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STATUTORY INSTRUMENTS

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**1996 No. 1299**

**The Proceeds of Crime (Northern Ireland) Order 1996**

**PART II**

**CONFISCATION ORDERS**

*Insolvency of defendants, etc.*

**Bankruptcy of defendant, etc.**

**37.**—(1) Where a person who holds realisable property is adjudged bankrupt—

- (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt, and
- (b) any proceeds of property realised by virtue of Article 31(8) or 34(5) or (6) for the time being in the hands of a receiver appointed under Article 31 or 34,

is excluded from the bankrupt's estate for the purposes of Part IX of the Insolvency (Northern Ireland) Order 1989.

(2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by Articles 31 to 35 or on a receiver so appointed shall not be exercised in relation to—

- (a) property for the time being comprised in the bankrupt's estate for the purposes of that Part of the Order of 1989;
- (b) property in respect of which his trustee in bankruptcy may (without leave of the High Court) serve a notice under Article 280 or 281 of that Order of 1989 (after-acquired property and tools, clothes, etc. exceeding value of reasonable replacement); and
- (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under Article 254(2)(c) of that Order of 1989.

(3) Nothing in that Order of 1989 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Paragraph (2) does not affect the enforcement of a charging order—

- (a) made before the order adjudging the person bankrupt; or
- (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

(5) Where, in the case of a debtor, an interim receiver stands appointed under Article 259 of that Order of 1989 and any property of the debtor is subject to a restraint order, the powers conferred on the receiver by virtue of that Order of 1989 do not apply to property for the time being subject to the restraint order.

(6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Order—

- (a) no order shall be made under Article 312 or 367 of that Order of 1989 (avoidance of certain transactions) in respect of the making of the gift at any time when—
  - (i) proceedings for an offence to which this Order applies have been instituted against him and have not been concluded; or
  - (ii) an application has been made under Article 17, 18, 19, 21 or 24 and has not been concluded; or
  - (iii) property of the person to whom the gift was made is subject to a restraint order or charging order; and
- (b) any order made under Article 312 or 367 of that Order of 1989 after the conclusion of the proceedings or of the application shall take into account any realisation under this Order of property held by the person to whom the gift was made.

### **Winding up of company holding realisable property**

**38.**—(1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—

- (a) property for the time being subject to a restraint order made before the relevant time, and
- (b) any proceeds of property realised by virtue of Article 31(8) or 34(5) or (6) for the time in the hands of a receiver appointed under Article 31 or 34.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the High Court by Articles 31 to 35 or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company’s creditors; or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) Nothing in the Insolvency (Northern Ireland) Order 1989 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Paragraph (2) does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.

(5) In this Article—

“company” means any company which may be wound up under the Insolvency (Northern Ireland) Order 1989; and

“the relevant time” means—

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made but, before the presentation of the petition for the winding up of the company by the High Court, such a resolution has been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.