1991 No. 369

COMPANIES

The Companies (Unfair Prejudice Applications) Proceedings Rules (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 359 of the Insolvency (Northern Ireland) Order 1989(**a**) as applied by Article 454(6) of the Companies (Northern Ireland) Order 1986(**b**), with the concurrence of the Department of Economic Development, and after consulting the committee existing for that purpose under Article 360 of the Insolvency (Northern Ireland) Order 1989, hereby makes the following Rules—

Citation and commencement

1. These Rules may be cited as the Companies (Unfair Prejudice Applications) Proceedings Rules (Northern Ireland) 1991 and shall come into operation on 1st October 1991.

Interpretation

2. In these Rules—

"the court" means the High Court of Justice in Northern Ireland (Chancery Division) exercising its jurisdiction under the Order and in respect of administrative functions includes the Bankruptcy and Companies Office;

"the Judge" means the Chancery Judge or any Judge of the High Court or of the Court of Appeal for the time being acting as Chancery Judge;

"the Order" means the Companies (Northern Ireland) Order 1986 (any reference to a numbered Article or Part being to an Article or Part of that Order); and

"the return day" means the day fixed by the court under Rule 4(4) for the hearing of a petition to which these Rules apply.

(**a**) S.I. 1989/2405 (N.I. 19)
(**b**) S.I. 1986/1032 (N.I. 6) as amended by S.I. 1989/2405 (N.I. 19), Schedule 9, paragraph 18

Preliminary

3.—(1) These Rules apply in relation to petitions presented to the court on or after the day on which the Rules came into operation under Part XVIII (protection of company's members against unfair prejudice) by a member of a company under Article 452(1), by a person treated as a member under Article 452(2) or by the Department of Economic Development under Article 453.

(2) Except so far as inconsistent with the Order and these Rules, the Rules of the Supreme Court (Northern Ireland) 1980(**a**) and the practice of the High Court apply to proceedings under Part XVIII, with any necessary modifications.

Presentation of petition

4.—(1) The petition shall be in the form set out in the Schedule.

(2) The petition shall specify the grounds on which it is presented and the nature of the relief which is sought by the petitioner, and shall be delivered to the court for filing with sufficient copies for service under Rule 5.

(3) The petition shall be presented in the Bankruptcy and Companies Office.

(4) The court shall fix a hearing for a day on which, unless the court otherwise directs, the petitioner and any respondent (including the company) shall attend before the Master (Bankruptcy) in chambers for directions to be given in relation to the procedure on the petition.

(5) On fixing the return day, the court shall return to the petitioner sealed copies of the petition for service, each endorsed with the return day and the time of hearing.

Service of petition

5.—(1) The petitioner shall, at least 14 days before the return day, serve a sealed copy of the petition on the company.

(2) In the case of a petition based upon Article 452, the petitioner shall also, at least 14 days before the return day, serve a sealed copy of the petition on every respondent named in the petition.

Return of petition

6. On the return day, or at any time after it, the court shall give such directions as it thinks appropriate with respect to the following matters—

(*a*) service of the petition on any person, whether in connection with the time, date and place of a further hearing, or for any other purpose;

(*b*) whether particulars of claim and defence are to be delivered, and generally as to the procedure on the petition;

(**a**) S.R. 1980 No. 346; the relevant amending instruments are S.R. 1981 No. 224, S.R. 1983 No. 5, S.R. 1983 No. 114 and S.R. 1986 No. 203

(*c*) whether, and if so by what means, the petition is to be advertised;

(*d*) the manner in which any evidence is to be adduced at any hearing before the Judge and in particular (but without prejudice to the generality of the above) as to—

(i) the taking of evidence wholly or in part by affidavit or orally;

(ii) the cross-examination of any deponents to affidavits;

(iii) the matters to be dealt with in evidence;

(*e*) any other matter affecting the procedure on the petition or in connection with the hearing and disposal of the petition.

Settlement and advertisement of the order

7.—(1) When an order has been made by the court under Part XVIII, the petitioner and every other person who has appeared on the hearing of the petition shall, not later than the day following that on which the order is made, leave at the court all the documents required for enabling the order to be completed forthwith.

(2) It is not necessary for the court to appoint a time, date and place for any person to attend to settle the order, unless in any particular case the special circumstances make an appointment necessary.

(3) If the court considers that the order should be advertised, it shall give directions as to the manner and time of advertisement.

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

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

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

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

SCHEDULE

Rule 4

Petition on Ground that Members Unfairly Prejudiced

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

(a) Insert full name of company

IN THE MATTER OF (a)
Ltd. [or p.l.c.]
—and—
IN THE MATTER OF the Companies (Northern Ireland) Order 1986

(b) Insert full name(s) and address(es) of petitioner

To Her Majesty's High Court of Justice in Northern Ireland
The petition of (b)

1.(a)
(hereinafter called "the company" was incorporated on

(c) Insert date

(c)
under

(d) Insert title of statutory provision under which company was incorporated

(d)

(e) Insert address of registered office

2. The registered office of the company is at (e)

3. The nominal capital of the company is £ divided into shares of £ each. The amount of the capital paid up or credited as paid up is £
The petitioner(s) is/are the holders of shares of £ each

(f) Delete as applicable

Such shares at the date of this petition (f) [are registered in the name(s) of the petitioner(s)] [have been transferred or transmitted to the petitioner(s) by operation of law].

4. The principal objects for which the company was established are as follows:

and other objects stated in the memorandum of association of the company.

(g) Set out the grounds on which the petition is presented

5. (g)

In these circumstances your petitioner submits that the affairs of the company are being conducted in a manner which is unfairly prejudicial to the interests of (f) [some part of the members (including your petitioner)] [your petitioner]
or
(f) [The act or omission] [the proposed act or omission] referred to above (f) [is] [would be] unfairly prejudicial to the interests of (f) [some part of the members (including your petitioner)] [your petitioner].

(h) Here set out the nature of relief sought

The petitioner therefore prays as follows (h)

or

that such other order may be made as the court thinks fit.

Note

It is intended to serve this petition on:

Endorsement

This petition having been presented to the court on
let all parties attend before the
Master (Bankruptcy) in chambers on:

Date .....
Time .....
Place .....
for directions to be given
The Solicitor(s) for the petitioner is/are:
Name .....
Address .....
.....
Tel. No. .....
Fax. No. (if any) .....
Reference .....

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules set out a new procedure governing petitions presented to the court under Part XVIII of the Companies (Northern Ireland) Order 1986 (which provides for applications to the court to grant relief against a company whose members are unfairly prejudiced). The Rules apply where the petition is presented on or after the commencement date, which is the same day as Article 359 of the Insolvency (Northern Ireland) Order 1989 comes into operation. For petitions presented before that date the procedure under Part XVIII will continue to be governed by the Companies (Winding-up) Rules 1984 (S.I. 1984/163).

The Rules contain a new form of petition in the Schedule. They also provide for a hearing before the Master (Bankruptcy) at an early stage in the proceedings. The Master (Bankruptcy) is given wide powers to direct that the petition proceed in the manner best suited to the particular petition, including powers to direct the service and advertisement of the petition and the manner in which any evidence is to be adduced at subsequent hearings.

1991 No. 370

Temporary Speed Limit (Motorway M2) No. 5 Order (Northern Ireland) 1991

This Order, being of a temporary character, is not printed at length in this volume.