

---

DRAFT STATUTORY INSTRUMENTS

---

**2005 No.**

**The Insolvency (Northern Ireland) Order 2005**

*Companies etc.*

**Replacement of Part III of the 1989 Order**

3.—(1) The following shall be substituted for Part III of the 1989 Order (administration orders)—

**“PART III  
ADMINISTRATION**

**Administration**

**21.** Schedule B1 (which makes provision about the administration of companies) shall have effect.”

(2) The Schedule B1 set out in Schedule 1 to this Order shall be inserted after Schedule A1 to the 1989 Order.

(3) Schedule 2 (minor and consequential amendments relating to administration) shall have effect.

(4) The Department may by order amend any statutory provision in consequence of this Article.

(5) An order under paragraph (4) shall be subject to negative resolution.

**Special administration regimes**

4.—(1) Article 3 shall have no effect in relation to—

(a) a licence company within the meaning of section 26 of the Transport Act 2000 (c. 38) (air traffic services), or

(b) a building society within the meaning of section 119 of the Building Societies Act 1986 (c. 53) (interpretation).

(2) A reference in an Act listed in paragraph (1) to a provision of Part III of the 1989 Order (or to a provision which has effect in relation to a provision of that Part of that Order) shall, in so far as it relates to a licence company or a building society, continue to have effect as if it referred to Part III as it had effect immediately before the coming into operation of Article 3.

(3) But the effect of paragraph (2) in respect of a particular class of licence company or building society may be modified by order of—

(a) the Department, in the case of a licence company, or

(b) the Treasury, in the case of a building society.

(4) An order under paragraph (3) may make consequential amendment of a statutory provision.

(5) An order under paragraph (3) shall—

(a) where it is made by the Department, be subject to negative resolution, and

(b) where it is made by the Treasury, be subject to annulment in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.

(6) An amendment of the 1989 Order made by this Order is without prejudice to any power conferred by Part V of the Companies (No. 2) (Northern Ireland) Order 1990 (NI 10) (financial markets) to modify the law of insolvency.

### **Prohibition on appointment of administrative receiver**

5.—(1) The following shall be inserted at the end of Part IV of the 1989 Order (receivership)—

*“Prohibition of appointment of administrative receiver*

#### **Floating charge holder not to appoint administrative receiver**

**59A.**—(1) The holder of a qualifying floating charge in respect of a company’s property may not appoint an administrative receiver of the company.

(2) In paragraph (1) “holder of a qualifying floating charge in respect of a company’s property” has the same meaning as in paragraph 15 of Schedule B1.

(3) This Article applies—

- (a) to a floating charge created on or after a date appointed by the Department by order, and
- (b) in spite of any provision of an agreement or instrument which purports to empower a person to appoint an administrative receiver (by whatever name).

(4) An order under paragraph (3)(a) may—

- (a) make provision which applies generally or only for a specified purpose;
- (b) make different provision for different purposes;
- (c) make transitional provision.

(5) This Article is subject to the exceptions specified in Articles 59B to 59I.

#### **First exception: capital market**

**59B.**—(1) Article 59A does not prevent the appointment of an administrative receiver in pursuance of an agreement which is or forms part of a capital market arrangement if—

- (a) a party incurs or, when the agreement was entered into was expected to incur, a debt of at least £50 million under the arrangement, and
- (b) the arrangement involves the issue of a capital market investment.

(2) In paragraph (1)—

“capital market arrangement” means an arrangement of a kind described in paragraph 1 of Schedule 1A, and

“capital market investment” means an investment of a kind described in paragraph 2 or 3 of that Schedule.

#### **Second exception: public-private partnership**

**59C.**—(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

- (a) is a public-private partnership project, and

- (b) includes step-in rights.
- (2) In this Article “public-private partnership project” means a project—
  - (a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or
  - (b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.
- (3) In this Article—
  - “step-in rights” has the meaning given by paragraph 6 of Schedule 1A, and
  - “project company” has the meaning given by paragraph 7 of that Schedule.

### **Third exception: utilities**

- 59D.**—(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—
- (a) is a utility project, and
  - (b) includes step-in rights.
- (2) In this Article—
- (a) “utility project” means a project designed wholly or mainly for the purpose of a regulated business,
  - (b) “regulated business” means a business of a kind listed in paragraph 10 of Schedule 1A,
  - (c) “step-in rights” has the meaning given by paragraph 6 of that Schedule, and
  - (d) “project company” has the meaning given by paragraph 7 of that Schedule.

### **Fourth exception: urban regeneration projects**

- 59E.**—(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—
- (a) is designed wholly or mainly to develop land which at the commencement of the project is wholly or partly in a designated disadvantaged area in Northern Ireland, and
  - (b) includes step-in rights.
- (2) In paragraph (1) “develop” means to carry out—
- (a) building operations,
  - (b) any operation for the removal of substances or waste from land and the levelling of the surface of the land, or
  - (c) engineering operations in connection with the activities mentioned in subparagraph (a) or (b).
- (3) In this Article—
- “building” includes any structure or erection, and any part of a building as so defined, but does not include plant and machinery comprised in a building,
  - “building operations” includes—
    - (a) demolition of buildings,
    - (b) filling in of trenches,
    - (c) rebuilding,

- (d) structural alterations of, or additions to, buildings and
  - (e) other operations normally undertaken by a person carrying on business as a builder,
- “designated disadvantaged area” means an area designated as a disadvantaged area under section 92 of the Finance Act 2001 (c. 9),
- “engineering operations” includes the formation and laying out of means of access to highways,
- “project company” has the meaning given by paragraph 7 of Schedule 1A,
- “step-in rights” has the meaning given by paragraph 6 of that Schedule,
- “substance” means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour, and
- “waste” includes any waste materials, spoil, refuse or other matter deposited on land.

#### **Fifth exception: project finance**

**59F.**—(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

- (a) is a financed project, and
  - (b) includes step-in rights.
- (2) In this Article—
- (a) a project is “financed” if under an agreement relating to the project a project company incurs, or when the agreement is entered into is expected to incur, a debt of at least £50 million for the purposes of carrying out the project,
  - (b) “project company” has the meaning given by paragraph 7 of Schedule 1A, and
  - (c) “step-in rights” has the meaning given by paragraph 6 of that Schedule.

#### **Sixth exception: financial market**

**59G.** Article 59A does not prevent the appointment of an administrative receiver of a company by virtue of—

- (a) a market charge within the meaning of Article 95 of the [Companies \(No. 2\) \(Northern Ireland\) Order 1990 \(NI 10\)](#),
- (b) a system-charge within the meaning of the [Financial Markets and Insolvency Regulations \(Northern Ireland\) 1996 \(SR 1996 No. 252\)](#).

#### **Seventh exception: registered housing association**

**59H.** Article 59A does not prevent the appointment of an administrative receiver of a housing association which is registered as such under Chapter II of Part II of the [Housing \(Northern Ireland\) Order 1992 \(NI 15\)](#).

#### **Eighth exception: licence companies**

**59I.** Article 59A does not prevent the appointment of an administrative receiver of a licence company within the meaning of section 26 of the Transport Act 2000 (c. 38).

#### **Articles 59A to 59I: supplementary**

**59J.**—(1) Schedule 1A (which supplements Articles 59A to 59I) shall have effect.

- (2) The Department may by order—
  - (a) insert into this Order provision creating an additional exception to Article 59A(1);
  - (b) provide for a provision of this Order which creates an exception to Article 59A(1) to cease to have effect;
  - (c) amend Article 59A in consequence of provision made under sub-paragraph (a) or (b);
  - (d) amend any of Articles 59B to 59I;
  - (e) amend Schedule 1A.
- (3) An order under paragraph (2) may make—
  - (a) provision which applies generally or only for a specified purpose;
  - (b) different provision for different purposes;
  - (c) consequential or supplementary provision;
  - (d) transitional provision.
- (4) An order under paragraph (2)—
  - (a) in the case of an order under paragraph (2)(e), shall be subject to negative resolution,
  - (b) in the case of an order under paragraph (2)(d) varying the sum specified in Article 59B(1)(a) or 59F(2)(a) (whether or not the order also makes consequential or transitional provision), shall be subject to negative resolution, and
  - (c) in the case of any other order under paragraph (2)(a) to (d), shall be subject to affirmative resolution.”.

(2) The Schedule 1A set out in Schedule 3 to this Order shall be inserted after Schedule 1 to the 1989 Order.

### **Abolition of Crown preference**

**6.—**(1) The following paragraphs of Schedule 4 to the 1989 Order (categories of preferential debts) shall cease to have effect—

- (a) paragraphs 1 and 2 (debts due to Inland Revenue),
- (b) paragraphs 3 to 5C (debts due to Customs and Excise), and
- (c) paragraphs 6 and 7 (social security contributions).

(2) In Article 346 of the 1989 Order (categories of preferential debts) in paragraph (1) for the parenthetical words after “Schedule 4” there shall be substituted “(contributions to occupational pension schemes; remuneration, &c. of employees; levies on coal and steel production)”.

### **Unsecured creditors**

**7.—**(1) The following shall be inserted after Article 150 of the 1989 Order (winding up: preferential debt)—

*“Property subject to floating charge*

#### **Share of assets for unsecured creditors**

**150A.—**(1) This Article applies where a floating charge relates to property of a company—

- (a) which has gone into liquidation,
- (b) which is in administration,

- (c) of which there is a provisional liquidator, or
- (d) of which there is a receiver.
- (2) The liquidator, administrator or receiver—
  - (a) shall make a prescribed part of the company’s net property available for the satisfaction of unsecured debts, and
  - (b) shall not distribute that part to the proprietor of a floating charge except in so far as it exceeds the amount required for the satisfaction of unsecured debts.
- (3) Paragraph (2) shall not apply to a company if—
  - (a) the company’s net property is less than the prescribed minimum, and
  - (b) the liquidator, administrator or receiver thinks that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.
- (4) Paragraph (2) shall also not apply to a company if or in so far as it is disapplied by—
  - (a) a voluntary arrangement in respect of the company, or
  - (b) a compromise or arrangement agreed under Article 418 of the Companies Order (compromise with creditors and members).
- (5) Paragraph (2) shall also not apply to a company if—
  - (a) the liquidator, administrator or receiver applies to the High Court for an order under this paragraph on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits, and
  - (b) the Court orders that paragraph (2) shall not apply.
- (6) In paragraphs (2) and (3) a company’s net property is the amount of its property which would, but for this Article, be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company.
- (7) An order under paragraph (2) prescribing part of a company’s net property may, in particular, provide for its calculation—
  - (a) as a percentage of the company’s net property, or
  - (b) as an aggregate of different percentages of different parts of the company’s net property.
- (8) An order under this Article shall be subject to negative resolution.
- (9) In this Article—
  - “floating charge” means a charge which is a floating charge on its creation and which is created after the first order under paragraph (2)(a) comes into operation, and
  - “prescribed” means prescribed by order by the Department.
- (10) An order under this Article may include transitional or incidental provision.”.
- (2) In Article 2(2) of the 1989 Order (general interpretation), in paragraph (b) in the definition of “prescribed” after “sub-paragraph (a)” there shall be inserted “in Article 150A(9)”.

### **Liquidator’s powers**

**8.** The following shall be inserted in Part I of Schedule 2 to the 1989 Order (liquidator’s powers in winding up: powers exercisable only with sanction) after paragraph 3—

“**3A.** Power to bring legal proceedings under Article 177, 178, 202, 203 or 367.”.

### **Application of insolvency law to company incorporated outside Northern Ireland**

**9.**—(1) The Department may by order provide for a provision of the 1989 Order to apply (with or without modification) in relation to a company incorporated outside Northern Ireland.

(2) An order under this Article—

- (a) may make provision generally or for a specified purpose only,
- (b) may make different provision for different purposes, and
- (c) may make transitional, consequential or incidental provision.

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

### **Application of law about company arrangement or administration to non-company**

**10.**—(1) The Treasury may with the concurrence of the Secretary of State by order provide for a company arrangement or administration provision to apply (with or without modification) in relation to—

- (a) a society registered under section 7(1)(b), (c), (d), (e) or (f) of the Friendly Societies Act 1974 (c. 46),
- (b) a friendly society within the meaning of the Friendly Societies Act 1992 (c. 40), or
- (c) an unregistered friendly society.

(2) The Department may by order provide for a company arrangement or administration provision to apply (with or without modification) in relation to a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24).

(3) In paragraphs (1) and (2) “company arrangement or administration provision” means—

- (a) a provision of Part II of the 1989 Order (company voluntary arrangements),
- (b) a provision of Part III of that Order (administration), and
- (c) Article 418 of the Companies (Northern Ireland) Order 1986 (NI 6) (compromise or arrangement with creditors).

(4) An order under paragraph (1) or (2) may not provide for a company arrangement or administration provision to apply in relation to a society which is registered as a housing association under Part II of the Housing (Northern Ireland) Order 1992 (NI 15).

(5) An order under paragraph (1) or (2)—

- (a) may make provision generally or for a specified purpose only,
- (b) may make different provision for different purposes, and
- (c) may make transitional, consequential or incidental provision.

(6) Provision by virtue of paragraph (5)(c) may, in particular—

- (a) apply a statutory provision (with or without modification);
- (b) amend a statutory provision.

(7) An order under paragraph (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.

(8) An order under paragraph (2) shall be subject to negative resolution.

### **Voluntary arrangements: minor amendments**

**11.**—(1) Schedule A1 to the 1989 Order (moratorium where directors propose voluntary arrangement) shall be amended as follows.

- (2) In paragraph 2(1)(a) for “paragraph 4” substitute “paragraphs 4 to 7”.
- (3) In paragraph 23(4), paragraphs (b) and (c) shall cease to have effect.