

STATUTORY INSTRUMENTS

2002 No. 3152 (N.I. 6)

The Insolvency (Northern Ireland) Order 2002

17th December 2002

F1

F1 Order: functions transferred from Lord Chancellor to Department of Justice (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 15(1), [Sch. 17 para. 52](#) (with arts. 15(6), 28-31); S.I. 2010/977, [art. 1\(2\)](#)

Modifications etc. (not altering text)

C1 Order applied (with modifications) (8.12.2017) by [The Risk Transformation Regulations 2017 \(S.I. 2017/1212\)](#), regs. 1(2), 166(2), 167(2), [Sch. 2, Sch. 3](#) (with regs. 168, 189)

Introductory

Title and commencement

1.—(1) This Order may be cited as the Insolvency (Northern Ireland) Order 2002.

(2) This Article and Articles 2(1) and (2), 11 and 12 shall come into operation on the expiration of one month from the day on which this Order is made.

(3) The other provisions of this Order shall come into operation on such day or days as the Department may by order appoint.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

“the Department” means the Department of Enterprise, Trade and Investment;

“the Insolvency Order” means the Insolvency (Northern Ireland) Order 1989 (NI 19); and

“statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).

(3) For the purposes of the Financial Services and Markets Act 2000 (c. 8), the functions conferred on [^{F2}the Financial Conduct Authority and the Prudential Regulation Authority] by virtue of Schedules 1 and 2 are to be treated as conferred by that Act.

F2 Words in art. 2(3) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 79](#)

Voluntary arrangements

Moratorium where directors propose voluntary arrangement

- 3. Schedule 1 (which—
 - (a) enables the directors of a company to obtain an initial moratorium for the company where they propose a voluntary arrangement under Part II of the Insolvency Order,
 - (b) makes provision about the approval and implementation of such a voluntary arrangement where a moratorium is obtained, and
 - (c) makes consequential amendments),

shall have effect.

Company voluntary arrangements

- 4. Schedule 2 (which—
 - (a) amends the provisions about company voluntary arrangements under Part II of the Insolvency Order, and
 - (b) in consequence of Schedule 1 and those amendments, makes amendments to the Building Societies Act 1986 (c.53)),

shall have effect.

Individual voluntary arrangements

5. Schedule 3 (which enables the procedure for the approval of individual voluntary arrangements under Chapter II of Part VIII of the Insolvency Order to be started without an initial moratorium for the insolvent debtor and makes other amendments of the provisions about individual voluntary arrangements) shall have effect.

Qualification or authorisation of nominees and supervisors

- 6.—(1) In Article 3 of the Insolvency Order (meaning of “act as insolvency practitioner”)—
 - (a) for paragraph (1)(b) there shall be substituted—
 - “(b) where a voluntary arrangement in relation to the company is proposed or approved under Part II, as nominee or supervisor.” ;
 - (b) for paragraph (2)(c) there shall be substituted—
 - “(c) where a voluntary arrangement in relation to the individual is proposed or approved under Part VIII, as nominee or supervisor;” ; and
 - (c) after paragraph (3) there shall be inserted—
 - “(3A) In relation to a voluntary arrangement proposed under Part II or VIII, a person acts as nominee if he performs any of the functions conferred on nominees under the Part in question.” .

F3(2)

F3(3)

<p>F3 Art. 6(2)(3) repealed (1.4.2016) by Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), s. 28(2), Sch. 4; S.R. 2016/203, art. 2</p>

Miscellaneous

Administration orders

7. ^{F4}

F4 Art. 7 repealed (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 31, Sch. 9; S.R. 2006/21, [art. 2](#) (subject to S.R. 2006/22, [arts. 2-7](#))

Investigation and prosecution of malpractice

8.—(1) Article 182 of the Insolvency Order (prosecution of delinquent officers and members of company) shall be amended as follows.

(2) In paragraph (1), for the words from “the Director” to the end there shall be substituted “the Department”.

(3) In paragraph (3), for sub-paragraphs (a) and (b) there shall be substituted—

“(a) forthwith report the matter to the Department, and

(b) furnish to the Department such information and give to it such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the liquidator and relating to the matter in question) as the Department requires.”

(4) For paragraph (4) there shall be substituted—

“(4) Where a report is made to the Department under paragraph (3), the Department may, for the purpose of investigating the matter reported to it and such other matters relating to the affairs of the company as appear to it to require investigation, exercise any of the powers which are exercisable by inspectors appointed under Article 424 or 425 of the Companies Order to investigate a company's affairs.”

(5) In paragraph (5)(b), “to the prosecuting authority” shall be omitted.

(6) In Article 183 of that Order (obligations arising under Article 182)—

(a) in paragraph (1), for “under Article 182(4)” there shall be substituted “in consequence of a report made to it under Article 182(3)” and for “that paragraph” there shall be substituted “Article 182(4)”;

(b) in paragraph (3), for “the prosecuting authority” and “that authority” there shall be substituted “the Director of Public Prosecutions for Northern Ireland”;

(c) in paragraph (5), for “prosecuting authority” there shall be substituted “Director of Public Prosecutions for Northern Ireland”.

Restriction on use of answers obtained under compulsion

9. In Article 183 of the Insolvency Order, after paragraph (2) (answers given by a person pursuant to powers conferred by Article 182 may be used in evidence against him) there shall be inserted—

“(2A) However, in criminal proceedings in which that person is charged with an offence to which this paragraph applies—

(a) no evidence relating to the answer may be adduced, and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(2B) Paragraph (2A) applies to any offence other than an offence under Article 7 or 10 of the Perjury (Northern Ireland) Order 1979 (NI 19) (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).” .

Insolvent estates of deceased persons

10.—(1) After Article 365 of the Insolvency Order (insolvent estates of deceased persons) there shall be inserted—

“Insolvent estates: joint tenancies

365A.—(1) This Article applies where—

- (a) an insolvency administration order has been made in respect of the insolvent estate of a deceased person,
- (b) the petition for the order was presented after the commencement of this Article and within the period of 5 years beginning with the day on which he died, and
- (c) immediately before his death he was beneficially entitled to an interest in any property as joint tenant.

(2) For the purpose of securing that debts and other liabilities to which the estate is subject are met, the High Court may, on an application by the trustee appointed pursuant to the insolvency administration order, make an order under this Article requiring the survivor to pay to the trustee an amount not exceeding the value lost to the estate.

(3) In determining whether to make an order under this Article, and the terms of such an order, the High Court must have regard to all the circumstances of the case, including the interests of the deceased's creditors and of the survivor; but, unless the circumstances are exceptional, the Court must assume that the interests of the deceased's creditors outweigh all other considerations.

(4) The order may be made on such terms and conditions as the High Court thinks fit.

(5) Any sums required to be paid to the trustee in accordance with an order under this Article shall be comprised in the estate.

(6) The modifications of this Order which may be made by an order under Article 365 include any modifications which are necessary or expedient in consequence of this Article.

(7) In this Article “survivor” means the person who, immediately before the death, was beneficially entitled as joint tenant with the deceased or, if the person who was so entitled dies after the making of the insolvency administration order, his personal representatives.

(8) If there is more than one survivor—

- (a) an order under this Article may be made against all or any of them, but
- (b) no survivor shall be required to pay more than so much of the value lost to the estate as is properly attributable to him.

(9) In this Article—

“insolvency administration order” has the same meaning as in any order under Article 365 having effect for the time being,

“value lost to the estate” means the amount which, if paid to the trustee, would in the High Court's opinion restore the position to what it would have been if the deceased had been adjudged bankrupt immediately before his death.”.

(2) In paragraph (1) of Article 365 of the Insolvency Order, after “apply” there shall be inserted “ in relation ”.

Model law on cross-border insolvency

11.—(1) The Department may by regulations make any provision which it considers necessary or expedient for the purpose of giving effect, with or without modifications, to the model law on cross-border insolvency.

(2) In particular, the regulations may—

- (a) apply any provision of insolvency law in relation to foreign proceedings (whether begun before or after the regulations come into force),
- (b) modify the application of insolvency law (whether in relation to foreign proceedings or otherwise),

and may apply or, as the case may be, modify the application of insolvency law in relation to the Crown.

(3) The regulations may make different provision for different purposes and may make—

- (a) any supplementary, incidental or consequential provision, or
- (b) any transitory, transitional or saving provision,

which the Department considers necessary or expedient.

(4) In this Article—

“foreign proceedings” has the same meaning as in the model law on cross-border insolvency, “insolvency law” means provision made by or under the Insolvency Order or Articles 9 to 14, 16, 19 and 23 (with Schedule 1) of the Company Directors Disqualification (Northern Ireland) Order 2002,

“the model law on cross-border insolvency” means the model law contained in Annex I of the report of the 30th session of UNCITRAL.

(5) Regulations under this Article may only be made if a draft has been laid before, and approved by a resolution of, the Assembly.

(6) Making regulations under this Article requires the agreement of the Lord Chancellor.

General

Orders

12.—(1) The Department may by order make—

- (a) any supplementary, incidental or consequential provision, and
- (b) any transitory, transitional or saving provision,

which it considers necessary or expedient for the purposes of this Order.

(2) An order under this Article may—

- (a) modify, exclude or apply (with or without modifications) any statutory provision;
- (b) make consequential amendments, repeals and revocations of any such provision.

(3) An order made under this Article shall be subject to negative resolution.

Article 13—Repeals

Changes to legislation: There are currently no known outstanding effects for the *The Insolvency (Northern Ireland) Order 2002*. (See end of Document for details)

SCHEDULES

SCHEDULE 1

Article 3.

MORATORIUM WHERE DIRECTORS PROPOSE VOLUNTARY ARRANGEMENT AMENDMENTS OF THE INSOLVENCY ORDER

1. The Insolvency Order shall be amended as follows.

^{F5}2.

F5 Sch. 1 paras. 2-5 omitted (26.6.2020) by virtue of [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), **Sch. 7 para. 34(2)(a)** (with ss. 2(2), 5(2))

^{F5}3.

F5 Sch. 1 paras. 2-5 omitted (26.6.2020) by virtue of [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), **Sch. 7 para. 34(2)(a)** (with ss. 2(2), 5(2))

^{F5}4.

F5 Sch. 1 paras. 2-5 omitted (26.6.2020) by virtue of [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), **Sch. 7 para. 34(2)(a)** (with ss. 2(2), 5(2))

^{F5}5.

F5 Sch. 1 paras. 2-5 omitted (26.6.2020) by virtue of [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), **Sch. 7 para. 34(2)(a)** (with ss. 2(2), 5(2))

6. In Article 39(3)(a) (protection of interests of creditors and members when administration order in force), for “Article 17” substitute “ Part II ”.

^{F6}7.

F6 Sch. 1 para. 7 omitted (26.6.2020) by virtue of [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), **Sch. 7 para. 34(2)(a)** (with ss. 2(2), 5(2))

^{F7}8.

F7 Sch. 1 para. 8 omitted (26.6.2020) by virtue of [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), **Sch. 7 para. 34(2)(a)** (with ss. 2(2), 5(2))

9.—(1) Article 197 (conditions which may be imposed on supply of water, electricity, etc.) is amended as follows.

(2) In paragraph (1)—

Changes to legislation: There are currently no known outstanding effects for the *The Insolvency (Northern Ireland) Order 2002*. (See end of Document for details)

- F⁸(a)
- (b) in sub-paragraph (c), for the words from “under Part II” to “Article 16” substitute “approved under Part II”, and
- F⁸(c)
- (3) In paragraph (4)—
 - F⁸(a)
 - (b) in sub-paragraph (c), for the words following “arrangement” substitute “took effect”.

F8 Para. 9(2)(a)(c) and (3)(a) omitted (26.6.2020) by virtue of [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), **Sch. 7 para. 34(2)(b)** (with ss. 2(2), 5(2))

F⁹**10.**

F9 Sch. 1 paras. 10-12 omitted (26.6.2020) by virtue of [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), **Sch. 7 para. 34(2)(c)** (with ss. 2(2), 5(2))

F⁹**11.**

F9 Sch. 1 paras. 10-12 omitted (26.6.2020) by virtue of [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), **Sch. 7 para. 34(2)(c)** (with ss. 2(2), 5(2))

12. F⁹

F9 Sch. 1 paras. 10-12 omitted (26.6.2020) by virtue of [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), **Sch. 7 para. 34(2)(c)** (with ss. 2(2), 5(2))

Schedule 2—Amendments

Schedule 3—Amendments

Schedule 4—Repeals

Changes to legislation:

There are currently no known outstanding effects for the The Insolvency (Northern Ireland) Order 2002.