
STATUTORY INSTRUMENTS

2005 No. 1455

The Insolvency (Northern Ireland) Order 2005

Introductory

Title and commencement

- 1.—(1) This Order may be cited as the Insolvency (Northern Ireland) Order 2005.
- (2) This Article and Article 2 shall come into operation on the expiration of 7 days 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 1989 Order” means the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#);
- “statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954.

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.

Individuals

Duration of, and discharge from, bankruptcy

- 12.—(1) The following shall be substituted for Article 253 of the 1989 Order (duration of bankruptcy)—

“Duration

- 253.—(1) A bankrupt is discharged from bankruptcy at the end of the period of one year beginning with the date on which the bankruptcy commences.
- (2) If before the end of that period the official receiver files with the High Court a notice stating that investigation of the conduct and affairs of the bankrupt under Article 262 is unnecessary or concluded, the bankrupt is discharged when the notice is filed.
- (3) On the application of the official receiver or the trustee of a bankrupt’s estate, the High Court may order that the period specified in paragraph (1) shall cease to run until—
 - (a) the end of a specified period, or
 - (b) the fulfilment of a specified condition.
- (4) The High Court may make an order under paragraph (3) only if satisfied that the bankrupt has failed or is failing to comply with an obligation under this Part.
- (5) In paragraph (3)(b) “condition” includes a condition requiring that the High Court be satisfied of something.

- (6) This Article is without prejudice to any power of the High Court to annul a bankruptcy order.
- (7) Nothing in this Article applies to a bankrupt who is a solicitor.”.
- (2) In Article 254 of the 1989 Order (discharge by order of the High Court)—
 - (a) the following shall be substituted for the heading of the Article—
“**Discharge where bankrupt is a solicitor**”; and
 - (b) the following shall be substituted for paragraph (1)—
“(1) A bankrupt who is a solicitor is discharged from bankruptcy by an order of the High Court under this Article.
(1A) An application for an order under this Article may be made at any time.”.
- (3) Schedule 4 (which makes transitional provision in relation to this Article)—
 - (a) shall have effect, and
 - (b) is without prejudice to the generality of Article 250.

Post-discharge restrictions

13.—(1) The following shall be inserted after Article 255 of the 1989 Order (bankruptcy: effect of discharge)—

“Post-discharge restrictions

255A. Schedule 2A (bankruptcy restrictions order and bankruptcy restrictions undertaking) shall have effect.”.

- (2) The Schedule 2A set out in Schedule 5 to this Order shall be inserted after Schedule 2 to the 1989 Order.
- (3) The amendments set out in Schedule 6 (which specify the effect of a bankruptcy restrictions order or undertaking) shall have effect.

Investigation by official receiver

14. The following shall be substituted for Article 262 of the 1989 Order (official receiver’s duty to investigate)—

“Investigatory duties of official receiver

- 262.**—(1) The official receiver shall—
 - (a) investigate the conduct and affairs of each bankrupt (including his conduct and affairs before the making of the bankruptcy order), and
 - (b) make such report (if any) to the High Court as the official receiver thinks fit.
- (2) Paragraph (1) shall not apply to a case in which the official receiver thinks an investigation under that paragraph unnecessary.
- (3) Where a bankrupt makes an application for discharge under Article 254—
 - (a) the official receiver shall make a report to the Court about such matters as may be prescribed, and
 - (b) the Court shall consider the report before determining the application.
- (4) A report by the official receiver under this Article shall in any proceedings be prima facie evidence of the facts stated in it.”.

Income payments order

15.—(1) Article 283 of the 1989 Order (income payments order) shall be amended as follows.

(2) In paragraph (1) omit “, on the application of the trustee,”.

(3) After paragraph (1) insert—

“(1A) An income payments order may be made only on an application instituted—

(a) by the trustee, and

(b) before the discharge of the bankrupt.”.

(4) For paragraph (6) substitute—

“(6) An income payments order shall specify the period during which it is to have effect; and that period—

(a) may end after the discharge of the bankrupt, but

(b) may not end after the period of 3 years beginning with the date on which the order is made.

(6A) An income payments order may (subject to paragraph (6)(b)) be varied on the application of the trustee or the bankrupt (whether before or after discharge).

(6B) Where the Court has made an income payments order in relation to a bankrupt who is a solicitor, nothing in paragraph (6) shall affect the continuance of a condition with respect to income specified in an order made under Article 254(2)(c).”.

Income payments agreement

16. The following shall be inserted after Article 283 of the 1989 Order (income payments order)

“Income payments agreement

283A.—(1) In this Article “income payments agreement” means a written agreement between a bankrupt and his trustee or between a bankrupt and the official receiver which provides—

(a) that the bankrupt is to pay to the trustee or the official receiver an amount equal to a specified part or proportion of the bankrupt’s income for a specified period, or

(b) that a third person is to pay to the trustee or the official receiver a specified proportion of money due to the bankrupt by way of income for a specified period.

(2) A provision of an income payments agreement of a kind specified in paragraph (1) (a) or (b) may be enforced as if it were a provision of an income payments order.

(3) While an income payments agreement is in force the High Court may, on the application of the bankrupt, his trustee or the official receiver, discharge or vary an attachment of earnings order that is for the time being in force to secure payments by the bankrupt.

(4) The following provisions of Article 283 shall apply to an income payments agreement as they apply to an income payments order—

(a) paragraph (5) (receipts to form part of estate), and

(b) paragraphs (7) to (9) (meaning of income).

(5) An income payments agreement must specify the period during which it is to have effect; and that period—

(a) may end after the discharge of the bankrupt, but

- (b) may not end after the period of 3 years beginning with the date on which the agreement is made.
- (6) An income payments agreement may (subject to paragraph (5)(b)) be varied—
 - (a) by written agreement between the parties, or
 - (b) by the High Court on an application made by the bankrupt, the trustee or the official receiver.
- (7) The High Court—
 - (a) may not vary an income payments agreement so as to include provision of a kind which could not be included in an income payments order, and
 - (b) shall grant an application to vary an income payments agreement if and to the extent that the Court thinks variation necessary to avoid the effect mentioned in Article 283(2).”.

Bankrupt’s home

17.—(1) In Chapter II of Part IX of the 1989 Order (protection of bankrupt’s estate and investigation of his affairs) the following shall be inserted before Article 257 (restrictions on dispositions of property)—

“Bankrupt’s home ceasing to form part of estate

256A.—(1) This Article applies where property comprised in the bankrupt’s estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

- (a) the bankrupt,
- (b) the bankrupt’s spouse, or
- (c) a former spouse of the bankrupt.
- (2) At the end of the period of 3 years beginning with the date of the bankruptcy the interest mentioned in paragraph (1) shall—
 - (a) cease to be comprised in the bankrupt’s estate, and
 - (b) vest in the bankrupt (without conveyance, assignment or transfer).
- (3) Paragraph (2) shall not apply if during the period mentioned in that paragraph—
 - (a) the trustee realises the interest mentioned in paragraph (1),
 - (b) the trustee applies for an order for sale in respect of the dwelling-house,
 - (c) the trustee applies for an order for possession of the dwelling-house,
 - (d) the trustee applies for an order under Article 286 in Chapter IV in respect of that interest, or
 - (e) the trustee and the bankrupt agree that the bankrupt shall incur a specified liability to his estate (with or without the addition of interest from the date of the agreement) in consideration of which the interest mentioned in paragraph (1) shall cease to form part of the estate.
- (4) Where an application of a kind described in paragraph (3)(b) to (d) is made during the period mentioned in paragraph (2) and is dismissed, unless the High Court orders otherwise the interest to which the application relates shall on the dismissal of the application—
 - (a) cease to be comprised in the bankrupt’s estate, and
 - (b) vest in the bankrupt (without conveyance, assignment or transfer).

- (5) If the bankrupt does not inform the trustee or the official receiver of his interest in a property before the end of the period of 3 months beginning with the date of the bankruptcy, the period of 3 years mentioned in paragraph (2)—
- (a) shall not begin with the date of the bankruptcy, but
 - (b) shall begin with the date on which the trustee or official receiver becomes aware of the bankrupt's interest.
- (6) The High Court may substitute for the period of 3 years mentioned in paragraph (2) a longer period—
- (a) in prescribed circumstances, and
 - (b) in such other circumstances as the Court thinks appropriate.
- (7) The rules may make provision for this Article to have effect with the substitution of a shorter period for the period of 3 years mentioned in paragraph (2) in specified circumstances (which may be described by reference to action to be taken by a trustee in bankruptcy).
- (8) The rules may also, in particular, make provision—
- (a) requiring or enabling the trustee of a bankrupt's estate to give notice that this Article applies or does not apply;
 - (b) about the effect of a notice under sub-paragraph (a);
 - (c) requiring the trustee of a bankrupt's estate to make an application to the Land Registry or the Registry of Deeds.
- (9) Rules under paragraph (8)(b) may, in particular—
- (a) disapply this Article;
 - (b) enable the High Court to disapply this Article;
 - (c) make provision in consequence of a disapplication of this Article;
 - (d) enable the Court to make provision in consequence of a disapplication of this Article;
 - (e) make provision (which may include provision conferring jurisdiction on a court or tribunal) about compensation.”.
- (2) Article 286 of the 1989 Order (charge on bankrupt's home) shall be amended as follows—
- (a) in paragraph (2) for “, up to the value from time to time of the property secured,” substitute “, up to the charged value from time to time,”,
 - (b) after paragraph (2) insert—
 - “(2A) In paragraph (2) “the charged value” means—
 - (a) the amount specified in the charging order as the value of the bankrupt's interest in the property at the date of the order, plus
 - (b) interest on that amount from the date of the charging order at the prescribed rate.
 - (2B) In determining the value of an interest for the purposes of this Article the High Court shall disregard any matter which it is required to disregard by the rules.”, and
 - (c) at the end insert—
 - “(8) But an order under paragraph (6) may not vary a charged value.”.
- (3) The following shall be inserted after Article 286 of the 1989 Order—

“Low value home: application for sale, possession or charge

286A.—(1) This Article applies where—

- (a) property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—
 - (i) the bankrupt,
 - (ii) the bankrupt's spouse, or
 - (iii) a former spouse of the bankrupt, and
 - (b) the trustee applies for an order for the sale of the property, for an order for possession of the property or for an order under Article 286 in respect of the property.
- (2) The High Court shall dismiss the application if the value of the interest is below such amount as may for the time being be specified for the purposes of this paragraph by order under Article 362(1)(b).
- (3) In determining the value of an interest for the purposes of this Article the High Court shall disregard any matter which it is required to disregard by the order which specifies the amount for the purposes of paragraph (2)."
- (4) The following shall be inserted after Article 280(2)(a) of the 1989 Order (after-acquired property: exclusions)—
- "(aa) any property vesting in the bankrupt by virtue of Article 256A in Chapter II,".
- (5) In Article 362(1)(b) of the 1989 Order (monetary limits in bankruptcy) after the entry for Article 247 there shall be inserted—
- "Article 286A (value of property below which application for sale, possession or charge to be dismissed);".
- (6) In paragraph (7)—
- (a) "pre-commencement bankrupt" means an individual who is adjudged bankrupt before paragraph (1) comes into operation, and
 - (b) "the transitional period" is the period of 3 years beginning with the date on which paragraph (1) comes into operation.
- (7) If a pre-commencement bankrupt's estate includes an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of him, his spouse or a former spouse of his, at the end of the transitional period that interest shall—
- (a) cease to be comprised in the estate, and
 - (b) vest in the bankrupt (without conveyance, assignment or transfer).
- (8) But paragraph (7) shall not apply if before or during the transitional period—
- (a) any of the events mentioned in Article 256A(3) of the 1989 Order (inserted by paragraph (1) above) occurs in relation to the interest or the dwelling-house, or
 - (b) the trustee obtains any order of a court, or makes any agreement with the bankrupt, in respect of the interest or the dwelling-house.
- (9) Paragraphs (4) to (9) of Article 256A of the 1989 Order shall have effect, with any necessary modifications, in relation to the provision made by paragraphs (6) to (8); in particular—
- (a) a reference to the period mentioned in Article 256A(2) shall be construed as a reference to the transitional period; and
 - (b) in the application of Article 256A(5) a reference to the date of the bankruptcy shall be construed as a reference to the date on which paragraph (1) comes into operation.
- (10) In Article 11 of the 1989 Order (meaning of "bankrupt's estate"), after paragraph (5) insert—
- "(5A) This Article has effect subject to Article 256A.".

Bankrupt's home: civil partnership

18.—(1) The 1989 Order shall be amended as follows.

- (2) In Article 256A (as inserted by Article 17(1) of this Order), in paragraph (1)—
 - (a) in sub-paragraph (b), after “spouse” insert “or civil partner”, and
 - (b) in sub-paragraph (c), after “spouse” insert “or former civil partner”.
- (3) In Article 286A (as inserted by Article 17(3) of this Order), in paragraph (1)—
 - (a) in sub-paragraph (a)(ii), after “spouse” insert “or civil partner”, and
 - (b) in sub-paragraph (a)(iii), after “spouse” insert “or former civil partner”.
- (4) In Article 309 (rights of occupation, etc.)—
 - (a) in paragraph (4)(b) and (c), after “spouse or former spouse” insert “or civil partner or former civil partner”, and
 - (b) in the heading to the Article, after “spouse” insert “or civil partner”.

Powers of trustee in bankruptcy

19. The following shall be inserted in Part I of Schedule 3 to the 1989 Order (powers of trustee in bankruptcy: powers exercisable only with sanction) after paragraph 2—

“2A. Power to bring legal proceedings under Article 312, 313 or 367.”.

Repeal of certain bankruptcy offences

20. The following Articles of the 1989 Order shall cease to have effect—

- (a) Article 332 (offence of failure to keep proper accounting records), and
- (b) Article 333 (offence of gambling and speculation).

Individual voluntary arrangement

21.—(1) Schedule 7 (which makes provision about individual voluntary arrangements) shall have effect.

(2) The Department may by order amend the 1989 Order so as to extend the provisions of Articles 237B to 237G (which are inserted by Schedule 7 and provide a fast-track procedure for making an individual voluntary arrangement) to some or all cases other than those specified in Article 237A as inserted by Schedule 7.

- (3) An order under paragraph (2) shall be subject to affirmative resolution.
- (4) An order under paragraph (2) may make—
 - (a) consequential provision (which may include provision amending the 1989 Order or another statutory provision);
 - (b) transitional provision.

Disqualification for office: the Assembly

22. The following shall be substituted for Article 370 of the 1989 Order (Northern Ireland Assembly disqualification)—

“Assembly disqualification

370.—(1) If the High Court makes a bankruptcy restrictions order or interim order in respect of a member of the Assembly, the Court shall notify the presiding officer of the Assembly.

(2) If the Department accepts a bankruptcy restrictions undertaking made by a member of the Assembly, the Department shall notify the presiding officer of the Assembly.

Irrelevance of privilege

370A. A statutory provision about insolvency applies in relation to a member of the Assembly irrespective of any privilege of the Assembly.”.

Disqualification for office: district councils

23.—(1) The following shall be substituted for section 4(1)(b) of the Local Government Act (Northern Ireland) 1972 (c. 9) (disqualification for membership of district council: bankrupt)—

“(b) is the subject of a bankruptcy restrictions order or interim order;”.

(2) Section 5 of that Act (which amplifies the provision substituted by paragraph (1)) shall cease to have effect.

Disqualification for office: general

24.—(1) A Northern Ireland department may make, subject to affirmative resolution, an order under this Article in relation to a disqualification provision.

(2) A “disqualification provision” is a provision which disqualifies (whether permanently or temporarily and whether absolutely or conditionally) a bankrupt or a class of bankrupts from—

- (a) being elected or appointed to an office or position,
- (b) holding an office or position, or
- (c) becoming or remaining a member of a body or group.

(3) In paragraph (2) the reference to a provision which disqualifies a person conditionally includes a reference to a provision which enables him to be dismissed.

(4) An order under paragraph (1) may repeal or revoke the disqualification provision.

(5) An order under paragraph (1) may amend, or modify the effect of, the disqualification provision—

- (a) so as to reduce the class of bankrupts to whom the disqualification provision applies;
 - (b) so as to extend the disqualification provision to some or all individuals who are subject to a bankruptcy restrictions regime;
 - (c) so that the disqualification provision applies only to some or all individuals who are subject to a bankruptcy restrictions regime;
 - (d) so as to make the application of the disqualification provision wholly or partly subject to the discretion of a specified person, body or group.
- (6) An order by virtue of paragraph (5)(d) may provide for a discretion to be subject to—
- (a) the approval of a specified person or body;
 - (b) appeal to a specified person or body.

(7) An order by virtue of paragraph (5)(d) made with the concurrence of the Lord Chancellor may provide for a discretion to be subject to appeal to a specified court or tribunal.

(8) The Northern Ireland department making the order may specify itself for the purposes of paragraph (5)(d) or (6)(a) or (b).

(9) In this Article “bankrupt” means an individual—

- (a) who has been adjudged bankrupt by the High Court in Northern Ireland or by a court in England and Wales,
- (b) whose estate has been sequestrated by a court in Scotland, or
- (c) who has made an agreement with creditors of his for a composition of debts, for a scheme of arrangement of affairs, for the grant of a trust deed or for some other kind of settlement or arrangement.

(10) In this Article “bankruptcy restrictions regime” means an order or undertaking—

- (a) under Schedule 2A to the 1989 Order (bankruptcy restrictions orders),
- (b) under Schedule 4A to the Insolvency Act 1986 (c. 45) (corresponding provision in England and Wales), or
- (c) under any system operating in Scotland which appears to the Northern Ireland department making the order to be equivalent to the system operating under Schedule 2A of the 1989 Order.

(11) In this Article—

“body” includes, except in paragraph (2)(c), the Assembly, and

“provision” means any statutory provision—

- (a) which deals with a transferred matter within the meaning of the Northern Ireland Act 1998 (c. 47), and
- (b) which was passed or made before the day appointed for the coming into operation of this Article.

(12) 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.

Minor and consequential amendments relating to individual insolvency

25. Schedule 8 (minor and consequential amendments relating to individual insolvency) shall have effect.

Money

Fees

26.—(1) The following shall be inserted after Article 361 of the 1989 Order (fees orders)—

“Fees orders (supplementary)

361A.—(1) The Department—

- (a) may, with the concurrence of the Department of Finance and Personnel, by order subject to negative resolution require a body to pay a fee in connection with the grant or maintenance of recognition of the body under Article 350, and

- (b) may refuse recognition, or revoke an order of recognition under Article 350(1) by a further order, where a fee is not paid.
- (2) The Department—
 - (a) may, with the concurrence of the Department of Finance and Personnel, by order subject to negative resolution require a person to pay a fee in connection with the grant or maintenance of authorisation of the person under Article 352, and
 - (b) may disregard an application or withdraw an authorisation where a fee is not paid.
- (3) The Department may by order subject to negative resolution require the payment of fees in respect of—
 - (a) the operation of the Insolvency Account;
 - (b) payments into and out of that Account.
- (4) The Department of Finance and Personnel may direct by whom and in what manner the fees are to be collected and accounted for.
- (5) Paragraphs (3) and (5) of Article 361 apply to fees under this Article as they apply to fees under that Article.
- (6) Nothing in this Article prejudices the provision contained in Article 361.”.
- (2) An order made by virtue of paragraph (1) may relate to the maintenance of recognition or authorisation granted before this Article comes into operation.
- (3) At the end of Article 351 of the 1989 Order (authorisation of insolvency practitioner) there shall be added—
 - “(9) Paragraph (3)(c) shall not have effect in respect of an application made to the Department (but this paragraph is without prejudice to Article 361A).”.

Insolvency Account: interest

27.—(1) The following shall be inserted after paragraph 16 of Schedule 5 to the 1989 Order (company insolvency rules: money)—

“**16A.** Provision enabling the Department to set the rate of interest paid on sums which have been paid into the Insolvency Account.”.

(2) The following shall be inserted after paragraph 19 of Schedule 6 to the 1989 Order (individual insolvency rules: money)—

“**19A.** Provision enabling the Department to set the rate of interest paid on sums which have been paid into the Insolvency Account.”.

Insolvency Account: adjustment of balances

28. The following shall be inserted after Article 358 of the 1989 Order (Insolvency Account)—

“Adjustment of balances

358A.—(1) The Department of Finance and Personnel may direct the payment out of the Consolidated Fund of sums into the Insolvency Account.

(2) The Department of Finance and Personnel shall certify to the Assembly the reason for any payment under paragraph (1).

(3) The Department may pay sums out of the Insolvency Account into the Consolidated Fund.”.

Miscellaneous

Transitional or transitory provision and savings

29.—(1) The Department may by order make such transitional or transitory provisions and savings as it considers appropriate in connection with the coming into operation of any provision of this Order.

(2) An order under this Article may modify any statutory provision.

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

Power to make consequential amendments etc.

30.—(1) The Department may by order make such supplementary, incidental or consequential provision as it thinks appropriate—

(a) for the general purposes, or any particular purpose, of this Order; or

(b) in consequence of any provision made by or under this Order or for giving full effect to it.

(2) An order under this Article may—

(a) amend, repeal or modify any statutory provision (including this Order);

(b) make incidental, supplementary, consequential, transitional, transitory or saving provision.

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

(4) The power conferred by this Article is not restricted by any other provision of this Order.

Repeals

31. Schedule 9 (which contains repeals) shall have effect.

A. K. Galloway
Clerk of the Privy Council