

Status: Point in time view as at 12/04/2010.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989, Cross Heading: Other order#making powers is up to date with all changes known to be in force on or before 18 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

^{F1}PART XIII

PUBLIC ADMINISTRATION

Other order#making powers

Insolvent partnerships

364 ^{F1}.—(1) The [^{F2}Department of Justice] may, by order made with the concurrence of [^{F3} the Lord Chief Justice and] the Department, provide that such provisions of this Order, Part VI of the Judgments Enforcement (Northern Ireland) Order 1981^{F4}, the Land Registration Act (Northern Ireland) 1970^{F5} or the Registration of Deeds Acts as may be specified in the order shall apply in relation to insolvent partnerships with such modifications as may be so specified.

[^{F6}(1ZA) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under paragraph (1)—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

[^{F7}(1A) An order under this Article may make provision in relation to the EC Regulation.

(1B) Provision made by virtue of this Article in relation to the EC Regulation may not create an offence of a kind referred to in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972.]

(2) An order under this Article shall be subject to [^{F8} negative resolution].

F1 mod. by SR 2004/307

F2 Words in art. 364(1) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 144(a)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

F3 Words in art. 364(1) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 83(2); S.I. 2006/1014, **art. 2(a)**, Sch. 1

F4 1981 NI 6

F5 1970 c. 18 (NI)

F6 Art. 364(1ZA) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 83(3); S.I. 2006/1014, **art. 2(a)**, Sch. 1

F7 SR 2002/223

F8 Words in art. 364(2) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 144(b)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

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Modifications etc. (not altering text)

- C1** Art. 364 applied (with modifications) (6.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), **ss. 28(5)**, 94(1); S.I. 2008/755, **art. 15(1)(f)**

Insolvent estates of deceased persons

365 ^{F9}.—(1) The [^{F10}Department of Justice] may, by order made with the concurrence of [^{F11}the Lord Chief Justice and] the Department, provide that such provisions of this Order, Part VI of the Judgments Enforcement (Northern Ireland) Order 1981, the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts as may be specified in the order shall apply [^{F12}in relation] to the administration of the insolvent estates of deceased persons with such modifications as may be so specified.

[^{F13}(1ZA) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under paragraph (1)—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

[^{F14}(1A) An order under this Article may make provision in relation to the EC Regulation.

(1B) Provision made by virtue of this Article in relation to the EC Regulation may not create an offence of a kind referred to in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972.]

(2) An order under this Article shall be subject to [^{F15}negative resolution].

(3) For the purposes of this Article the estate of a deceased person is insolvent if, when realised, it will be insufficient to meet in full all the debts and other liabilities to which it is subject.

F9 mod. by SR 2004/307

F10 Words in [art. 365\(1\)](#) substituted (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 15(5), **Sch. 18 para. 145(a)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

F11 Words in [art. 365\(1\)](#) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15(2), 148(1), Sch. 5 para. 84(2); S.I. 2006/1014, **art. 2(a)**, Sch. 1

F12 2002 NI 6

F13 [Art. 365\(1ZA\)](#) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15(2), 148(1), Sch. 5 para. 84(3); S.I. 2006/1014, **art. 2(a)**, Sch. 1

F14 SR 2002/223

F15 Words in [art. 365\(2\)](#) substituted (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 15(5), **Sch. 18 para. 145(b)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

[^{F16}Insolvent estates: joint tenancies

365A.—(1) This Article applies where—

- (a) an insolvency administration order has been made in respect of the insolvent estate of a deceased person,
- (b) the petition for the order was presented after the commencement of this Article and within the period of 5 years beginning with the day on which he died, and

- (c) immediately before his death he was beneficially entitled to an interest in any property as joint tenant.
- (2) For the purpose of securing that debts and other liabilities to which the estate is subject are met, the High Court may, on an application by the trustee appointed pursuant to the insolvency administration order, make an order under this Article requiring the survivor to pay to the trustee an amount not exceeding the value lost to the estate.
- (3) In determining whether to make an order under this Article, and the terms of such an order, the High Court must have regard to all the circumstances of the case, including the interests of the deceased's creditors and of the survivor; but, unless the circumstances are exceptional, the Court must assume that the interests of the deceased's creditors outweigh all other considerations.
- (4) The order may be made on such terms and conditions as the High Court thinks fit.
- (5) Any sums required to be paid to the trustee in accordance with an order under this Article shall be comprised in the estate.
- (6) The modifications of this Order which may be made by an order under Article 365 include any modifications which are necessary or expedient in consequence of this Article.
- (7) In this Article “survivor” means the person who, immediately before the death, was beneficially entitled as joint tenant with the deceased or, if the person who was so entitled dies after the making of the insolvency administration order, his personal representatives.
- (8) If there is more than one survivor—
- (a) an order under this Article may be made against all or any of them, but
 - (b) no survivor shall be required to pay more than so much of the value lost to the estate as is properly attributable to him.
- (9) In this Article—
- “insolvency administration order” has the same meaning as in any order under Article 365 having effect for the time being,
- “value lost to the estate” means the amount which, if paid to the trustee, would in the High Court's opinion restore the position to what it would have been if the deceased had been adjudged bankrupt immediately before his death.]

F16 2002 NI 6

[^{F17}Formerly authorised banks]

366.—^{F18}(1) The Department may, by order subject to negative resolution, after consultation with the Financial Services Authority provide that specified provisions in Parts II to VII shall apply with specified modifications in relation to any person who—

- (a) has a liability in respect of a deposit which he accepted in accordance with the Banking Act 1979 or 1987, but
 - (b) does not have permission under Part IV of the Financial Services and Markets Act 2000 (regulated activities) to accept deposits.
- (1A) Paragraph (1)(b) shall be construed in accordance with—
- (a) section 22 of the Financial Services and Markets Act 2000 (classes of regulated activity and categories of investment),
 - (b) any relevant order under that section, and
 - (c) Schedule 2 to that Act (regulated activities).]

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(2) ^{F19}

F17 SI 2004/355

F18 Art. 366(1)(1A) substituted (27.3.2006) for art. 366(1) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 43(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

F19 Art. 366(2) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 43(3), Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

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