notice of their appointment to the bankrupts' creditors, or, if the High Court allows, to advertise it in accordance with the Court's directions. Paragraph (5) provides that in the case of an insolvency practitioner, the notice or advertisement has to include an explanation of how to establish a creditors' committee.

Subsection (2) of clause 92 introduces Schedule 2, which contains consequential amendments to Part IX of and Schedule 6 to the Insolvency Order.

The repeal, by clause 92 and paragraph (5) of Schedule 2, of Article 266 of the Insolvency Order, will remove the obligation which the official receiver was under to decide within 12 weeks of the making of a bankruptcy order whether to summon a meeting of creditors to appoint a trustee. However the official receiver will still be able to apply at any time to the Department to have an insolvency practitioner appointed to replace him as trustee.

Clause 93: Abolition of fast-track voluntary arrangements

Fast-track voluntary arrangements (FTVA) are a streamlined Individual Voluntary Arrangement (IVA) procedure for cases where a debtor has already been made bankrupt. They were first introduced in March 2006, along with other changes to the personal insolvency regime included within the Insolvency (Northern Ireland) Order 2005.

In a FTVA the official receiver acts as nominee and supervisor. One of the requirements of an FTVA is that the debtor is an undischarged bankrupt at the time the proposal is made. There is no private sector insolvency practitioner involvement in FTVAs.

FTVAs have never been used in Northern Ireland.

Clause 93 amends Part 8 of the Insolvency Order by removing the provisions for FTVAs.

Individuals who are undischarged bankrupts who wish to propose an IVA will still be able to do so, but an insolvency practitioner will act as nominee and supervisor, not the official receiver.

Clause 94: Power to add to supplies protected under the 1989 Order

This clause gives the Department power to make regulations amending Article 197 of the Insolvency Order. This Article currently allows certain providers of gas, electricity, water and communications services ("utility supplies") to seek a personal guarantee from the insolvency officeholder before continuing to supply an insolvent company and prevents such suppliers insisting on pre-insolvency arrears being cleared as a condition of continuing supply.

Subsection (1) of clause 94 provides a power to enable IT supplies to be added to the

present list of utility supplies to which Article 197 applies. This reflects the increasing importance of IT supplies to the functioning of modern businesses since this Article was enacted.

Subsection (1) also enables the Department to widen the application of Article 197 to providers of utility services who are not presently covered by it. It is considered that this needs to be done to reflect the way utility and telecoms markets have evolved and been deregulated since this Article was enacted.

Clause 95: Power to give further protection to essential supplies

This clause gives the Department power to make regulations that, provided any conditions specified in the regulations are met, render void certain contractual terms in contracts for the supply of essential goods or services which would otherwise be triggered by a company going into administration, or a voluntary arrangement taking effect. The supplies that may be protected are those listed in Article 197(3), i.e. supplies of gas, electricity, water, communications and IT supplies.

Subsection (2) lists specific safeguards which must be included in any regulations made under this power. Suppliers must be given the right, regardless of the terms of the contract, to terminate a contract of supply if they are not paid in full for supplies made post insolvency within 28 days of payment for those supplies first becoming due, or if the insolvency officeholder or a court gives permission to terminate the contract.

Subsection (3) gives affected suppliers a further safeguard by providing that the regulations must also give them the right to request a personal guarantee of payment from the insolvency officeholder as a condition of continuing the supply. Subsection (4) provides scope for the Department to provide exceptions to this right.

Subsection (5) gives the Department the power to add any other safeguards that might be felt necessary, in order to protect suppliers who may be affected.

Subsection (7) defines which contractual terms may be rendered void by regulations made for the purposes of this power. These are contractual terms that would allow providers of essential IT or utility supplies to alter the terms of a contract with, or withdraw the supply from, an insolvent company on account of the insolvency.

Contractual terms which give the provider the right to terminate the supply on a termination event occurring are also rendered void in cases where such an event did occur prior to the insolvency, but the supplier did not withdraw the supply.

Clause 96: Protection of supplies of water, electricity, etc

Clause 96 amends Article 343 of the Insolvency Order.

Article 343 applies where an individual who has been carrying on business in their own right, or as a member of a partnership, is made bankrupt or an individual voluntary arrangement which they have proposed is approved, or an interim receiver of their

property is appointed. Article 343 provides that if the insolvency officeholder asks the supplier of certain listed utilities to continue to provide a supply to the business, the supplier is not allowed to make it a condition for doing so that any outstanding charges for supplies made before the insolvency event are paid. The supplier can however make it a condition of continuing the supply that the office holder provides a personal guarantee that supplies made during the insolvency will be paid for.

Article 343 as originally enacted covered the supply of electricity, gas, water, sewerage and communications services by statutory undertakers and similar bodies. Clause 96 extends the scope of Article 343 so that it covers private suppliers of electricity and communications services and the supply of water by a landlord to a tenant.

Clause 96 also adds to the list of utilities covered by Article 343 the supply of certain goods or services where this is done for the purposes of enabling or facilitating anything to be done by electronic means ("IT supplies"). The goods and services added are point of sale terminals, computer hardware and software, information, advice and technical assistance in connection with the use of information technology, data storage and processing and website hosting.

The effect is to extend the scope of Article 343 to cover the supply of goods or services relating to information technology, other than where this is already covered by Article 343 by virtue of being a communication service.

Clause 97: Further protection of essential supplies

Clause 97 inserts a new Article 343A into the Insolvency Order.

Article 343A applies where a voluntary arrangement proposed by an individual who has been carrying on business in their own right, or as a member of a partnership, is approved. Article 343A provides that on this happening, any insolvency-related terms

in contracts for the supply to the business of utility or other goods and services listed in paragraph (4) of Article 343 cease to have effect. The effect is to prevent the suppler causing or permitting the termination of the supply or the contract, altering the contract terms, or demanding increased payments for the supply.

There are exceptions. The supplier can still terminate the contract if the supervisor of the voluntary arrangement consents, or the High Court gives permission (which it can do on grounds of hardship caused to the supplier) or if they are not paid in full for supplies made after the date on which the voluntary arrangement is approved within 28 days of payment for those supplies first becoming due.

The supplier will be able to terminate the supply if they give written notice to the supervisor of the voluntary arrangement that the supply will be terminated unless the supervisor provides a personal guarantee that any supplies made after the approval of the arrangement will be paid for and the supervisor does not provide this within 14 days.

Clause 98: Power to add to supplies protected under the 1989 Order

This clause gives the Department power to make regulations amending Article 343 of the Insolvency Order. Article 343 applies where an individual who has been carrying on business in their own right, or as a member of a partnership, is made bankrupt or a voluntary arrangement which they have proposed is approved, or an interim receiver of their property is appointed.

This Article currently allows certain providers of electricity, gas, water, sewerage and communications services ("utility supplies") to seek a personal guarantee from the insolvency officeholder before continuing to supply the business and prevents such suppliers insisting on pre-insolvency arrears being cleared as a condition of continuing supply.

Subsection (1) of clause 98 provides a power to enable IT supplies to be added to the present list of utility supplies to which Article 343 applies. This reflects the increasing importance of IT supplies to the functioning of modern businesses since this Article was enacted.

Subsection (1) also enables the Department to widen the application of Article 343 to providers of utility services who are not covered by it at present. It is considered that this needs to be done to reflect the way the utility and telecoms markets have evolved and been deregulated since this Article was enacted.

Clause 99: Power to give protection to essential supplies

This clause gives the Department power to make regulations that, provided any conditions specified in the regulations are met, render void certain contractual terms in

contracts for the supply of essential goods or services which would otherwise be triggered by the approval of an individual voluntary arrangement.

Subsection (2) of the clause provides that any regulations made under this power must provide that the terms are only nullified where the supply is being made to a business carried on by the individual or with which the individual has a connection of a kind specified in the regulations.

The supplies that may be protected are those listed in Article 343(4), i.e. supplies of gas, electricity, water, communications and IT supplies if these are added through exercise of the power in clause 98.

Subsection (3) lists specific safeguards which must be included in any regulations made under this power. Suppliers must be given the right, regardless of the terms of the contract, to terminate a contract of supply if they are not paid in full for any supplies made after the date on which the voluntary arrangement is approved, within 28 days of payment for those supplies first becoming due, or if the supervisor of the arrangement or a court gives permission for the contract to be terminated.

Subsection (4) gives affected suppliers a further safeguard by providing that the regulations must also give them the right to request a personal guarantee of payment from the supervisor as a condition of continuing the supply. Subsection (5) provides scope for the Department to provide exceptions to this right.

Subsection (6) gives the Department power to add any other safeguards that might be felt necessary, in order to protect suppliers who may be affected.

Subsection (8) defines which contractual terms may be rendered void by regulations made for the purposes of this power. They are contractual terms that would allow providers of essential IT or utility supplies to alter the terms of a contract with, or withdraw the supply from, an individual with a business in the event of a voluntary arrangement proposed by that individual being approved. Contractual terms which give the provider the right to withdraw the supply on a termination event occurring are also rendered void in cases where, before the individual voluntary arrangement was approved, such an event did occur but the supplier did not withdraw the supply.

Clause 100: Sections 94 to 99: supplemental

Subsection (1) of clause 100 gives the Department the power in regulations under clause 94 or 98 to make incidental, supplementary, consequential, transitional or saving provisions, including by amending any statutory provision.

Subsection (2) provides that regulations made under clause 95 or 99 can provide for persons to exercise discretion, can make incidental, supplementary, consequential and transitional or saving provision and can amend the Insolvency Order or other statutory provision for the purposes of the regulations.

Subsection (3) restricts the powers to make regulations under clauses 95 and 99 so that they may not be exercised retrospectively in a way which would affect contracts of supply which pre-date the introduction of any regulations made.

Subsection (4) ensures that any regulations made under clauses 94, 95, 98 and 99 are subject to the affirmative resolution procedure in the Assembly.

Clause 101: Remote attendance at meetings and use of websites

Clause 101 inserts new Articles 208ZH, 208ZI and 345D into the Insolvency Order.

The same Articles had been previously inserted as Articles 208ZA, 208ZB, and 345B by section 1 of the Insolvency (Amendment) Act (Northern Ireland) 2016. Section 1 was never commenced and is repealed by subsection (3) of clause 101.

Article 208ZH

Article 208ZH allows meetings of company members to be held in company insolvency proceedings without the participants having to be present at a single physical location.

Paragraph (1) of Article 208ZH provides for this Article to apply to meetings of the members of a company summoned by the office-holder under the Insolvency Order or rules made under Article 359 thereof, with the exception that it does not apply to meetings of the members of a company in a members' voluntary winding up.

Paragraph (2) of Article 208ZH provides that, where the person summoning a meeting ("the convener") considers it appropriate, a meeting can be conducted and held in such a way that people can attend it without having to be present together at the same place.

Paragraph (3) of Article 208ZH defines attendance at a meeting for the purposes of paragraph (2) as being able to exercise whatever rights a person has to speak and vote at the meeting.

Paragraph (4) of Article 208ZH provides that for the purposes of that Article a person is able to exercise the right to speak at a meeting if, during the time that the meeting is in progress, it is possible for them to communicate any information or opinions they have on the business of the meeting to everyone else attending it. Paragraph (4) further provides that for the purposes of Article 208ZH a person is able to exercise the right to vote at a meeting if it is possible for them to vote during the time that the meeting is in progress on any resolutions which are put to the vote, and if their vote can be counted at the same time as the votes of everyone else attending the meeting.

Paragraph (5) of Article 208ZH places the convener of a meeting which is to be held in such a way that it can be attended by persons who are not present together at the same place under a duty to make whatever arrangements he considers appropriate to check the identity of those attending, to ensure that they can exercise their right to speak and vote and to make sure that any electronic means used to enable attendance is secure.

Paragraph (6) of Article 208ZH provides that, where there is a requirement under the Insolvency Order or rules made under Article 359 thereof to specify a place for a meeting, in certain circumstances it will be sufficient to specify what arrangements are being made to enable those entitled to attend the meeting to exercise their right to speak and vote. The circumstances are that in the reasonable opinion of the person calling the meeting, it will be attended by persons who will not be present together at the same place and it is unnecessary or inexpedient to specify a place for the meeting.

Paragraph (7) of Article 208ZH provides that, when making the arrangements mentioned in paragraph (5) and forming an opinion that a meeting may be held without specifying that it is to be at a particular location, the convener is required to have regard to the legitimate interests of those who will be attending the meeting in the efficient despatch of the business of the meeting.

Paragraph (8) of Article 208ZH places the convener of a meeting under a duty to specify a place for meeting if, following the issue of a notice of the meeting which does not specify a place, members representing at least ten percent of the total voting rights request that one should be specified.

Paragraph (9) of Article 208ZH provides a definition of the term "the office-holder" as used in that Article.

Article 208ZI

Paragraph (1) of Article 208ZI applies in the case of company insolvency and enables an office-holder to comply with requirements in the Insolvency Order and rules made under Article 359 thereof to provide notices, documents or information by making them available on a website. This is subject to the proviso that this can only be done in prescribed circumstances and must be done in accordance with the rules.

Paragraph (2) of Article 208ZI provides a definition of the term "the office-holder" as used in that Article.

Article 345D

Paragraph (1) of Article 345D provides for that Article to apply where a bankruptcy order has been made against an individual, where an interim receiver of their property has been appointed or where they are proposing or have had approved a voluntary arrangement under Chapter 2 of Part 8 of the Insolvency Order. Paragraph (1) also provides a definition of the term "the office-holder" as used in Article 345D.

Paragraph (2) of Article 345D enables an office-holder to comply with requirements in the Order and rules made under Article 359 thereof to provide notices, documents or information by making them available on a website. This is subject to the proviso that this can only be done in prescribed circumstances and must be done in accordance with the rules.

Clause 102: Miscellaneous provisions about insolvency law

Clause 102 introduces Schedule 3 which makes miscellaneous amendments to the Insolvency and Disqualification Orders, and other legislation.

Clause 103: Notice of proposed resolution for voluntary winding up

Article 70 of the Insolvency Order makes provision about when a company can be wound up voluntarily and the procedure which must be carried out before a resolution to wind a company up voluntarily can be passed.

Subsection (2) of clause 103 substitutes for paragraph (1A) of Article 70 four new paragraphs, (1ZA), (1ZB), (1ZC) and (1A).

New paragraph (1ZA) provides that a company must comply with the other three paragraphs before passing a resolution for voluntary winding up.

New paragraph (1ZB) applies in the case of written resolutions proposed by the directors of a company under section 291 of the Companies Act 2006 or by members under section 293 of that Act. New paragraph (1ZB) obliges the company to give notice of the proposed resolution to the Enforcement of Judgments Office at the same time as it sends or submits copies of the resolution to its members.

New paragraph (1ZC) applies where a resolution for voluntary winding up is to be put to a general meeting called by the directors or the members. New paragraph (1ZC) obliges the company to give notice of the proposed resolution to the Enforcement of Judgements Office at the same time as it sends notice of the meeting to the members and directors.

New paragraph (1A) obliges the company to give notice of the proposed resolution to holders of what are called qualifying floating charges if these were created on or after 27 March 2006, this being the date appointed under Article 59A(3) of the Insolvency Order.

Clause 104: Notice of result of resolution to wind up voluntarily

Article 71 of the Insolvency Order sets out action to be taken by a company once a resolution to wind it up voluntarily has been passed or it has become apparent that it is not going to be passed.

Subsection (2) of clause 104 amends paragraph (1) of Article 71 so that it now provides that on a resolution for voluntary winding up being passed, notice has to be given within 14 days to the Enforcement of Judgments Office as well as in the Belfast Gazette.

Subsection (3) of clause 104 inserts a new paragraph (1A) into Article 71. This new paragraph applies where a company has given written notice to the Enforcement of Judgments Office that it has circulated a copy of a resolution for voluntary winding up to its members or that it intends to move such a resolution at a meeting of its members. The new paragraph (1A) provides that if, in the first case the resolution lapses, or in the second the resolution is not passed by the meeting, or it becomes apparent that it is not

going to be passed, notice has to be given to the Enforcement of Judgment Office within 14 days.

Clause 105: Presentation of bankruptcy petition; conditions to be satisfied

Clause 105 repeals paragraph (2)(b) of Article 239 of the Insolvency Order.

Paragraph (1) of Article 239 sets out three conditions, at least one of which must be satisfied, before a bankruptcy petition can be presented to the High Court by an individual's creditors under Article 238(1)(a), or by the individual themselves under Article 238(1)(b).

One of the conditions is that the test in paragraph (2) is met.

The test in paragraph (2) can be met in one of three ways.

Subparagraph (b) of paragraph (2), as it stands, provides that the test is met if the debtor is personally present in Northern Ireland on the day on which the petition is presented.

The repeal by clause 105 of paragraph (2)(b) will result in it becoming the case that being personally present in Northern Ireland on a particular day is no longer sufficient to meet the test under paragraph (2), and thus will no longer be sufficient to satisfy the territorial requirements for a debtor or their creditors to be able to present a bankruptcy petition to the High Court. For the test under paragraph (2) to be met, the requirements under either of the two remaining sub-paragraphs, that is sub-paragraphs (a) or (c) will have to be satisfied. This will mean that for the test to be passed the debtor will have to either be domiciled in Northern Ireland, or, at any time during the three years ending with the day on which the petition is presented, have been ordinarily resident in Northern Ireland, had a place of residence in Northern Ireland, or carried on business in Northern Ireland.

Clause 106: Orders relating to recognised professional bodies to be subject to negative resolution

Clause 106 provides that orders made by the Department under Articles 350, 350L and 350N of the Insolvency Order are to be subject to negative resolution in the Assembly.

Clause 107: Amendments of the 1995 Order

Subsections (4), (5) and (6) of clause 107 set out transitional provisions for amendments made to the Insolvent Partnerships Order (Northern Ireland) 1995 by Part 12 of the Bill.

Clause 108: Voluntary arrangements of insolvent partnerships

Paragraph (1) of Article 4 of the Insolvent Partnerships Order (Northern Ireland) 1995 applies the provisions in the Insolvency Order pertaining to company voluntary arrangements to insolvent partnerships.

Paragraph (2) provides that, for the purposes of the application of the provisions pertaining to company voluntary arrangements, certain other provisions in the Insolvency Order are to apply. These are listed in paragraph (3).

Clause 108 amends Article 4 by adding to the list in paragraph (3):

- Article 8A of the Insolvency Order, which defines "opted-out creditor" for the purposes of Parts 2 to 7 of that Order and establishes how to become such a person,

- Articles 208ZE, 208ZF and 208ZJ, which enable a company's creditors and contributories to make decisions using qualifying decision and deemed consent procedures and the creditors to opt-out of receiving notices, and

- Part 15 of the Insolvency Order, which consists of supplementary provisions.

Clause 109: Voluntary arrangements of members of insolvent partnership

Article 5 of the Insolvent Partnerships Order (Northern Ireland) 1995 applies where a winding up order is made in respect of an insolvent partnership and a winding-up order is made against a corporate member or a bankruptcy order against an individual member.

Clause 109 inserts two new paragraphs into Article 5.

New paragraph (3) applies where a winding up order has been made against a corporate member. Paragraph (3) provides that if the provisions in the Insolvency Order pertaining to company voluntary arrangements are being applied in relation to that corporate member, Articles 208ZE and 208ZF, which enable a company's creditors to make decisions using qualifying decision and deemed consent procedures, are also to apply.

New paragraph (4) applies where a bankruptcy order has been made against an individual member. Paragraph (4) provides that if the provisions in the Insolvency Order pertaining to individual voluntary arrangements are being applied in relation to that member Articles 345A and 345B, which enable an individual's creditors to make decisions using creditors' decision and deemed consent procedures, are also to apply.

Clause 110: Administration in relation to insolvent partnerships

Article 6 of the Insolvent Partnerships Order (Northern Ireland) 1995 applies the provisions in the Insolvency Order pertaining to administration to insolvent partnerships.

Paragraph (2) of Article 6 provides that, for the purposes of the application of the provisions pertaining to administration, certain other provisions in the Insolvency Order are to apply. These are listed in paragraph (3).

Clause 110 amends Article 6 by adding to the list in paragraph (3) Article 8A of the Insolvency Order, which defines "opted-out creditor" for the purposes of Parts 1 to 7 of

the Insolvency Order and establishes how to become such a person, and Part 15 of the that Order, comprised of supplemental provisions.

Clause 111: Creditors' winding up: no concurrent petitions against member

Article 7 of the Insolvent Partnerships Order (Northern Ireland) 1995 provides that Part 6 of the Insolvency Order is to apply where an insolvent partnership is being wound up as an unregistered company on the petition of various listed parties, and they did not petition to have any of the members made bankrupt, or as the case may be wound up.

Among the parties listed is the supervisor of a voluntary arrangement entered into by a member of the partnership.

The amendment made by subsection (1)(b) of clause 111 adds to the list the supervisor of a voluntary arrangement entered into by the partnership itself.

Clause 112: Creditors' winding-up: concurrent petition against member or members

Article 8 of the Insolvent Partnerships Order (Northern Ireland) 1995 applies where an insolvent partnership is wound up as an unregistered company, and a petition is presented to have one or more corporate members wound up or to have one or more individual members made bankrupt.

Article 8 sets out which provisions in the Insolvency Order are to apply to the winding up of the partnership, which are to apply in relation to the winding up of a corporate member, and which are to apply to the bankruptcy of an individual member.

Subsection (3) of clause 112 amends paragraph (5) of Article 8 with effect that, in relation to the winding up of corporate members, Article 8A of the Insolvency Order, which defines "opted-out creditor" for the purposes of Parts 1 to 7 of the Insolvency Order and establishes how to become such a person, and Part 15 of the that Order, comprised of supplemental provisions are also to apply.

Subsection (4) of clause 112 amends paragraph (7) of Article 8 with effect that in relation to the bankruptcy of an individual member the following are also to apply: Article 2B of the Insolvency Order, which lists powers the Department has to make regulations which are not subject to negative resolution; Article 11A, which defines "opted-out creditor" for the purposes of parts 7A to 10 of the Insolvency Order and establishes how to become such a person; and Part 15 comprised of supplemental provisions

Clause 113: Members' winding up: no concurrent petitions against all members

Article 10 of the Insolvent Partnerships Order (Northern Ireland) 1995 applies where a member of an insolvent partnership presents a petition to have the partnership wound up as an unregistered company and to have all of its members wound up or made bankrupt.

Article 10 sets out which provisions in the Insolvency Order are to apply to the winding up of the partnership, which are to apply in relation to the winding up of any corporate members, and which are to apply to the bankruptcy of any individual members.

Subsection (3) of clause 113 amends paragraph (3) of Article 108 with effect that, in relation to the winding up of corporate members, Article 8A of the Insolvency Order, which enables company creditors to opt out of receiving correspondence and Part 15 of that Order, comprised of supplemental provisions, are also to apply.

Subsection (4) of clause 113 amends paragraph (5) of Article 10 with effect that in relation to the bankruptcy of an individual member the following provisions are also to apply: Article 2B of the Insolvency Order, which lists powers the Department has, to make regulations which are not subject to negative resolution; Article 11A, which defines "opted-out creditor" for the purposes of Parts 7A to 10 of the Insolvency Order and establishes how to become such a person; and Part 15 comprised of supplemental provisions.

Clause 114: Individual members presenting joint petition: no winding-up of partnership

Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995 applies where the members of an insolvent partnership are all individuals and they all petition to be made bankrupt and to have the partnership wound up, but not as an unregistered company.

The Insolvency Order provisions which apply to the bankruptcy of the individual members are listed in paragraph (2).

Clause 114 adds to those provisions Article 2B of the Insolvency Order, which lists powers the Department has, to make regulations which are not subject to negative resolution, Article 11A, which enables an individuals' creditors to opt out of receiving correspondence and Part 15 comprised of supplemental provisions.

Clause 115: Application of the Company Directors Disqualification (Northern Ireland) Order 2002

Clause 115 replaces Article 16 of the Insolvent Partnerships Order (Northern Ireland) 1995 with a substitute which sets out the provisions in the Disqualification Order which apply if an insolvent partnership is wound up as an unregistered company, enters administration or is wound up otherwise than as an unregistered company.

Clause 117: Amendments to the Schedule to the 1995 Order

Clause 117 introduces Schedule 4 to the Bill which makes amendments to Schedules 1 to 10 of the Insolvent Partnerships Order (Northern Ireland) 1995.

Schedule 3: Miscellaneous Amendments of Insolvency Law.

Part 1: Administration of Companies

Administration is dealt with in Schedule B1 to the Insolvency Order.

Paragraph 2 of Schedule 3 to the Bill inserts a new paragraph 26A into Schedule B1 to the Insolvency Order to enable a company, or the directors of a company, to appoint an administrator despite the presentation of a winding-up petition, if it was presented during an interim moratorium. The act of filing with the High Court notice of intent to appoint an administrator under paragraph 28 of Schedule B1 to the Insolvency Order commences an interim moratorium in respect of the company (paragraph 45(4) of that Schedule). The interim moratorium prevents other insolvency proceedings or legal processes being instituted or continued against the company. New paragraph 26A clarifies that the prohibition (under paragraph 26(a) of Schedule B1) on appointing an administrator when a winding-up petition has been presented and not yet disposed of applies only to a petition presented before an interim moratorium comes into effect.

Paragraph 3 of Schedule 3 to the Bill removes a requirement in paragraph 27(2) of Schedule B1 to the Insolvency Order to give notice of intention to appoint an administrator to persons who are not themselves entitled to appoint an administrative receiver or administrator in certain circumstances.

At present a company or its directors intending to appoint an administrator must give notice of intention to appoint to anyone entitled to appoint an administrative receiver of the company, to any holder of a qualifying floating charge entitled to appoint an administrator, and to other prescribed persons. The prescribed persons are set out in rule 2.021 of the Insolvency Rules (Northern Ireland) 1991 and include the company (if the company is not intending to make the appointment) and a supervisor of a company voluntary arrangement under Part 2 of the Insolvency Order. Unlike those entitled to appoint a receiver or administrator, the prescribed persons cannot block the appointment of an administrator.

The requirement to give notice to these prescribed persons can lead to unnecessary delay in the administrator's appointment where there is no one else to whom notice of intention to appoint must be given and so the requirement is being removed by paragraph 3 of Schedule 3 (amendment of paragraph 27 of Schedule B1). The prescribed persons will in any event receive notice of the appointment when it is made.

Paragraph 4 of Schedule 3 to the Bill replaces sub-paragraphs (2) and (3) of paragraph 99 of Schedule B1 to the Insolvency Order with new sub-paragraphs (1A) to (3A). New sub-paragraphs (2A), (2B), (3) and (3A) establish that where an administrator of a company has been appointed by a floating charge holder or by the company or its directors and there are insufficient assets to enable a distribution to be made to the unsecured creditors (other than under Article 150A(2)(ii) of the Insolvency Order – the "prescribed part") there is no requirement for all of the creditors to resolve to give the administrator his/her release. Release is the release of an office-holder from liability in respect of his or her acts and omissions as an office-holder. The "prescribed part" is a proportion of the company's assets over which a floating charge holder has security which can nonetheless be applied in certain circumstances to unsecured creditors.

Currently paragraph 99(2)(b) of Schedule B1 to the Insolvency Order provides that such an administrator obtains their release by a resolution of the creditors' committee or

by a resolution of the creditors. Paragraph 99(3) of Schedule B1 to that Order goes on to provide that where such an administrator makes a statement under paragraph 53(1)(b) of Schedule B1 (company has insufficient property to make a distribution to unsecured creditors) a resolution requires the approval of every secured creditor and where distributions to preferential creditors have been or may be made, the approval of at least 50% of the preferential creditors by value. This implies that a normal resolution of all the creditors is required plus a resolution of all of the secured creditors.

New sub-paragraphs (2A) and (2B) distinguish paragraph 53(1)(b) cases from non-paragraph 53(1)(b) cases. The effect is to provide that where the unsecured creditors have no interest in an administration (other than by virtue of the "prescribed part"), they are not to be involved in the administrator's release – the release need only be given by (all of) the secured creditors, unless that the administrator has made a distribution to the preferential creditors or thinks that a distribution may be made to them, in which case the release needs to be given by both the secured and the preferential creditors. The release is effective from such time as the secured creditors, or, as the case may be, the secured creditors and the preferential creditors, decide.

New sub-paragraphs (1A) to (3A) correspond to sub-paragraphs (2) and (3) in paragraph 98 of Schedule B1 to the Insolvency Act 1986, except that the layout has been altered to make them easier to read.

Paragraph 5 of Schedule 3 to the Bill makes amendments to paragraph 99 of Schedule B1 to the Insolvency Order as it will read following the amendments made by paragraph 4. This was done with the aim of avoiding having to postpone commencement of paragraph 4 if there was a delay in being able to bring the provisions enabling decisions to be taken by qualifying decision procedure into operation. New sub-paragraph (2A) is amended so that it will refer to a decision of the creditors instead of to a resolution of the creditors. An additional sub-paragraph (3B) is inserted to provide that where an administrator has been removed from office any decisions by creditors for the purposes of sub-paragraph (2A)(b) or by preferential creditors for the purposes of sub-paragraph (2B) must be taken by a qualifying decision procedure.

Part 2: Winding-up of Companies

Paragraph 6 repeals Article 129 of the Insolvency Order, which provided the High Court with power to order any contributory (that is a person liable to contribute to the assets of a company in the event of its being wound up), purchaser or other person from whom money is due to a company that is the subject of a winding-up order to pay the sum due into a bank appointed by the Court to the account of the liquidator instead of to the liquidator.

Part 3: Disqualification of Unfit Directors of Insolvent Companies

Paragraph 7 replaces paragraphs (5) and (5A) of Article 10 of the Disqualification Order with new paragraphs (5) to (5D).

If the Department or the official receiver are considering whether to make an application for a disqualification order against a director, they have the right to require

the provision of relevant information and the production of relevant documentation about the person's conduct as a director of that company.

Currently where a company has been dissolved without having been subject to insolvency proceedings this right is exercisable against any person, including the directors themselves.

However where a company has been wound up as a result of insolvency, or has entered administration, or where an administrative receiver has been appointed, the right to require the provision of relevant information and the production of relevant documentation about a person's conduct as a director of that company is only exercisable against the office-holder, that is the liquidator, the administrator or the administrative receiver.

New paragraphs (5) to (5D) give the Department and the official receiver the same rights to require any person to provide them with information and to require the production of books, papers and other records, where a company has been wound up as a result of insolvency or has entered administration or had an administrative receiver appointed, as the Department and the official receiver currently enjoy in cases where a company has been dissolved without having been subject to insolvency proceedings.

Paragraph 8 makes amendments to rule 7 of the Insolvent Companies (Reports on Conduct of Directors) Rules (Northern Ireland) 2003 consequential on the replacement of paragraphs (5) and (5A) of Article 10 of the Disqualification Order with new paragraphs (5) to (5D). Paragraph 8 also replaces paragraph (3) of rule 7 with a substitute which provides that the Insolvency Rules (Northern Ireland) 1991 are to apply to applications to the High Court to enforce requests to provide information and produce books, papers and records, instead of the Rules of the Supreme Court (Northern Ireland) 1980.

Paragraph 9 amends paragraphs (1) and (2) of Article 24 of the Disqualification Order. Paragraph (1) lists provisions in the Disqualification Order which are deemed to be included in the Insolvency Order for the purposes of certain provisions of that order. Paragraph (2) provides for Article 378 of the Insolvency Order, which determines the extent to which the Crown is bound by the Insolvency Order, to apply to the listed provisions when they are deemed to be included in the Insolvency Order.

Paragraph 9 extends the lists in both paragraphs (1) and (2) of Article 24 to include Articles 20 and 22 to 23A of the Disqualification Order.

Part 4: Bankruptcy

Paragraph 11 amends paragraphs (1) and (2) of Article 259 of the Insolvency Order. Paragraph (1) already provides that the High Court can appoint the official receiver as interim receiver of a debtor's property during the period between the presentation of a bankruptcy petition and its being heard by the Court. The amendment to paragraph (1) gives the High Court the option of instead appointing a private sector insolvency practitioner as interim receiver.

Paragraph (2) applies where a debtor has petitioned to be made bankrupt and the High Court has appointed an insolvency practitioner to prepare a report under Article 248 of the Insolvency Order on the feasibility of an individual voluntary arrangement. Paragraph (2) as it stands would enable either the official receiver or the insolvency practitioner engaged to prepare the report to be appointed as interim receiver. The amendment to paragraph (2) gives the High Court the option of appointing a different insolvency practitioner as interim receiver.

Paragraph 12 makes consequential amendments to Article 341 of the Insolvency Order, which gives the High Court power to appoint a special manager to assist the trustee of a bankrupt's estate or an interim receiver.

Paragraph 13 amends Article 261 of the Insolvency Order, which applies where a bankruptcy order has been made on a creditor's petition. Article 261 provided that the bankrupt had to submit a statement of affairs to the official receiver within 21 days from the making of the bankruptcy order, unless the official receiver or the High Court released them from the obligation to do so, or extended the period allowed for doing so.

Sub-paragraph (2) of paragraph 13 replaces paragraph (1) of Article 261 with a substitute which provides that where a bankruptcy order has been made on a creditor's petition, a statement of affairs only has to be submitted if the official receiver requires it, which the official receiver can do at any time before the bankrupt is discharged.

Sub-paragraph (3) of paragraph 13 inserts a new paragraph (2A) into Article 261. New paragraph (2A) provides that where the official does require a bankrupt to submit a statement of affairs, the bankrupt must do so within a 21 day period, starting with the day after the day on which they are given notice of the requirement, although this is subject to paragraph (3).

New paragraph (2A) inserted into Article 261 corresponds to subsection (2A) in section 288 of the Insolvency Act 1986.

Sub-paragraph (4) of paragraph 13 replaces sub-paragraphs (a) and (b) of paragraph (3) of Article 261 with substitutes. The effect of this substitution is to provide that the official receiver, or, where the official receiver has refused to act, the High Court, can release a bankrupt from a requirement to submit a statement of affairs, or extend the time allowed for doing so.

Part 5: Other Minor Amendments of the 1989 Order and Other Enactments

Paragraph 15 corrects an error in Article 14(6) of the Insolvency Order.

Paragraph 16 replaces paragraph (1) of Article 104 of the Insolvency Order with a substitute, which reflects that subsection (4B) inserted into section 35 of the Criminal Justice Act (Northern Ireland) 1945 and Article (1A) inserted into section 92A of the Magistrates' Courts (Northern Ireland) Order 1981 provide that in certain circumstances an application under Article 104 can be made by a collection officer.

Paragraph 18 amends Article 349 of the Insolvency Order, which includes provision disqualifying certain categories of person from acting as an insolvency practitioner.

Sub-paragraph (3) of paragraph 18 replaces sub-paragraph (a) of paragraph (4) of Article 349 with a substitute. This substitution was necessary because it is no longer appropriate to refer to persons having been adjudged bankrupt under the 1986 Act as that Act (the Insolvency Act 1986) has been amended to provide that making of bankruptcy orders at debtors' instigation no longer involves adjudication by the courts. The substitution made by paragraph (4) of paragraph 18 was necessary because of changes to mental health legislation applying in England and Wales, Scotland and Northern Ireland.

Paragraph 19 amends Article 24 of the Insolvency (Northern Ireland) Order 2005, which enables Northern Ireland Departments to make orders disqualifying bankrupts, or a class of bankrupt, from occupying offices or positions. The amendment, which consists of the replacement of sub-paragraph (a) of paragraph (9) in Article 24 with a substitute and the insertion of new sub-paragraph (aa), is to take account of the fact that in England and Wales the making of bankruptcy orders at debtors' instigation no longer involves adjudication by the courts.

Paragraph 20 replaces head (i) in Article 15(1B)(b) of the Disqualification Order with a substitute. The substitution was necessary to take account of the fact that the courts in England and Wales no longer adjudicate individuals bankrupt on their own petition.

Paragraph 21 removes Article 332(2)(a) from the list of provisions in Article 362(1)(b) of the Insolvency Order in respect of which amounts can be specified. Article 332 was repealed by paragraph (1) of Schedule 9 to the Insolvency (Northern Ireland) Order 2005.

Paragraph 26 replaces sub-paragraphs (1)(d) and (e) in paragraph 13 of Schedule B1 to the Insolvency Order with substitutes, which reflect that subsection (4B) inserted into section 35 of the Criminal Justice Act (Northern Ireland) 1945 and Article (1A) inserted into section 92A of the Magistrates' Courts (Northern Ireland) Order 1981 provide that in certain circumstances an application under paragraph 13 of Schedule B1 can be made by a collection officer.

Paragraph 30 amends paragraph 26 of Schedule 5 to the Insolvency Order. The amendment is required as a consequence of paragraph (4) of Article 10 of the Disqualification Order having been revoked by paragraph 5(3) of Schedule 8 to the Small Business, Enterprise and Employment Act 2015 and new Article 10A having been inserted by paragraph 5(2) of that Schedule.

Schedule 4: Insolvent Partnerships: Amendments to Schedules to the 1995 Order

Schedule 4 amends Schedules 1 to 8 and Schedule 10 to the Insolvent Partnerships (Northern Ireland) Order 1995.

Part 1: Amendments to Schedule 1

Schedule 1 to the 1995 Order sets out modified provisions in Part 2 of the Insolvency Order and a modified version of Schedule A1 to that Order to apply for the purposes of Article 4 of the 1995 Order dealing with partnership voluntary arrangements.

Paragraph 2 of Schedule 4 to the Bill removes references in Part 1 of Schedule 1 to the 1995 Order to persons who are not insolvency practitioners but are authorised to act as nominees or supervisors of voluntary arrangements (there are no persons who are so authorised).

These references are removed in consequence of the repeal of Article 348A of the Insolvency Order by paragraph 15 of Schedule 3 to the Insolvency Act (Northern Ireland) 2016. Article 348A enabled persons, other than insolvency practitioners, to be treated as authorised to act as nominees and supervisors of voluntary arrangements if they were members of a body recognised by the Department.

Paragraph 5 replaces modified Article 16 of the Insolvency Order in Schedule 1 to the 1995 Order with a substitute, which provides that creditors are to use a qualifying decision procedure to decide whether to approve a voluntary arrangement being proposed by a partnership.

Paragraphs 4 and 6 to 10 include amendments to modified provisions of the Insolvency Order in Schedule 1 consequent on the changes effected by the substitution of modified Article 16.

Part 2: Amendments to Schedule 2

Schedule 2 to the 1995 Order sets out modified provisions in Schedule B1 to the Insolvency Order and a modified version of Schedule 1 to that Order to apply for the purposes of Article 6 of the 1995 Order dealing with partnership administration.

Paragraph 12 makes amendments to Schedule 2 to the 1995 Order to clarify that the modifications to Schedule B1 are in paragraphs 2 to 56 and modified Schedule 1 to the Insolvency Order is in paragraph 57.

Paragraphs 13 to 30 make miscellaneous amendments to the modified versions of provisions in Schedule B1 to the Insolvency Order which are in Schedule 2 to the 1995 Order. These include amendments to reflect the policy that decisions by creditors are to be made using a qualifying decision procedure and that Articles 208ZJ and 345E inserted into the Insolvency Order, by, respectively, clauses 9 and 10 of the Bill, give creditors the right to opt out of receiving certain correspondence.

Part 3: Amendments to Schedule 3

Schedule 3 to the 1995 Order sets out modified provisions in the Insolvency Order and a modified version of Schedule 2 to that Order to apply for the purposes of winding up of an insolvent partnership under Article 7 of the 1995 Order.

Paragraphs 32 to 36 make miscellaneous amendments to those modified provisions and that modified Schedule.

Part 4: Amendments to Schedule 4

Schedule 4 to the 1995 Order sets out modified provisions in the Insolvency Order and a modified version of Schedule 2 to that Order to apply where an insolvent partnership is being wound up under Article 8 of the 1995 Order.

Part 4 makes miscellaneous amendments to these modified provisions and to the modified version of Schedule 2.

Paragraph 61 inserts modified versions of Articles 208ZE and 345A and 208ZF and 345B of the Insolvency Order into Schedule 4 to the 1995 Order. The modified versions of Article 208ZE and 345A are for use in two cases. Firstly, they are for use where a qualifying decision procedure is being used to seek a decision from the creditors of a partnership, the creditors of a corporate member of a partnership where an insolvency order has been made against that corporate member, or from the creditors of a partnership and of any insolvent members, together as if they were a single set of creditors. Secondly, they are for use where a creditors' decision procedure is being used to seek a decision only from the creditors of an individual member of a partnership where an insolvency order has been made against that individual member.

The modified versions of Articles 208ZF and 345B are for use where a deemed consent procedure is being used to seek a decision from the creditors of a partnership, the creditors of a corporate or individual member of a partnership against whom an insolvency order has been made, or from the creditors of a partnership and of any insolvent members, together as if they were a single set of creditors.

Part 5: Amendments to Schedule 5

Schedule 5 to the 1995 Order sets out modified versions of Articles 185 and 185A of the Insolvency Order to apply for the purposes of winding up of an insolvent partnership under Article 9 of the 1995 Order.

Part 5 makes miscellaneous amendments to the modified version of Article 185.

Part 6: Amendments to Schedule 6

Schedule 6 to the 1995 Order sets out modified provisions in the Insolvency Order to apply where an insolvent partnership is being wound up under Article 10 of the 1995 Order.

Part 6 makes miscellaneous amendments to the modified version of Article 185.

Part 7: Amendments to Schedule 7

Schedule 7 to the 1995 Order sets out modified provisions in the Insolvency Order to apply where all of the members of a partnership have jointly petitioned to have themselves made bankrupt and the partnership's business wound up and its property administered under Article 11 of the 1995 Order, without the partnership being wound up as an unregistered company under Part 6 of the Insolvency Order.

Part 7 makes miscellaneous amendments to these modified provisions.

Paragraph 71 replaces modified Article 239 of the Insolvency Order in paragraph 4 of Schedule 7 with a substitute which sets out revised criteria for establishing if the High Court has territorial jurisdiction to hear a petition under Article 11 of the 1995 Order.

Part 8: Amendments to Schedule 8

Schedule 8 to the 1995 Order sets out modified provisions in the Company Directors Disqualification (Northern Ireland) Order 2002 and a modified version of Schedule 1 to that Order to apply where an insolvent partnership is being wound up under Part 6 of the Insolvency Order.

Part 8:

- replaces modified Article 9 of the Disqualification Order with a substitute and creates a new Article 9A, consisting of interpretive provisions for modified Article 9, to apply in the case of insolvent partnerships
- replaces modified Article 10 of the Disqualification Order with a substitute
- inserts modified versions of Article 10A, 11A, 11B, 11C, 12, 14, 17A, 19A, 19B, 20, 22, 23, and 23A
- replaces modified Schedule 1 which sets out matters for determining unfitness of officers of a partnership with a substitute.

Part 9: Amendment to Schedule 10

Schedule 10 to the 1995 Order lists subordinate legislation which applies for the purpose of giving effect to the provisions of the 1995 Order and to the provisions of the Disqualification Order, which are applied by the 1995 Order.

Part 9 add to that list the Preferential Payments (Monetary Limits) Order (Northern Ireland) 1991.

FINANCIAL EFFECTS OF THE BILL

38. There is no financial cost to government. It has been estimated that the removal, by clauses 90 and 91 of the Bill, of the requirement for creditors to prove small debts could result in direct savings for creditors of £33,634 per annum. Other measures included in

the Bill could result in per annum savings to insolvency practitioners of £18,844, to the Official Receiver of £2,118 and to the Official Receiver and insolvency practitioners combined of £336,028. Some of these savings could be expected to be passed on to creditors in the form of increased dividends.

HUMAN RIGHTS ISSUES

39. The provisions of the Bill are considered to be compatible with the Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

40. Equality impact screening has been carried out and it has been concluded that the only impact on the sections of the community mentioned in section 75 of the Northern Ireland Act 1998 will be minor and positive. The proposal that meetings of creditors and company members during insolvency proceedings should normally take place virtually should benefit the elderly, those with a disability and those with dependants.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

41. A Regulatory Impact Assessment has shown that the Bill objectives can only be achieved by legislative change and has shown the existence of cost savings or other tangible benefits sufficient to justify legislative change. The Regulatory Impact Assessment can be viewed at:

Proposals to Amend the Insolvency (Northern Ireland) Order 1989, the Company Directors Disqualification (Northern Ireland) Order 2002 and the Insolvent Partnerships Order (Northern Ireland) 1995 | Department for the Economy

DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN

42. A data protection impact assessment had been prepared with respect to the processing of additional data which will be generated if meetings of creditors and company members take place virtually. It was concluded that while the severity of harm were the associated risks to materialise was significant, the measures in place to reduce those risks meant that any residual risk was low.

43. The Data Protection Impact Assessment can be viewed at:

Proposals to Amend the Insolvency (Northern Ireland) Order 1989, the Company Directors Disqualification (Northern Ireland) Order 2002 and the Insolvent Partnerships Order (Northern Ireland) 1995 | Department for the Economy

RURAL NEEDS IMPACT ASSESSMENT

44. A rural needs impact assessment has been carried out with respect to the Bill proposals. It was concluded that only two of the proposals will have a differential impact on those living in rural areas. The impact of one will be minor, the other will benefit rural dwellers. The Rural Needs Impact Assessment can be viewed at:

Proposals to Amend the Insolvency (Northern Ireland) Order 1989, the Company Directors Disqualification (Northern Ireland) Order 2002 and the Insolvent Partnerships Order (Northern Ireland) 1995 | Department for the Economy

LEGISLATIVE COMPETENCE

At Introduction the Minister for the Economy had made the following statement under section 9 of the Northern Ireland Act 1998:

> *"In my view the Insolvency (Amendment)Bill would be within the legislative competence of the Northern Ireland Assembly."*