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STATUTORY INSTRUMENTS

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**2004 No. 355**

**The Financial Services and Markets Act 2000  
(Consequential Amendments) Order 2004**

NORTHERN IRELAND LEGISLATION

*The Companies (Northern Ireland) Order 1986 (S.I.1986/1032 (N.I. 6))*

**Meaning of “offer of securities to the public”**

**12.**—(1) The Companies (Northern Ireland) Order 1986 is amended as follows.

(2) In paragraph (1) of Article 10A (meaning of “offer to the public”)(1), before “Part V (allotment of shares and debentures)” insert “Article 2(3) (interpretation),”.

(3) In paragraph (1)(b) of Article 91 (restriction on public offers by private company), for “Articles 68 to 70” substitute “Articles 68 and 10A”.

**Provision for security of information obtained**

**13.**—(1) Sub-paragraphs (c) and (d) of Article 442(1) of the Companies (Northern Ireland) Order 1986 (“the 1986 Order”) have effect without the amendments made by article 62(2) of the 2001 Order, and instead sub-paragraph (c) is amended in accordance with paragraph (2).

(2) In sub-paragraph (c), the words “section 94 or 177 of the Financial Services Act 1986” are repealed.

(3) The amendment made to sub-paragraph (d) of Article 442(1) of the 1986 Order by article 62(5) of the 2001 Order is treated as if it had not been made.

(4) In sub-paragraph (dd) of article 442(1) of the 1986 Order, for “the Insurance Companies Act 1982, or the Financial Services Act 1986,” substitute “or the Financial Services and Markets Act 2000,”.

(5) The provisions substituted for sub-paragraphs (fa) to (i) of Article 442(1) of the 1986 Order by Article 62(6) of the 2001 Order are treated as if they had not been substituted for sub-paragraphs (fa) to (i), and instead are substituted for sub-paragraphs (fa) to (h) of Article 442(1) of the 1986 Order.

(6) Paragraph (3)(b) of Article 442 of the 1986 Order has effect without the amendment made by Article 62(9) of the 2001 Order, and instead paragraph (3)(b) is amended in accordance with paragraph (7).

(7) In paragraph (3)(b) of Article 442 of the 1986 Order, the words “or section 94 or 177 of the Financial Services Act 1986” are repealed.

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(1) Article 10A, together with Articles 10B and 10C, was inserted by S.I. [2001/3649](#), article 43.

*The Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19))*

**Limitation on power to make an administration order**

**14.**—(1) The substitution of sub-paragraph (a) of Article 21(5) of the Insolvency (Northern Ireland) Order 1989(2) by article 57 of the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2002 (limitation of power to make an administration order)(3) is treated as if it had not been made, and instead that sub-paragraph is substituted in accordance with paragraph (2).

(2) For sub-paragraph (a) substitute—

“(a) it effects or carries out contracts of insurance, but is not—

- (i) exempt from the general prohibition, within the meaning of section 19 of the Financial Services and Markets Act 2000, in relation to effecting or carrying out contracts of insurance, or
- (ii) an authorised deposit taker within the meaning given by paragraph (1B), and effecting or carrying out contracts of insurance in the course of a banking business;”.

**Power to apply Parts 2 to 7 to formerly authorised banks**

**15.**—(1) The amendments made to the cross-heading to Article 366 of the Insolvency (Northern Ireland) Order 1989 by article 59(2) of the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2002 (power to apply Parts 2 to 7 to formerly authorised banks)(4) is treated as if it had not been made, and instead that cross heading is amended in accordance with paragraph (2).

(2) For the cross heading to that Article substitute “Formerly authorised banks”.

(3) In paragraph (1) of that Article(5), for “any company” substitute “any person”.

*The Banks (Administration Proceedings) Order (Northern Ireland) 1991 (S.R. (NI) 1991/295)*

**Application of Part III of the 1989 Order to former authorised institutions**

**16.** In the Banks (Administration Proceedings) Order (Northern Ireland) 1991, for the cross heading to Article 3 (application of the 1989 Order with modifications to banks) substitute—

*“Application of the 1989 Order with modifications to former authorised institutions”.*

*The Insolvency Rules (Northern Ireland) 1991 (S.R. 1991 No. 364)*

**Interpretation of “deposit-taker”**

**17.**—(1) The Insolvency Rules (Northern Ireland) 1991 are amended as follows.

(2) In Rule 0.2 of those Rules (interpretation), insert the following in the appropriate places—

““authorised deposit-taker” means a person with permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits, and this definition must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000,

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(2) Paragraph (5) was substituted, together with paragraphs (4) and (6), for paragraph (4) by S.I. 2001/3649, article 401.

(3) S.I. 2002/1555.

(4) S.I. 2002/1555.

(5) Article 366 was amended by S.I. 2001/3649, article 403 and S.I. 2002/1555, article 59.

- (b) any relevant order under that section, and
  - (c) Schedule 2 to that Act;” and
- ““former authorised deposit-taker” means a person who—
- (a) is not an authorised deposit-taker,
  - (b) was formerly an authorised institution under the Banking Act 1987(6), or a recognised bank or a licensed institution under the Banking Act 1979(7), and
  - (c) continues to have liability in respect of any deposit for which it had a liability at a time when it was an authorised institution, recognised bank or licensed institution,
- and in this definition references to a “deposit” must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order made under that section, and Schedule 2 to that Act;”.

### **Authorised deposit-takers and former authorised deposit-takers**

**18.**—(1) In rule 2.08 of those Rules (manner in which service to be effected), for paragraph (5) (a) substitute—

“(a) is an authorised deposit-taker or former authorised deposit-taker.”

(2) In rule 4.001 (voluntary winding up; winding up by the court), in paragraph (1)(b)(8) for “authorised institutions or former authorised institutions within the meaning of the Banking Act 1987” substitute “authorised deposit-takers or former authorised deposit-takers”.

(3) In rule 4.007 (presentation and filing of petition), in paragraph (4)(f)(9) for “an authorised institution or former authorised institution within the meaning of the Banking Act 1987” substitute “an authorised deposit-taker or a former authorised deposit-taker”.

(4) In rule 4.055 (first meetings (No CVL Application)), in paragraph (8) for “an authorised institution or former authorised institution within the meaning of the Banking Act 1987” substitute “an authorised deposit-taker or a former authorised deposit-taker”.

(5) In rule 4.056 (first meeting of creditors (CVL)), in paragraph (3) for “an authorised institution or former authorised institution within the meaning of the Banking Act 1987” substitute “an authorised deposit-taker or a former authorised deposit-taker”.

(6) In rule 4.078 (additional provisions as regards certain meetings), in paragraph (1) for “an authorised institution or former authorised institution within the meaning of the Banking Act 1987” substitute “an authorised deposit-taker or a former authorised deposit-taker”.

### **The Scheme Manager of the Financial Services Compensation Scheme**

**19.**—(1) In rule 4.001 of those Rules (voluntary winding up; winding up by the court), in paragraph (1)(b), for “Deposit Protection Board” substitute “the scheme manager”.

(2) In rule 4.078 (additional provisions as regards certain meetings)—

- (a) In paragraph (2)(10) for “to the Deposit Protection Board” substitute “to the scheme manager established under section 212(1) of the Financial Services and Markets Act 2000”, and
- (b) in paragraphs (3), (4), (5), (6) and (7) for “the Board” substitute “the scheme manager”.

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(6) 1987 c. 22, repealed by S.I. 2001/3649, article 3(1)(d).

(7) 1979 c. 37, repealed by the Banking Act 1987, section 108, Schedule 7.

(8) Paragraph (1)(b) was amended by S.R. 2000 No. 247, Rule 4(a).

(9) Paragraph (4)(f) was amended by S.R. 2000 No. 247, Rule 4.

(10) To which there are amendments not relevant to this order.

(3) In Schedule 1 (Deposit Protection Board’s Voting Rights) for “Deposit Protection Board” or “Board” wherever occurring, substitute “scheme manager”.

#### **Additional creditor members**

**20.** In rule 4.160 of those Rules (membership of committee), for paragraph (7) substitute—

“(7) The following categories of person are to be regarded as additional creditor members —

- (a) a representative of the Financial Services Authority who exercises the right under section 371(4)(b) of the Financial Services and Markets Act 2000 to be a member of the committee;
- (b) a representative of the scheme manager who exercises the right under section 215(4) of that Act to be a member of the committee.”.

#### **Debts not provable unless all other claims have been paid in full**

**21.** In rule 12.03 of those Rules (provable debts), for sub-paragraphs (a) and (b) of paragraph (4) substitute—

- “(a) in a winding up or a bankruptcy, any claim arising by virtue of section 382(1) (a) of the Financial Services and Markets Act 2000, not being a claim also arising by virtue of section 382(1)(b) of that Act;”.

*The Insolvent Partnerships Order (Northern Ireland) 1995 (S.R. 1995 No. 225)*

#### **Supplementary powers of the court: winding up of insolvent partnerships**

**22.** In paragraph (1) of Article 15 of the Insolvent Partnerships Order (Northern Ireland) 1995 (supplemental powers of the court), for the text of paragraph (5C) of Article 143 of the Insolvency (Northern Ireland) Order 1989 (as that Article is modified by paragraph (1)), substitute—

“(5C) Where the High Court makes an order for the winding up of an insolvent partnership under—

- (a) section 73(1)(a) of the Financial Services Act 1986<sup>(11)</sup>;
- (b) section 92(3)(a) of the Banking Act 1987<sup>(12)</sup>; or
- (c) section 367(3) of the Financial Services and Markets Act 2000,

the Court may make an order as to the future conduct of the winding up proceedings, and any such order may apply any provisions of the Insolvent Partnerships Order (Northern Ireland) 1995 with any necessary modifications.”.

#### **Partnerships which are authorised persons: administration orders**

**23.—**(1) In paragraph 2 of Schedule 2 to the Insolvent Partnerships Order (Northern Ireland) 1995 (modified provisions of Part III of the Order), in the text of Article 21(1)(a) of the Insolvency (Northern Ireland) Order 1989 (as modified by that paragraph) after “or 188” insert “or paragraph (1A)”.

(2) In that paragraph, after the text of Article 21(1) of the Insolvency (Northern Ireland) Order 1989 (as modified by that paragraph) insert—

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<sup>(11)</sup> 1986 c. 60; section 73 was amended by S.I. 1989/2405 (N.I. 19), Article 381, Schedule 9, paragraph 47.

<sup>(12)</sup> 1987 c. 22; section 92 was amended by S.I. 1989/2405 (N.I. 19), Article 381, Schedule 9, paragraph 56.

“(1A) An authorised deposit-taker which defaults on an obligation to pay any sum due and payable in respect of a relevant deposit is deemed to be unable to pay its debts.

(1B) In paragraph (1A)—

(a) “authorised deposit taker” means a person (being a partnership) who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits, other than a person who has such permission only for the purpose of carrying on another regulated activity in accordance with that permission; and

(b) “relevant deposit” must be read with—

(i) section 22 of the Financial Services and Markets Act 2000,

(ii) any relevant order under that section, and

(iii) Schedule 2 to that Act,

but any restriction on the meaning of deposit which arises from the identity of the person making it is to be disregarded.”.

(3) In that paragraph, for the text of Article 21(4) of the Insolvency (Northern Ireland) Order 1989 (as modified by that paragraph) substitute—

“(4) An administration order shall not be made in relation to a partnership after an order has been made for it to be wound up by the court as an unregistered company, nor after an order has been made in relation to it by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995.

(4A) An administration order shall not be made against a partnership if—

(a) it has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance in the United Kingdom;

(b) it continues to have a liability in respect of a deposit which was held by it in accordance with the Banking Act 1979 or the Banking Act 1987, but is not an authorised deposit taker, within the meaning given by paragraph (1B).

(4B) The definition of “authorised deposit taker” in paragraph (1B)(a) and paragraph (4A)(b) must be read with—

(a) section 22 of the Financial Services and Markets Act 2000,

(b) any relevant order under that section, and

(c) Schedule 2 to that Act.”.

### **Authorised deposit takers and former authorised institutions: restriction on presentation of bankruptcy petition by partners**

**24.—**(1) In paragraph 3 of Schedule 7 to the Insolvent Partnerships Order (Northern Ireland) 1995 (provisions of the Order which apply with modifications for the purposes of Article 11 where joint bankruptcy petition is presented by individual members without winding up partnership as unregistered company), in the text of Article 238(2) of the Insolvency (Northern Ireland) Order 1989 (as modified by that paragraph), for “which is an authorised institution or former authorised institution within the meaning of the Banking Act 1987” substitute—

“if the partnership—

(a) has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits, other than such a permission only for the purpose of carrying on another regulated activity in accordance with that permission, or

(b) continues to have a liability in respect of a deposit which was held by it in accordance with the Banking Act 1979 or the Banking Act 1987.”.

(2) In that paragraph, in the text of Article 238 of the Insolvency (Northern Ireland) Order 1989 (as modified by that paragraph), after sub-paragraph (2) insert—

“(2A) Paragraph (2)(a) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000,
- (b) any relevant order under that section, and
- (c) Schedule 2 to that Act.”.

### **Disqualification of a member of an insolvent partnership after investigation**

**25.** In Schedule 8 to the Insolvent Partnerships Order (Northern Ireland) 1995 (provisions of Part II of the Companies (Northern Ireland) Order 1989 which apply with modifications for the purposes of Article 16), for the text of paragraphs (1) and (2) of Article 11 of the Companies (Northern Ireland) Order 1989 (as modified by that paragraph) substitute—

“(1) If it appears to the Department from—

- (a) a report made by an inspector or person appointed to conduct an investigation under a provision mentioned in paragraph (1A), or
- (b) information or documents obtained under a provision mentioned in paragraph (1B),

that it is expedient in the public interest that a disqualification order should be made against any person who is or has been an officer of an insolvent partnership, it may apply to the High Court for such an order to be made against that person.

(2) The provisions are—

- (a) Article 430 of the Companies Order,
- (b) section 167, 168, 169(1)(b) or 284 of the Financial Services and Markets Act 2000, or
- (c) regulations made as a result of section 262(2)(k) of that Act.

(2A) The provisions are—

- (a) Articles 440 or 441 of the Companies Order,
- (b) section 2 of the Criminal Justice Act 1987<sup>(13)</sup>,
- (c) section 28 of the Criminal Law (Consolidation) (Scotland) Act 1995<sup>(14)</sup>,
- (d) section 83 of the Companies Act 1989<sup>(15)</sup>, or
- (e) section 171 or 173 of the Financial Services and Markets Act 2000.”.

*The Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))*

### **Restriction on employer-related investments**

**26.**—(1) Article 40 of the Pensions (Northern Ireland) Order 1995 (employer-related investments) has effect without the amendments made by article 152(3) of the 2001 Order, and instead Article 40 is amended in accordance with paragraph (2).

(2) After paragraph (2) insert—

“(2A) In the definition of “employer-related investments” in paragraph (2), “securities” means—

- (a) shares,

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<sup>(13)</sup> 1987 c. 38.

<sup>(14)</sup> 1995 c. 39.

<sup>(15)</sup> 1989 c. 40.

- (b) instruments creating or acknowledging indebtedness,
  - (c) instruments giving entitlements to investments,
  - (d) certificates representing securities.
- (2B) Paragraph (2A) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000,
  - (b) any relevant order made under that section, and
  - (c) Schedule 2 to that Act.”.

*The Insolvency Regulations (Northern Ireland) 1996 (S.R. 1996 No.574)*

**Interpretation of the 1996 Regulations**

**27.** In paragraph (1) of regulation 3 of the Insolvency Regulations (Northern Ireland) 1996 (interpretation and application), for the definition of “bank” substitute—

““bank” means—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits, or
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits;”.