

*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

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Section 9: Definition of debt*

Subsection (2) amends Article 2 of the Insolvency Order by providing a substitute for paragraph (3) and inserting a new paragraph (3A). The effect is to separate the criteria governing admissibility of a liability in tort in bankruptcy from those applying in the case of company administration or winding up.

Substitute paragraph (3) specifies the criterion governing whether any liability in tort is a bankruptcy debt. A bankrupt's liability in tort is treated as having arisen as a consequence of an obligation incurred at the time that the cause of action accrued.

New paragraph (3A) establishes new criteria for deciding whether a liability in tort is provable in a company administration or winding up. It will be provable if the cause of action had accrued or all the elements necessary to establish the cause of action except for actionable damage existed before the company went into liquidation or entered administration. In a case where a company has been in the two procedures consecutively it will be provable if the cause of action had accrued, or all the elements necessary to establish the cause of action except for actionable damage, existed before it entered the first procedure.

Subsections (3) and (4) amend Article 5 of the Insolvency Order. The qualification made in the definition of "debt" in paragraph (1) of that Article is amended to refer to Article 2(3A) in recognition of the fact that it is now that paragraph which deals with whether a liability in tort is provable in a company administration or winding up. Amendments made to the definition of "debt" in Article 5(1) by paragraphs (b) to (d) of subsection (3) together with the insertion of new paragraph (1A) by subsection (4) serve to clarify that where liquidation is immediately preceded by administration or vice versa it is the date on which the company entered the earlier proceedings which determines whether debts, liabilities and interest on debt are to be treated as debt for the purposes of the Insolvency Order.

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Subsection (5) makes clear that the explanation of the term “the relevant date” in Article 347 of the Insolvency Order does not apply to that term as used in new paragraph (1A) of Article 5.