

These notes refer to the Insolvency (Amendment) Act (Northern Ireland) 2016 (c.2) which received Royal Assent on 29 January 2016

Insolvency (Amendment) Act (Northern Ireland) 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1: Attendance at meetings and use of websites

Section 1 inserts new Articles 208ZA, 208ZB, 345A and 345B into the Insolvency Order.

Article 208ZA

Article 208ZA allows meetings to be held in company insolvency proceedings without the participants having to be present at a single physical location.

Paragraph (1) of Article 208ZA provides for that Article to apply to two kinds of meetings. It applies to meetings of the creditors of a company summoned under the Insolvency Order or rules made under Article 359 thereof. It applies to meetings of the members or contributories of a company summoned by the office-holder under the Insolvency Order or rules made under Article 359 thereof, with the exception that it does not apply to meetings of the members of a company in a members' voluntary winding up.

Paragraph (2) of Article 208ZA provides that, where the person summoning a meeting ("the convener") considers it appropriate, a meeting can be conducted and held in such a way that people can attend it without having to be present together at the same place.

Paragraph (3) of Article 208ZA defines attendance at a meeting for the purposes of paragraph (2) as being able to exercise whatever rights a person has to speak and vote at the meeting.

Paragraph (4) of Article 208ZA provides that for the purposes of that Article a person is able to exercise the right to speak at a meeting if, during the time that the meeting is in progress, it is possible for them to communicate any information or opinions they have on the business of the meeting to everyone else attending it. Paragraph (4) further provides that for the purposes of Article 208ZA a person is able to exercise the right to vote at a meeting if it is possible for them to vote during the time that the meeting is in progress on any resolutions

which are put to the vote, and if their vote can be counted at the same time as the votes of everyone else attending the meeting.

Paragraph (5) of Article 208ZA places the person summoning a meeting which is to be held in such a way that it can be attended by persons who are not present together at the same place under a duty to make whatever arrangements he considers appropriate to check the identity of those attending, to ensure that they can exercise their right to speak and vote and to make sure that any electronic means used to enable attendance is secure.

Paragraph (6) of Article 208ZA provides that, where there is a requirement under the Insolvency Order or rules made under Article 359 thereof to specify a place for a meeting, in certain circumstances it will be sufficient to specify what arrangements are being made to enable those entitled to attend the meeting to exercise their right to speak and vote. The circumstances are that in the reasonable opinion of the person calling the meeting, it will be attended by persons who will not be present together at the same place and it is unnecessary or inexpedient to specify a place for the meeting.

Paragraph (7) of Article 208ZA provides that, when making the arrangements mentioned in paragraph (5) and forming an opinion that a meeting may be held without specifying that it is to be at a particular location, the convener is required to have regard to the legitimate interests of those who will be attending the meeting in the efficient despatch of the business of the meeting.

Paragraph (8) of Article 208ZA places the convener of a meeting under a duty to specify a place for meeting if, following the issue of a notice of the meeting which does not specify a place, a certain minimum percentage of those entitled to attend request that one should be specified. That percentage is, in the case of a meeting of creditors or contributories, at least ten percent of them by value, and, in the case of a meeting of members, members representing at least ten percent of the total voting rights.

Paragraph (9) of Article 208ZA provides a definition of the term “the office-holder” as used in that Article.

Article 208ZB

Paragraph (1) of Article 208ZB applies in the case of company insolvency and enables an office-holder to comply with requirements in the Insolvency Order and rules made under Article 359 thereof to provide notices, documents or information by making them available on a website. This is subject to the proviso that this can only be done in prescribed circumstances and must be done in accordance with the rules.

Paragraph (2) of Article 208ZB provides a definition of the term “the office-holder” as used in that Article.

Article 345A

Article 345A allows meetings to be held in individual insolvency proceedings without the participants having to be present at a single physical location.

Paragraph (1) of Article 345A provides for that Article to apply to meetings of an individual's creditors summoned under the Insolvency Order or rules made under Article 359 thereof in certain circumstances. The circumstances are where a bankruptcy order has been made against the individual, where an interim receiver of their property has been appointed or where they are proposing or have had approved a voluntary arrangement under Chapter 2 of Part 8 of the Insolvency Order.

Paragraph (2) of Article 345A provides that, where the person summoning a meeting ("the convener") considers it appropriate, a meeting can be conducted and held in such a way that people can attend it even though they are not present together at the same place.

Paragraph (3) of Article 345A defines attendance at a meeting for the purposes of paragraph (2) as being able to exercise whatever rights a person has to speak and vote at the meeting.

Paragraph (4) of Article 345A provides that for the purposes of that Article a person is able to exercise the right to speak at a meeting if, during the time that the meeting is in progress, it is possible for them to communicate any information or opinions they have on the business of the meeting to everyone else attending it. Paragraph (4) further provides that for the purposes of Article 345A a person is able to exercise the right to vote at a meeting if it is possible for them to vote during the time that the meeting is in progress on any resolutions which are put to the vote, and if their vote can be counted at the same time as the votes of everyone else attending the meeting.

Paragraph (5) of Article 345A places the person summoning a meeting which is to be held in such a way that it can be attended by persons who are not present together at the same place under a duty to make whatever arrangements he considers appropriate to check the identity of those attending, to ensure that they can exercise their right to speak and vote and to make sure that any electronic means used to enable attendance is secure.

Paragraph (6) of Article 345A provides that where there is a requirement under the Insolvency Order or rules made under Article 359 thereof to specify a place for a meeting, in certain circumstances it will be sufficient to specify what arrangements are being made to enable those entitled to attend the meeting to exercise their right to speak and vote. The circumstances are that in the reasonable opinion of the person calling the meeting, it will be attended by persons who will not be present together at the same place and it is unnecessary or inexpedient to specify a place for the meeting.

Paragraph (7) of Article 345A provides that, when making the arrangements mentioned in paragraph (5) and forming an opinion that a meeting may be held

without specifying that it is to be at a particular location, the convener is required to have regard to the legitimate interests of those who will be attending the meeting in the efficient despatch of the business of the meeting.

Paragraph (8) of Article 345A places a person summoning a meeting under a duty to specify a place at which to hold it if, in response to the issue of a notice of the meeting which does not specify a place, at least ten percent of the creditors by value request that one should be specified.

Article 345B

Paragraph (1) of Article 345B provides for that Article to apply where a bankruptcy order has been made against the individual, where an interim receiver of their property has been appointed or where they are proposing or have had approved a voluntary arrangement under Chapter 2 of Part 8 of the Insolvency Order. Paragraph (1) also provides a definition of the term “the office-holder” as used in Article 345B.

Paragraph (2) of Article 345B enables an office-holder to comply with requirements in the Order and rules made under Article 359 thereof to provide notices, documents or information by making them available on a website. This is subject to the proviso that this can only be done in prescribed circumstances and must be done in accordance with the rules.