STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

PART XIV

MISCELLANEOUS

Modifications etc. (not altering text)

C1 Pts. 11-14 modified by S.R. 2004/307 (as amended (1.10.2006) by Limited Liability Partnerships (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/377), reg. 3, **Sch. 2**; (temp.) (27.4.2020 retrospective) by virtue of Corporate Insolvency and Governance Act 2020 (c. 12), Sch. 11 para. 8(1)(2), **14** (with ss. 2(2), 5(2)); (26.6.2020) by The Limited Liability Partnerships (Amendment etc.) Regulations 2020 (S.I. 2020/643), reg. 1(1), **Sch. 2** (with reg. 3); (16.2.2021) by The Limited Liability Partnerships (Amendment etc.) Regulations 2021 (S.I. 2021/60), reg. 1(1), **Sch. 2** (with reg. 4(2)))

C2 Pts. 11-14 applied (with modifications) (4.1.2024) by S.I. 2021/716, **Sch. 1A para. 3** (as inserted by The Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023 (S.I. 2023/1399), reg. 1(2), **Sch. 1**)

Provisions against debt avoidance

Transactions defrauding creditors

367.—(1) This Article relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if—

(a) he makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration;

(b) he enters into a transaction with the other in consideration of marriage **[**[F1]or the formation of a civil partnership**]**; or

(c) he enters into a transaction with the other for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by himself.

(2) Where a person has entered into such a transaction, the High Court may, if satisfied as mentioned in paragraph (3), make such order as it thinks fit for—

(a) restoring the position to what it would have been if the transaction had not been entered into, and

(b) protecting the interests of persons who are victims of the transaction.

(3) In the case of a person entering into such a transaction, an order shall only be made if the High Court is satisfied that it was entered into by him for the purpose—

(a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or

(b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make.

(4) In relation to a transaction at an undervalue, references in this Article and Article 368 to a victim of the transaction are to a person who is, or is capable of being, prejudiced by it; and in Articles 368 and 369 the person entering into the transaction is referred to as "the debtor".

F1 2004 c. 33

Modifications etc. (not altering text)

C3 Art. 367 applied (with modifications) (4.1.2024) by S.I. 2021/716, **reg. 37A** (as inserted by The Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023 (S.I. 2023/1399), regs. 1(2), **12**)

Those who may apply for an order under Article 367

368.—(1) An application for an order under Article 367 shall not be made in relation to a transaction except—

(a) in a case where the debtor has been adjudged bankrupt or is a body corporate which is being wound up or **[**[F2]is in administration**]**, by the official receiver, by the trustee of the bankrupt's estate or the liquidator or administrator of the body corporate or (with the leave of the High Court) by a victim of the transaction;

(b) in a case where a victim of the transaction is bound by a voluntary arrangement approved under Part II or Part VIII, by the supervisor of the voluntary arrangement or by any person who (whether or not so bound) is such a victim; or

(c) in any other case, by a victim of the transaction.

(2) An application made under any of the sub#paragraphs of paragraph (1) is to be treated as made on behalf of every victim of the transaction.

F2 Words in art. 368(1)(a) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 44 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2** - 7)

Modifications etc. (not altering text)

C4 Art. 368 applied (with modifications) (4.1.2024) by S.I. 2021/716, **reg. 37A** (as inserted by The Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023 (S.I. 2023/1399), regs. 1(2), **12**)

Provision which may be made by order under Article 367

369.—(1) Without prejudice to the generality of Article 367, an order made under that Article with respect to a transaction may (subject as follows)—

(a) require any property transferred as part of the transaction to be vested in any person, either absolutely or for the benefit of all the persons on whose behalf the application for the order is treated as made;

(b) require any property to be so vested if it represents, in any person's hands, the application either of the proceeds of sale of property so transferred or of money so transferred;

(c) release or discharge (in whole or in part) any security given by the debtor;

(d) require any person to pay to any other person in respect of benefits received from the debtor such sums as the High Court may direct;

(e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction to be under such new or revived obligations as the High Court thinks appropriate;

(f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction.

(2) An order under Article 367 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the debtor entered into the transaction; but such an order—

(a) shall not prejudice any interest in property which was acquired from a person other than the debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest, and

(b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.

(3) For the purposes of this Article the relevant circumstances in relation to a transaction are the circumstances by virtue of which an order under Article 367 may be made in respect of the transaction.

(4) In this Article "security" means any mortgage, charge, lien or other security.

Modifications etc. (not altering text)

C5 Art. 369 applied (with modifications) (4.1.2024) by S.I. 2021/716, **reg. 37A** (as inserted by The Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023 (S.I. 2023/1399), regs. 1(2), **12**)

Disqualifications, reviews and reports

[[F3]Assembly disqualification

370.—[[F4](1) If the High Court makes any order mentioned in paragraph (1A) in respect of a member of the Assembly, the Court shall notify the presiding officer of the Assembly.

(1A) The orders are—

(a) a bankruptcy restrictions order;

(b) a debt relief restrictions order;

(c) an interim bankruptcy restrictions order; or

(d) an interim debt relief restrictions order.**]**

(2) If the Department accepts a bankruptcy restrictions undertaking **[**[F5]or a debt relief restrictions undertaking**]** made by a member of the Assembly, the Department shall notify the presiding officer of the Assembly.**]**

F3 Arts. 370 - 370A substituted (27.3.2006) for art. 370 by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 22 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2** - 7)

F4 Art. 370(1)(1A) substituted (30.6.2011) for art. 370(1) by Debt Relief Act (Northern Ireland) 2010 (c. 16), ss. 6, 7(1), **Sch. para. 4(13)(a)**; S.R. 2011/13, **art. 2**

F5 Words in art. 370(2) inserted (30.6.2011) by Debt Relief Act (Northern Ireland) 2010 (c. 16), ss. 6, 7(1), **Sch. para. 4(13)(b)**; S.R. 2011/13, **art. 2**

[F6Irrelevance of privilege

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

F6 Arts. 370 - 370A substituted (27.3.2006) for art. 370 by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 22 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2** - 7)

Review, etc., by High Court of its orders

371. The High Court may review, rescind or vary any order made by it in the exercise of the jurisdiction under this Order.

Annual report

372. The Department shall cause an annual general report of matters for which it and its officers, including the official receiver, are responsible under this Order to be prepared and laid before the Assembly.

Legal proceedings

Prosecution and punishment of offences

373.—(1) Schedule 7 sets out in tabular form the manner in which offences under this Order are punishable on conviction.

(2) In relation to an offence under a provision of this Order specified in column 1 of Schedule 7 (the general nature of the offence being described in column 2)—

(a) column 3 shows whether the offence is punishable on conviction on indictment, or on summary conviction, or either in one way or the other;

(b) column 4 shows the maximum punishment by way of fine or imprisonment which may be imposed on a person convicted of the offence in the way specified in relation to it in column 3 (that is to say, on indictment or summarily) any reference to a period of years or months being to a term of imprisonment of that duration;

(c) column 5 shows (in relation to an offence for which there is an entry in that column) that a person convicted of the offence after continued contravention is liable to a daily default fine; that is to say he is liable on a second or subsequent conviction of the offence to the fine specified in that column for each day on which the contravention is continued (instead of the penalty specified for the offence in column 4).

(3) This Article and Schedule 7 shall be subject to any provision of this Order with respect to the prosecution and punishment of any offence specified in that Schedule.

(4) The power to charge a person by virtue of section 20(2) of the Interpretation Act (Northern Ireland) 1954[F7] of any offence committed by a body corporate under this Order does not extend to an offence committed under Articles **[**[F8]13DA(5), 13DG(3), 13DH(4), 13DI(1), 13DJ(5), 13DK(6),

13DL(2), 13DM(9), 13DN(4),**]** 40, 49(2), 71(2), 75(4) and (6), 139, 159(2), 166(4), 170(1), (2) and (5), 171(1), 172(1), 173, 174(1) and 175(1).

(5) In Schedule 7 a reference to a fine without a qualifying reference shall be construed as a reference to an unlimited fine.

F7 1954 c. 33 (NI)

F8 Words in art. 373(4) inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 7 para. 24** (with ss. 2(2), 5(2))

Modifications etc. (not altering text)

C6 Art. 373 applied (with modifications) (4.1.2024) by S.I. 2021/716, **reg. 37A** (as inserted by The Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023 (S.I. 2023/1399), regs. 1(2), **12**)

C7 Art. 373 applied (with modifications) (4.1.2024) by S.I. 2021/716, **Sch. 1A para. 3** (as inserted by The Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023 (S.I. 2023/1399), reg. 1(2), **Sch. 1**)

Summary proceedings

374.—(1) Summary proceedings for any offence under any of **[**[F9]Parts 1A to 7**]** may (without prejudice to any jurisdiction exercisable apart from this paragraph) be taken against a body corporate at any place at which the body has a place of business, and against any other person at any place at which he is for the time being.

(2) Notwithstanding anything in Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981[F10] (limitation of time for taking proceedings) summary proceedings for an offence under this Order, other than under Articles 34(6), 40, 41(1), 57(6), 75(4), 84(4), 85(3), 111(7), 139, 170(1) and (2), 171(1), 172(1), 173, 174(1),175(1), 180(4), 199(5), 223, 324(1), 325(1), (3) and (5), 326(1), (2) and (3), 327(1) and (3), 328(1) and (3), 329(1), 330(1) and (3), 331(1) and (3), 332, 333(1) and 348(1) may be instituted at any time within 3 years from the commission of the offence and within 12 months from the date on which evidence sufficient in the opinion of the Director of Public Prosecutions for Northern Ireland or, as the case may be, the Department to justify the proceedings comes to his or the Department's knowledge.

(3) For the purposes of this Article, a certificate of the Director of Public Prosecutions for Northern Ireland or, as the case may be, the Department as to the date on which such evidence as is referred to in paragraph (2) came to his or the Department's knowledge is conclusive evidence.

F9 Words in art. 374(1) substituted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 7 para. 2** (with ss. 2(2), 5(2))

F10 1981 NI 26

Modifications etc. (not altering text)

C8 Art. 374 applied (with modifications) (4.1.2024) by S.I. 2021/716, **reg. 37A** (as inserted by The Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023 (S.I. 2023/1399), regs. 1(2), **12**)

Admissibility in evidence of statements of affairs, etc.

[F11][F12]**375.—[**[F13](1)**]** In any proceedings (whether or not under this Order)—

(a) a statement of affairs prepared for the purposes of any provision of this Order, and

(b) any other statement made in pursuance of a requirement imposed by or under any such provision or by or under rules made under this Order,

may be used in evidence against any person making or concurring in making the statement.

[[F14](2) However, in criminal proceedings in which any such person is charged with an offence to which this paragraph applies—

(a) no evidence relating to the statement may be adduced, and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Paragraph (2) applies to any offence other than—

(a) an offence under Article 34(6), 57(6), 58(8), 81(7), 84(5), 85(3)(a), 111(7), 162(2), 172(1)(a) or (d) or (2), 174, 199(5), 324(1), 325(1)(b) or (5) or 327(1) or (3)(a) or (b);

(b) an offence which is—

(i) created by rules made under this Order, and

(ii) designated for the purposes of this paragraph by such rules or by regulations;

(c) an offence which is—

(i) created by regulations made under any such rules, and

(ii) designated for the purposes of this paragraph by such regulations; or

(d) an offence under Article 3, 7 or 10 of the Perjury (Northern Ireland) Order 1979 (false statements made on oath or made otherwise than on oath).

(4) Regulations under paragraph (3)(b)(ii) shall after being made be laid before the Assembly.**]**]]

F11 "By Banking Act 2009 (c. 1), **ss. 128**, 134, 263(1) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. it is provided that art. 375 is amended (17.2.2009 for certain purposes, otherwise 21.2.2009) (art. 375 being the equivalent enactment having effect in relation to Northern Ireland to s. 433 of the Insolvency Act 1986 (c. 45))"

F12 "By Banking Act 2009 (c. 1), **ss. 162**, 167, 263(1) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. it is provided that art. 375 is amended (17.2.2009 for certain purposes, otherwise 21.2.2009) (art. 375 being the equivalent enactment having effect in relation to Northern Ireland to s. 433 of the Insolvency Act 1986 (c. 45))"

F13 1999 c. 23

F14 1999 c. 23

Modifications etc. (not altering text)

C9 Art. 375 applied (with modifications) (4.1.2024) by S.I. 2021/716, **reg. 37A** (as inserted by The Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023 (S.I. 2023/1399), regs. 1(2), **12**)

Supplemental

Judicial notice of court documents

376. In all proceedings under this Order, all courts, judges and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court shall take judicial notice—

(a) of the signature of any officer of the High Court in Northern Ireland or of the High Court or a county court in England and Wales, or of the Court of Session or a sheriff court in Scotland, and also

(b) of the official seal or stamp of the several offices of the High Court in Northern Ireland or England and Wales or of the Court of Session, appended to or impressed on any document made, issued or signed under the provisions of this Order or **[**[F15]the Companies Acts**]**, or any official copy of such a document.

F15 Words in art. 376(b) substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), **Sch. 4 para. 63** (with art. 12)

Modifications etc. (not altering text)

C10 Art. 376 applied (with modifications) (4.1.2024) by S.I. 2021/716, **reg. 37A** (as inserted by The Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023 (S.I. 2023/1399), regs. 1(2), **12**)

Exemption from stamp duty

377. Stamp duty shall not be charged on—

(a) any document, being a deed, conveyance, assignment, surrender, admission or other assurance relating solely to property which—

(i) in the case of a winding up by the High Court or of a creditors' voluntary winding up, forms part of the company's assets; or

(ii) is comprised in a bankrupt's estate;

and which, after the execution of that document, is or remains at law or in equity part of that company's assets or the property of the bankrupt or of the trustee in bankruptcy, as the case may require,

(b) any order, certificate or other instrument relating solely to—

(i) the assets of any company which is being wound up as mentioned in head (a)(i) or any proceedings under such a winding up, or

(ii) the property of a bankrupt or any bankruptcy proceedings.

Crown application

378. For the avoidance of doubt it is hereby declared that provisions of this Order bind the Crown, including the Crown in right of Her Majesty's government in the United Kingdom, so far as affecting or relating to the following matters, namely—

(a) remedies against, or against the property of, companies or individuals;

(b) priorities of debts;

(c) transactions at an undervalue or preferences;

(d) voluntary arrangements approved under Part II or Part VIII, and

(e) discharge from bankruptcy.

Transitional provisions and savings

379 [F16]**.** The transitional provisions and savings set out in Schedule 8 shall have effect, the Schedule comprising the following Parts—

Part I: company insolvency and winding up (matters arising before the date of the coming into operation of this Order, and continuance of proceedings in certain cases as before that date);

Part II: individual insolvency (matters so arising, and continuance of bankruptcy proceedings in certain cases as before that date); and

Part III: other general transitional provisions and savings.

F16 mod. by SR 2004/307

Art.380 rep. by 1996 NI 16

Art.381—Amendments

Art.382—Repeals

Changes to legislation:
The Insolvency (Northern Ireland) Order 1989, PART XIV is up to date with all changes known to be in force on or before 07 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.
View outstanding changes

Changes and effects yet to be applied to :

- Instrument amended by 1998 c. 11 s. 23 Sch. 5 Pt.1 Ch. 3 para. 40
- Instrument amended (prosp) by S.I. 1994/279 (N.I.) art. 26(1)Sch. 2 para. 15

Changes and effects yet to be applied to the whole Order associated Parts and Chapters:
Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Sch. 9 Pt. 2 para. 66 revoked by 1996 c. 23 s. 107(2)Sch. 4 (Amendment could not be applied. The relevant affected text is not available on legislation.gov.uk)
- art. 2B inserted by 2016 c. 2 (N.I.) s. 2(1)
- art. 208ZA applied (with modifications) by S.I. 2021/716, reg. 37A (as inserted) by S.I. 2023/1399 reg. 12 (This amendment not applied to Legislation.gov.uk. S. 208ZA is inserted by the Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), s. 1(1) which is currently prospective.)
- art. 208ZA-208ZB inserted by 2016 c. 2 (N.I.) s. 1(1)
- art. 208ZB applied (with modifications) by S.I. 2021/716, reg. 37A (as inserted) by S.I. 2023/1399 reg. 12 (This amendment not applied to Legislation.gov.uk. S. 208ZB is inserted by the Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), s. 1(1) which is currently prospective.)
- art. 345A-345B inserted by 2016 c. 2 (N.I.) s. 1(2)