
STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

[^{F1}PART 1A

Moratorium

[^{F1}CHAPTER 4

Effects of moratorium

F1 Pt. 1A inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), **ss. 4(1), 49(1)** (with **ss. 2(2), 5(2)**)

Introductory

Overview and construction of references to payment holidays

13D.—(1) This Chapter makes provision about the main effects of a moratorium for a company.

(2) The provision made by this Chapter includes restrictions on the enforcement or payment of the debts that are defined by paragraph (3) as pre-moratorium debts for which a company has a payment holiday during a moratorium.

(3) In this Part a reference to pre-moratorium debts for which a company has a payment holiday during a moratorium is to its pre-moratorium debts that have fallen due before the moratorium, or that fall due during the moratorium, except in so far as they consist of amounts payable in respect of—

- (a) the monitor’s remuneration or expenses,
- (b) goods or services supplied during the moratorium,
- (c) rent in respect of a period during the moratorium,
- (d) wages or salary arising under a contract of employment,
- (e) redundancy payments, or
- (f) debts or other liabilities arising under a contract or other instrument involving financial services.

(4) The rules may make provision as to what is, or is not, to count as the supply of goods or services for the purposes of paragraph (3)(b).

(5) Regulations may amend this Article for the purposes of changing the list in paragraph (3).

(6) Regulations may not be made under paragraph (5) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(7) In this Article—

“contract or other instrument involving financial services” has the meaning given by Schedule ZA2;

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“monitor’s remuneration or expenses” does not include remuneration in respect of anything done by a proposed monitor before the moratorium begins;

“redundancy payment” means—

- (a) a redundancy payment under Part 11 of the Employment Rights Act 1996 or Part 12 of the Employment Rights (Northern Ireland) Order 1996, or
- (b) a payment made to a person who agrees to the termination of their employment in circumstances where they would have been entitled to a redundancy payment under that Part if dismissed;

“wages or salary” includes—

- (a) a sum payable in respect of a period of holiday (for which purpose the sum is to be treated as relating to the period by reference to which the entitlement to holiday accrued),
- (b) a sum payable in respect of a period of absence through illness or other good cause,
- (c) a sum payable in lieu of holiday, and
- (d) a contribution to an occupational pension scheme.

Publicity about moratorium

Publicity about moratorium

13DA.—(1) During a moratorium, the company must, in any premises—

- (a) where business of the company is carried on, and
- (b) to which customers of the company or suppliers of goods or services to the company have access,

display, in a prominent position so that it may easily be read by such customers or suppliers, a notice containing the required information.

(2) During a moratorium, any websites of the company must state the required information.

(3) During a moratorium, every business document issued by or on behalf of the company must state the required information.

(4) For the purposes of paragraphs (1), (2) and (3), “the required information” is—

- (a) that a moratorium is in force in relation to the company, and
- (b) the name of the monitor.

(5) If paragraph (1), (2) or (3) is contravened—

- (a) the company commits an offence, and
- (b) any officer of the company who without reasonable excuse authorised or permitted the contravention commits an offence.

(6) In this Article “business document” means—

- (a) an invoice,
- (b) an order for goods or services,
- (c) a business letter, and
- (d) an order form,

whether in hard copy, electronic or any other form.

Effect on creditors etc

Restrictions on insolvency proceedings etc

13DB.—(1) During a moratorium—

- (a) no petition may be presented for the winding up of the company, except by the directors,
- (b) no resolution may be passed for the voluntary winding up of the company under Article 70(1)(a),
- (c) a resolution for the voluntary winding up of the company under Article 70(1)(b) may be passed only if the resolution is recommended by the directors,
- (d) no order may be made for the winding up of the company, except on a petition by the directors,
- (e) no administration application may be made in respect of the company, except by the directors,
- (f) no notice of intention to appoint an administrator of the company under paragraph 15 or 23(1) of Schedule B1 may be filed with the High Court,
- (g) no administrator of the company may be appointed under paragraph 15 or 23(1) of Schedule B1, and
- (h) no administrative receiver of the company may be appointed.

(2) Paragraph (1)(a) does not apply to an excepted petition; and paragraph (1)(d) does not apply to an order on an excepted petition.

(3) For these purposes, “excepted petition” means a petition under—

- (a) Article 104A, 104B or 104C, or
- (b) section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in subsection (3)(b) of that section.

Restrictions on enforcement and legal proceedings

13DC.—(1) During a moratorium—

- (a) a landlord or other person to whom rent is payable may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company, except with the permission of the High Court,
- (b) no steps may be taken to enforce any security over the company’s property except—
 - (i) steps to enforce a collateral security charge (within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979)),
 - (ii) steps to enforce security created or otherwise arising under a financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226)), or
 - (iii) steps taken with the permission of the High Court,
- (c) no steps may be taken to repossess goods in the company’s possession under any hire-purchase agreement, except with the permission of the High Court, and
- (d) no legal process (including legal proceedings, enforcement and distress) may be instituted, carried out or continued against the company or its property except—
 - (i) employment tribunal proceedings or any legal process arising out of such proceedings,

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- (ii) proceedings, not within paragraph (i), involving a claim between an employer and a worker, or
- (iii) a legal process instituted, carried out or continued with the permission of the High Court.

(2) An application may not be made for permission under paragraph (1) for the purposes of enforcing a pre-moratorium debt for which the company has a payment holiday during the moratorium.

(3) An application may not be made for permission under paragraph (1)(b), (c) or (d) with a view to obtaining—

- (a) the crystallisation of a floating charge, or
- (b) the imposition, by virtue of provision in an instrument creating a floating charge, of any restriction on the disposal of any property of the company.

(4) Permission of the High Court under paragraph (1) may be given subject to conditions.

(5) Paragraph (1)(b)(iii) is subject to Article 13DE(1).

(6) In this Article—

“agency worker” has the meaning given by Article 15(2) of the Employment Relations (Northern Ireland) Order 1999;

“employer”—

- (a) in relation to an agency worker, has the meaning given by Article 15(2) of the Employment Relations (Northern Ireland) Order 1999;
- (b) otherwise, has the meaning given by Article 3(4) of the Employment Rights (Northern Ireland) Order 1996;

“worker” means an individual who is—

- (a) a worker within the meaning of Article 3(3) of the Employment Rights (Northern Ireland) Order 1996, or
- (b) an agency worker.

Floating charges

13DD.—(1) This Article applies where there is an uncrystallised floating charge on the property of a company for which a moratorium is in force.

(2) During the moratorium, the holder of the floating charge may not give any notice which would have the effect of—

- (a) causing the floating charge to crystallise, or
- (b) causing the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of property of the company.

(3) No other event occurring during the moratorium is to have the effect mentioned in paragraph (2)(a) or (b).

(4) Paragraph (5) applies where—

- (a) the holder of a floating charge (“the chargee”) is prevented by paragraph (2) from giving a notice mentioned there during the moratorium, and
- (b) under the terms of the floating charge, the time for giving such a notice ends during the moratorium or before the chargee is given notice of the end of the moratorium under Article 13CH.

(5) The chargee may give notice later than is required under the terms of the floating charge, but only if the chargee does so as soon as is practicable after—

- (a) the end of the moratorium, or
- (b) if later, the day on which the chargee is notified of the end of the moratorium.

(6) Where—

- (a) paragraph (3) prevents an event which occurs during the moratorium from having the effect mentioned there, and
- (b) the holder of the floating charge gives notice of the event to the company as soon as is practicable after—
 - (i) the end of the moratorium, or
 - (ii) if later, the day on which the chargee is notified of the end of the moratorium,

the event is to be treated as if it had occurred when the notice was given.

(7) This Article does not apply in relation to a floating charge that is—

- (a) a collateral security (as defined by Article 13DI);
- (b) a market charge (as defined by Article 13DI);
- (c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));
- (d) a system-charge (as defined by Article 13DI).

Enforcement of security granted during moratorium

13DE.—(1) Security granted by a company during a moratorium in relation to the company may be enforced only if the monitor consented to the grant of security under Article 13DH.

(2) See also Article 13DC(1)(b), which restricts enforcement during a moratorium.

Notification of insolvency proceedings

Duty of directors to notify monitor of insolvency proceedings etc

13DF.—(1) The directors of a company must notify the monitor before taking any of the following steps during a moratorium—

- (a) presenting a petition for the winding up of the company;
- (b) making an administration application in respect of the company;
- (c) appointing an administrator under paragraph 23(2) of Schedule B1.

(2) The directors of a company must notify the monitor if, during a moratorium for the company, they recommend that the company passes a resolution for voluntary winding up under Article 70(1)(b).

(3) The rules may make provision about the timing of a notice required to be given under paragraph (1) or (2).

(4) If the directors fail to comply with paragraph (1) or (2), any director who did not have a reasonable excuse for the failure commits an offence.

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Restrictions on transactions

Restrictions on obtaining credit

13DG.—(1) During a moratorium, the company may not obtain credit to the extent of £500 or more from a person unless the person has been informed that a moratorium is in force in relation to the company.

- (2) The reference to the company obtaining credit includes—
- (a) the company entering into a conditional sale agreement in accordance with which goods are to be sold to the company,
 - (b) the company entering into any other form of hire-purchase agreement under which goods are to be bailed to the company, and
 - (c) the company being paid in advance (whether in money or otherwise) for the supply of goods or services.
- (3) If a company contravenes paragraph (1)—
- (a) the company commits an offence, and
 - (b) any officer of the company who without reasonable excuse authorised or permitted the obtaining of the credit commits an offence.

Restrictions on grant of security etc

13DH.—(1) During a moratorium, the company may grant security over its property only if the monitor consents.

(2) The monitor may give consent under paragraph (1) only if the monitor thinks that the grant of security will support the rescue of the company as a going concern.

(3) In deciding whether to give consent under paragraph (1), the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.

(4) If the company grants security over its property during the moratorium otherwise than as authorised by paragraph (1)—

- (a) the company commits an offence, and
- (b) any officer of the company who without reasonable excuse authorised or permitted the grant of the security commits an offence.

(5) For the consequences of a company granting security over its property in contravention of paragraph (1), see also Article 13DE.

(6) The monitor may not give consent under this Article if the granting of security is an offence under Article 13DI.

Prohibition on entering into market contracts etc

13DI.—(1) If a company enters into a transaction to which this Article applies during a moratorium for the company—

- (a) the company commits an offence, and
- (b) any officer of the company who without reasonable excuse authorised or permitted the company to enter into the transaction commits an offence.

(2) A company enters into a transaction to which this Article applies if it—

- (a) enters into a market contract,
- (b) enters into a financial collateral arrangement,

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- (c) gives a transfer order,
- (d) grants a market charge or a system-charge, or
- (e) provides any collateral security.

(3) Where during the moratorium a company enters into a transaction to which this Article applies, nothing done by or in pursuance of the transaction is to be treated as done in contravention of any of Articles 13DA, 13DC, 13DG, 13DH and 13DJ to 13DN.

(4) In this Article—

“collateral security” has the same meaning as in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979);

“financial collateral arrangement” has the same meaning as in the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226);

“market charge” has the same meaning as in Part 5 of the Companies (No. 2) (Northern Ireland) Order 1990;

“market contract” has the same meaning as in Part 5 of the Companies (No. 2) (Northern Ireland) Order 1990;

“system-charge” has the meaning given by the Financial Markets and Insolvency Regulations (Northern Ireland) 1996 (S.R. 1996/252);

“transfer order” has the same meaning as in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979).

Restrictions on payments and disposal of property

Restrictions on payment of certain pre-moratorium debts

13DJ.—(1) During a moratorium, the company may make one or more relevant payments to a person that (in total) exceed the specified maximum amount only if—

- (a) the monitor consents,
- (b) the payment is in pursuance of a court order, or
- (c) the payment is required by Article 13DM(3) or 13DN(3).

(2) In paragraph (1)—

“relevant payments” means payments in respect of pre-moratorium debts for which the company has a payment holiday during the moratorium (see Article 13D);

“specified maximum amount” means an amount equal to the greater of—

- (a) £5000, and
- (b) 1% of the value of the debts and other liabilities owed by the company to its unsecured creditors when the moratorium began, to the extent that the amount of such debts and liabilities can be ascertained at that time.

(3) The monitor may give consent under paragraph (1)(a) only if the monitor thinks that it will support the rescue of the company as a going concern.

(4) In deciding whether to give consent under paragraph (1)(a), the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.

(5) If the company makes a payment to which paragraph (1) applies otherwise than as authorised by that paragraph—

- (a) the company commits an offence, and

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- (b) any officer of the company who without reasonable excuse authorised or permitted the payment commits an offence.

Restrictions on disposal of property

13DK.—(1) During a moratorium, the company may dispose of its property only if authorised by paragraph (2) or (5).

(2) In the case of property that is not subject to a security interest, the company may dispose of the property if—

- (a) the disposal is made in the ordinary way of the company’s business,
- (b) the monitor consents, or
- (c) the disposal is in pursuance of a court order.

(3) The monitor may give consent under paragraph (2)(b) only if the monitor thinks that it will support the rescue of the company as a going concern.

(4) In deciding whether to give consent under paragraph (2)(b), the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.

(5) In the case of property that is subject to a security interest, the company may dispose of the property if the disposal is in accordance with—

- (a) Article 13DM(1), or
- (b) the terms of the security.

(6) If the company disposes of its property during the moratorium otherwise than as authorised by this Article—

- (a) the company commits an offence, and
- (b) any officer of the company who without reasonable excuse authorised or permitted the disposal commits an offence.

Restrictions on disposal of hire-purchase property

13DL.—(1) During a moratorium, the company may dispose of any goods in the possession of the company under a hire-purchase agreement only if the disposal is in accordance with —

- (a) Article 13DN(1), or
- (b) the terms of the agreement.

(2) If the company disposes of goods in the possession of the company under a hire-purchase agreement otherwise than as authorised by paragraph (1)—

- (a) the company commits an offence, and
- (b) any officer of the company who without reasonable excuse authorised or permitted the disposal commits an offence.

Disposals of property free from charges etc

Disposal of charged property free from charge

13DM.—(1) During a moratorium, the company may, with the permission of the High Court, dispose of property which is subject to a security interest as if it were not subject to the security interest.

(2) The Court may give permission under paragraph (1) only if the Court thinks that it will support the rescue of the company as a going concern.

(3) Where the Court gives permission under paragraph (1) other than in relation to a floating charge, the company must apply the following towards discharging the sums secured—

- (a) the net proceeds of disposal of the property, and
- (b) any money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realised on a sale of the property in the open market by a willing vendor.

(4) Where the permission relates to two or more security interests, the condition in paragraph (3) requires the application of money in the order of the priorities of the security interests.

(5) Where property subject to a floating charge is disposed of under paragraph (1), the holder of the floating charge has the same priority in respect of acquired property as they had in respect of the property disposed of.

(6) In paragraph (5) “acquired property” means property of the company which directly or indirectly represents the property disposed of.

(7) Where the Court makes an order giving permission under paragraph (1), the directors must, within the period of 14 days beginning with the date of the order, send a copy of it to the registrar.

(8) If the directors fail to comply with paragraph (7), any director who did not have a reasonable excuse for the failure commits an offence.

(9) If a company fails to comply with paragraph (3)—

- (a) the company commits an offence, and
- (b) any officer of the company who without reasonable excuse authorised or permitted the failure commits an offence.

(10) Paragraph (1) does not apply in relation to any property which is subject to a financial collateral arrangement, a market charge, a system-charge or a collateral security (as defined by Article 13DI).

Disposal of hire-purchase property

13DN.—(1) During a moratorium, the company may, with the permission of the High Court, dispose of goods which are in the possession of the company under a hire-purchase agreement as if all of the rights of the owner under the agreement were vested in the company.

(2) The Court may give permission under paragraph (1) only if the Court thinks that it will support the rescue of the company as a going concern.

(3) Where the Court gives permission under paragraph (1), the company must apply the following towards discharging the sums payable under the hire-purchase agreement—

- (a) the net proceeds of disposal of the goods, and
- (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realised on a sale of the goods in the open market by a willing vendor.

(4) If a company fails to comply with paragraph (3)—

- (a) the company commits an offence, and
- (b) any officer of the company who without reasonable excuse authorised or permitted the failure commits an offence.

(5) Where the Court makes an order giving permission under paragraph (1), the directors must, within the period of 14 days beginning with the date of the order, send a copy of it to the registrar.

(6) If the directors fail to comply with paragraph (5), any director who did not have a reasonable excuse for the failure commits an offence.

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Effect of contravention of certain provisions of Chapter

Contravention of certain requirements imposed under this Chapter

13DO. The fact that a company contravenes Article 13DA or any of Articles 13DG to 13DN does not—

- (a) make any transaction void or unenforceable, or
- (b) affect the validity of any other thing.]

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