1991 No. 365

INSOLVENCY

The Administration of Insolvent Estates of Deceased Persons Order (Northern Ireland) 1991

Made . . . . . *5th August 1991*

Coming into operation . . *1st October 1991*

To be laid before Parliament

The Lord Chancellor, in exercise of the powers conferred on him by Article 365 of the Insolvency (Northern Ireland) Order 1989(**a**) and of all other powers enabling him in that behalf, with the concurrence of the Department of Economic Development, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Administration of Insolvent Estates of Deceased Persons Order (Northern Ireland) 1991 and shall come into operation on 1st October 1991.

Interpretation

2. In this Order—

"insolvency administration" means the administration in bankruptcy of the insolvent estate of a deceased person;

"insolvency administration order" means an order for the administration in bankruptcy of the insolvent estate of a deceased debtor (being an individual at the date of his death);

"insolvency administration petition" means a petition for an insolvency administration order;

"the Judgments Enforcement Order" means the Judgments Enforcement (Northern Ireland) Order 1981(**b**);

"the Land Registration Act" means the Land Registration Act (Northern Ireland) 1970(**c**);

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

"the Registration of Deeds Act" means the Registration of Deeds Act (Northern Ireland) 1970(**d**); and

"the Rules means the Insolvency Rules (Northern Ireland) 1991(**e**)

(**a**) S.I. 1989/2405 (N.I. 19)
(**b**) S.I. 1981/226 (N.I. 6)
(**c**) 1970 c. 18 (N.I.)
(**d**) 1970 c. 25 (N.I.)
(**e**) S.R. 1991 No. 364

Application of Insolvency and Judgments Enforcement Orders

3.—(1) The provisions of the Order, the Land Registration Act, the Registration of Deeds Act and the Judgments Enforcement Order specified in Parts II and III of Schedule 1 shall apply to the administration in bankruptcy of the insolvent estates of deceased persons dying before presentation of a bankruptcy petition with the modifications specified in those Parts and with any further such modifications as may be necessary to render them applicable to the estate of a deceased person and in particular with the modifications specified in Part I of the Schedule, and the provisions of the Rules, the Insolvency Regulations (Northern Ireland) 1991(**a**), the Land Registration Rules (Northern Ireland) 1977(**b**), the Insolvency (Registration of Deeds) Regulations (Northern Ireland) 1991(**c**) and any order made under Article 361 of the Order (fees and deposits) shall apply accordingly.

(2) In the case of any conflict between any provision of the Rules and any provision of this Order, the latter provision shall prevail.

Estate administered otherwise than in bankruptcy

4.—(1) Where the estate of a deceased person is insolvent and is being administered otherwise than in bankruptcy, subject to paragraphs (2) and (3), the same provisions as may be in operation for the time being under the law of bankruptcy with respect to the assets of individuals adjudged bankrupt shall apply to the administration of the estate with respect to the respective rights of secured and unsecured creditors, to debts and liabilities provable, to the valuation of future and contingent liabilities and to the priorities of debts and other payments.

(2) The reasonable funeral, testamentary and administration expenses have priority over the preferential debts listed in Schedule 4 to the Order.

(3) Article 265(2) of the Order shall not apply.

Debtor dying after bankruptcy petition presented

5.—(1) If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the High Court otherwise orders, be continued as if he were alive, with the modifications specified in Schedule 2.

(2) The reasonable funeral and testamentary expenses have priority over the preferential debts listed in Schedule 4 to the Order.

(3) If a debtor dies after presentation of a bankruptcy petition but before service, the High Court may order service to be effected on his personal representative or such other person as it thinks fit.

(4) In this Article "debtor" includes a solicitor against whom a bankruptcy petition has been presented by the Law Society of Northern Ireland under Article 238(1)(*d*) of the Order.

(**a**) S.R. 1991 No. 388
(**b**) S.R. 1977 No. 154 as amended by S.R. 1991 No. 381
(**c**) S.R. 1991 No. 382

Definitions to be added to Insolvency Order

6. The definitions in Article 2 other than the definition of ''the Order'' shall be added to those in Article 9 of the Order.

Definitions to be added to Land Registration Act

7. The definitions in Article 2 other than the definition of ''the Land Registration Act'' shall be added to those in section 94 of the Land Registration Act.

Definitions to be added to Registration of Deeds Act

8. The definitions in Article 2 other than the definition of ''the Registration of Deeds Act'' shall be added to those in section 20 of the Registration of Deeds Act.

Definitions to be added to Judgments Enforcement Order

9. The definitions in Article 2 other than the definitions of ''the Judgments Enforcement Order'' and ''the Rules'' shall be added to those in Article 2 of the Judgments Enforcement Order.

Dated 5th August 1991. *Mackay of Clashfern*, C.

The Department of Economic Development hereby concurs with the foregoing Order.

Sealed with the Official Seal of the Department of Economic Development on 12th August 1991.

(L.S.) *A. H. McAlister*
Assistant Secretary

Provisions of the Order, the Land Registration Act, the Registration of Deeds Act and the Judgments Enforcement Order applying with relevant modifications to the Administration in Bankruptcy of Insolvent Estates of deceased persons dying before presentation of a bankruptcy Petition

PART I

GENERAL MODIFICATIONS OF PROVISIONS OF THE ORDER, THE LAND REGISTRATION ACT, THE REGISTRATION OF DEEDS ACT AND THE JUDGMENTS ENFORCEMENT ORDER

Except in so far as the context otherwise requires, for any such reference as is specified in column 1 of the Table there shall be substituted the reference specified in column 2.

Table

Reference in provision of the Order, the Land Registration Act, the Registration of Deeds Act and the Judgments Enforcement Order specified in Part II (1)	*Substituted references* (2)
bankrupt; debtor.	deceased debtor or his personal representative (or if there is no personal representative such person as the court may order) as the case may require.
bankruptcy.	insolvency administration.
the bankrupt's estate.	the deceased debtor's estate.
the commencement of the bankruptcy.	the date of the insolvency administration order.
a bankruptcy order.	an insolvency administration order.
a bankruptcy petition.	an insolvency administration petition.
an individual being adjudged bankrupt.	an insolvency administration order being made.
a debtor's petition.	a petition by the personal representative of a deceased debtor for an insolvency administration order.

PART II

(1) PROVISIONS OF THE ORDER NOT INCLUDED IN PART III

The following provisions of the Order shall apply—

1. Articles 2 to 4.

2. Article 9 with the modification that in the definition of ''bankruptcy debt'', for the words ''commencement of the bankruptcy'', wherever they occur, there shall be substituted the words ''date of death of the deceased debtor'' and the words ''(including after his discharge from bankruptcy)'' shall be omitted.

3. Article 10.

4. Article 11 with the modification that it shall have effect as if the petition had been presented and the insolvency administration order had been made on the date of death of the deceased debtor and with the following modifications—

(*a*) paragraph 2(*a*) shall be omitted;

(*b*) in paragraph 2(*b*), for the words "bankrupt and his family" there shall be substituted the words "family of the deceased debtor"; and

(*c*) after paragraph (4) there shall be added the following paragraph—

"(4A) References in Parts VIII to X to property, in relation to a deceased debtor, include the capacity to exercise and take proceedings for exercising all such powers over or in respect of property as might have been exercised by his personal representative for the benefit of the estate on the date of the insolvency administration order and as are specified in paragraph (4).".

5. Article 238 with the following modifications—

(*a*) the words "against an individual" shall be omitted;

(*b*) at the end of paragraph 1(*a*) there shall be added the words "in Form 1 set out in Schedule 3 to the Administration of Insolvent Estates of Deceased Persons Order (Northern Ireland) 1991";

(*c*) paragraph 1(*b*) shall be omitted;

(*d*) in paragraph 1(*c*) after the words "Part VIII" there shall be added the words "in Form 2 set out in the said Schedule 3";

(*e*) paragraph (1)(*d*) shall be omitted; and

(*f*) at the end of paragraph (2) there shall be added the words "in Form 3 set out in the said Schedule 3".

6. Article 240 with the following modifications—

(*a*) for paragraph (1) there shall be substituted the following—

"(1) An insolvency administration petition shall, unless the High Court otherwise directs, be served on the personal representative and shall be served on such other persons as the Court may direct."; and

(*b*) in paragraph (3) for the words "bankruptcy petition" there shall be substituted the words "petition to the High Court for an insolvency administration order with or without costs".

7. Article 241 with the following modifications to paragraph (2)—

(*a*) for the words "Subject to Articles 242 to 244" there shall be substituted the words "Subject to Article 243";

(*b*) before the words "at the time" there shall be inserted the words "had the debtor been alive"; and

(*c*) for sub-paragraphs (*a*) to (*d*) there shall be substituted the following—

"(*a*) the amount of the debt, or the aggregate amount of the debts, owed by the debtor would have been equal to or exceeded the bankruptcy level, or

(*b*) the debt, or each of the debts, owed by the debtor would have been for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain future time, and would have been unsecured.".