

These notes refer to the Insolvency (Amendment) Act (Northern Ireland) 2016 (c.2) which received Royal Assent on 29 January 2016

Insolvency (Amendment) Act (Northern Ireland) 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 16: Oversight of recognised professional bodies

Recognised professional bodies are bodies, or professional organisations, which authorise insolvency practitioners to act. They regulate the insolvency practitioners by maintaining and enforcing rules for securing that those who they permit to act, are fit and proper persons to do so and have the correct levels of education, experience and practical training. The recognised professional bodies also have the power to discipline members. A body may be recognised by the Department pursuant to Article 350(1) or (2).

This section inserts new Articles 350D to 350K into the Insolvency Order. These Articles set out the way in which the Department will be able to sanction recognised professional bodies and also the appeals process available to them.

New Articles 350D and 350E of the Insolvency Order will allow the Department to issue directions to a recognised professional body; they set out what sort of requirements the directions may impose; and the procedure for issuing such directions. The Department would consider using its power to direct a recognised professional body to take such steps as the Department considers will counter any adverse impact of a failure to act compatibly with the objectives, mitigate its effect or prevent its occurrence or recurrence. An example which might prompt a direction might be if the recognised professional body has failed to address the Department's concerns following a review of the way the recognised professional body handles complaints or a recognised professional body's failure to carry out a targeted monitoring visit of its insolvency practitioners where the Department has requested that it be done.

These Articles set out the procedure and the way in which the Department may direct a recognised body to act following an act or omission which has resulted in one or more of the regulatory objectives not being complied with or which has an unfavourable impact on those objectives. The Department must give at least 28 days notice to the recognised professional body of the proposed direction. The recognised professional body will have the opportunity to make written

representations to the Department, which must be considered before a direction is imposed.

New Articles 350F, 350G, 350H and 350I concern the ability of the Department to impose a financial penalty on a recognised professional body if it has failed to comply with a direction imposed under Article 350D, or any other requirement imposed on it under the Insolvency Order or secondary legislation made under that Order, and it is appropriate to impose a financial penalty. Such a penalty should deter future transgressions. Any sums paid over to the Department under this provision will be paid into the Consolidated Fund. There is no financial limit on the penalty. Before imposing a financial penalty, the Department must give at least 28 days notice of the proposed financial penalty, during which time the recognised professional body can make written representations to the Department. Before imposing any penalty, the Department must have considered any such representations.

A recognised professional body may appeal a financial penalty on a number of grounds. These grounds are set out in new Article 350H and include that the Department was not acting within its powers; that the recognised professional body had in fact complied with the requirement – that is the financial penalty should not have been imposed; the correct procedure had not been followed; the amount of the penalty was unreasonable; or that the time given to pay was unreasonable.

New Articles 350J and 350K introduce a reprimand as a sanction available to the Department. This means that the Department will be able to publish a statement reprimanding a recognised professional body for an act or omission which has an adverse impact on one or more of the regulatory objectives. This provision enables the Department to publicly register its disapproval of a recognised professional body's act or omission if it has (or has had) an adverse impact on the regulatory objectives. The recognised professional body must have been given at least 28 days notice of the Department's proposal to use the power under this Article and the Department must consider any written representations that are made by the recognised professional body ahead of publishing the reprimand.

New Article 361A(1B) clarifies that the fee the Department is able to charge the recognised professional bodies for the maintenance of their recognition can include, but is not limited to, the costs in connection with a direction issued to a recognised professional body under Articles 350D and 350E, a reprimand to a recognised professional body given under Articles 350J and 350K and revocation of a recognised professional body's recognition, where it has been requested under Article 350N.