Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament

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DRAFT STATUTORY INSTRUMENTS

2005 No. (N.I.)

NORTHERN IRELAND

The Insolvency (Northern Ireland) Order 2005

Made - - - - - 2005

Coming into operation in accordance with Article 1(2) and (3)

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At the Court at Buckingham Palace, the ** day of ** 2005

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c.1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Introductory

Title and commencement

1.—(1) This Order may be cited as the Insolvency (Northern Ireland) Order 2005.

(2) This Article and Article 2 shall come into operation on the expiration of 7 days from the day on which this Order is made.

(3) The other provisions of this Order shall come into operation on such day or days as the Department may by order appoint.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

"the Department" means the Department of Enterprise, Trade and Investment;

"the 1989 Order" means the Insolvency (Northern Ireland) Order 1989 (NI 19);

"statutory provision" has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954.

Replacement of Part III of the 1989 Order

3.—(1) The following shall be substituted for Part III of the 1989 Order (administration orders)—

"PART III

ADMINISTRATION

Administration

21. Schedule B1 (which makes provision about the administration of companies) shall have effect.".

(2) The Schedule B1 set out in Schedule 1 to this Order shall be inserted after Schedule A1 to the 1989 Order.

(3) Schedule 2 (minor and consequential amendments relating to administration) shall have effect.

(4) The Department may by order amend any statutory provision in consequence of this Article.

(5) An order under paragraph (4) shall be subject to negative resolution.

Special administration regimes

4.—(1) Article 3 shall have no effect in relation to—

(a) a licence company within the meaning of section 26 of the Transport Act 2000 (c. 38) (air traffic services), or

(b) a building society within the meaning of section 119 of the Building Societies Act 1986 (c. 53) (interpretation).

(2) A reference in an Act listed in paragraph (1) to a provision of Part III of the 1989 Order (or to a provision which has effect in relation to a provision of that Part of that Order) shall, in so far as it relates to a licence company or a building society, continue to have effect as if it referred to Part III as it had effect immediately before the coming into operation of Article 3.

(3) But the effect of paragraph (2) in respect of a particular class of licence company or building society may be modified by order of—

(a) the Department, in the case of a licence company, or

(b) the Treasury, in the case of a building society.

(4) An order under paragraph (3) may make consequential amendment of a statutory provision.

(5) An order under paragraph (3) shall—

(a) where it is made by the Department, be subject to negative resolution, and

(b) where it is made by the Treasury, be subject to annulment in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.

(6) An amendment of the 1989 Order made by this Order is without prejudice to any power conferred by Part V of the Companies (No. 2) (Northern Ireland) Order 1990 (NI 10) (financial markets) to modify the law of insolvency.

Prohibition on appointment of administrative receiver

5.—(1) The following shall be inserted at the end of Part IV of the 1989 Order (receivership)—

"*Prohibition of appointment of administrative receiver*

Floating charge holder not to appoint administrative receiver

59A.—(1) The holder of a qualifying floating charge in respect of a company's property may not appoint an administrative receiver of the company.

(2) In paragraph (1) "holder of a qualifying floating charge in respect of a company's property" has the same meaning as in paragraph 15 of Schedule B1.

(3) This Article applies—

(a) to a floating charge created on or after a date appointed by the Department by order, and

(b) in spite of any provision of an agreement or instrument which purports to empower a person to appoint an administrative receiver (by whatever name).

(4) An order under paragraph (3)(a) may—

(a) make provision which applies generally or only for a specified purpose;

(b) make different provision for different purposes;

(c) make transitional provision.

(5) This Article is subject to the exceptions specified in Articles 59B to 59I.

First exception: capital market

59B.—(1) Article 59A does not prevent the appointment of an administrative receiver in pursuance of an agreement which is or forms part of a capital market arrangement if—

(a) a party incurs or, when the agreement was entered into was expected to incur, a debt of at least £50 million under the arrangement, and

(b) the arrangement involves the issue of a capital market investment.

(2) In paragraph (1)—

"capital market arrangement" means an arrangement of a kind described in paragraph 1 of Schedule 1A, and

"capital market investment" means an investment of a kind described in paragraph 2 or 3 of that Schedule.

Second exception: public-private partnership

59C.—(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

(a) is a public-private partnership project, and

(b) includes step-in rights.

(2) In this Article "public-private partnership project" means a project—

(a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or

(b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.

(3) In this Article—

"step-in rights" has the meaning given by paragraph 6 of Schedule 1A, and

"project company" has the meaning given by paragraph 7 of that Schedule.

Third exception: utilities

59D.—(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

(a) is a utility project, and

(b) includes step-in rights.

(2) In this Article—

(a) "utility project" means a project designed wholly or mainly for the purpose of a regulated business,

(b) "regulated business" means a business of a kind listed in paragraph 10 of Schedule 1A,

(c) "step-in rights" has the meaning given by paragraph 6 of that Schedule, and

(d) "project company" has the meaning given by paragraph 7 of that Schedule.

Fourth exception: urban regeneration projects

59E.—(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

(a) is designed wholly or mainly to develop land which at the commencement of the project is wholly or partly in a designated disadvantaged area in Northern Ireland, and

(b) includes step-in rights.

(2) In paragraph (1) "develop" means to carry out—

(a) building operations,

(b) any operation for the removal of substances or waste from land and the levelling of the surface of the land, or

(c) engineering operations in connection with the activities mentioned in sub-paragraph (a) or (b).

(3) In this Article—

"building" includes any structure or erection, and any part of a building as so defined, but does not include plant and machinery comprised in a building,

"building operations" includes—

(a) demolition of buildings,

(b) filling in of trenches,

(c) rebuilding,

(d) structural alterations of, or additions to, buildings and

(e) other operations normally undertaken by a person carrying on business as a builder,

"designated disadvantaged area" means an area designated as a disadvantaged area under section 92 of the Finance Act 2001 (c. 9),

"engineering operations" includes the formation and laying out of means of access to highways,

"project company" has the meaning given by paragraph 7 of Schedule 1A,

"step-in rights" has the meaning given by paragraph 6 of that Schedule,

"substance" means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour, and

"waste" includes any waste materials, spoil, refuse or other matter deposited on land.

Fifth exception: project finance

59F.—(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

(a) is a financed project, and

(b) includes step-in rights.

(2) In this Article—

(a) a project is "financed" if under an agreement relating to the project a project company incurs, or when the agreement is entered into is expected to incur, a debt of at least £50 million for the purposes of carrying out the project,

(b) "project company" has the meaning given by paragraph 7 of Schedule 1A, and

(c) "step-in rights" has the meaning given by paragraph 6 of that Schedule.

Sixth exception: financial market

59G. Article 59A does not prevent the appointment of an administrative receiver of a company by virtue of—

(a) a market charge within the meaning of Article 95 of the Companies (No. 2) (Northern Ireland) Order 1990 (NI 10),

(b) a system-charge within the meaning of the Financial Markets and Insolvency Regulations (Northern Ireland) 1996 (SR 1996 No. 252).

Seventh exception: registered housing association

59H. Article 59A does not prevent the appointment of an administrative receiver of a housing association which is registered as such under Chapter II of Part II of the Housing (Northern Ireland) Order 1992 (NI 15).

Eighth exception: licence companies

59I. Article 59A does not prevent the appointment of an administrative receiver of a licence company within the meaning of section 26 of the Transport Act 2000 (c. 38).

Articles 59A to 59I: supplementary

59J.—(1) Schedule 1A (which supplements Articles 59A to 59I) shall have effect.

(2) The Department may by order—

(a) insert into this Order provision creating an additional exception to Article 59A(1);

(b) provide for a provision of this Order which creates an exception to Article 59A(1) to cease to have effect;

(c) amend Article 59A in consequence of provision made under sub-paragraph (a) or (b);

(d) amend any of Articles 59B to 59I;

(e) amend Schedule 1A.

(3) An order under paragraph (2) may make—

(a) provision which applies generally or only for a specified purpose;

(b) different provision for different purposes;

(c) consequential or supplementary provision;

(d) transitional provision.

(4) An order under paragraph (2)—

(a) in the case of an order under paragraph (2)(e), shall be subject to negative resolution,

(b) in the case of an order under paragraph (2)(d) varying the sum specified in Article 59B(1)(a) or 59F(2)(a) (whether or not the order also makes consequential or transitional provision), shall be subject to negative resolution, and

(c) in the case of any other order under paragraph (2)(a) to (d), shall be subject to affirmative resolution.".

(2) The Schedule 1A set out in Schedule 3 to this Order shall be inserted after Schedule 1 to the 1989 Order.

Abolition of Crown preference

6.—(1) The following paragraphs of Schedule 4 to the 1989 Order (categories of preferential debts) shall cease to have effect—

(a) paragraphs 1 and 2 (debts due to Inland Revenue),

(b) paragraphs 3 to 5C (debts due to Customs and Excise), and

(c) paragraphs 6 and 7 (social security contributions).

(2) In Article 346 of the 1989 Order (categories of preferential debts) in paragraph (1) for the parenthetical words after "Schedule 4" there shall be substituted "(contributions to occupational pension schemes; remuneration, &c. of employees; levies on coal and steel production)".

Unsecured creditors

7.—(1) The following shall be inserted after Article 150 of the 1989 Order (winding up: preferential debt)—

"*Property subject to floating charge*

Share of assets for unsecured creditors

150A.—(1) This Article applies where a floating charge relates to property of a company—

(a) which has gone into liquidation,

(b) which is in administration,

(c) of which there is a provisional liquidator, or

(d) of which there is a receiver.

(2) The liquidator, administrator or receiver—

(a) shall make a prescribed part of the company's net property available for the satisfaction of unsecured debts, and

(b) shall not distribute that part to the proprietor of a floating charge except in so far as it exceeds the amount required for the satisfaction of unsecured debts.

(3) Paragraph (2) shall not apply to a company if—

(a) the company's net property is less than the prescribed minimum, and

(b) the liquidator, administrator or receiver thinks that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.

(4) Paragraph (2) shall also not apply to a company if or in so far as it is disapplied by—

(a) a voluntary arrangement in respect of the company, or

(b) a compromise or arrangement agreed under Article 418 of the Companies Order (compromise with creditors and members).

(5) Paragraph (2) shall also not apply to a company if—

(a) the liquidator, administrator or receiver applies to the High Court for an order under this paragraph on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits, and

(b) the Court orders that paragraph (2) shall not apply.

(6) In paragraphs (2) and (3) a company's net property is the amount of its property which would, but for this Article, be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company.

(7) An order under paragraph (2) prescribing part of a company's net property may, in particular, provide for its calculation—

(a) as a percentage of the company's net property, or

(b) as an aggregate of different percentages of different parts of the company's net property.

(8) An order under this Article shall be subject to negative resolution.

(9) In this Article—

"floating charge" means a charge which is a floating charge on its creation and which is created after the first order under paragraph (2)(a) comes into operation, and

"prescribed" means prescribed by order by the Department.

(10) An order under this Article may include transitional or incidental provision.".

(2) In Article 2(2) of the 1989 Order (general interpretation), in paragraph (b) in the definition of "prescribed" after "sub-paragraph (a)" there shall be inserted "in Article 150A(9)".

Liquidator's powers

8. The following shall be inserted in Part I of Schedule 2 to the 1989 Order (liquidator's powers in winding up: powers exercisable only with sanction) after paragraph 3—

"3A. Power to bring legal proceedings under Article 177, 178, 202, 203 or 367.".

Application of insolvency law to company incorporated outside Northern Ireland

9.—(1) The Department may by order provide for a provision of the 1989 Order to apply (with or without modification) in relation to a company incorporated outside Northern Ireland.

(2) An order under this Article—

(a) may make provision generally or for a specified purpose only,

(b) may make different provision for different purposes, and

(c) may make transitional, consequential or incidental provision.

(3) An order under this Article shall be subject to negative resolution.

Application of law about company arrangement or administration to non-company

10.—(1) The Treasury may with the concurrence of the Secretary of State by order provide for a company arrangement or administration provision to apply (with or without modification) in relation to—

(a) a society registered under section 7(1)(b), (c), (d), (e) or (f) of the Friendly Societies Act 1974 (c. 46),

(b) a friendly society within the meaning of the Friendly Societies Act 1992 (c. 40), or

(c) an unregistered friendly society.

(2) The Department may by order provide for a company arrangement or administration provision to apply (with or without modification) in relation to a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24).

(3) In paragraphs (1) and (2) "company arrangement or administration provision" means—

(a) a provision of Part II of the 1989 Order (company voluntary arrangements),

(b) a provision of Part III of that Order (administration), and

(c) Article 418 of the Companies (Northern Ireland) Order 1986 (NI 6) (compromise or arrangement with creditors).

(4) An order under paragraph (1) or (2) may not provide for a company arrangement or administration provision to apply in relation to a society which is registered as a housing association under Part II of the Housing (Northern Ireland) Order 1992 (NI 15).

(5) An order under paragraph (1) or (2)—

(a) may make provision generally or for a specified purpose only,

(b) may make different provision for different purposes, and

(c) may make transitional, consequential or incidental provision.

(6) Provision by virtue of paragraph (5)(c) may, in particular—

(a) apply a statutory provision (with or without modification);

(b) amend a statutory provision.

(7) An order under paragraph (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.

(8) An order under paragraph (2) shall be subject to negative resolution.

Voluntary arrangements: minor amendments

11.—(1) Schedule A1 to the 1989 Order (moratorium where directors propose voluntary arrangement) shall be amended as follows.

(2) In paragraph 2(1)(a) for "paragraph 4" substitute "paragraphs 4 to 7".

(3) In paragraph 23(4), paragraphs (b) and (c) shall cease to have effect.

Individuals

Duration of, and discharge from, bankruptcy

12.—(1) The following shall be substituted for Article 253 of the 1989 Order (duration of bankruptcy)—

"Duration

253.—(1) A bankrupt is discharged from bankruptcy at the end of the period of one year beginning with the date on which the bankruptcy commences.

(2) If before the end of that period the official receiver files with the High Court a notice stating that investigation of the conduct and affairs of the bankrupt under Article 262 is unnecessary or concluded, the bankrupt is discharged when the notice is filed.

(3) On the application of the official receiver or the trustee of a bankrupt's estate, the High Court may order that the period specified in paragraph (1) shall cease to run until—

(a) the end of a specified period, or

(b) the fulfilment of a specified condition.

(4) The High Court may make an order under paragraph (3) only if satisfied that the bankrupt has failed or is failing to comply with an obligation under this Part.

(5) In paragraph (3)(b) "condition" includes a condition requiring that the High Court be satisfied of something.

(6) This Article is without prejudice to any power of the High Court to annul a bankruptcy order.

(7) Nothing in this Article applies to a bankrupt who is a solicitor.".

(2) In Article 254 of the 1989 Order (discharge by order of the High Court)—

(a) the following shall be substituted for the heading of the Article—

"Discharge where bankrupt is a solicitor"; and

(b) the following shall be substituted for paragraph (1)—

"(1) A bankrupt who is a solicitor is discharged from bankruptcy by an order of the High Court under this Article.

(1A) An application for an order under this Article may be made at any time.".

(3) Schedule 4 (which makes transitional provision in relation to this Article)—

(a) shall have effect, and

(b) is without prejudice to the generality of Article 250.

Post-discharge restrictions

13.—(1) The following shall be inserted after Article 255 of the 1989 Order (bankruptcy: effect of discharge)—

"Post-discharge restrictions

255A. Schedule 2A (bankruptcy restrictions order and bankruptcy restrictions undertaking) shall have effect.".

(2) The Schedule 2A set out in Schedule 5 to this Order shall be inserted after Schedule 2 to the 1989 Order.

(3) The amendments set out in Schedule 6 (which specify the effect of a bankruptcy restrictions order or undertaking) shall have effect.

Investigation by official receiver

14. The following shall be substituted for Article 262 of the 1989 Order (official receiver's duty to investigate)—

"Investigatory duties of official receiver

262.—(1) The official receiver shall—

(a) investigate the conduct and affairs of each bankrupt (including his conduct and affairs before the making of the bankruptcy order), and

(b) make such report (if any) to the High Court as the official receiver thinks fit.

(2) Paragraph (1) shall not apply to a case in which the official receiver thinks an investigation under that paragraph unnecessary.

(3) Where a bankrupt makes an application for discharge under Article 254—

(a) the official receiver shall make a report to the Court about such matters as may be prescribed, and

(b) the Court shall consider the report before determining the application.

(4) A report by the official receiver under this Article shall in any proceedings be prima facie evidence of the facts stated in it.".

Income payments order

15.—(1) Article 283 of the 1989 Order (income payments order) shall be amended as follows.

(2) In paragraph (1) omit ", on the application of the trustee,".

(3) After paragraph (1) insert—

"(1A) An income payments order may be made only on an application instituted—

(a) by the trustee, and

(b) before the discharge of the bankrupt.".

(4) For paragraph (6) substitute—

"(6) An income payments order shall specify the period during which it is to have effect; and that period—

(a) may end after the discharge of the bankrupt, but

(b) may not end after the period of 3 years beginning with the date on which the order is made.

(6A) An income payments order may (subject to paragraph (6)(b)) be varied on the application of the trustee or the bankrupt (whether before or after discharge).

(6B) Where the Court has made an income payments order in relation to a bankrupt who is a solicitor, nothing in paragraph (6) shall affect the continuance of a condition with respect to income specified in an order made under Article 254(2)(c).".

Income payments agreement

16. The following shall be inserted after Article 283 of the 1989 Order (income payments order)—

"Income payments agreement

283A.—(1) In this Article "income payments agreement" means a written agreement between a bankrupt and his trustee or between a bankrupt and the official receiver which provides—

(a) that the bankrupt is to pay to the trustee or the official receiver an amount equal to a specified part or proportion of the bankrupt's income for a specified period, or

(b) that a third person is to pay to the trustee or the official receiver a specified proportion of money due to the bankrupt by way of income for a specified period.

(2) A provision of an income payments agreement of a kind specified in paragraph (1)(a) or (b) may be enforced as if it were a provision of an income payments order.

(3) While an income payments agreement is in force the High Court may, on the application of the bankrupt, his trustee or the official receiver, discharge or vary an attachment of earnings order that is for the time being in force to secure payments by the bankrupt.

(4) The following provisions of Article 283 shall apply to an income payments agreement as they apply to an income payments order—

(a) paragraph (5) (receipts to form part of estate), and

(b) paragraphs (7) to (9) (meaning of income).

(5) An income payments agreement must specify the period during which it is to have effect; and that period—

(a) may end after the discharge of the bankrupt, but

(b) may not end after the period of 3 years beginning with the date on which the agreement is made.

(6) An income payments agreement may (subject to paragraph (5)(b)) be varied—

(a) by written agreement between the parties, or

(b) by the High Court on an application made by the bankrupt, the trustee or the official receiver.

(7) The High Court—

(a) may not vary an income payments agreement so as to include provision of a kind which could not be included in an income payments order, and

(b) shall grant an application to vary an income payments agreement if and to the extent that the Court thinks variation necessary to avoid the effect mentioned in Article 283(2).".

Bankrupt's home

17.—(1) In Chapter II of Part IX of the 1989 Order (protection of bankrupt's estate and investigation of his affairs) the following shall be inserted before Article 257 (restrictions on dispositions of property)—

"Bankrupt's home ceasing to form part of estate

256A.—(1) This Article applies where property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

(a) the bankrupt,

(b) the bankrupt's spouse, or

(c) a former spouse of the bankrupt.

(2) At the end of the period of 3 years beginning with the date of the bankruptcy the interest mentioned in paragraph (1) shall—

(a) cease to be comprised in the bankrupt's estate, and

(b) vest in the bankrupt (without conveyance, assignment or transfer).

(3) Paragraph (2) shall not apply if during the period mentioned in that paragraph—

(a) the trustee realises the interest mentioned in paragraph (1),

(b) the trustee applies for an order for sale in respect of the dwelling-house,

(c) the trustee applies for an order for possession of the dwelling-house,

(d) the trustee applies for an order under Article 286 in Chapter IV in respect of that interest, or

(e) the trustee and the bankrupt agree that the bankrupt shall incur a specified liability to his estate (with or without the addition of interest from the date of the agreement) in consideration of which

the interest mentioned in paragraph (1) shall cease to form part of the estate.

(4) Where an application of a kind described in paragraph (3)(b) to (d) is made during the period mentioned in paragraph (2) and is dismissed, unless the High Court orders otherwise the interest to which the application relates shall on the dismissal of the application—

(a) cease to be comprised in the bankrupt's estate, and

(b) vest in the bankrupt (without conveyance, assignment or transfer).

(5) If the bankrupt does not inform the trustee or the official receiver of his interest in a property before the end of the period of 3 months beginning with the date of the bankruptcy, the period of 3 years mentioned in paragraph (2)—

(a) shall not begin with the date of the bankruptcy, but

(b) shall begin with the date on which the trustee or official receiver becomes aware of the bankrupt's interest.

(6) The High Court may substitute for the period of 3 years mentioned in paragraph (2) a longer period—

(a) in prescribed circumstances, and

(b) in such other circumstances as the Court thinks appropriate.

(7) The rules may make provision for this Article to have effect with the substitution of a shorter period for the period of 3 years mentioned in paragraph (2) in specified circumstances (which may be described by reference to action to be taken by a trustee in bankruptcy).

(8) The rules may also, in particular, make provision—

(a) requiring or enabling the trustee of a bankrupt's estate to give notice that this Article applies or does not apply;

(b) about the effect of a notice under sub-paragraph (a);

(c) requiring the trustee of a bankrupt's estate to make an application to the Land Registry or the Registry of Deeds.

(9) Rules under paragraph (8)(b) may, in particular—

(a) disapply this Article;

(b) enable the High Court to disapply this Article;

(c) make provision in consequence of a disapplication of this Article;

(d) enable the Court to make provision in consequence of a disapplication of this Article;

(e) make provision (which may include provision conferring jurisdiction on a court or tribunal) about compensation.".

(2) Article 286 of the 1989 Order (charge on bankrupt's home) shall be amended as follows—

(a) in paragraph (2) for ", up to the value from time to time of the property secured," substitute ", up to the charged value from time to time,",

(b) after paragraph (2) insert—

"(2A) In paragraph (2) "the charged value" means—

(a) the amount specified in the charging order as the value of the bankrupt's interest in the property at the date of the order, plus

(b) interest on that amount from the date of the charging order at the prescribed rate.

(2B) In determining the value of an interest for the purposes of this Article the High Court shall disregard any matter which it is required to disregard by the rules.", and

(c) at the end insert—

"(8) But an order under paragraph (6) may not vary a charged value.".

(3) The following shall be inserted after Article 286 of the 1989 Order—

"Low value home: application for sale, possession or charge

286A.—(1) This Article applies where—

(a) property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

(i) the bankrupt,

(ii) the bankrupt's spouse, or

(iii) a former spouse of the bankrupt, and

(b) the trustee applies for an order for the sale of the property, for an order for possession of the property or for an order under Article 286 in respect of the property.

(2) The High Court shall dismiss the application if the value of the interest is below such amount as may for the time being be specified for the purposes of this paragraph by order under Article 362(1)(b).

(3) In determining the value of an interest for the purposes of this Article the High Court shall disregard any matter which it is required to disregard by the order which specifies the amount for the purposes of paragraph (2).".

(4) The following shall be inserted after Article 280(2)(a) of the 1989 Order (after-acquired property: exclusions)—

"(aa) any property vesting in the bankrupt by virtue of Article 256A in Chapter II,".

(5) In Article 362(1)(b) of the 1989 Order (monetary limits in bankruptcy) after the entry for Article 247 there shall be inserted—

"Article 286A (value of property below which application for sale, possession or charge to be dismissed);".

(6) In paragraph (7)—

(a) "pre-commencement bankrupt" means an individual who is adjudged bankrupt before paragraph (1) comes into operation, and

(b) "the transitional period" is the period of 3 years beginning with the date on which paragraph (1) comes into operation.

(7) If a pre-commencement bankrupt's estate includes an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of him, his spouse or a former spouse of his, at the end of the transitional period that interest shall—

(a) cease to be comprised in the estate, and

(b) vest in the bankrupt (without conveyance, assignment or transfer).

(8) But paragraph (7) shall not apply if before or during the transitional period—

(a) any of the events mentioned in Article 256A(3) of the 1989 Order (inserted by paragraph (1) above) occurs in relation to the interest or the dwelling-house, or

(b) the trustee obtains any order of a court, or makes any agreement with the bankrupt, in respect of the interest or the dwelling-house.

(9) Paragraphs (4) to (9) of Article 256A of the 1989 Order shall have effect, with any necessary modifications, in relation to the provision made by paragraphs (6) to (8); in particular—

(a) a reference to the period mentioned in Article 256A(2) shall be construed as a reference to the transitional period; and

(b) in the application of Article 256A(5) a reference to the date of the bankruptcy shall be construed as a reference to the date on which paragraph (1) comes into operation.

(10) In Article 11 of the 1989 Order (meaning of "bankrupt's estate"), after paragraph (5) insert—

"(5A) This Article has effect subject to Article 256A.".

Bankrupt's home: civil partnership

18.—(1) The 1989 Order shall be amended as follows.

(2) In Article 256A (as inserted by Article 17(1) of this Order), in paragraph (1)—

(a) in sub-paragraph (b), after "spouse" insert "or civil partner", and

(b) in sub-paragraph (c), after "spouse" insert "or former civil partner".

(3) In Article 286A (as inserted by Article 17(3) of this Order), in paragraph (1)—

(a) in sub-paragraph (a)(ii), after "spouse" insert "or civil partner", and

(b) in sub-paragraph (a)(iii), after "spouse" insert "or former civil partner".

(4) In Article 309 (rights of occupation, etc.)—

(a) in paragraph (4)(b) and (c), after "spouse or former spouse" insert "or civil partner or former civil partner", and

(b) in the heading to the Article, after "spouse" insert "or civil partner".

Powers of trustee in bankruptcy

19. The following shall be inserted in Part I of Schedule 3 to the 1989 Order (powers of trustee in bankruptcy: powers exercisable only with sanction) after paragraph 2—

"2A. Power to bring legal proceedings under Article 312, 313 or 367.".

Repeal of certain bankruptcy offences

20. The following Articles of the 1989 Order shall cease to have effect—

(a) Article 332 (offence of failure to keep proper accounting records), and

(b) Article 333 (offence of gambling and speculation).

Individual voluntary arrangement

21.—(1) Schedule 7 (which makes provision about individual voluntary arrangements) shall have effect.

(2) The Department may by order amend the 1989 Order so as to extend the provisions of Articles 237B to 237G (which are inserted by Schedule 7 and provide a fast-track procedure for making an individual voluntary arrangement) to some or all cases other than those specified in Article 237A as inserted by Schedule 7.

(3) An order under paragraph (2) shall be subject to affirmative resolution.

(4) An order under paragraph (2) may make—

(a) consequential provision (which may include provision amending the 1989 Order or another statutory provision);

(b) transitional provision.

Disqualification for office: the Assembly

22. The following shall be substituted for Article 370 of the 1989 Order (Northern Ireland Assembly disqualification)—

"Assembly disqualification

370.—(1) If the High Court makes a bankruptcy restrictions order or interim order in respect of a member of the Assembly, the Court shall notify the presiding officer of the Assembly.

(2) If the Department accepts a bankruptcy restrictions undertaking made by a member of the Assembly, the Department shall notify the presiding officer of the Assembly.

Irrelevance of privilege

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

Disqualification for office: district councils

23.—(1) The following shall be substituted for section 4(1)(b) of the Local Government Act (Northern Ireland) 1972 (c. 9) (disqualification for membership of district council: bankrupt)—

"(b) is the subject of a bankruptcy restrictions order or interim order;".

(2) Section 5 of that Act (which amplifies the provision substituted by paragraph (1)) shall cease to have effect.

Disqualification for office: general

24.—(1) A Northern Ireland department may make, subject to affirmative resolution, an order under this Article in relation to a disqualification provision.

(2) A "disqualification provision" is a provision which disqualifies (whether permanently or temporarily and whether absolutely or conditionally) a bankrupt or a class of bankrupts from—

(a) being elected or appointed to an office or position,

(b) holding an office or position, or

(c) becoming or remaining a member of a body or group.

(3) In paragraph (2) the reference to a provision which disqualifies a person conditionally includes a reference to a provision which enables him to be dismissed.

(4) An order under paragraph (1) may repeal or revoke the disqualification provision.

(5) An order under paragraph (1) may amend, or modify the effect of, the disqualification provision—

(a) so as to reduce the class of bankrupts to whom the disqualification provision applies;

(b) so as to extend the disqualification provision to some or all individuals who are subject to a bankruptcy restrictions regime;

(c) so that the disqualification provision applies only to some or all individuals who are subject to a bankruptcy restrictions regime;

(d) so as to make the application of the disqualification provision wholly or partly subject to the discretion of a specified person, body or group.

(6) An order by virtue of paragraph (5)(d) may provide for a discretion to be subject to—

(a) the approval of a specified person or body;

(b) appeal to a specified person or body.

(7) An order by virtue of paragraph (5)(d) made with the concurrence of the Lord Chancellor may provide for a discretion to be subject to appeal to a specified court or tribunal.

(8) The Northern Ireland department making the order may specify itself for the purposes of paragraph (5)(d) or (6)(a) or (b).

(9) In this Article "bankrupt" means an individual—

(a) who has been adjudged bankrupt by the High Court in Northern Ireland or by a court in England and Wales,

(b) whose estate has been sequestrated by a court in Scotland, or

(c) who has made an agreement with creditors of his for a composition of debts, for a scheme of arrangement of affairs, for the grant of a trust deed or for some other kind of settlement or arrangement.

(10) In this Article "bankruptcy restrictions regime" means an order or undertaking—

(a) under Schedule 2A to the 1989 Order (bankruptcy restrictions orders),

(b) under Schedule 4A to the Insolvency Act 1986 (c. 45) (corresponding provision in England and Wales), or

(c) under any system operating in Scotland which appears to the Northern Ireland department making the order to be equivalent to the system operating under Schedule 2A of the 1989 Order.

(11) In this Article—

"body" includes, except in paragraph (2)(c), the Assembly, and

"provision" means any statutory provision—

(a) which deals with a transferred matter within the meaning of the Northern Ireland Act 1998 (c. 47), and

(b) which was passed or made before the day appointed for the coming into operation of this Article.

(12) An order under this Article—

(a) may make provision generally or for a specified purpose only,

(b) may make different provision for different purposes, and

(c) may make transitional, consequential or incidental provision.

Minor and consequential amendments relating to individual insolvency

25. Schedule 8 (minor and consequential amendments relating to individual insolvency) shall have effect.

Money

Fees

26.—(1) The following shall be inserted after Article 361 of the 1989 Order (fees orders)—

"Fees orders (supplementary)

361A.—(1) The Department—

(a) may, with the concurrence of the Department of Finance and Personnel, by order subject to negative resolution require a body to pay a fee in connection with the grant or maintenance of recognition of the body under Article 350, and

(b) may refuse recognition, or revoke an order of recognition under Article 350(1) by a further order, where a fee is not paid.

(2) The Department—

(a) may, with the concurrence of the Department of Finance and Personnel, by order subject to negative resolution require a person

to pay a fee in connection with the grant or maintenance of authorisation of the person under Article 352, and

(b) may disregard an application or withdraw an authorisation where a fee is not paid.

(3) The Department may by order subject to negative resolution require the payment of fees in respect of—

(a) the operation of the Insolvency Account;

(b) payments into and out of that Account.

(4) The Department of Finance and Personnel may direct by whom and in what manner the fees are to be collected and accounted for.

(5) Paragraphs (3) and (5) of Article 361 apply to fees under this Article as they apply to fees under that Article.

(6) Nothing in this Article prejudices the provision contained in Article 361.".

(2) An order made by virtue of paragraph (1) may relate to the maintenance of recognition or authorisation granted before this Article comes into operation.

(3) At the end of Article 351 of the 1989 Order (authorisation of insolvency practitioner) there shall be added—

"(9) Paragraph (3)(c) shall not have effect in respect of an application made to the Department (but this paragraph is without prejudice to Article 361A).".

Insolvency Account: interest

27.—(1) The following shall be inserted after paragraph 16 of Schedule 5 to the 1989 Order (company insolvency rules: money)—

"16A. Provision enabling the Department to set the rate of interest paid on sums which have been paid into the Insolvency Account.".

(2) The following shall be inserted after paragraph 19 of Schedule 6 to the 1989 Order (individual insolvency rules: money)—

"19A. Provision enabling the Department to set the rate of interest paid on sums which have been paid into the Insolvency Account.".

Insolvency Account: adjustment of balances

28. The following shall be inserted after Article 358 of the 1989 Order (Insolvency Account)—

"Adjustment of balances

358A.—(1) The Department of Finance and Personnel may direct the payment out of the Consolidated Fund of sums into the Insolvency Account.

(2) The Department of Finance and Personnel shall certify to the Assembly the reason for any payment under paragraph (1).

(3) The Department may pay sums out of the Insolvency Account into the Consolidated Fund.".

Miscellaneous

Transitional or transitory provision and savings

29.—(1) The Department may by order make such transitional or transitory provisions and savings as it considers appropriate in connection with the coming into operation of any provision of this Order.

(2) An order under this Article may modify any statutory provision.

(3) An order under this Article shall be subject to negative resolution.

Power to make consequential amendments etc.

30.—(1) The Department may by order make such supplementary, incidental or consequential provision as it thinks appropriate—

(a) for the general purposes, or any particular purpose, of this Order; or

(b) in consequence of any provision made by or under this Order or for giving full effect to it.

(2) An order under this Article may—

(a) amend, repeal or modify any statutory provision (including this Order);

(b) make incidental, supplementary, consequential, transitional, transitory or saving provision.

(3) An order under this Article shall be subject to negative resolution.

(4) The power conferred by this Article is not restricted by any other provision of this Order.

Repeals

31. Schedule 9 (which contains repeals) shall have effect.

Clerk of the Privy Council

SCHEDULES

Article 3(2).

SCHEDULE 1

SCHEDULE B1 TO THE 1989 ORDER

"SCHEDULE B1

ADMINISTRATION

ARRANGEMENT OF SCHEDULE

Interpretation	Paragraph 1
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INTRODUCTORY

Interpretation

1.—(1) In this Schedule—

"administrative receiver" has the meaning given by Article 5(1),

"administrator" has the meaning given by paragraph 2 and, where the context requires, includes a reference to a former administrator,

"company" includes a company which may enter administration by virtue of Article 3 of the EC Regulation,

"correspondence" includes correspondence by telephonic or other electronic means,

"creditors' meeting" has the meaning given by paragraph 51,

"enters administration" has the meaning given by paragraph 2,

"floating charge" means a charge which is a floating charge on its creation,

"in administration" has the meaning given by paragraph 2,

"hire-purchase agreement" includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,

"holder of a qualifying floating charge" in respect of a company's property has the meaning given by paragraph 15,

"market value" means the amount which would be realised on a sale of property in the open market by a willing vendor,

"the purpose of administration" means an objective specified in paragraph 4, and

"unable to pay its debts" has the meaning given by Article 103.

(2) A reference in this Schedule to a thing in writing includes a reference to a thing in electronic form.

(3) In this Schedule a reference to action includes a reference to inaction.

NATURE OF ADMINISTRATION

Administration

2.—(1) For the purposes of this Order "administrator" of a company means a person appointed under this Schedule to manage the company's affairs, business and property.

(2) For the purposes of this Order—

(a) a company is "in administration" while the appointment of an administrator of the company has effect,

(b) a company "enters administration" when the appointment of an administrator takes effect,

(c) a company ceases to be in administration when the appointment of an administrator of the company ceases to have effect in accordance with this Schedule, and

(d) a company does not cease to be in administration merely because an administrator vacates office (by reason of resignation, death or otherwise) or is removed from office.

3. A person may be appointed as administrator of a company—

(a) by administration order of the High Court under paragraph 11,

(b) by the holder of a floating charge under paragraph 15, or

(c) by the company or its directors under paragraph 23.

Purpose of administration

4.—(1) The administrator of a company must perform his functions with the objective of—

(a) rescuing the company as a going concern, or

(b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or

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(c) realising property in order to make a distribution to one or more secured or preferential creditors.

(2) Subject to sub-paragraph (4), the administrator of a company must perform his functions in the interests of the company's creditors as a whole.

(3) The administrator must perform his functions with the objective specified in sub-paragraph (1)(a) unless he thinks either—

(a) that it is not reasonably practicable to achieve that objective, or

(b) that the objective specified in sub-paragraph (1)(b) would achieve a better result for the company's creditors as a whole.

(4) The administrator may perform his functions with the objective specified in sub-paragraph (1)(c) only if—

(a) he thinks that it is not reasonably practicable to achieve either of the objectives specified in sub-paragraph (1)(a) and (b), and

(b) he does not unnecessarily harm the interests of the creditors of the company as a whole.

5. The administrator of a company must perform his functions as quickly and efficiently as is reasonably practicable.

Status of administrator

6. An administrator is an officer of the High Court (whether or not he is appointed by the Court).

General restrictions

7. A person may be appointed as administrator of a company only if he is qualified to act as an insolvency practitioner in relation to the company.

8. A person may not be appointed as administrator of a company which is in administration (subject to the provisions of paragraphs 91 to 98 and 101 to 104 about replacement and additional administrators).

9.—(1) A person may not be appointed as administrator of a company which is in liquidation by virtue of—

(a) a resolution for voluntary winding up, or

(b) a winding-up order.

(2) Sub-paragraph (1)(a) is subject to paragraph 39.

(3) Sub-paragraph (1)(b) is subject to paragraphs 38 and 39.

10.—(1) A person may not be appointed as administrator of a company which—

(a) has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 (c. 37) or 1987 (c. 22), but

(b) is not an authorised deposit taker.

(2) A person may not be appointed as administrator of a company which effects or carries out contracts of insurance.

(3) But sub-paragraph (2) does not apply to a company which—

(a) is exempt from the general prohibition in relation to effecting or carrying out contracts of insurance, or

(b) is an authorised deposit taker effecting or carrying out contracts of insurance in the course of a banking business.

(4) In this paragraph—

"authorised deposit taker" means a person with permission under Part IV of the Financial Services and Markets Act 2000 (c. 8) to accept deposits, and

"the general prohibition" has the meaning given by section 19 of that Act.

(5) This paragraph 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).

APPOINTMENT OF ADMINISTRATOR BY HIGH COURT

Administration order

11. An administration order is an order appointing a person as the administrator of a company.

Conditions for making order

12. The High Court may make an administration order in relation to a company only if satisfied—

(a) that the company is or is likely to become unable to pay its debts, and

(b) that the administration order is reasonably likely to achieve the purpose of administration.

Administration application

13.—(1) An application to the High Court for an administration order in respect of a company (an "administration application") may be made only by—

(a) the company,

(b) the directors of the company,

(c) one or more creditors of the company,

(d) the chief clerk in the exercise of the power conferred by section 35(4A) of the Criminal Justice Act (Northern Ireland) 1945 (c. 15) (fine imposed on company),

(e) a clerk of petty sessions in exercise of the power conferred by Article 92A of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26), (fines imposed on company), or

(f) a combination of persons listed in paragraphs (a) to (e).

(2) As soon as is reasonably practicable after the making of an administration application the applicant shall notify—

(a) any person who has appointed an administrative receiver of the company,

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(b) any person who is or may be entitled to appoint an administrative receiver of the company,

(c) any person who is or may be entitled to appoint an administrator of the company under paragraph 15, and

(d) such other persons as may be prescribed.

(3) An administration application may not be withdrawn without the permission of the Court.

(4) In sub-paragraph (1) "creditor" includes a contingent creditor and a prospective creditor.

(5) Sub-paragraph (1) is without prejudice to Article 20(4)(b).

Powers of High Court

14.—(1) On hearing an administration application the High Court may—

(a) make the administration order sought;

(b) dismiss the application;

(c) adjourn the hearing conditionally or unconditionally;

(d) make an interim order;

(e) treat the application as a winding-up petition and make any order which the Court could make under Article 105;

(f) make any other order which the Court thinks appropriate.

(2) An appointment of an administrator by administration order takes effect—

(a) at a time appointed by the order, or

(b) where no time is appointed by the order, when the order is made.

(3) An interim order under sub-paragraph (1)(d) may, in particular—

(a) restrict the exercise of a power of the directors or the company;

(b) make provision conferring a discretion on the Court or on a person qualified to act as an insolvency practitioner in relation to the company.

(4) This paragraph is subject to paragraph 40.

APPOINTMENT OF ADMINISTRATOR BY HOLDER OF FLOATING CHARGE

Power to appoint

15.—(1) The holder of a qualifying floating charge in respect of a company's property may appoint an administrator of the company.

(2) For the purposes of sub-paragraph (1) a floating charge qualifies if created by an instrument which—

(a) states that this paragraph applies to the floating charge,

(b) purports to empower the holder of the floating charge to appoint an administrator of the company, or

(c) purports to empower the holder of the floating charge to make an appointment which would be the appointment of an administrative receiver within the meaning given by Article 5(1).

(3) For the purposes of sub-paragraph (1) a person is the holder of a qualifying floating charge in respect of a company's property if he holds one or more debentures of the company secured—

(a) by a qualifying floating charge which relates to the whole or substantially the whole of the company's property,

(b) by a number of qualifying floating charges which together relate to the whole or substantially the whole of the company's property, or

(c) by charges and other forms of security which together relate to the whole or substantially the whole of the company's property and at least one of which is a qualifying floating charge.

Restrictions on power to appoint

16.—(1) A person may not appoint an administrator under paragraph 15 unless—

(a) he has given at least 2 business days' written notice to the holder of any prior floating charge which satisfies paragraph 15(2), or

(b) the holder of any prior floating charge which satisfies paragraph 15(2) has consented in writing to the making of the appointment.

(2) One floating charge is prior to another for the purposes of this paragraph if—

(a) it was created first, or

(b) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.

17. An administrator may not be appointed under paragraph 15 while a floating charge on which the appointment relies is not enforceable.

18. An administrator of a company may not be appointed under paragraph 15 if—

(a) a provisional liquidator of the company has been appointed under Article 115, or

(b) an administrative receiver of the company is in office.

Notice of appointment

19.—(1) A person who appoints an administrator of a company under paragraph 15 shall file with the High Court—

(a) a notice of appointment, and

(b) such other documents as may be prescribed.

(2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—

(a) that the person is the holder of a qualifying floating charge in respect of the company's property,

(b) that each floating charge relied on in making the appointment is (or was) enforceable on the date of the appointment, and

(c) that the appointment is in accordance with this Schedule.

(3) The notice of appointment must identify the administrator and must be accompanied by a statement by the administrator—

(a) that he consents to the appointment,

(b) that in his opinion the purpose of administration is reasonably likely to be achieved, and

(c) giving such other information and opinions as may be prescribed.

(4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy).

(5) The notice of appointment and any document accompanying it must be in the prescribed form.

(6) A statutory declaration under sub-paragraph (2) must be made during the prescribed period.

(7) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—

(a) which is false, and

(b) which he does not reasonably believe to be true.

Commencement of appointment

20. The appointment of an administrator under paragraph 15 takes effect when the requirements of paragraph 19 are satisfied.

21. A person who appoints an administrator under paragraph 15—

(a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 19 are satisfied, and

(b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).

Invalid appointment: indemnity

22.—(1) This paragraph applies where—

(a) a person purports to appoint an administrator under paragraph 15, and

(b) the appointment is discovered to be invalid.

(2) The High Court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS

Power to appoint

23.—(1) A company may appoint an administrator.

(2) The directors of a company may appoint an administrator.

Restrictions on power to appoint

24.—(1) This paragraph applies where an administrator of a company is appointed—

(a) under paragraph 23, or

(b) on an administration application made by the company or its directors.

(2) An administrator of the company may not be appointed under paragraph 23 during the period of 12 months beginning with the date on which the appointment referred to in sub-paragraph (1) ceases to have effect.

25.—(1) If a moratorium for a company under Schedule A1 ends on a date when no voluntary arrangement is in force in respect of the company, this paragraph applies for the period of 12 months beginning with that date.

(2) This paragraph also applies for the period of 12 months beginning with the date on which a voluntary arrangement in respect of a company ends if—

(a) the arrangement was made during a moratorium for the company under Schedule A1, and

(b) the arrangement ends prematurely (within the meaning of Article 20B).

(3) While this paragraph applies, an administrator of the company may not be appointed under paragraph 23.

26. An administrator of a company may not be appointed under paragraph 23 if—

(a) a petition for the winding up of the company has been presented and is not yet disposed of,

(b) an administration application has been made and is not yet disposed of, or

(c) an administrative receiver of the company is in office.

Notice of intention to appoint

27.—(1) A person who proposes to make an appointment under paragraph 23 shall give at least 5 business days' written notice to—

(a) any person who is or may be entitled to appoint an administrative receiver of the company, and

(b) any person who is or may be entitled to appoint an administrator of the company under paragraph 15.

(2) A person who proposes to make an appointment under paragraph 23 shall also give such notice as may be prescribed to such other persons as may be prescribed.

(3) A notice under this paragraph must—

(a) identify the proposed administrator, and

(b) be in the prescribed form.

28.—(1) A person who gives notice of intention to appoint under paragraph 27 shall file with the High Court as soon as is reasonably practicable a copy of—

(a) the notice, and

(b) any document accompanying it.

(2) The copy filed under sub-paragraph (1) must be accompanied by a statutory declaration made by or on behalf of the person who proposes to make the appointment—

(a) that the company is or is likely to become unable to pay its debts,

(b) that the company is not in liquidation, and

(c) that, so far as the person making the statement is able to ascertain, the appointment is not prevented by paragraphs 24 to 26, and

(d) to such additional effect, and giving such information, as may be prescribed.

(3) A statutory declaration under sub-paragraph (2) must—

(a) be in the prescribed form, and

(b) be made during the prescribed period.

(4) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—

(a) which is false, and

(b) which he does not reasonably believe to be true.

29.—(1) An appointment may not be made under paragraph 23 unless the person who makes the appointment has complied with any requirement of paragraphs 27 and 28 and—

(a) the period of notice specified in paragraph 27(1) has expired, or

(b) each person to whom notice has been given under paragraph 27(1) has consented in writing to the making of the appointment.

(2) An appointment may not be made under paragraph 23 after the period of 10 business days beginning with the date on which the notice of intention to appoint is filed under paragraph 28(1).

Notice of appointment

30.—(1) A person who appoints an administrator of a company under paragraph 23 shall file with the High Court—

(a) a notice of appointment, and

(b) such other documents as may be prescribed.

(2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—

(a) that the person is entitled to make an appointment under paragraph 23,

(b) that the appointment is in accordance with this Schedule, and

(c) that, so far as the person making the statement is able to ascertain, the statements made and information given in the statutory declaration filed with the notice of intention to appoint remain accurate.

(3) The notice of appointment must identify the administrator and must be accompanied by a statement by the administrator—

(a) that he consents to the appointment,

(b) that in his opinion the purpose of administration is reasonably likely to be achieved, and

(c) giving such other information and opinions as may be prescribed.

(4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy).

(5) The notice of appointment and any document accompanying it must be in the prescribed form.

(6) A statutory declaration under sub-paragraph (2) must be made during the prescribed period.

(7) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—

(a) which is false, and

(b) which he does not reasonably believe to be true.

31. In a case in which no person is entitled to notice of intention to appoint under paragraph 27(1) (and paragraph 29 therefore does not apply)—

(a) the statutory declaration accompanying the notice of appointment must include the statements and information required under paragraph 28(2), and

(b) paragraph 30(2)(c) shall not apply.

Commencement of appointment

32. The appointment of an administrator under paragraph 23 takes effect when the requirements of paragraph 30 are satisfied.

33. A person who appoints an administrator under paragraph 23—

(a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 30 are satisfied, and

(b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).

34. If before the requirements of paragraph 30 are satisfied the company enters administration by virtue of an administration order or an appointment under paragraph 15—

(a) the appointment under paragraph 23 shall not take effect, and

(b) paragraph 33 shall not apply.

Invalid appointment: indemnity

35.—(1) This paragraph applies where—

(a) a person purports to appoint an administrator under paragraph 23, and

(b) the appointment is discovered to be invalid.

(2) The High Court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

Application by holder of floating charge

36.—(1) This paragraph applies where an administration application in respect of a company—

(a) is made by the holder of a qualifying floating charge in respect of the company's property, and

(b) includes a statement that the application is made in reliance on this paragraph.

(2) The High Court may make an administration order—

(a) whether or not satisfied that the company is or is likely to become unable to pay its debts, but

(b) only if satisfied that the applicant could appoint an administrator under paragraph 15.

Intervention by holder of floating charge

37.—(1) This paragraph applies where—

(a) an administration application in respect of a company is made by a person who is not the holder of a qualifying floating charge in respect of the company's property, and

(b) the holder of a qualifying floating charge in respect of the company's property applies to the High Court to have a specified person appointed as administrator (and not the person specified by the administration applicant).

(2) The Court shall grant an application under sub-paragraph (1)(b) unless the Court thinks it right to refuse the application because of the particular circumstances of the case.

Application where company in liquidation

38.—(1) This paragraph applies where the holder of a qualifying floating charge in respect of a company's property could appoint an administrator under paragraph 15 but for paragraph 9(1)(b).

(2) The holder of the qualifying floating charge may make an administration application.

(3) If the High Court makes an administration order on hearing an application made by virtue of sub-paragraph (2)—

(a) the Court shall discharge the winding-up order,

(b) the Court shall make provision for such matters as may be prescribed,

(c) the Court may make other consequential provision,

(d) the Court shall specify which of the powers under this Schedule are to be exercisable by the administrator, and

(e) this Schedule shall have effect with such modifications as the Court may specify.

39.—(1) The liquidator of a company may make an administration application.

(2) If the High Court makes an administration order on hearing an application made by virtue of sub-paragraph (1)—

(a) the Court shall discharge any winding-up order in respect of the company,

(b) the Court shall make provision for such matters as may be prescribed,

(c) the Court may make other consequential provision,

(d) the Court shall specify which of the powers under this Schedule are to be exercisable by the administrator, and

(e) this Schedule shall have effect with such modifications as the Court may specify.

Effect of administrative receivership

40.—(1) Where there is an administrative receiver of a company the High Court must dismiss an administration application in respect of the company unless—

(a) the person by or on behalf of whom the receiver was appointed consents to the making of the administration order,

(b) the Court thinks that the security by virtue of which the receiver was appointed would be liable to be released or discharged under Articles 202 to 204 (transaction at undervalue and preference) if an administration order were made, or

(c) the Court thinks that the security by virtue of which the receiver was appointed would be avoided under Article 207 (avoidance of floating charge) if an administration order were made.

(2) Sub-paragraph (1) applies whether the administrative receiver is appointed before or after the making of the administration application.

EFFECT OF ADMINISTRATION

Dismissal of pending winding-up petition

41.—(1) A petition for the winding up of a company—

(a) shall be dismissed on the making of an administration order in respect of the company, and

(b) shall be suspended while the company is in administration following an appointment under paragraph 15.

(2) Sub-paragraph (1)(b) does not apply to a petition presented under—

(a) Article 104A (public interest),

(b) Article 104B (SEs), or

(c) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Services Authority).

(3) Where an administrator becomes aware that a petition was presented under a provision referred to in sub-paragraph (2) before his appointment, he shall apply to the High Court for directions under paragraph 64.

Dismissal of administrative or other receiver

42.—(1) When an administration order takes effect in respect of a company any administrative receiver of the company shall vacate office.

(2) Where a company is in administration, any receiver of part of the company's property shall vacate office if the administrator requires him to.

(3) Where an administrative receiver or receiver vacates office under sub-paragraph (1) or (2)—

(a) his remuneration shall be charged on and paid out of any property of the company which was in his custody or under his control immediately before he vacated office, and

(b) he need not take any further steps under Article 50.

(4) In the application of sub-paragraph (3)(a)—

(a) "remuneration" includes expenses properly incurred and any indemnity to which the administrative receiver or receiver is entitled out of the assets of the company,

(b) the charge imposed takes priority over security held by the person by whom or on whose behalf the administrative receiver or receiver was appointed, and

(c) the provision for payment is subject to paragraph 44.

Moratorium on insolvency proceedings

43.—(1) This paragraph applies to a company in administration.

(2) No resolution may be passed for the winding up of the company.

(3) No order may be made for the winding up of the company.

(4) Sub-paragraph (3) does not apply to an order made on a petition presented under—

(a) Article 104A (public interest),

(b) Article 104B (SEs), or

(c) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Services Authority).

(5) If a petition presented under a provision referred to in sub-paragraph (4) comes to the attention of the administrator, he shall apply to the High Court for directions under paragraph 64.

Moratorium on other legal process

44.—(1) This paragraph applies to a company in administration.

(2) No step may be taken to enforce security over the company's property except—

(a) with the consent of the administrator, or

(b) with the permission of the High Court.

(3) No step may be taken to repossess goods in the company's possession under a hire-purchase agreement except—

(a) with the consent of the administrator, or

(b) with the permission of the Court.

(4) A landlord may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company except—

(a) with the consent of the administrator, or

(b) with the permission of the Court.

(5) No legal process (including legal proceedings, execution and distress) may be instituted or continued against the company or property of the company except—

(a) with the consent of the administrator, or

(b) with the permission of the Court.

(6) An administrative receiver of the company may not be appointed.

(7) Where the Court gives permission for a transaction under this paragraph it may impose a condition on or a requirement in connection with the transaction.

(8) In this paragraph "landlord" includes a person to whom rent is payable.

Interim moratorium

45.—(1) This paragraph applies where an administration application in respect of a company has been made and—

(a) the application has not yet been granted or dismissed, or

(b) the application has been granted but the administration order has not yet taken effect.

(2) This paragraph also applies from the time when a copy of notice of intention to appoint an administrator under paragraph 15 is filed with the High Court until—

(a) the appointment of the administrator takes effect, or

(b) the period of 5 business days beginning with the date of filing expires without an administrator having been appointed.

(3) Sub-paragraph (2) has effect in relation to a notice of intention to appoint only if it is in the prescribed form.

(4) This paragraph also applies from the time when a copy of notice of intention to appoint an administrator is filed with the Court under paragraph 28(1) until—

(a) the appointment of the administrator takes effect, or

(b) the period specified in paragraph 29(2) expires without an administrator having been appointed.

(5) The provisions of paragraphs 43 and 44 shall apply (ignoring any reference to the consent of the administrator).

(6) If there is an administrative receiver of the company when the administration application is made, the provisions of paragraphs 43 and 44 shall not begin to apply by virtue of this paragraph until the person by or on behalf of whom the receiver was appointed consents to the making of the administration order.

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(7) This paragraph does not prevent or require the permission of the High Court for—

(a) the presentation of a petition for the winding up of the company under a provision mentioned in paragraph 43(4),

(b) the appointment of an administrator under paragraph 15,

(c) the appointment of an administrative receiver of the company, or

(d) the carrying out by an administrative receiver (whenever appointed) of his functions.

Publicity

46.—(1) While a company is in administration every business document issued by or on behalf of the company or the administrator must state—

(a) the name of the administrator, and

(b) that the affairs, business and property of the company are being managed by him.

(2) Any of the following commits an offence if without reasonable excuse he authorises or permits a contravention of sub-paragraph (1)—

(a) the administrator,

(b) an officer of the company, and

(c) the company.

(3) In sub-paragraph (1) "business document" means—

(a) an invoice,

(b) an order for goods or services, and

(c) a business letter.

PROCESS OF ADMINISTRATION

Announcement of administrator's appointment

47.—(1) This paragraph applies where a person becomes the administrator of a company.

(2) As soon as is reasonably practicable the administrator shall—

(a) send a notice of his appointment to the company, and

(b) publish a notice of his appointment in the prescribed manner.

(3) As soon as is reasonably practicable the administrator shall—

(a) obtain a list of the company's creditors, and

(b) send a notice of his appointment to each creditor of whose claim and address he is aware.

(4) The administrator shall send a notice of his appointment to the registrar before the end of the period of 7 days beginning with the date specified in sub-paragraph (6).

(5) The administrator shall send a notice of his appointment to such persons as may be prescribed before the end of the prescribed period beginning with the date specified in sub-paragraph (6).

(6) The date for the purpose of sub-paragraphs (4) and (5) is—

(a) in the case of an administrator appointed by administration order, the date of the order,

(b) in the case of an administrator appointed under paragraph 15, the date on which he receives notice under paragraph 21, and

(c) in the case of an administrator appointed under paragraph 23, the date on which he receives notice under paragraph 33.

(7) The High Court may direct that sub-paragraph (3)(b) or (5)—

(a) shall not apply, or

(b) shall apply with the substitution of a different period.

(8) A notice under this paragraph must—

(a) contain the prescribed information, and

(b) be in the prescribed form.

(9) An administrator commits an offence if he fails without reasonable excuse to comply with a requirement of this paragraph.

Statement of company's affairs

48.—(1) As soon as is reasonably practicable after appointment the administrator of a company shall by notice in the prescribed form require one or more relevant persons to provide the administrator with a statement of the affairs of the company.

(2) The statement must—

(a) be verified by affidavit,

(b) be in the prescribed form,

(c) give particulars of the company's property, debts and liabilities,

(d) give the names and addresses of the company's creditors,

(e) specify the security held by each creditor,

(f) give the date on which each security was granted, and

(g) contain such other information as may be prescribed.

(3) In sub-paragraph (1) "relevant person" means—

(a) a person who is or has been an officer of the company,

(b) a person who took part in the formation of the company during the period of one year ending with the date on which the company enters administration,

(c) a person employed by the company during that period, and

(d) a person who is or has been during that period an officer or employee of a company which is or has been during that year an officer of the company.

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(4) For the purpose of sub-paragraph (3) a reference to employment is a reference to employment through a contract of employment or a contract for services.

49.—(1) A person required to submit a statement of affairs must do so before the end of the period of 11 days beginning with the day on which he receives notice of the requirement.

(2) The administrator may—

(a) revoke a requirement under paragraph 48(1), or

(b) extend the period specified in sub-paragraph (1) (whether before or after expiry).

(3) If the administrator refuses a request to act under sub-paragraph (2)—

(a) the person whose request is refused may apply to the High Court, and

(b) the Court may take action of a kind specified in sub-paragraph (2).

(4) A person commits an offence if he fails without reasonable excuse to comply with a requirement under paragraph 48(1).

Administrator's proposals

50.—(1) The administrator of a company shall make a statement setting out proposals for achieving the purpose of administration.

(2) A statement under sub-paragraph (1) must, in particular—

(a) deal with such matters as may be prescribed, and

(b) where applicable, explain why the administrator thinks that the objective mentioned in paragraph 4(1)(a) or (b) cannot be achieved.

(3) Proposals under this paragraph may include—

(a) a proposal for a voluntary arrangement under Part II of this Order (although this paragraph is without prejudice to Article 17(3));

(b) a proposal for a compromise or arrangement to be sanctioned under Article 418 of the Companies Order (compromise with creditors or members).

(4) The administrator shall send a copy of the statement of his proposals—

(a) to the registrar,

(b) to every creditor of the company of whose claim and address he is aware, and

(c) to every member of the company of whose address he is aware.

(5) The administrator shall comply with sub-paragraph (4)—

(a) as soon as is reasonably practicable after the company enters administration, and

(b) in any event, before the end of the period of 8 weeks beginning with the day on which the company enters administration.

(6) The administrator shall be taken to comply with sub-paragraph (4)(c) if he publishes in the prescribed manner a notice undertaking to provide a copy of the statement of proposals free of charge to any member of the company who applies in writing to a specified address.

(7) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (5).

(8) A period specified in this paragraph may be varied in accordance with paragraph 108.

Creditors' meeting

51.—(1) In this Schedule "creditors' meeting" means a meeting of creditors of a company summoned by the administrator—

(a) in the prescribed manner, and

(b) giving the prescribed period of notice to every creditor of the company of whose claim and address he is aware.

(2) A period prescribed under sub-paragraph (1)(b) may be varied in accordance with paragraph 108.

(3) A creditors' meeting shall be conducted in accordance with the rules.

Requirement for initial creditors' meeting

52.—(1) Each copy of an administrator's statement of proposals sent to a creditor under paragraph 50(4)(b) must be accompanied by an invitation to a creditors' meeting (an "initial creditors' meeting").

(2) The date set for an initial creditors' meeting must be—

(a) as soon as is reasonably practicable after the company enters administration, and

(b) in any event, within the period of 10 weeks beginning with the date on which the company enters administration.

(3) An administrator shall present a copy of his statement of proposals to an initial creditors' meeting.

(4) A period specified in this paragraph may be varied in accordance with paragraph 108.

(5) An administrator commits an offence if he fails without reasonable excuse to comply with a requirement of this paragraph.

53.—(1) Paragraph 52(1) shall not apply where the statement of proposals states that the administrator thinks—

(a) that the company has sufficient property to enable each creditor of the company to be paid in full,

(b) that the company has insufficient property to enable a distribution to be made to unsecured creditors other than by virtue of Article 150A(2)(a), or

(c) that neither of the objectives specified in paragraph 4(1)(a) and (b) can be achieved.

(2) But the administrator shall summon an initial creditors' meeting if it is requested—

(a) by creditors of the company whose debts amount to at least 10 per cent. of the total debts of the company,

(b) in the prescribed manner, and

(c) in the prescribed period.

(3) A meeting requested under sub-paragraph (2) must be summoned for a date in the prescribed period.

(4) The period prescribed under sub-paragraph (3) may be varied in accordance with paragraph 108.

Business and result of initial creditors' meeting

54.—(1) An initial creditors' meeting to which an administrator's proposals are presented shall consider them and may—

(a) approve them without modification, or

(b) approve them with modification to which the administrator consents.

(2) After the conclusion of an initial creditors' meeting the administrator shall as soon as is reasonably practicable report any decision taken to—

(a) the High Court,

(b) the registrar, and

(c) such other persons as may be prescribed.

(3) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (2).

Revision of administrator's proposals

55.—(1) This paragraph applies where—

(a) an administrator's proposals have been approved (with or without modification) at an initial creditors' meeting,

(b) the administrator proposes a revision to the proposals, and

(c) the administrator thinks that the proposed revision is substantial.

(2) The administrator shall—

(a) summon a creditors' meeting,

(b) send a statement in the prescribed form of the proposed revision with the notice of the meeting sent to each creditor,

(c) send a copy of the statement, within the prescribed period, to each member of the company of whose address he is aware, and

(d) present a copy of the statement to the meeting.

(3) The administrator shall be taken to have complied with sub-paragraph (2)(c) if he publishes a notice undertaking to provide a copy of the statement free of charge to any member of the company who applies in writing to a specified address.

(4) A notice under sub-paragraph (3) must be published—

(a) in the prescribed manner, and

(b) within the prescribed period.

(5) A creditors' meeting to which a proposed revision is presented shall consider it and may—

(a) approve it without modification, or

(b) approve it with modification to which the administrator consents.

(6) After the conclusion of a creditors' meeting the administrator shall as soon as is reasonably practicable report any decision taken to—

(a) the High Court,

(b) the registrar, and

(c) such other persons as may be prescribed.

(7) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (6).

Failure to obtain approval of administrator's proposals

56.—(1) This paragraph applies where an administrator reports to the High Court that—

(a) an initial creditors' meeting has failed to approve the administrator's proposals presented to it, or

(b) a creditors' meeting has failed to approve a revision of the administrator's proposals presented to it.

(2) The Court may—

(a) provide that the appointment of an administrator shall cease to have effect from a specified time;

(b) adjourn the hearing conditionally or unconditionally;

(c) make an interim order;

(d) make an order on a petition for winding up suspended by virtue of paragraph 41(1)(b);

(e) make any other order (including an order making consequential provision) that the Court thinks appropriate.

Further creditors' meetings

57.—(1) The administrator of a company shall summon a creditors' meeting if—

(a) it is requested in the prescribed manner by creditors of the company whose debts amount to at least 10 per cent. of the total debts of the company, or

(b) he is directed by the High Court to summon a creditors' meeting.

(2) An administrator commits an offence if he fails without reasonable excuse to summon a creditors' meeting as required by this paragraph.

Creditors' committee

58.—(1) A creditors' meeting may establish a creditors' committee.

(2) A creditors' committee shall carry out functions conferred on it by or under this Order.

(3) A creditors' committee may require the administrator—

(a) to attend on the committee at any reasonable time of which he is given at least 7 days' notice, and

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(b) to provide the committee with information about the exercise of his functions.

Correspondence instead of creditors' meeting

59.—(1) Anything which is required or permitted by or under this Schedule to be done at a creditors' meeting may be done by correspondence between the administrator and creditors—

(a) in accordance with the rules, and

(b) subject to any prescribed condition.

(2) A reference in this Schedule to anything done at a creditors' meeting includes a reference to anything done in the course of correspondence in reliance on sub-paragraph (1).

(3) A requirement to hold a creditors' meeting is satisfied by conducting correspondence in accordance with this paragraph.

FUNCTIONS OF ADMINISTRATOR

General powers

60.—(1) The administrator of a company may do anything necessary or expedient for the management of the affairs, business and property of the company.

(2) A provision of this Schedule which expressly permits the administrator to do a specified thing is without prejudice to the generality of sub-paragraph (1).

(3) A person who deals with the administrator of a company in good faith and for value need not inquire whether the administrator is acting within his powers.

61. The administrator of a company has the powers specified in Schedule 1.

62. The administrator of a company—

(a) may remove a director of the company, and

(b) may appoint a director of the company (whether or not to fill a vacancy).

63. The administrator of a company may call a meeting of members or creditors of the company.

64. The administrator of a company may apply to the High Court for directions in connection with his functions.

65.—(1) A company in administration or an officer of a company in administration may not exercise a management power without the consent of the administrator.

(2) For the purpose of sub-paragraph (1)—

(a) " management power" means a power which could be exercised so as to interfere with the exercise of the administrator's powers,

(b) it is immaterial whether the power is conferred by an enactment or an instrument, and

(c) consent may be general or specific.

Distribution

66.—(1) The administrator of a company may make a distribution to a creditor of the company.

(2) Article 149 shall apply in relation to a distribution under this paragraph as it applies in relation to a winding up.

(3) A payment may not be made by way of distribution under this paragraph to a creditor of the company who is neither secured nor preferential unless the High Court gives permission.

67. The administrator of a company may make a payment otherwise than in accordance with paragraph 66 or paragraph 14 of Schedule 1 if he thinks it likely to assist achievement of the purpose of administration.

General duties

68. The administrator of a company shall on his appointment take custody or control of all the property to which he thinks the company is entitled.

69.—(1) Subject to sub-paragraph (2), the administrator of a company shall manage its affairs, business and property in accordance with—

(a) any proposals approved under paragraph 54,

(b) any revision of those proposals which is made by him and which he does not consider substantial, and

(c) any revision of those proposals approved under paragraph 55.

(2) If the High Court gives directions to the administrator of a company in connection with any aspect of his management of the company's affairs, business or property, the administrator shall comply with the directions.

(3) The Court may give directions under sub-paragraph (2) only if—

(a) no proposals have been approved under paragraph 54,

(b) the directions are consistent with any proposals or revision approved under paragraph 54 or 55,

(c) the Court thinks the directions are required in order to reflect a change in circumstances since the approval of proposals or a revision under paragraph 54 or 55, or

(d) the Court thinks the directions are desirable because of a misunderstanding about proposals or a revision approved under paragraph 54 or 55.

Administrator as agent of company

70. In exercising his functions under this Schedule the administrator of a company acts as its agent.

Charged property: floating charge

71.—(1) The administrator of a company may dispose of or take action relating to property which is subject to a floating charge as if it were not subject to the charge.

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(2) Where property is disposed of in reliance on sub-paragraph (1) the holder of the floating charge shall have the same priority in respect of acquired property as he had in respect of the property disposed of.

(3) In sub-paragraph (2) "acquired property" means property of the company which directly or indirectly represents the property disposed of.

Charged property: non-floating charge

72.—(1) The High Court may by order enable the administrator of a company to dispose of property which is subject to a security (other than a floating charge) as if it were not subject to the security.

(2) An order under sub-paragraph (1) may be made only—

(a) on the application of the administrator, and

(b) where the Court thinks that disposal of the property would be likely to promote the purpose of administration in respect of the company.

(3) An order under this paragraph is subject to the condition that there be applied towards discharging the sums secured by the security—

(a) the net proceeds of disposal of the property, 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 property at market value.

(4) If an order under this paragraph relates to more than one security, application of money under sub-paragraph (3) shall be in the order of the priorities of the securities.

(5) An administrator who makes a successful application for an order under this paragraph shall send a copy of the order to the registrar before the end of the period of 14 days starting with the date of the order.

(6) An administrator commits an offence if he fails to comply with sub-paragraph (5) without reasonable excuse.

Hire-purchase property

73.—(1) The High Court may by order enable the administrator of a company to dispose of goods which are in the possession of the company under a hire-purchase agreement as if all the rights of the owner under the agreement were vested in the company.

(2) An order under sub-paragraph (1) may be made only—

(a) on the application of the administrator, and

(b) where the Court thinks that disposal of the goods would be likely to promote the purpose of administration in respect of the company.

(3) An order under this paragraph is subject to the condition that there be applied 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 at market value.

(4) An administrator who makes a successful application for an order under this paragraph shall send a copy of the order to the registrar before the end of the period of 14 days starting with the date of the order.

(5) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (4).

Protection for secured or preferential creditor

74.—(1) An administrator's statement of proposals under paragraph 50 may not include any action which—

(a) affects the right of a secured creditor of the company to enforce his security,

(b) would result in a preferential debt of the company being paid otherwise than in priority to its non-preferential debts, or

(c) would result in one preferential creditor of the company being paid a smaller proportion of his debt than another.

(2) Sub-paragraph (1) does not apply to—

(a) action to which the relevant creditor consents,

(b) a proposal for a voluntary arrangement under Part II of this Order (although this sub-paragraph is without prejudice to Article 17(3)), or

(c) a proposal for a compromise or arrangement to be sanctioned under Article 418 of the Companies Order (compromise with creditors or members).

(3) The reference to a statement of proposals in sub-paragraph (1) includes a reference to a statement as revised or modified.

Challenge to administrator's conduct of company

75.—(1) A creditor or member of a company in administration may apply to the High Court claiming that—

(a) the administrator is acting or has acted so as unfairly to harm the interests of the applicant (whether alone or in common with some or all other members or creditors), or

(b) the administrator proposes to act in a way which would unfairly harm the interests of the applicant (whether alone or in common with some or all other members or creditors).

(2) A creditor or member of a company in administration may apply to the Court claiming that the administrator is not performing his functions as quickly or as efficiently as is reasonably practicable.

(3) The Court may—

(a) grant relief;

(b) dismiss the application;

(c) adjourn the hearing conditionally or unconditionally;

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(d) make an interim order;

(e) make any other order it thinks appropriate.

(4) In particular, an order under this paragraph may—

(a) regulate the administrator's exercise of his functions;

(b) require the administrator to do or not do a specified thing;

(c) require a creditors' meeting to be held for a specified purpose;

(d) provide for the appointment of an administrator to cease to have effect;

(e) make consequential provision.

(5) An order may be made on a claim under sub-paragraph (1) whether or not the action complained of—

(a) is within the administrator's powers under this Schedule;

(b) was taken in reliance on an order under paragraph 72 or 73.

(6) An order may not be made under this paragraph if it would impede or prevent the implementation of—

(a) a voluntary arrangement approved under Part II,

(b) a compromise or arrangement sanctioned under Article 418 of the Companies Order (compromise with creditors and members), or

(c) proposals or a revision approved under paragraph 54 or 55 more than 28 days before the day on which the application for the order under this paragraph is made.

Misfeasance

76.—(1) The High Court may examine the conduct of a person who—

(a) is or purports to be the administrator of a company, or

(b) has been or has purported to be the administrator of a company.

(2) An examination under this paragraph may be held only on the application of—

(a) the official receiver,

(b) the administrator of the company,

(c) the liquidator of the company,

(d) a creditor of the company, or

(e) a contributory of the company.

(3) An application under sub-paragraph (2) must allege that the administrator—

(a) has misapplied or retained money or other property of the company,

(b) has become accountable for money or other property of the company,

(c) has breached a fiduciary or other duty in relation to the company, or

(d) has been guilty of misfeasance.

(4) On an examination under this paragraph into a person's conduct the Court may order him—

(a) to repay, restore or account for money or property;

(b) to pay interest;

(c) to contribute a sum to the company's property by way of compensation for breach of duty or misfeasance.

(5) In sub-paragraph (3) "administrator" includes a person who purports or has purported to be a company's administrator.

(6) An application under sub-paragraph (2) may be made in respect of an administrator who has been discharged under paragraph 99 only with the permission of the Court.

ENDING ADMINISTRATION

Automatic end of administration

77.—(1) The appointment of an administrator shall cease to have effect at the end of the period of one year beginning with the date on which it takes effect.

(2) But—

(a) on the application of an administrator the High Court may by order extend his term of office for a specified period, and

(b) an administrator's term of office may be extended for a specified period not exceeding 6 months by consent.

78.—(1) An order of the High Court under paragraph 77—

(a) may be made in respect of an administrator whose term of office has already been extended by order or by consent, but

(b) may not be made after the expiry of the administrator's term of office.

(2) Where an order is made under paragraph 77 the administrator shall as soon as is reasonably practicable notify the registrar.

(3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

79.—(1) In paragraph 77(2)(b) "consent" means consent of—

(a) each secured creditor of the company, and

(b) if the company has unsecured debts, creditors whose debts amount to more than 50 per cent. of the company's unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(2) But where the administrator has made a statement under paragraph 53(1)(b) "consent" means—

(a) consent of each secured creditor of the company, or

(b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—

(i) each secured creditor of the company, and

(ii) preferential creditors whose debts amount to more than 50 per cent. of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(3) Consent for the purposes of paragraph 77(2)(b) may be—

(a) written, or

(b) signified at a creditors' meeting.

(4) An administrator's term of office—

(a) may be extended by consent only once,

(b) may not be extended by consent after extension by order of the High Court, and

(c) may not be extended by consent after expiry.

(5) Where an administrator's term of office is extended by consent he shall as soon as is reasonably practicable—

(a) file notice of the extension with the Court, and

(b) notify the registrar.

(6) An administrator who fails without reasonable excuse to comply with sub-paragraph (5) commits an offence.

Court ending administration on application of administrator

80.—(1) On the application of the administrator of a company the High Court may provide for the appointment of an administrator of the company to cease to have effect from a specified time.

(2) The administrator of a company shall make an application under this paragraph if—

(a) he thinks the purpose of administration cannot be achieved in relation to the company,

(b) he thinks the company should not have entered administration, or

(c) a creditors' meeting requires him to make an application under this paragraph.

(3) The administrator of a company shall make an application under this paragraph if—

(a) the administration is pursuant to an administration order, and

(b) the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company.

(4) On an application under this paragraph the Court may—

(a) adjourn the hearing conditionally or unconditionally;

(b) dismiss the application;

(c) make an interim order;

(d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

Termination of administration where objective achieved

81.—(1) This paragraph applies where an administrator of a company is appointed under paragraph 15 or 23.

(2) If the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company he may file a notice in the prescribed form—

(a) with the High Court, and

(b) with the registrar.

(3) The administrator's appointment shall cease to have effect when the requirements of sub-paragraph (2) are satisfied.

(4) Where the administrator files a notice he shall within the prescribed period send a copy to every creditor of the company of whose claim and address he is aware.

(5) The rules may provide that the administrator is taken to have complied with sub-paragraph (4) if before the end of the prescribed period he publishes in the prescribed manner a notice undertaking to provide a copy of the notice under sub-paragraph (2) to any creditor of the company who applies in writing to a specified address.

(6) An administrator who fails without reasonable excuse to comply with sub-paragraph (4) commits an offence.

Court ending administration on application of creditor

82.—(1) On the application of a creditor of a company the High Court may provide for the appointment of an administrator of the company to cease to have effect at a specified time.

(2) An application under this paragraph must allege an improper motive—

(a) in the case of an administrator appointed by administration order, on the part of the applicant for the order, or

(b) in any other case, on the part of the person who appointed the administrator.

(3) On an application under this paragraph the Court may—

(a) adjourn the hearing conditionally or unconditionally;

(b) dismiss the application;

(c) make an interim order;

(d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

Public interest winding-up

83.—(1) This paragraph applies where a winding-up order is made for the winding up of a company in administration on a petition presented under—

(a) Article 104A (public interest),

(b) Article 104B (SEs), or

(c) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Services Authority).

(2) This paragraph also applies where a provisional liquidator of a company in administration is appointed following the presentation of a petition under any of the provisions listed in sub-paragraph (1).

(3) The High Court shall order—

(a) that the appointment of the administrator shall cease to have effect, or

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(b) that the appointment of the administrator shall continue to have effect.

(4) If the Court makes an order under sub-paragraph (3)(b) it may also—

(a) specify which of the powers under this Schedule are to be exercisable by the administrator, and

(b) order that this Schedule shall have effect in relation to the administrator with specified modifications.

Moving from administration to creditors' voluntary liquidation

84.—(1) This paragraph applies where the administrator of a company thinks—

(a) that the total amount which each secured creditor of the company is likely to receive has been paid to him or set aside for him, and

(b) that a distribution will be made to unsecured creditors of the company (if there are any).

(2) The administrator may send to the registrar a notice that this paragraph applies.

(3) On receipt of a notice under sub-paragraph (2) the registrar shall register it.

(4) If an administrator sends a notice under sub-paragraph (2) he shall as soon as is reasonably practicable—

(a) file a copy of the notice with the High Court, and

(b) send a copy of the notice to each creditor of whose claim and address he is aware.

(5) On the registration of a notice under sub-paragraph (2)—

(a) the appointment of an administrator in respect of the company shall cease to have effect, and

(b) the company shall be wound up as if a resolution for voluntary winding up under Article 70 were passed on the day on which the notice is registered.

(6) The liquidator for the purposes of the winding up shall be—

(a) a person nominated by the creditors of the company in the prescribed manner and within the prescribed period, or

(b) if no person is nominated under paragraph (a), the administrator.

(7) In the application of Part V to a winding up by virtue of this paragraph—

(a) Article 71 shall not apply,

(b) Article 72 shall apply as if the reference to the time of the passing of the resolution for voluntary winding up were a reference to the beginning of the date of registration of the notice under sub-paragraph (2),

(c) Article 75 does not apply,

(d) Articles 84, 85 and 86 shall not apply,

(e) Article 109 shall apply as if the reference to the time of the passing of the resolution for voluntary winding up were a reference to the beginning of the date of registration of the notice under sub-paragraph (2), and

(f) any creditors' committee which is in existence immediately before the company ceases to be in administration shall continue in existence after that time as if appointed as a liquidation committee under Article 87.

Moving from administration to dissolution

85.—(1) If the administrator of a company thinks that the company has no property which might permit a distribution to its creditors, he shall send a notice to that effect to the registrar.

(2) The High Court may on the application of the administrator of a company disapply sub-paragraph (1) in respect of the company.

(3) On receipt of a notice under sub-paragraph (1) the registrar shall register it.

(4) On the registration of a notice in respect of a company under sub-paragraph (1) the appointment of an administrator of the company shall cease to have effect.

(5) If an administrator sends a notice under sub-paragraph (1) he shall as soon as is reasonably practicable—

(a) file a copy of the notice with the Court, and

(b) send a copy of the notice to each creditor of whose claim and address he is aware.

(6) At the end of the period of 3 months beginning with the date of registration of a notice in respect of a company under sub-paragraph (1) the company is deemed to be dissolved.

(7) On an application in respect of a company by the administrator or another interested person the Court may—

(a) extend the period specified in sub-paragraph (6),

(b) suspend that period, or

(c) disapply sub-paragraph (6).

(8) Where an order is made under sub-paragraph (7) in respect of a company the administrator shall as soon as is reasonably practicable notify the registrar.

(9) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (5).

Discharge of administration order where administration ends

86.—(1) This paragraph applies where—

(a) the High Court makes an order under this Schedule providing for the appointment of an administrator of a company to cease to have effect, and

(b) the administrator was appointed by administration order.

(2) The Court shall discharge the administration order.

Notice to registrar where administration ends

87.—(1) This paragraph applies where the High Court makes an order under this Schedule providing for the appointment of an administrator to cease to have effect.

(2) The administrator shall send a copy of the order to the registrar within the period of 14 days beginning with the date of the order.

(3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

REPLACING ADMINISTRATOR

Resignation of administrator

88.—(1) An administrator may resign only in prescribed circumstances.

(2) Where an administrator may resign he may do so only—

(a) in the case of an administrator appointed by administration order, by notice in writing to the High Court,

(b) in the case of an administrator appointed under paragraph 15, by notice in writing to the holder of the floating charge by virtue of which the appointment was made,

(c) in the case of an administrator appointed under paragraph 23(1), by notice in writing to the company, or

(d) in the case of an administrator appointed under paragraph 23(2), by notice in writing to the directors of the company.

Removal of administrator from office

89. The High Court may by order remove an administrator from office.

Administrator ceasing to be qualified

90.—(1) The administrator of a company shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.

(2) Where an administrator vacates office by virtue of sub-paragraph (1) he shall give notice in writing—

(a) in the case of an administrator appointed by administration order, to the High Court,

(b) in the case of an administrator appointed under paragraph 15, to the holder of the floating charge by virtue of which the appointment was made,

(c) in the case of an administrator appointed under paragraph 23(1), to the company, or

(d) in the case of an administrator appointed under paragraph 23(2), to the directors of the company.

(3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

Supplying vacancy in office of administrator

91. Paragraphs 92 to 96 apply where an administrator—

(a) dies,

(b) resigns,

(c) is removed from office under paragraph 89, or

(d) vacates office under paragraph 90.

92.—(1) Where the administrator was appointed by administration order, the High Court may replace the administrator on an application under this sub-paragraph made by—

(a) a creditors' committee of the company,

(b) the company,

(c) the directors of the company,

(d) one or more creditors of the company, or

(e) where more than one person was appointed to act jointly or concurrently as the administrator, any of those persons who remains in office.

(2) But an application may be made in reliance on sub-paragraph (1)(b) to (d) only where—

(a) there is no creditors' committee of the company,

(b) the Court is satisfied that the creditors' committee or a remaining administrator is not taking reasonable steps to make a replacement, or

(c) the Court is satisfied that for another reason it is right for the application to be made.

93. Where the administrator was appointed under paragraph 15 the holder of the floating charge by virtue of which the appointment was made may replace the administrator.

94.—(1) Where the administrator was appointed under paragraph 23(1) by the company it may replace the administrator.

(2) A replacement under this paragraph may be made only—

(a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or

(b) where consent is withheld, with the permission of the High Court.

95.—(1) Where the administrator was appointed under paragraph 23(2) the directors of the company may replace the administrator.

(2) A replacement under this paragraph may be made only—

(a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or

(b) where consent is withheld, with the permission of the High Court.

96. The High Court may replace an administrator on the application of a person listed in paragraph 92(1) if the Court—

(a) is satisfied that a person who is entitled to replace the administrator under any of paragraphs 93 to 95 is not taking reasonable steps to make a replacement, or

(b) that for another reason it is right for the Court to make the replacement.

Substitution of administrator: competing floating charge-holder

97.—(1) This paragraph applies where an administrator of a company is appointed under paragraph 15 by the holder of a qualifying floating charge in respect of the company's property.

(2) The holder of a prior qualifying floating charge in respect of the company's property may apply to the High Court for the administrator to be replaced by an administrator nominated by the holder of the prior floating charge.

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(3) One floating charge is prior to another for the purposes of this paragraph if—

(a) it was created first, or

(b) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.

Substitution of administrator appointed by company or directors: creditors' meeting

98.—(1) This paragraph applies where—

(a) an administrator of a company is appointed by a company or directors under paragraph 23, and

(b) there is no holder of a qualifying floating charge in respect of the company's property.

(2) A creditors' meeting may replace the administrator.

(3) A creditor's meeting may act under sub-paragraph (2) only if the new administrator's written consent to act is presented to the meeting before the replacement is made.

Vacation of office: discharge from liability

99.—(1) Where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect) he is discharged from liability in respect of any action of his as administrator.

(2) The discharge provided by sub-paragraph (1) takes effect—

(a) in the case of an administrator who dies, on the filing with the High Court of notice of his death,

(b) in the case of an administrator appointed under paragraph 15 or 23, at a time appointed by resolution of the creditors' committee or, if there is no committee, by resolution of the creditors, or

(c) in any case, at a time specified by the Court.

(3) For the purpose of the application of sub-paragraph (2)(b) in a case where the administrator has made a statement under paragraph 53(1)(b), a resolution shall be taken as passed if (and only if) passed with the approval of—

(a) each secured creditor of the company, or

(b) if the administrator has made a distribution to preferential creditors or thinks that a distribution may be made to preferential creditors—

(i) each secured creditor of the company, and

(ii) preferential creditors whose debts amount to more than 50 per cent. of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

(4) Discharge—

(a) applies to liability accrued before the discharge takes effect, and

(b) does not prevent the exercise of the High Court's powers under paragraph 76.

Vacation of office: charges and liabilities

100.—(1) This paragraph applies where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect).

(2) In this paragraph—

"the former administrator" means the person referred to in sub-paragraph (1), and

"cessation" means the time when he ceases to be the company's administrator.

(3) The former administrator's remuneration and expenses shall be—

(a) charged on and payable out of property of which he had custody or control immediately before cessation, and

(b) payable in priority to any security to which paragraph 71 applies.

(4) A sum payable in respect of a debt or liability arising out of a contract entered into by the former administrator or a predecessor before cessation shall be—

(a) charged on and payable out of property of which the former administrator had custody or control immediately before cessation, and

(b) payable in priority to any charge arising under sub-paragraph (3).

(5) Sub-paragraph (4) shall apply to a liability arising under a contract of employment which was adopted by the former administrator or a predecessor before cessation; and for that purpose—

(a) action taken within the period of 14 days after an administrator's appointment shall not be taken to amount or contribute to the adoption of a contract,

(b) no account shall be taken of a liability which arises, or in so far as it arises, by reference to anything which is done or which occurs before the adoption of the contract of employment, and

(c) no account shall be taken of a liability to make a payment other than wages or salary.

(6) In sub-paragraph (5)(c) "wages or salary" includes—

(a) a sum payable in respect of a period of holiday (for which purpose the sum shall 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,

(d) in respect of a period, a sum which would be treated as earnings for that period for the purposes of an enactment about social security, and

(e) a contribution to an occupational pension scheme.

Joint and concurrent administrators

101.—(1) In this Schedule—

(a) a reference to the appointment of an administrator of a company includes a reference to the appointment of a number of persons to act jointly or concurrently as the administrator of a company, and

(b) a reference to the appointment of a person as administrator of a company includes a reference to the appointment of a person as one of a number of persons to act jointly or concurrently as the administrator of a company.

(2) The appointment of a number of persons to act as administrator of a company must specify—

(a) which functions (if any) are to be exercised by the persons appointed acting jointly, and

(b) which functions (if any) are to be exercised by any or all of the persons appointed.

102.—(1) This paragraph applies where two or more persons are appointed to act jointly as the administrator of a company.

(2) A reference to the administrator of the company is a reference to those persons acting jointly.

(3) But a reference to the administrator of a company in paragraphs 88 to 100 of this Schedule is a reference to any or all of the persons appointed to act jointly.

(4) Where an offence of omission is committed by the administrator, each of the persons appointed to act jointly—

(a) commits the offence, and

(b) may be proceeded against and punished individually.

(5) The reference in paragraph 46(1)(a) to the name of the administrator is a reference to the name of each of the persons appointed to act jointly.

(6) Where persons are appointed to act jointly in respect of only some of the functions of the administrator of a company, this paragraph applies only in relation to those functions.

103.—(1) This paragraph applies where two or more persons are appointed to act concurrently as the administrator of a company.

(2) A reference to the administrator of a company in this Schedule is a reference to any of the persons appointed (or any combination of them).

104.—(1) Where a company is in administration, a person may be appointed to act as administrator jointly or concurrently with the person or persons acting as the administrator of the company.

(2) Where a company entered administration by administration order, an appointment under sub-paragraph (1) must be made by the High Court on the application of—

(a) a person or group listed in paragraph 13(1)(a) to (f), or

(b) the person or persons acting as the administrator of the company.

(3) Where a company entered administration by virtue of an appointment under paragraph 15, an appointment under sub-paragraph (1) must be made by—

(a) the holder of the floating charge by virtue of which the appointment was made, or

(b) the High Court on the application of the person or persons acting as the administrator of the company.

(4) Where a company entered administration by virtue of an appointment under paragraph 23(1), an appointment under sub-paragraph (1) must be made either by the High Court on the application of the person or persons acting as the administrator of the company or—

(a) by the company, and

(b) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, where consent is withheld, with the permission of the Court.

(5) Where a company entered administration by virtue of an appointment under paragraph 23(2), an appointment under sub-paragraph (1) must be made either by the Court on the application of the person or persons acting as the administrator of the company or—

(a) by the directors of the company, and

(b) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, where consent is withheld, with the permission of the Court.

(6) An appointment under sub-paragraph (1) may be made only with the consent of the person or persons acting as the administrator of the company.

Presumption of validity

105. An act of the administrator of a company is valid in spite of a defect in his appointment or qualification.

Majority decision of directors

106. A reference in this Schedule to something done by the directors of a company includes a reference to the same thing done by a majority of the directors of a company.

Penalties

107.—(1) A person who is guilty of an offence under this Schedule is liable to a fine (in accordance with Article 373 and Schedule 7).

(2) A person who is guilty of an offence under any of the following paragraphs of this Schedule is liable to a daily default fine (in accordance with Article 373 and Schedule 7)—

(a) paragraph 21,

(b) paragraph 33,

(c) paragraph 47,

(d) paragraph 49,

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(e) paragraph 50,

(f) paragraph 52,

(g) paragraph 54,

(h) paragraph 55,

(i) paragraph 57,

(j) paragraph 72,

(k) paragraph 73,

(l) paragraph 78,

(m) paragraph 79,

(n) paragraph 81,

(o) paragraph 85,

(p) paragraph 87, and

(q) paragraph 90.

Extension of time limit

108.—(1) Where a provision of this Schedule provides that a period may be varied in accordance with this paragraph, the period may be varied in respect of a company—

(a) by the High Court, and

(b) on the application of the administrator.

(2) A time period may be extended in respect of a company under this paragraph—

(a) more than once, and

(b) after expiry.

109.—(1) A period specified in paragraph 50(5), 51(1)(b) or 52(2) may be varied in respect of a company by the administrator with consent.

(2) In sub-paragraph (1) "consent" means consent of—

(a) each secured creditor of the company, and

(b) if the company has unsecured debts, creditors whose debts amount to more than 50 per cent. of the company's unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(3) But where the administrator has made a statement under paragraph 53(1)(b) "consent" means—

(a) consent of each secured creditor of the company, or

(b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—

(i) each secured creditor of the company, and

(ii) preferential creditors whose debts amount to more than 50 per cent. of the total preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(4) Consent for the purposes of sub-paragraph (1) may be—

(a) written, or

(b) signified at a creditors' meeting.

(5) The power to extend under sub-paragraph (1)—

(a) may be exercised in respect of a period only once,

(b) may not be used to extend a period by more than 28 days,

(c) may not be used to extend a period which has been extended by the High Court, and

(d) may not be used to extend a period after expiry.

110. Where a period is extended under paragraph 108 or 109, a reference to the period shall be taken as a reference to the period as extended.

Amendment of provision about time

111.—(1) The Department may by order amend a provision of this Schedule which—

(a) requires anything to be done within a specified period of time,

(b) prevents anything from being done after a specified time, or

(c) requires a specified minimum period of notice to be given.

(2) An order under this paragraph shall be subject to negative resolution.

SCHEDULE 2

Article 3(3)

ADMINISTRATION: MINOR AND CONSEQUENTIAL AMENDMENTS

General

1. In any instrument made before Article 3(1) to (3) comes into operation—

(a) a reference to the making of an administration order shall be treated as including a reference to the appointment of an administrator under paragraph 15 or 23 of Schedule B1 to the 1989 Order (inserted by Article 3(2)), and

(b) a reference to making an application for an administration order by petition shall be treated as including a reference to making an administration application under that Schedule, appointing an administrator under paragraph 15 or 23 of that Schedule or giving notice under paragraph 16 or 27 of that Schedule.

The Third Parties (Rights against Insurers) Act (Northern Ireland) 1930 (NI 19)

2. The Third Parties (Rights against Insurers) Act (Northern Ireland) 1930 shall be amended as follows.

3. In section 1 (rights of third parties against insurers on bankruptcy, etc. of the insured)—

(a) in subsection (1)(b) omit "or an administration order", and

(b) after "with respect to the company," insert "or of the company entering administration,".

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4. In section 2 (duty to give necessary information to third parties), in subsection (1)—

(a) omit "or an administration order", and

(b) after "with respect to any company" insert "or of the company entering administration".

The Criminal Justice Act (Northern Ireland) 1945 (c. 15)

5. In section 35(4A) of the Criminal Justice Act (Northern Ireland) 1945 (powers of Crown Court or county courts in relation to fines and forfeited recognizances) for the words from "Article 22" to the end substitute "Article 104 of, or paragraph 13 of Schedule B1 to, the Insolvency (Northern Ireland) Order 1989 (winding up or administration)".

The Transport Act (Northern Ireland) 1967 (c. 37)

6. The Transport Act (Northern Ireland) 1967 shall be amended as follows.

7. In section 7(1A)(b)(ii) (conditions of road service licences) after "liquidation" insert "or enters administration".

8. In section 15A(1)(b)(ii) (conditions of operators' licences) after "liquidation" insert "or enters administration".

9. In section 33(2)(c) (transfer of licences) after "appointed" insert "or the undertaking enters administration".

The Solicitors (Northern Ireland) Order 1976 (NI 12)

10. In Schedule 1A to the Solicitors (Northern Ireland) Order 1976 (incorporated practices: supplementary provisions), in paragraph 3—

(a) omit "or" after sub-paragraph (a), and

(b) after sub-paragraph (b) insert—

"or

(c) for the appointment of an administrator under Schedule B1 to the Insolvency (Northern Ireland) Order 1989,".

The Magistrates' Courts (Northern Ireland) Order 1981 (NI 26)

11. In Article 92A(1) of the Magistrates' Courts (Northern Ireland) Order 1981 (fines imposed on companies) for the words from "Article 22" to the end substitute "Article 104 of, or paragraph 13 of Schedule B1 to, the Insolvency (Northern Ireland) Order 1989 (winding up or administration)".

The Companies (Northern Ireland) Order 1986 (NI 6)

12. The Companies (Northern Ireland) Order 1986 shall be amended as follows.

13. In Article 233 (alteration of accounting reference date)—

(a) in paragraph (4) for "an administration order is in force" substitute "the company is in administration", and

(b) in paragraph (6) for "An accounting reference period may not in any case, unless an administration order is in force" substitute "A company's accounting reference period may not in any case, unless the company is in administration".

14. In Article 418(1) (power of company to compromise) for "an administration order being in force in relation to a company" substitute "in administration".

15. In Article 420A(3) (mergers and divisions of public companies) for "an administration order being in force in relation to the company" substitute "where the company is in administration".

16. In Article 603B(3) (duty when applying to strike off defunct company) for sub-paragraph (c) substitute—

"(c) the company is in administration under Part III of that Order;

(ca) an application to the court for an administration order in respect of the company has been made and not finally dealt with or withdrawn;

(cb) a copy of notice of intention to appoint an administrator of the company under paragraph 15 of Schedule B1 to that Order has been filed with the court and neither of the events mentioned in paragraph 45(2)(a) and (b) of that Schedule has occurred;

(cc) a copy of notice of intention to appoint an administrator of the company under paragraph 23 of that Schedule has been filed with the court and neither of the events mentioned in paragraph 45(4)(a) and (b) of that Schedule has occurred;".

17. In Article 603C(4) (director's duty following application to strike off defunct company) for sub-paragraph (d) substitute—

"(d) an application to the court for an administration order in respect of the company is made under paragraph 13 of Schedule B1 to that Order;

(da) an administrator is appointed in respect of the company under paragraph 15 or 23 of that Schedule;

(db) a copy of notice of intention to appoint an administrator of the company under paragraph 15 or 23 of that Schedule is filed with the court;".

The 1989 Order

18. The 1989 Order shall be amended as follows.

19. In Article 5(1) (interpretation), omit the definitions of "administrator" and "administration order".

20.—(1) Article 6 (meaning of "insolvency" and "go into liquidation") shall be amended as follows.

(2) In paragraph (1) for "the making of an administration order or the appointment of an administrative receiver" substitute "or the appointment of an administrator or administrative receiver".

(3) For paragraph (3) substitute—

"(3) The reference to a resolution for voluntary winding up in paragraph (2) includes a reference to a resolution which is deemed to occur by virtue of—

(a) paragraph 84(5)(b) of Schedule B1, or

(b) an order made following conversion of administration or a voluntary arrangement into winding up by virtue of Article 37 of the EC Regulation.".

21. In Article 14 (proposal for company voluntary arrangement)—

(a) in paragraph (1) for "(other than one for which an administration order is in force, or which is being wound up)" substitute "(other than one which is in administration or being wound up)", and

(b) in paragraph (3) for sub-paragraph (a) substitute—

"(a) where the company is in administration, by the administrator,".

22. In Article 18(3) (approval of company voluntary arrangement)—

(a) for "an administration order is in force" substitute "is in administration", and

(b) for "discharge the administration order" substitute "provide for the appointment of the administrator to cease to have effect".

23. In Article 19(2)(c) (challenge of decision in relation to company voluntary arrangement) for "an administration order is in force" substitute "is in administration".

24. After Article 70(1) (voluntary winding up) insert—

"(1A) Before a company passes a resolution for voluntary winding up it must give written notice of the resolution to the holder of any qualifying floating charge to which Article 59A applies.

(1B) Where notice is given under subsection (1A) a resolution for voluntary winding up may be passed only—

(a) after the end of the period of 5 business days beginning with the day on which the notice was given, or

(b) if the person to whom the notice was given has consented in writing to the passing of the resolution.".

25. At the end of Article 86 (creditors' voluntary winding up of company: appointment of liquidator) add—

"(4) The Court shall grant an application under paragraph (3) made by the holder of a qualifying floating charge in respect of the company's property (within the meaning of paragraph 15 of Schedule B1) unless the Court thinks it right to refuse the application because of the particular circumstances of the case.".

26. At the end of Article 107 (winding-up: avoidance of property disposition) (which becomes paragraph (1)) add—

"(2) This Article has no effect in respect of anything done by an administrator of a company while a winding-up petition is suspended under paragraph 41 of Schedule B1.".

27. After Article 109(1) (commencement of winding up) insert—

"(1A) Where the Court makes a winding-up order by virtue of paragraph 14(1)(e) of Schedule B1, the winding up is deemed to commence on the making of the order.".

28. In Article 119 (appointment by High Court of liquidator following administration or voluntary arrangement) for paragraph (1) substitute—

"(1) Where a winding-up order is made immediately upon the appointment of an administrator ceasing to have effect, the High Court may appoint as liquidator of the company the person whose appointment as administrator has ceased to have effect.".

29. In Article 176 (misfeasance of officers)—

(a) in paragraph (1)(b) omit ", administrator",

(b) in paragraph (2) omit (in each place) "or administrator", and

(c) in paragraph (4)—

(i) omit "or administrator", and

(ii) for "that person" substitute "he".

30. Article 194(1) (administrator to be qualified insolvency practitioner) shall cease to have effect.

31. In Article 195(1) and (2) (appointment to office of two or more persons) omit "administrator,".

32. In Article 196 (validity of office-holder's act) omit "administrator,".

33. In Article 197 (utility supplies)—

(a) for paragraph (1)(a) substitute—

"(a) the company enters administration, or", and

(b) for paragraph (4)(a) substitute—

"(a) the date on which the company entered administration".

34. For Article 198(1)(a) (getting in the company's property) substitute—

"(a) the company enters administration, or".

35. For Article 199(4)(a) (co-operation with office-holder) substitute—

"(a) the date on which the company entered administration,".

36. For Article 202(1)(a) (transactions at an undervalue) substitute—

"(a) the company enters administration, or".

37.—(1) Article 204 (relevant time for Articles 202 and 203) shall be amended as follows.

(2) For paragraph (1)(c) substitute—

"(c) in either case, at a time between the making of an administration application in respect of the company and the making of an administration order on that application, and

(d) in either case, at a time between the filing with the Court of a copy of notice of intention to appoint an administrator under paragraph 15 or 23 of Schedule B1 and the making of an appointment under that paragraph.".

(3) The word "and" after paragraph (1)(b) shall cease to have effect.

(4) For paragraph (3)(a), (aa) and (b) substitute—

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"(a) in a case where Article 202 or 203 applies by reason of an administrator of a company being appointed by administration order, the date on which the administration application is made,

(b) in a case where Article 202 or 203 applies by reason of an administrator of a company being appointed under paragraph 15 or 23 of Schedule B1 following filing with the High Court of a copy of a notice of intention to appoint under that paragraph, the date on which the copy of the notice is filed,

(c) in a case where Article 202 or 203 applies by reason of an administrator of a company being appointed otherwise than as mentioned in sub-paragraph (a) or (b), the date on which the appointment takes effect,

(d) in a case where Article 202 or 203 applies by reason of a company going into liquidation either following conversion of administration into winding up by virtue of Article 37 of the EC Regulation or at the time when the appointment of an administrator ceases to have effect, the date on which the company entered administration (or, if relevant, the date on which the application for the administration order was made or a copy of the notice of intention to appoint was filed), and

(e) in a case where Article 202 or 203 applies by reason of a company going into liquidation at any other time, the date of the commencement of the winding up.".

38.—(1) Article 205 (order under Article 202 or 203) shall be amended as follows.

(2) For paragraph (3A) substitute—

"(3A) Where Article 202 or 203 applies by reason of a company's entering administration, a person has notice of the relevant proceedings if he has notice that—

(a) an administration application has been made,

(b) an administration order has been made,

(c) a copy of a notice of intention to appoint an administrator under paragraph 15 or 23 of Schedule B1 has been filed, or

(d) notice of the appointment of an administrator has been filed under paragraph 19 or 30 of that Schedule.".

(3) For subsection (3B) substitute—

"(3B) Where Article 202 or 203 applies by reason of a company's going into liquidation at the time when the appointment of an administrator of the company ceases to have effect, a person has notice of the relevant proceedings if he has notice that—

(a) an administration application has been made,

(b) an administration order has been made,

(c) a copy of a notice of intention to appoint an administrator under paragraph 15 or 23 of Schedule B1 has been filed,

(d) notice of the appointment of an administrator has been filed under paragraph 19 or 30 of that Schedule, or

(e) the company has gone into liquidation.".

39. In Article 206(2) (extortionate credit transaction) for "the day on which the administration order was made or (as the case may be) the company went into liquidation" substitute "the day on which the company entered administration or went into liquidation".

40.—(1) Article 207 (avoidance of floating charge) shall be amended as follows.

(2) The word "or" after paragraph (3)(b) shall cease to have effect.

(3) For paragraph (3)(c) substitute—

"(c) in either case, at a time between the making of an administration application in respect of the company and the making of an administration order on that application, or

(d) in either case, at a time between the filing with the High Court of a copy of notice of intention to appoint an administrator under paragraph 15 or 23 of Schedule B1 and the making of an appointment under that paragraph.".

(4) For paragraph (5)(a) and (b) substitute—

"(a) in a case where this Article applies by reason of an administrator of a company being appointed by administration order, the date on which the administration application is made,

(b) in a case where this Article applies by reason of an administrator of a company being appointed under paragraph 15 or 23 of Schedule B1 following filing with the High Court of a copy of notice of intention to appoint under that paragraph, the date on which the copy of the notice is filed,

(c) in a case where this Article applies by reason of an administrator of a company being appointed otherwise than as mentioned in sub-paragraph (a) or (b), the date on which the appointment takes effect, and

(d) in a case where this Article applies by reason of a company going into liquidation, the date of the commencement of the winding up.".

41. For Article 208(1)(a) (unenforceability of lien on records) substitute—

"(a) the company enters administration, or".

42.—(1) Article 347 (preferential debts: "the relevant date") shall be amended as follows.

(2) In paragraph (2) for sub-paragraphs (a) and (b) substitute—

"(a) if the company is in administration, the date on which it entered administration, and

(b) if the company is not in administration, the date on which the voluntary arrangement takes effect.".

(3) In paragraph (3)—

(a) in sub-paragraphs (a), (aa) and (ab) for "the date of the making of the administration order" substitute "the date on which the company entered administration",

(b) after sub-paragraph (b) insert—

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"(ba) if the case does not fall within sub-paragraph (a), (aa), (ab) or (b) and the company is being wound up following administration pursuant to paragraph 84 of Schedule B1, the relevant date is the date on which the company entered administration;", and

(c) in sub-paragraph (c) for "sub-paragraph (a), (aa), (ab) or (b)" substitute "sub-paragraph (a), (aa), (ab), (b) or (ba)".

(4) After paragraph (3) insert—

"(3A) In relation to a company which is in administration (and to which no other provision of this Article applies) the relevant date is the date on which the company enters administration.".

43.—(1) Article 366 (power to apply Parts II to VII to formerly authorised banks, &c.) shall be amended as follows.

(2) For paragraph (1) substitute—

"(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).".

(3) Omit paragraph (2).

44. In Article 368(1)(a) (application for order in relation to transaction defrauding creditor) for "in relation to which an administration order is in force" substitute "is in administration".

45.—(1) Schedule A1 (moratorium where directors propose voluntary arrangement) shall be amended as follows.

(2) In paragraph 4(1) (exclusion from eligibility for moratorium)—

(a) for paragraph (a) substitute—

"(a) the company is in administration,", and

(b) after paragraph (f) (and before the word "or") insert—

"(fa) an administrator appointed under paragraph 23 of Schedule B1 has held office in the period of 12 months ending with the date of filing,".

(3) In paragraph 23(1) (effect of moratorium on creditor) for paragraph (d) substitute—

"(d) no administration application may be made in respect of the company,

(da) no administrator of the company may be appointed under paragraph 15 or 23 of Schedule B1,".

(4) In paragraph 50 (challenge of directors' actions during moratorium) for sub-paragraph (7) substitute—

"(7) Sub-paragraph (8) applies where—

(a) the appointment of an administrator has effect in relation to the company and that appointment was made in pursuance of—

(i) an administration application made, or

(ii) a notice of intention to appoint filed,

before the moratorium came into force, or

(b) the company is being wound up in pursuance of a petition presented before the moratorium came into force.

(8) No application for an order under this paragraph may be made by a creditor or member of the company; but such an application may be made instead by the administrator or (as the case may be) the liquidator.".

46.—(1) Schedule 5 (scope of insolvency rules) shall be amended as follows.

(2) At the end of paragraph 1 (which becomes sub-paragraph (1)) add—

"(2) Rules made by virtue of this paragraph about the consequence of failure to comply with practice or procedure may, in particular, include provision about the termination of administration.".

(3) In paragraph 10 (provision as to committees) for "Article 38, 59, 87 or 120" substitute "Article 59, 87 or 120, or paragraph 58 of Schedule B1".

(4) After paragraph 14 insert—

"14A. Provision about the application of Article 150A which may include, in particular—

(a) provision enabling a receiver to institute winding up proceedings;

(b) provision requiring a receiver to institute winding up proceedings.".

(5) After paragraph 14A (inserted by sub-paragraph (4)) insert—

"*Administration*

14B. Provision which—

(a) applies in relation to administration, with or without modifications, a provision of Parts V to VII and any of Articles 5 to 8 in so far as that Article relates to that provision, or

(b) serves a purpose in relation to administration similar to a purpose that may be served by the rules in relation to winding up by virtue of a provision of this Schedule.".

(6) In paragraph 29 (general provision) for "Article 34, 57, 111, 121(2) or 199 of this Order" substitute "Article 57, 111, 121(2) or 199 of, or paragraph 48 of Schedule B1 to, this Order".

47.—(1) Schedule 7 (punishment of offences) shall be amended as follows.

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(2) After the entries for Schedule A1 insert—

"Sch. B1, para. 19(7).	Making false statement in statutory declaration where administrator appointed by holder of floating charge.	1.On indictment 2.Summary	2 years, or a fine or both. 6 months, or the statutory maximum or both	
Sch.B1, para. 21	Holder of floating charge failing to notify administrator or others of commencement of appointment.	1.On indictment 2. Summary	2 years, or a fine or both. 6 months, or the statutory maximum or both	One-tenth of the statutory maximum.
Sch. B1, para. 28(4).	Making false statement in statutory declaration where appointment of administrator proposed by company or directors.	1.On indictment 2. Summary	2 years, or a fine or both. 6 months, or the statutory maximum or both.	
Sch. B1, para. 30(7).	Making false statement in statutory declaration where administrator appointed by company or directors.	1.On indictment 2. Summary	2 years, or a fine or both. 6 months, or the statutory maximum or both.	
Sch. B1, para. 33.	Company or directors failing to notify administrator or others of commencement of appointment.	1.On indictment 2. Summary	2 years, or a fine or both. 6 months, or the statutory maximum or both.	One-tenth of the statutory maximum.
Sch. B1, para. 46(2).	Administrator, company or officer failing to state in business document that administrator appointed.	Summary	One-fifth of the statutory maximum.	
Sch. B1, para. 47(9).	Administrator failing to give notice of his appointment.	Summary	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.

Sch. B1, para. 49(4).	Failing to comply with provisions about statement of affairs where administrator appointed.	1.On indictment 2. Summary	A fine. The statutory maximum.	One-tenth of the statutory maximum.
Sch. B1, para. 50(7).	Administrator failing to send out statement of his proposals.	Summary.	One-fifth of the statutory maximum.	One fiftieth of the statutory maximum.
Sch. B1, para. 52(5).	Administrator failing to arrange initial creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 54(3).	Administrator failing to report decision taken at initial creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 55(7).	Administrator failing to report decision taken at creditors' meeting summoned to consider revised proposal.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 57(2).	Administrator failing to summon creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 72(6).	Administrator failing to file Court order enabling disposal of charged property.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 73(5).	Administrator failing to file Court order enabling disposal of hire-purchase property.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 78(3).	Administrator failing to notify registrar of automatic end of administration.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.

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Sch. B1, para. 79(6).	Administrator failing to give notice of extension by consent of term of office.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 81(6).	Administrator failing to give notice of termination of administration where objective achieved.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 85(9).	Administrator failing to comply with provisions where company moves to dissolution.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 87(3).	Administrator failing to notify registrar where court terminates administration.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 90(3).	Administrator failing to give notice on ceasing to be qualified.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.”

(3) Omit the entries for the following provisions—

(a) Article 25(2),

(b) Article 28(8),

(c) Article 30(5),

(d) Article 33(3),

(e) Article 34(6),

(f) Article 35(3),

(g) Article 36(7), and

(h) Article 39(6).

The Companies (No. 2) (Northern Ireland) Order 1990 (NI 10)

48. The Companies (No. 2) (Northern Ireland) Order 1990 shall be amended as follows.

49. In Article 81 (modification of insolvency law)—

(a) in paragraph (3) for sub-paragraph (b) substitute—

“(b) the application for an administration order or the presentation of a winding-up petition or the passing of a resolution for voluntary winding up,”, and

(b) after paragraph (3) insert—

"(3A) In paragraph (3)(b) the reference to an application for an administration order shall be taken to include a reference to—

(a) in a case where an administrator is appointed under paragraph 15 or 23 of Schedule B1 to the Insolvency Order (appointment by floating charge holder, company or directors) following filing with the Court of a copy of a notice of intention to appoint under that paragraph, the filing of the copy of the notice, and

(b) in a case where an administrator is appointed under either of those paragraphs without a copy of a notice of intention to appoint having been filed with the Court, the appointment of the administrator.".

50. In Article 84(4) (disapplication of provisions to default proceedings) for "Article 23(1)(c), 24(3), 106, 108, 110 or 258 of the Insolvency Order" substitute "Article 106, 108, 110 or 258 of, or paragraph 43 or 44 (including paragraph 44(5) as applied by paragraph 45) of Schedule B1 to , the Insolvency Order".

51. After Article 90(1) (application by exchange or clearing house about taking default proceedings) insert—

"(1A) In paragraph (1) a reference to an administration order shall be taken to include a reference to the appointment of an administrator under—

(a) paragraph 15 of Schedule B1 to the Insolvency Order (appointment by holder of qualifying floating charge), or

(b) paragraph 23 of that Schedule (appointment by company or directors)."

52.—(1) Article 97 (financial markets: administration) shall be amended as follows.

(2) For paragraph (1) substitute—

"(1) The following provisions of Schedule B1 to the Insolvency Order (administration) do not apply in relation to a market charge—

(a) paragraph 44(2) and (3) (restriction on enforcement of security or repossession of goods) (including that provision as applied by paragraph 45 (interim moratorium)), and

(b) paragraphs 71, 72 and 73 (power of administrator to deal with charged or hire-purchase property).

(1A) Paragraph 42(2) of that Schedule (receiver to vacate office at request of administrator) does not apply to a receiver appointed under a market charge.".

(3) In paragraph (2) for "an administration order has been made or a petition for an administration order has been presented" substitute "the occurrence of an event to which paragraph (2A) applies".

(4) After paragraph (2) insert—

"(2A) This paragraph applies to—

(a) making an administration application under paragraph 13 of Schedule B1 to the Insolvency Order,

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(b) appointing an administrator under paragraph 15 or 23 of that Schedule (appointment by floating charge holder, company or directors),

(c) filing with the Court a copy of notice of intention to appoint an administrator under either of those paragraphs.".

The Pension Schemes (Northern Ireland) Act 1993 (c. 49)

53. In section 119 of the Pension Schemes (Northern Ireland) Act 1993 (interpretation of Chapter II), in subsection (1)(c)(i)—

(a) omit "or an administration order", and

(b) at the end add "or the company enters administration".

The Employment Rights (Northern Ireland) Order 1996 (NI 16)

54.—(1) The Employment Rights (Northern Ireland) Order 1996 shall be amended as follows.

(2) In Article 201(7) (application by employee for payment by Department)—

(a) in sub-paragraph (a) omit "or an administration order", and

(b) after sub-paragraph (a) insert—

"(aa) if the company is in administration for the purposes of the Insolvency (Northern Ireland) Order 1989,".

(3) In Article 228(3) (insolvency of employer)—

(a) in sub-paragraph (a) omit "or an administration order", and

(b) after sub-paragraph (a) insert—

"(aa) if the company is in administration for the purposes of the Insolvency (Northern Ireland) Order 1989,".

(4) Omit Article 234(4) (transfer to Department of rights and remedies: priority of preferential debts).

The Construction Contracts (Northern Ireland) Order 1997 (NI 1)

55. In Article 12(1) of the Construction Contracts (Northern Ireland) Order 1997 (prohibition of conditional payment provisions), for sub-paragraph (a) substitute—

"(a) when it enters administration within the meaning of Schedule B1 to the Insolvency (Northern Ireland) Order 1989,".

The Financial Services and Markets Act 2000 (c. 8)

56. The Financial Services and Markets Act 2000 shall be amended as follows.

57.—(1) Section 215 (provision of Financial Services Compensation Scheme in relation to insolvency) shall be amended as follows.

(2) In subsection (3) for "presents a petition under Article 22 of" substitute "Schedule B1 to".

(3) In subsection (3A)—

(a) in paragraph (a) after "Act" insert "or paragraph 15 or 23 of Schedule B1 to the 1989 Order", and

(b) in paragraph (b) for "either" substitute "any".

58.—(1) Section 359 (administration order) shall be amended as follows.

(2) In subsection (1) for "(or present a petition under Article 22 of the 1989 Order)" substitute "or Schedule B1 to the 1989 Order".

(3) In subsection (3) for "(or Article 21(1)(a) of the 1989 Order)" substitute "or paragraph 12(a) of Schedule B1 to the 1989 Order".

(4) In subsection (4) in the definition of "company", for paragraph (b) substitute—

"(b) in respect of which an administrator may be appointed under Schedule B1 to the 1989 Order,".

59. In section 361(1) (administrator to report to Authority) for paragraph (b) substitute—

"(b) in administration within the meaning of Schedule B1 to the 1989 Order.".

60.—(1) Section 362 (Financial Services Authority's right to participate in proceedings) shall be amended as follows.

(2) In subsection (1) for "(or presents a petition under Article 22 of the 1989 Order)" substitute "or Schedule B1 to the 1989 Order".

(3) In subsection (1A)—

(a) in paragraph (a) after "Act" insert "or paragraph 15 or 23 of Schedule B1 to the 1989 Order", and

(b) in paragraph (b) for "either" substitute "any".

(4) In subsection (2)(a) omit "or the petition".

(5) In subsection (4) for "(or Article 39 of the 1989 Order)" substitute "or paragraph 75 of Schedule B1 to the 1989 Order".

(6) In subsection (4A) for paragraph (b) substitute—

"(b) paragraph 75(1)(a) and (b) of Schedule B1 to the 1989 Order shall have effect as if for the words "harm the interests of the applicant (whether alone or in common with some or all other members or creditors)" there were substituted the words "harm the interests of some or all members or creditors".

(7) In subsection (5)(b) for "(Article 38 of the 1989 Order)" substitute "paragraph 58 of Schedule B1 to the 1989 Order".

61.—(1) Section 362A shall be amended as follows.

(2) In subsection (2) after "Act" insert "or paragraph 23 of Schedule B1 to the 1989 Order".

(3) In subsection (3)(b) for "that Schedule" substitute "Schedule B1 to the 1986 Act or paragraph 28 of Schedule B1 to the 1989 Order".

(4) In subsection (4)(b) for "that Schedule" substitute "Schedule B1 to the 1986 Act or paragraph 30 of Schedule B1 to the 1989 Order".

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The Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4)

62. The Company Directors Disqualification (Northern Ireland) Order 2002 shall be amended as follows.

63. In Article 9 (duty of Court to disqualify unfit director of insolvent company) for paragraph (2)(b) substitute—

"(b) the company enters administration, or".

64. In Article 10(4) (duty of office-holder to report to Department) for sub-paragraph (c) substitute—

"(c) in the case of a company which is in administration, the administrator, or".

65. In Part II of Schedule 1 (matters for determining unfitness of directors) in paragraph 12(a) for "Article 34" substitute "paragraph 48 of Schedule B1".

Article 5(2)

SCHEDULE 3

SCHEDULE 1A TO THE 1989 ORDER

"SCHEDULE 1A

EXCEPTIONS TO PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE RECEIVER: SUPPLEMENTARY PROVISIONS

Capital market arrangement

1.—(1) For the purposes of Article 59B an arrangement is a capital market arrangement if—

(a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement, or

(b) it involves a grant of security to—

(i) a party to the arrangement who issues a capital market investment, or

(ii) a person who holds the security as trustee for a party to the arrangement in connection with the issue of a capital market investment, or

(c) it involves a grant of security to a person who holds the security as trustee for a party to the arrangement who agrees to provide finance to another party, or

(d) at least one party guarantees the performance of obligations of another party, or

(e) at least one party provides security in respect of the performance of obligations of another party, or

(f) the arrangement involves an investment of a kind described in articles 83 to 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (options, futures and contracts for differences).

(2) For the purposes of sub-paragraph (1)—

(a) a reference to holding as trustee includes a reference to holding as nominee or agent,

(b) a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment, and

(c) a person holds a capital market investment if he has a legal or beneficial interest in it; and

(d) the reference to the provision of finance includes the provision of an indemnity.

(3) In Article 59B(1) and this paragraph "party" to an arrangement includes a party to an agreement which—

(a) forms part of the arrangement,

(b) provides for the raising of finance as part of the arrangement, or

(c) is necessary for the purposes of implementing the arrangement.

Capital market investment

2.—(1) For the purposes of Article 59B an investment is a capital market investment if it—

(a) is within article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (debt instruments), and

(b) is rated, listed or traded or designed to be rated, listed or traded.

(2) In sub-paragraph (1)—

"rated" means rated for the purposes of investment by an internationally recognised rating agency,

"listed" means admitted to the official list within the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (c. 8) (interpretation), and

"traded" means admitted to trading on a market established under the rules of a recognised investment exchange or on a foreign market.

(3) In sub-paragraph (2)—

"recognised investment exchange" has the meaning given by section 285 of the Financial Services and Markets Act 2000 (recognised investment exchange), and

"foreign market" has the same meaning as "relevant market" in article 67(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (S.I. 2001/1335) (foreign markets).

3.—(1) An investment is also a capital market investment for the purposes of Article 59B if it consists of a bond or commercial paper issued to one or more of the following—

(a) an investment professional within the meaning of article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001,

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(b) a person who is, when the agreement mentioned in Article 59B(1) is entered into, a certified high net worth individual in relation to a communication within the meaning of article 48(2) of that order,

(c) a person to whom article 49(2) of that order applies (high net worth company, &c.),

(d) a person who is, when the agreement mentioned in Article 59B(1) is entered into, a certified sophisticated investor in relation to a communication within the meaning of article 50(1) of that order, and

(e) a person in a State other than the United Kingdom who under the law of that State is not prohibited from investing in bonds or commercial paper.

(2) In sub-paragraph (1)—

"bond" shall be construed in accordance with article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), and

"commercial paper" has the meaning given by article 9(3) of that order.

(3) For the purposes of sub-paragraph (1)—

(a) in applying article 19(5) of the Financial Promotion Order for the purposes of sub-paragraph (1)(a)—

(i) in article 19(5)(b), ignore the words after "exempt person",

(ii) in article 19(5)(c)(i), for the words from "the controlled activity" to the end substitute "a controlled activity", and

(iii) in article 19(5)(e) ignore the words from "where the communication" to the end, and

(b) in applying article 49(2) of that order for the purposes of sub-paragraph (1)(c), ignore Article 49(2)(e).

"Agreement"

4. For the purposes of Articles 59B and 59F and this Schedule "agreement" includes an agreement or undertaking effected by—

(a) contract,

(b) deed, or

(c) any other instrument intended to have effect in accordance with the law of Northern Ireland or another jurisdiction.

Debt

5. The debt of at least £50 million referred to in Article 59B(1)(a) or 59F(2)(a)—

(a) may be incurred at any time during the life of the capital market arrangement or financed project, and

(b) may be expressed wholly or partly in foreign currency (in which case the sterling equivalent shall be calculated as at the time when the arrangement is entered into or the project begins).

Step-in rights

6.—(1) For the purposes of Articles 59C to 59F a project has "step-in rights" if a person who provides finance in connection with the project has a conditional entitlement under an agreement to—

(a) assume sole or principal responsibility under an agreement for carrying out all or part of the project, or

(b) make arrangements for carrying out all or part of the project.

(2) In sub-paragraph (1) a reference to the provision of finance includes a reference to the provision of an indemnity.

Project company

7.—(1) For the purposes of Articles 59C to 59F a company is a "project company" of a project if—

(a) it holds property for the purpose of the project,

(b) it has sole or principal responsibility under an agreement for carrying out all or part of the project,

(c) it is one of a number of companies which together carry out the project,

(d) it has the purpose of supplying finance to enable the project to be carried out, or

(e) it is the holding company of a company within any of paragraphs (a) to (d).

(2) But a company is not a "project company" of a project if—

(a) it performs a function within sub-paragraph (1)(a) to (d) or is within sub-paragraph (1)(e), but

(b) it also performs a function which is not—

(i) within sub-paragraph (1)(a) to (d),

(ii) related to a function within sub-paragraph (1)(a) to (d), or

(iii) related to the project.

(3) For the purposes of this paragraph a company carries out all or part of a project whether or not it acts wholly or partly through agents.

"Resources"

8. In Article 59C "resources" includes—

(a) funds (including payment for the provision of services or facilities),

(b) assets,

(c) professional skill,

(d) the grant of a concession or franchise, and

(e) any other commercial resource.

"Public body"

9.—(1) In Article 59C "public body" means—

(a) a body which exercises public functions,

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(b) a body specified for the purposes of this paragraph by the Department, and

(c) a body within a class specified for the purposes of this paragraph by the Department.

(2) A specification under sub-paragraph (1) may be—

(a) general, or

(b) for the purpose of the application of Article 59C to a specified case.

Regulated business

10.—(1) For the purposes of Article 59D a business is regulated if it is carried on—

(a) in reliance on a licence under Article 8 of the Gas (Northern Ireland) Order 1996 (NI 2) (licences authorising the supply of gas, etc.),

(b) in reliance on a licence granted by virtue of Article 40 of the Energy (Northern Ireland) Order 2003 (NI 6) (power to prescribe additional licensable activity),

(c) in reliance on a licence under Article 10 of the Electricity (Northern Ireland) Order 1992 (NI 1) (supply of electricity),

(d) by a universal service provider within the meaning given by section 4(3) and (4) of the Postal Services Act 2000 (c. 26),

(e) by the Post Office company within the meaning given by section 62 of that Act (transfer of property), or

(f) by a relevant subsidiary of the Post Office Company within the meaning given by section 63 of that Act (government holding).

(2) For the purposes of Article 59D a business is also regulated to the extent that it consists in the provision of a public electronic communications network or a public electronic communications service.

"Person"

11. A reference to a person in this Schedule includes a reference to a partnership or another unincorporated group of persons.".

Article 12(3)

SCHEDULE 4

DURATION OF BANKRUPTCY: TRANSITIONAL PROVISIONS

Introduction

1. This Schedule applies to an individual who immediately before commencement—

(a) has been adjudged bankrupt, and

(b) has not been discharged from the bankruptcy.

2. In this Schedule—

"commencement" means the date appointed under Article 1 for the commencement of Article 12, and

"pre-commencement bankrupt" means an individual to whom this Schedule applies.

Neither old law nor new law to apply

3. Article 253 of the 1989 Order (bankruptcy: discharge) shall not apply to a pre-commencement bankrupt (whether in its pre-commencement or its post-commencement form).

General rule for discharge from pre-commencement bankruptcy

4.—(1) A pre-commencement bankrupt is, subject to sub-paragraphs (2) and (3), discharged from bankruptcy at whichever is the earlier of—

(a) the end of the period of one year beginning with commencement, and

(b) the end of the relevant period applicable to the bankrupt under Article 253(1)(c) of the 1989 Order (duration of bankruptcy) as it had effect immediately before commencement.

(2) An order made under Article 253(3) of the 1989 Order before commencement—

(a) shall continue to have effect in respect of the pre-commencement bankrupt after commencement, and

(b) may be varied or revoked after commencement by an order under Article 253(3) as substituted by Article 12 of this Order.

(3) Article 253(3) to (5) of the 1989 Order as substituted by Article 12 of this Order shall have effect after commencement in relation to the period mentioned in sub-paragraph (1)(a) or (b).

Second-time bankruptcy

5.—(1) This paragraph applies to a pre-commencement bankrupt who was an undischarged bankrupt at some time during the period of 15 years ending with the day before the date on which the pre-commencement bankruptcy commenced.

(2) The pre-commencement bankrupt shall not be discharged from bankruptcy in accordance with paragraph 4.

(3) An order made before commencement under paragraph (2)(b) or (c) of Article 254 of the 1989 Order (discharge by order of the High Court), shall continue to have effect after commencement (including any provision made by the Court by virtue of paragraph (3) of that Article).

(4) A pre-commencement bankrupt to whom this paragraph applies (and in respect of whom no order was in force under Article 254(2)(b) or (c) of the 1989 Order immediately before commencement) is discharged from bankruptcy—

(a) at the end of the period of 5 years beginning with commencement, or

(b) at such earlier time as the High Court may order on an application made to it under sub-paragraph (5).

(5) For the purposes of sub-paragraph (4)(b), the pre-commencement bankrupt may make an application to the Court at any time after the expiration of 5 years from the commencement of the bankruptcy.

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(6) Article 253(3) to (5) of the 1989 Order as substituted by Article 12 of this Order shall have effect after commencement in relation to the period mentioned in sub-paragraph (4)(a).

(7) A bankruptcy annulled under Article 256 of the 1989 Order shall be ignored for the purpose of sub-paragraph (1).

Solicitors

6.—(1) This paragraph applies to a pre-commencement bankrupt—

(a) who is a solicitor, and

(b) who is not an individual to whom paragraph 5 applies.

(2) The pre-commencement bankrupt shall not be discharged from bankruptcy in accordance with paragraph 4.

(3) An order made before commencement under paragraph (2)(b) or (c) of Article 254 of the 1989 Order shall continue to have effect after commencement (including any provision made by the Court by virtue of paragraph (3) of that Article).

(4) A pre-commencement bankrupt to whom this paragraph applies (and in respect of whom no order under Article 254(2)(b) or (c) of the 1989 Order was in force immediately before commencement) is discharged from bankruptcy by an order of the High Court on an application made to it under sub-paragraph (5).

(5) For the purposes of sub-paragraph (4), a pre-commencement bankrupt may make an application to the Court at any time.

(6) On an application under sub-paragraph (5), the Court may—

(a) refuse to discharge the bankrupt from bankruptcy,

(b) make an order discharging him absolutely, or

(c) make an order discharging him subject to such conditions with respect to any income which may subsequently become due to him, or with respect to property devolving upon him, or acquired by him, after his discharge, as may be specified in the order.

(7) The Court may provide for an order falling within paragraph (b) or (c) of sub-paragraph (6) to have immediate effect or to have its effect suspended for such period, or until the fulfilment of such conditions (including a condition requiring the Court to be satisfied as to any matter), as may be specified in the order.

Income payments order

7.—(1) This paragraph applies where—

(a) a pre-commencement bankrupt is discharged by virtue of paragraph 4(1)(a), and

(b) an income payments order is in force in respect of him immediately before his discharge.

(2) If the income payments order specifies a date after which it is not to have effect, it shall continue in force until that date (and then lapse).

(3) But the High Court may on the application of the pre-commencement bankrupt—

(a) vary the income payments order;

(b) provide for the income payments order to cease to have effect before the date referred to in sub-paragraph (2).

Article 13(2)

SCHEDULE 5

SCHEDULE 2A TO THE 1989 ORDER

SCHEDULE 2A

BANKRUPTCY RESTRICTIONS ORDER AND UNDERTAKING

Bankruptcy restrictions order

1.—(1) A bankruptcy restrictions order may be made by the High Court.

(2) An order may be made only on the application of—

(a) the Department, or

(b) the official receiver acting on a direction of the Department.

Grounds for making order

2.—(1) The High Court shall grant an application for a bankruptcy restrictions order if it thinks it appropriate having regard to the conduct of the bankrupt (whether before or after the making of the bankruptcy order).

(2) The Court shall, in particular, take into account any of the following kinds of behaviour on the part of the bankrupt—

(a) failing to keep records which account for a loss of property by the bankrupt, or by a business carried on by him, where the loss occurred in the period beginning 2 years immediately preceding petition and ending with the date of the application;

(b) failing to produce records of that kind on demand by the official receiver or the trustee;

(c) entering into a transaction at an undervalue;

(d) giving a preference;

(e) making an excessive pension contribution;

(f) a failure to supply goods or services which were wholly or partly paid for which gave rise to a claim provable in the bankruptcy;

(g) trading at a time before commencement of the bankruptcy when the bankrupt knew or ought to have known that he was unable to pay his debts;

(h) incurring, before commencement of the bankruptcy, a debt which the bankrupt had no reasonable expectation of being able to pay;

(i) failing to account satisfactorily to the Court, the official receiver or the trustee for a loss of property or for an insufficiency of property to meet bankruptcy debts;

(j) carrying on any gambling, rash and hazardous speculation or unreasonable extravagance which may have materially contributed to or increased the extent of the bankruptcy or which took place between presentation of the petition and commencement of the bankruptcy;

(k) neglect of business affairs of a kind which may have materially contributed to or increased the extent of the bankruptcy;

(l) fraud or fraudulent breach of trust;

(m) failing to cooperate with the official receiver or the trustee.

(3) The Court shall also, in particular, consider whether the bankrupt was an undischarged bankrupt at some time during the period of 6 years ending with the date of the bankruptcy to which the application relates.

(4) For the purpose of sub-paragraph (2)—

"immediately preceding petition" shall be construed in accordance with Article 322(c),

"excessive pension contribution" shall be construed in accordance with Article 315A,

"preference" shall be construed in accordance with Article 313, and

"undervalue" shall be construed in accordance with Article 312.

Timing of application for order

3.—(1) An application for a bankruptcy restrictions order in respect of a bankrupt must be made—

(a) before the end of the period of one year beginning with the date on which the bankruptcy commences, or

(b) with the permission of the High Court.

(2) The period specified in sub-paragraph (1)(a) shall cease to run in respect of a bankrupt while the period set for his discharge is suspended under Article 253(3).

Duration of order

4.—(1) A bankruptcy restrictions order—

(a) shall come into force when it is made, and

(b) shall cease to have effect at the end of a date specified in the order.

(2) The date specified in a bankruptcy restrictions order under sub-paragraph (1)(b) must not be—

(a) before the end of the period of 2 years beginning with the date on which the order is made, or

(b) after the end of the period of 15 years beginning with that date.

Interim bankruptcy restrictions order

5.—(1) This paragraph applies at any time between—

(a) the institution of an application for a bankruptcy restrictions order, and

(b) the determination of the application.

(2) The High Court may make an interim bankruptcy restrictions order if the Court thinks that—

(a) there are prima facie grounds to suggest that the application for the bankruptcy restrictions order will be successful, and

(b) it is in the public interest to make an interim order.

(3) An interim order may be made only on the application of—

(a) the Department, or

(b) the official receiver acting on a direction of the Department.

(4) An interim order—

(a) shall have the same effect as a bankruptcy restrictions order, and

(b) shall come into force when it is made.

(5) An interim order shall cease to have effect—

(a) on the determination of the application for the bankruptcy restrictions order,

(b) on the acceptance of a bankruptcy restrictions undertaking made by the bankrupt, or

(c) if the Court discharges the interim order on the application of the person who applied for it or of the bankrupt.

6.—(1) This paragraph applies to a case in which both an interim bankruptcy restrictions order and a bankruptcy restrictions order are made.

(2) Paragraph 4(2) shall have effect in relation to the bankruptcy restrictions order as if a reference to the date of that order were a reference to the date of the interim order.

Bankruptcy restrictions undertaking

7.—(1) A bankrupt may offer a bankruptcy restrictions undertaking to the Department.

(2) In determining whether to accept a bankruptcy restrictions undertaking the Department shall have regard to the matters specified in paragraph 2(2) and (3).

8. A reference in a statutory provision to a person in respect of whom a bankruptcy restrictions order has effect (or who is "the subject of" a bankruptcy restrictions order) includes a reference to a person in respect of whom—

(a) an interim bankruptcy restrictions order, or

(b) a bankruptcy restrictions undertaking,

has effect.

9.—(1) A bankruptcy restrictions undertaking—

(a) shall come into force on being accepted by the Department, and

(b) shall cease to have effect at the end of a date specified in the undertaking.

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(2) The date specified under sub-paragraph (1)(b) must not be—

(a) before the end of the period of 2 years beginning with the date on which the undertaking is accepted, or

(b) after the end of the period of 15 years beginning with that date.

(3) On an application by the bankrupt the High Court may—

(a) annul a bankruptcy restrictions undertaking;

(b) provide for a bankruptcy restrictions undertaking to cease to have effect before the date specified under sub-paragraph (1)(b).

Effect of annulment of bankruptcy order

10. Where a bankruptcy order is annulled under Article 256(1)(a)—

(a) any bankruptcy restrictions order, interim order or undertaking which is in force in respect of the bankrupt shall be annulled,

(b) no new bankruptcy restrictions order or interim order may be made in respect of the bankrupt, and

(c) no new bankruptcy restrictions undertaking by the bankrupt may be accepted.

11. Where a bankruptcy order is annulled under Article 235, 237D or 256(1)(b)—

(a) the annulment shall not affect any bankruptcy restrictions order, interim order or undertaking in respect of the bankrupt,

(b) the High Court may make a bankruptcy restrictions order in relation to the bankrupt on an application instituted before the annulment,

(c) the Department may accept a bankruptcy restrictions undertaking offered before the annulment, and

(d) an application for a bankruptcy restrictions order or interim order in respect of the bankrupt may not be instituted after the annulment.

Registration

12. The Department shall maintain a register of—

(a) bankruptcy restrictions orders,

(b) interim bankruptcy restrictions orders, and

(c) bankruptcy restrictions undertakings.”.

Article 13(3).

SCHEDULE 6

EFFECT OF BANKRUPTCY RESTRICTIONS ORDER AND UNDERTAKING

Disqualification for acting as receiver or manager

1. For Article 41 of the 1989 Order (receiver and manager: disqualification) substitute—

"Disqualification of bankrupt

41.—(1) A person shall be guilty of an offence if he acts as receiver or manager of the property of a company on behalf of debenture holders while—

(a) he is an undischarged bankrupt, or

(b) a bankruptcy restrictions order is in force in respect of him.

(2) This Article does not apply to a receiver or manager acting under an appointment made by the High Court.".

Bankruptcy offences after discharge

2. After Article 321(3) of the 1989 Order (bankruptcy offences: general: no liability after discharge) insert—

"(3A) Paragraph (3) is without prejudice to any provision of this Chapter which applies to a person in respect of whom a bankruptcy restrictions order is in force.".

3. At the end of Article 331 of the 1989 Order (obtaining credit and doing business) insert—

"(5) This Article applies to the bankrupt after discharge while a bankruptcy restrictions order is in force in respect of him.

(6) For the purposes of paragraph (1)(a) as it applies by virtue of paragraph (5), the relevant information about the status of the person in question is the information that a bankruptcy restrictions order is in force in respect of him.".

Disqualification for acting as insolvency practitioner

4. At the end of Article 349 of the 1989 Order (disqualification for insolvency practitioner) insert—

"(5) A person is not qualified to act as an insolvency practitioner while a bankruptcy restrictions order is in force in respect of him.".

Prohibition against involvement in company

5. For Article 15(1) of the Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4) (bankrupt) substitute—

"(1) It is an offence for a person to act as director of a company or directly or indirectly to take part in or be concerned in the promotion, formation or management of a company, without the leave of the High Court, at a time when—

(a) he is an undischarged bankrupt, or

(b) a bankruptcy restrictions order is in force in respect of him.".

Article 21.

SCHEDULE 7

INDIVIDUAL VOLUNTARY ARRANGEMENT

Annulment of bankruptcy on making of voluntary arrangement

1. For Article 235 of the 1989 Order (effect of voluntary arrangement: undischarged bankrupt) substitute—

"Additional effect on undischarged bankrupt

235.—(1) This Article applies where—

(a) the creditors' meeting summoned under Article 231 approves the proposed voluntary arrangement (with or without modifications), and

(b) the debtor is an undischarged bankrupt.

(2) Where this Article applies the High Court shall annul the bankruptcy order on an application made—

(a) by the bankrupt, or

(b) where the bankrupt has not made an application within the prescribed period, by the official receiver.

(3) An application under paragraph (2) may not be made—

(a) during the period specified in Article 236(3)(a) during which the decision of the creditors' meeting can be challenged by application under Article 236,

(b) while an application under that Article is pending, or

(c) while an appeal in respect of an application under that Article is pending or may be brought.

(4) Where this Article applies the Court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.".

Fast-track for making voluntary arrangement

2. After Article 237 of the 1989 Order (implementation of voluntary arrangement) insert—

"Fast-track voluntary arrangement

Availability

237A. Article 237B applies where an individual debtor intends to make a proposal to his creditors for a voluntary arrangement and—

(a) the debtor is an undischarged bankrupt,

(b) the official receiver is specified in the proposal as the nominee in relation to the voluntary arrangement, and

(c) no interim order is applied for under Article 227.

Decision

237B.—(1) The debtor may submit to the official receiver—

(a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and

(b) a statement of his affairs containing such particulars as may be prescribed of his creditors, debts, other liabilities and assets and such other information as may be prescribed.

(2) If the official receiver thinks that the voluntary arrangement proposed has a reasonable prospect of being approved and implemented, he may make arrangements for inviting creditors to decide whether to approve it.

(3) For the purposes of paragraph (2) a person is a "creditor" only if—

(a) he is a creditor of the debtor in respect of a bankruptcy debt, and

(b) the official receiver is aware of his claim and his address.

(4) Arrangements made under paragraph (2)—

(a) must include the provision to each creditor of a copy of the proposed voluntary arrangement,

(b) must include the provision to each creditor of information about the criteria by reference to which the official receiver will determine whether the creditors approve or reject the proposed voluntary arrangement, and

(c) may not include an opportunity for modifications to the proposed voluntary arrangement to be suggested or made.

(5) Where a debtor submits documents to the official receiver under paragraph (1) no application under Article 227 for an interim order may be made in respect of the debtor until the official receiver has—

(a) made arrangements as described in paragraph (2), or

(b) informed the debtor that he does not intend to make arrangements (whether because he does not think the voluntary arrangement has a reasonable prospect of being approved and implemented or because he declines to act).

Result

237C. As soon as is reasonably practicable after the implementation of arrangements under Article 237B(2) the official receiver shall report to the High Court whether the proposed voluntary arrangement has been approved or rejected.

Approval of voluntary arrangement

237D.—(1) This Article applies where the official receiver reports to the High Court under Article 237C that a proposed voluntary arrangement has been approved.

(2) The voluntary arrangement—

(a) takes effect,

(b) binds the debtor, and

(c) binds every person who was entitled to participate in the arrangements made under Article 237B(2).

(3) The High Court shall annul the bankruptcy order in respect of the debtor on an application made by the official receiver.

(4) An application under paragraph (3) may not be made—

(a) during the period specified in Article 237F(3) during which the voluntary arrangement can be challenged by application under Article 237F(2),

(b) while an application under that Article is pending, or

(c) while an appeal in respect of an application under that Article is pending or may be brought.

(5) The High Court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.

(6) Chapter I of Part VIII does not apply to the voluntary arrangement.

(7) A reference in this Order or another statutory provision to a voluntary arrangement approved under this Part includes a reference to a voluntary arrangement which has effect by virtue of this Article.

Implementation

237E. Article 237 shall apply to a voluntary arrangement which has effect by virtue of Article 237D(2) as it applies to a voluntary arrangement approved by a creditors' meeting.

Revocation

237F.—(1) The High Court may make an order revoking a voluntary arrangement which has effect by virtue of Article 237D(2) on the ground—

(a) that it unfairly prejudices the interests of a creditor of the debtor, or

(b) that a material irregularity occurred in relation to the arrangements made under Article 237B(2).

(2) An order under paragraph (1) may be made only on the application of—

(a) the debtor,

(b) a person who was entitled to participate in the arrangements made under Article 237B(2),

(c) the trustee of the bankrupt's estate, or

(d) the official receiver.

(3) An application under paragraph (2) may not be made after the end of the period of 28 days beginning with the date on which the official receiver makes his report to the High Court under Article 237C.

(4) But a creditor who was not made aware of the arrangements under Article 237B(2) at the time when they were made may make an application under paragraph (2) during the period of 28 days beginning with the date on which he becomes aware of the voluntary arrangement.

Offences

237G.—(1) Article 236A shall have effect in relation to obtaining approval to a proposal for a voluntary arrangement under Article 237D.

(2) Article 236B shall have effect in relation to a voluntary arrangement which has effect by virtue of Article 237D(2) (for which purposes the words "by a creditors' meeting summoned under Article 231" shall be disregarded).".

Role of official receiver

3. After Article 348A of the 1989 Order (authorisation of nominees and supervisors) insert—

"Official receiver as nominee or supervisor

348B.—(1) The official receiver is authorised to act as nominee or supervisor in relation to a voluntary arrangement approved under Chapter II of Part VIII provided that the debtor is an undischarged bankrupt when the arrangement is proposed.

(2) The Department may by order repeal the proviso in paragraph (1).

(3) An order under paragraph (2) shall be subject to negative resolution.".

Article 25.

SCHEDULE 8

INDIVIDUAL INSOLVENCY: MINOR AND CONSEQUENTIAL AMENDMENTS

1. The 1989 Order shall be amended as follows.

2. In Article 2(2) (general interpretation), in the definition of "the official receiver" for "or winding up" (twice) substitute ", winding up or individual voluntary arrangement".

3. In Article 238(1) (who may present a bankruptcy petition), omit sub-paragraph (d) and the word "or" before it.

4. Article 249 (bankruptcy: summary administration) shall cease to have effect.

5. Article 251 (petition in respect of a solicitor) shall cease to have effect.

6. In Article 256 (annulment of bankruptcy)—

(a) omit paragraph (3) (annulment of bankruptcy order made in respect of a solicitor),

(b) in paragraph (4) (effect of annulment) after "Article 235" insert "or 237D", and

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(c) omit paragraph (5) (previous bankruptcy: disregard of annulled bankruptcy).

7. For Article 264(4) (co-operation with official receiver) substitute—

"(4) The bankrupt shall give the official receiver such inventory of his estate and such other information, and shall attend on the official receiver at such times, as the official receiver may reasonably require—

(a) for a purpose of this Chapter, or

(b) in connection with the making of a bankruptcy restrictions order.".

8. In Article 265(1)(a) (trustee in bankruptcy: power to appoint) omit the words "except at a time when a certificate for the summary administration of the bankrupt's estate is in force,".

9. In Article 266(1) (trustee in bankruptcy: meeting to appoint) omit the words "and no certificate for the summary administration of the bankrupt's estate has been issued,".

10. In Article 267(1) (power of creditors to requisition meeting) omit the words— "and

(b) a certificate for the summary administration of the estate is not for the time being in force,".

11. In Article 270 (trustee: special cases)—

(a) omit paragraphs (1) and (2), and

(b) in paragraph (3) omit the words "but no certificate for the summary administration of the estate is issued".

12. Omit Article 271(2) (removal of trustee: summary administration).

13. In Article 273 (trustee: vacancy)—

(a) omit paragraph (5), and

(b) in paragraphs (6) and (7) omit the words "or (5)".

14. In Article 325(5) (concealment of property) after "the official receiver" insert ", the trustee".

15. At the end of Article 326 (concealment and falsification of records) add—

"(5) In their application to a trading record paragraphs (2)(d) and (3)(b) shall have effect as if the reference to 12 months were a reference to two years.

(6) In paragraph (5) "trading record" means a book, document or record which shows or explains the transactions or financial position of a person's business, including—

(a) a periodic record of cash paid and received,

(b) a statement of periodic stock-taking, and

(c) except in the case of goods sold by way of retail trade, a record of goods sold and purchased which identifies the buyer and seller or enables them to be identified.".

16.—(1) Schedule 6 (scope of insolvency rules) shall be amended as follows.

(2) After paragraph 6 (deeds of arrangement and voluntary arrangements) insert—

"Official receiver acting on voluntary arrangement

6A. Provision about the official receiver acting as nominee or supervisor in relation to a voluntary arrangement under Part VIII, including—

(a) provision requiring the official receiver to act in specified circumstances;

(b) provision about remuneration;

(c) provision prescribing terms or conditions to be treated as forming part of a voluntary arrangement in relation to which the official receiver acts as nominee or supervisor;

(d) provision enabling those terms or conditions to be varied or excluded, in specified circumstances or subject to specified conditions, by express provision in an arrangement.".

(3) After paragraph 27 (records) insert—

"Bankruptcy restrictions orders and undertakings

27A. Provision about bankruptcy restrictions orders, interim orders and undertakings, including—

(a) provision about evidence;

(b) provision enabling the amalgamation of the register mentioned in paragraph 12 of Schedule 2A with another register;

(c) provision enabling inspection of that register by the public.".

17. In Schedule 7 (punishment of offences)—

(a) in the entry for Article 41(1) omit "Undischarged", and

(b) omit the entries for Articles 332(1) and 333(1).

SCHEDULE 9

Article 31..

REPEALS

Short Title	Extent of repeal
The Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 (c. 19).	In section 1(1)(b) "or an administration order". In section 2(1) "or an administration order".
The Local Government Act (Northern Ireland) 1972 (c. 9).	Section 5.
The Solicitors (Northern Ireland) Order 1976 (NI 12).	In Schedule 1A, paragraph 3, the word "or" after sub-paragraph (a).

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Short Title	Extent of repeal
The Insolvency (Northern Ireland) Order 1989 (NI 19).	In Article 5(1), the definitions of "administrator" and "administration order". In Article 176— in paragraph (1)(b), the word ", administrator"; in paragraph (2), in each place, the words "or administrator"; in paragraph (4), the words "or administrator". Article 194(1). In Article 195(1) and (2), the word "administrator". In Article 196, the word "administrator,". In Article 204(1), the word "and" after sub-paragraph (b). In Article 207(3), the word "or" after sub-paragraph (b). In Article 238(1), sub-paragraph (d) and the word "or" before it. Articles 249, 251 and 256(3) and (5). In Article 265(1)(a), the words "except at a time when a certificate for the summary administration of the bankrupt's estate is in force,". In Article 266(1), the words "and no certificate for the summary administration of the bankrupt's estate has been issued,". In Article 267(1), sub-paragraph (b) and the word "and" before it. In Article 270— paragraphs (1) and (2); in paragraph (3), the words "but no certificate for the summary administration of the estate is issued". Article 271(2). In Article 273— paragraph (5); in paragraphs (6) and (7), the words "or (5)". In Article 283(1), the words ", on the application of the trustee,". Articles 332, 333 and 366(2).

Short Title	Extent of repeal
	In Schedule A1, paragraph 23(4)(b) and (c).
	Schedule 4, paragraphs 1 to 7.
	In Schedule 7—
	the entries for Articles 25(2), 28(8), 30(5), 33(3), 34(6), 35(3), 36(7) and 39(6);
	in the entry for Article 41(1), the word "Undischarged";
	the entries for Articles 332(1) and 333(1).
	In Schedule 9, paragraph 84.
The Finance Act 1991 (c. 31).	In Schedule 2, paragraphs 22A and 23.
The Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9).	In Schedule 2, paragraph 37.
The Finance Act 1993 (c. 34).	Section 36(4) and (5).
The Pension Schemes (Northern Ireland) Act 1993 (c. 49).	In section 119(1)(c)(i), "or an administration order".
The Finance Act 1994 (c. 9).	In Schedule 6, paragraph 13(3).
	In Schedule 7, paragraph 7(6).
The Criminal Justice (Northern Ireland) Order 1994 (NI 15).	In Schedule 2, paragraph 15.
The Finance Act 1995 (c. 4).	Section 17.
The Finance Act 1996 (c. 8).	In Schedule 5, paragraph 12(5).
The Employment Rights (Northern Ireland) Order 1996 (NI 16).	In Articles 201(7)(a) and 228(3)(a), the words "or an administration order".
	Article 234(4).
The Financial Services and Markets Act 2000 (c. 8).	In section 362(2)(a), the words "or the petition".
The Finance Act 2000 (c. 17).	In Schedule 7, paragraph 5.
The Finance Act 2001 (c. 9).	In Schedule 5, paragraph 17(3) and (4).
The Insolvency (Northern	Article 7.

Short Title	Extent of repeal
Ireland) Order 2002 (NI 6).	

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Insolvency (Northern Ireland) Order 1989 and makes other provision about insolvency.

The Order provides for a new regime for company administration, restricts the future use of administrative receivership and abolishes Crown preference. It also establishes a new regime for the insolvency of individuals and makes changes to financial arrangements relating to functions performed by the Department of Enterprise, Trade and Investment in relation to insolvency.

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