
STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

PARTS II TO VIICOMPANY INSOLVENCY; COMPANIES WINDING UP

PART IV

RECEIVERSHIP

RECEIVERS AND MANAGERS

General Provisions

Disqualification of body corporate from acting as receiver

40. A body corporate is not qualified for appointment as receiver of the property of a company, and any body corporate which acts as such a receiver shall be guilty of an offence.

Disqualification of undischarged bankrupt

41.—(1) If a person being an undischarged bankrupt acts as receiver or manager of the property of a company on behalf of debenture holders, he shall be guilty of an offence.

(2) This Article does not apply to a receiver or a manager acting under an appointment made by the High Court.

Power of High Court to appoint official receiver

42. Where application is made to the High Court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the Court, the official receiver may be so appointed.

Receivers and managers appointed out of court

Time from which appointment is effective

43.—(1) The appointment of a person as a receiver or manager of a company's property under powers contained in an instrument—

- (a) is of no effect unless it is accepted by that person before the end of the business day next following that on which the instrument of appointment is received by him or on his behalf, and
- (b) subject to this, is deemed to be made at the time at which the instrument of appointment is so received.

(2) This Article applies to the appointment of 2 or more persons as joint receivers or managers of a company's property under powers contained in an instrument, subject to such modifications as may be prescribed.

Liability for invalid appointment

44. Where the appointment of a person as the receiver or manager of a company's property under powers contained in an instrument is discovered to be invalid (whether by virtue of the invalidity of the instrument or otherwise), the High Court may order the person by whom or on whose behalf the appointment was made to indemnify the person appointed against any liability which arises solely by reason of the invalidity of the appointment.

Application to High Court for directions

45.—(1) A receiver or manager of the property of a company appointed under powers contained in an instrument or the persons by whom or on whose behalf a receiver or manager has been so appointed, may apply to the High Court for directions in relation to any particular matter arising in connection with the performance of the functions of the receiver or manager.

(2) On such an application, the High Court may give such directions, or may make such order declaring the rights of persons before the Court or otherwise, as it thinks just.

Power of High Court to fix remuneration

46.—(1) The High Court may, on an application made by the liquidator of a company, by order fix the amount to be paid by way of remuneration to a person who, under powers contained in an instrument, has been appointed receiver or manager of the company's property.

(2) The High Court's power under paragraph (1), where no previous order has been made with respect thereto under that paragraph—

- (a) extends to fixing the remuneration for any period before the making of the order or the application for it,
- (b) is exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application, and
- (c) subject to paragraph (3), where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extends to requiring him or his personal representatives to account for the excess or such part of it as may be specified in the order.

(3) The power conferred by sub-paragraph (2)(c) shall not be exercised as respects any period before the making of the application for the order under this Article, unless in the opinion of the High Court there are special circumstances making it proper for the power to be exercised.

(4) The High Court may on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under paragraph (1).

Liability for contracts, etc.

47.—(1) A receiver or manager appointed under powers contained in an instrument (other than an administrative receiver) is, to the same extent as if he had been appointed by order of the High Court—

- (a) personally liable on any contract entered into by him in the performance of his functions (except in so far as the contract otherwise provides) and on any contract of employment adopted by him in the performance of those functions, and
- (b) entitled in respect of that liability to indemnity out of the assets.

(2) For the purposes of paragraph (1)(a), the receiver or manager is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days from his appointment.

(3) Paragraph (1) does not limit any right to indemnity which the receiver or manager would have apart from it, nor limit his liability on contracts entered into without authority, nor confer any right to indemnity in respect of that liability.

(4) Where at any time a receiver or manager so appointed vacates office—

- (a) his remuneration and any expenses properly incurred by him, and
- (b) any indemnity to which he is entitled out of the assets of the company,

shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any charge or other security held by the person by or on whose behalf he was appointed.

Receivership accounts to be delivered to registrar

48.—(1) Except in the case of an administrative receiver, every receiver or manager of a company's property who has been appointed under powers contained in an instrument shall deliver to the registrar for registration the requisite accounts of his receipts and payments.

(2) The accounts shall be delivered within one month (or such longer period as the registrar may allow) after the expiration of 12 months from the date of his appointment and of every subsequent period of 6 months, and also within one month after he ceases to act as receiver or manager.

(3) The requisite accounts shall be an abstract in the prescribed form showing—

- (a) receipts and payments during the relevant period of 12 or 6 months, or
- (b) where the receiver or manager ceases to act, receipts and payments during the period from the end of the period of 12 or 6 months to which the last preceding abstract related (or, if no preceding abstract has been delivered under this Article, from the date of his appointment) up to the date of his so ceasing, and the aggregate amount of receipts and payments during all preceding periods since his appointment.

(4) A receiver or manager who contravenes this Article shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

Provisions applicable to every receivership

Notification that receiver or manager appointed

49.—(1) When a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the company's name appears, shall contain a statement that a receiver or manager has been appointed.

(2) If this Article is contravened, the company and any of the following persons, who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be guilty of an offence.

Payment of debts out of assets subject to floating charge

50.—(1) This Article applies, in the case of a company, where a receiver is appointed on behalf of the holders of any debentures of the company secured by a charge which, as created, was a floating charge.

(2) If the company is not at the time in course of being wound up, its preferential debts (within the meaning of Article 346) shall be paid out of the assets coming to the hands of the receiver in priority to any claims for principal or interest in respect of the debentures.

(3) Payments made under this Article shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

Enforcement of duty to make returns

51.—(1) If a receiver or manager of a company’s property—

- (a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver or manager is by law required to file, deliver, make or give, fails to make good the default within 14 days from the service on him of a notice requiring him to do so, or
- (b) having been appointed under powers contained in an instrument, has, after being required at any time by the liquidator of the company to do so, failed to render proper accounts of his receipts and payments and to vouch them and pay over to the liquidator the amount properly payable to him,

the High Court may, on an application made for the purpose, make an order directing the receiver or manager (as the case may be) to make good the default within such time as may be specified in the order.

(2) In the case of the default mentioned in paragraph (1)(a), application to the High Court may be made by any member or creditor of the company or by the registrar; and in the case of the default mentioned in paragraph (1)(b), the application shall be made by the liquidator.

(3) An order of the High Court under paragraph (1), may provide that all costs of and incidental to an application under that paragraph shall be borne by the receiver or manager, as the case may be.

(4) Nothing in this Article prejudices the operation of any statutory provision imposing penalties on receivers in respect of any such default as is mentioned in paragraph (1).

Administrative receivers: general

General powers

52.—(1) The powers conferred on the administrative receiver of a company by the debentures by virtue of which he was appointed are deemed to include (except in so far as they are inconsistent with any of the provisions of those debentures) the powers specified in Schedule 1.

(2) In the application of Schedule 1 to the administrative receiver of a company—

- (a) the words “he” and “him” refer to the administrative receiver, and
- (b) references to the property of the company are to the property of which he is or, but for the appointment of some other person as the receiver of part of the company’s property, would be the receiver or manager.

(3) A person dealing with the administrative receiver in good faith and for value is not concerned to inquire whether the receiver is acting within his powers.

Power to dispose of charged property, etc.

53.—(1) Where, on an application by the administrative receiver, the High Court is satisfied that the disposal (with or without other assets) of any relevant property which is subject to a security would be likely to promote a more advantageous realisation of the company’s assets than would otherwise be effected, the Court may by order authorise the administrative receiver to dispose of the property as if it were not subject to the security.

(2) Paragraph (1) does not apply in the case of any security held by the person by or on whose behalf the administrative receiver was appointed, or of any security to which a security so held has priority.

(3) It shall be a condition of an order under this Article that—

(a) the net proceeds of the disposal, and

(b) where those proceeds are less than such amount as may be determined by the High Court to be the net amount which would be realised on a sale of the property in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security.

(4) Where a condition imposed in pursuance of paragraph (3) relates to 2 or more securities, that condition shall require the net proceeds of the disposal and, where sub-paragraph (b) of that paragraph applies, the sums mentioned in that sub-paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.

(5) An office copy of an order under this Article shall, within 14 days of the making of the order, be sent by the administrative receiver to the registrar.

(6) If the administrative receiver without reasonable excuse contravenes paragraph (5), he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

(7) In this Article “relevant property”, in relation to the administrative receiver, means the property of which he is or, but for the appointment of some other person as the receiver of part of the company’s property, would be the receiver or manager.

Agency and liability for contracts

54.—(1) The administrative receiver of a company—

(a) is deemed to be the company’s agent, unless and until the company goes into liquidation;

(b) is personally liable on any contract entered into by him in the carrying out of his functions (except in so far as the contract otherwise provides) and on any contract of employment adopted by him in the carrying out of those functions; and

(c) is entitled in respect of that liability to an indemnity out of the assets of the company.

(2) For the purposes of paragraph (1)(b) the administrative receiver is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days from his appointment.

(3) This Article does not limit any right to indemnity which the administrative receiver would have apart from it, nor limit his liability on contracts entered into or adopted without authority, nor confer any right to indemnity in respect of that liability.

Vacation of office

55.—(1) An administrative receiver of a company may at any time be removed from office by order of the High Court (but not otherwise) and may resign his office by giving notice of his resignation in the prescribed manner to such persons as may be prescribed.

(2) An administrative receiver shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.

(3) Where at any time an administrative receiver vacates office—

(a) his remuneration and any expenses properly incurred by him, and

(b) any indemnity to which he is entitled out of the assets of the company,

shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any security held by the person by or on whose behalf he was appointed.

(4) Where an administrative receiver vacates office otherwise than by death, he shall, within 14 days from his vacation of office, send a notice to that effect to the registrar.

(5) If an administrative receiver without reasonable excuse contravenes paragraph (4), he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Administrative receivers: ascertainment and investigation of company's affairs

Information to be given by administrative receiver

56.—(1) Where an administrative receiver is appointed, he shall—

- (a) forthwith send to the company and publish in the prescribed manner a notice of his appointment, and
- (b) within 28 days from his appointment, unless the High Court otherwise directs, send such a notice to all the creditors of the company (so far as he is aware of their addresses).

(2) This Article and Article 57 do not apply in relation to the appointment of an administrative receiver to act—

- (a) with an existing administrative receiver, or
- (b) in place of an administrative receiver dying or ceasing to act,

except that, where they apply to an administrative receiver who dies or ceases to act before they have been fully complied with, the references in this Article and Article 57 to the administrative receiver include (subject to paragraph (3)) his successor and any continuing administrative receiver.

(3) If the company is being wound up, this Article and Article 57 apply notwithstanding that the administrative receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

(4) If the administrative receiver without reasonable excuse contravenes this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Statement of affairs to be submitted

57.—(1) Where an administrative receiver is appointed, he shall forthwith require some or all of the persons mentioned in paragraph (3) to make out and submit to him a statement in the prescribed form as to the affairs of the company.

(2) A statement submitted under this Article shall be verified by affidavit by the persons required to submit it and shall show—

- (a) particulars of the company's assets, debts and liabilities;
- (b) the names and addresses of its creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed.

(3) The persons referred to in paragraph (1) are—

- (a) those who are or have been officers of the company;
- (b) those who have taken part in the company's formation at any time within one year before the date of the appointment of the administrative receiver;

- (c) those who are in the company's employment, or have been in its employment within that year, and are in the administrative receiver's opinion capable of giving the information required;
- (d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company;

and in this paragraph "employment" includes employment under a contract for services.

(4) Where any persons are required under this Article to submit a statement of affairs to the administrative receiver, they shall do so (subject to paragraph (5)) before the expiration of 21 days from the day on which the prescribed notice of the requirement is given to them by the administrative receiver.

(5) The administrative receiver, if he thinks fit, may—

- (a) at any time release a person from an obligation imposed on him under paragraph (1) or (2), or
- (b) either when giving notice under paragraph (4) or subsequently, extend the period so mentioned;

and where the administrative receiver has refused to exercise a power conferred by this paragraph, the High Court, if it thinks fit, may exercise it.

(6) If a person without reasonable excuse contravenes any obligation imposed under this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Report by administrative receiver

58.—(1) Where an administrative receiver is appointed, he shall, within 3 months (or such longer period as the High Court may allow) from his appointment, send to the registrar, to any trustees for secured creditors of the company and (so far as he is aware of their addresses) to all such creditors a report as to the following matters, namely—

- (a) the events leading up to his appointment, so far as he is aware of them;
- (b) the disposal or proposed disposal by him of any property of the company and the carrying on or proposed carrying on by him of any business of the company;
- (c) the amounts of principal and interest payable to the debenture holders by whom or on whose behalf he was appointed and the amounts payable to preferential creditors; and
- (d) the amount (if any) likely to be available for the payment of other creditors.

(2) The administrative receiver shall also, within 3 months (or such longer period as the High Court may allow) from his appointment, either—

- (a) send a copy of the report (so far as he is aware of their addresses) to all unsecured creditors of the company; or
- (b) publish in the prescribed manner a notice stating an address to which unsecured creditors of the company should write for copies of the report to be sent to them free of charge,

and (in either case), unless the Court otherwise directs, lay a copy of the report before a meeting of the company's unsecured creditors summoned for the purpose on not less than 14 days' notice.

(3) The High Court shall not give a direction under paragraph (2) unless—

- (a) the report states the intention of the administrative receiver to apply for the direction, and
- (b) a copy of the report is sent to the persons mentioned in sub-paragraph (a) of that paragraph, or a notice is published as mentioned in sub-paragraph (b) of that paragraph, not less than 14 days before the hearing of the application.

- (4) Where the company has gone or goes into liquidation, the administrative receiver—
- (a) shall, within 7 days from his compliance with paragraph (1) or, if later, the nomination or appointment of the liquidator, send a copy of the report to the liquidator, and
 - (b) where he does so within the time limited for compliance with paragraph (2), is not required to comply with that paragraph.
- (5) A report under this Article shall include a summary of the statement of affairs made out and submitted to the administrative receiver under Article 57 and of his comments (if any) upon it.
- (6) Nothing in this Article is to be taken as requiring any such report to include any information the disclosure of which would seriously prejudice the carrying out by the administrative receiver of his functions.
- (7) Article 56(2) applies for the purposes of this Article also.
- (8) If the administrative receiver without reasonable excuse contravenes this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Committee of creditors

59.—(1) Where a meeting of creditors is summoned under Article 58, the meeting may, if it thinks fit, establish a committee (“the creditors' committee”) to exercise the functions conferred on it by or under this Order.

(2) If such a committee is established, the committee may, on giving not less than 7 days' notice, require the administrative receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.