
STATUTORY INSTRUMENTS

1990 No. 439

The Insolvency Practitioners Regulations 1990

PART II

AUTHORISATION OF INSOLVENCY PRACTITIONERS

Application of this Part

- 3.** The Regulations in this Part apply in relation to:—
- (a) any applications made to a competent authority on or after the commencement date; and
 - (b) any withdrawal of an authorisation pursuant to a notice under section 394(2) of the Act given on or after the commencement date.

Matters for determining whether an applicant is fit and proper

4.—(1) Without prejudice to the generality of section 393(2)(a) or (4)(a) of the Act, in determining whether an applicant is a fit and proper person to act as an insolvency practitioner the matters to be taken into account shall include:—

- (a) whether the applicant has been convicted of any offence involving fraud or other dishonesty or violence;
- (b) whether the applicant has contravened any provision in any enactment contained in the insolvency legislation or in subordinate legislation made under any such enactment or any provision of the law of a country or territory outside Great Britain which corresponds to such legislation;
- (c) whether the applicant has engaged in any practices in the course of carrying on business appearing to be deceitful or oppressive or otherwise unfair or improper, whether unlawful or not, or which otherwise cast doubt upon his probity or competence for discharging the duties of an insolvency practitioner;
- (d) whether, in respect of any insolvency practice carried on by the applicant at the date of or at any time prior to the making of the application, there were established adequate systems of control of the practice and adequate records relating to the practice, including accounting records, and whether such systems of control and records have been or were maintained on an adequate basis;
- (e) whether the insolvency practice of the applicant is, has been or, where the applicant is not yet carrying on such a practice, will be, carried on with the independence, integrity and the professional skills appropriate to the range and scale of the practice and the proper performance of the duties of an insolvency practitioner;
- (f) whether the applicant, in any case where he has acted as an insolvency practitioner, has failed to disclose fully to such persons as might reasonably be expected to be affected thereby circumstances where there is or appears to be a conflict of interest between his so acting and any interest of his own, whether personal, financial or otherwise, without

having received such consent as might be appropriate to his acting or continuing to act despite the existence of such circumstances.

(2) In this regulation “applicant” includes, where it is proposed to withdraw any authorisation on the grounds that the holder is not a fit and proper person, the holder of the authorisation.

Education and training and experience

5.—(1) The requirements with respect to education and practical training and experience which are prescribed for the purposes of section 393(2)(b) of the Act are set out in regulations 6, 7 and 8 below which shall apply to applicants for authorisation as specified in this regulation.

(2) Regulation 6 shall apply to all applicants other than an applicant who:—

- (a) was born on or before 15 December 1951; or
- (b) at the relevant time is the holder of an authorisation.

(3) Regulations 7 and 8 shall apply to all applicants other than an applicant who at the relevant time:—

- (a) is the holder of an authorisation; and
- (b) (i) has been appointed an office-holder in at least one case under the law of England and Wales or Scotland; or
 - (ii) has acquired not less than 500 hours of higher insolvency work experience; within the period of three years immediately prior to the relevant time and in determining whether an applicant falls within this sub-paragraph the provisions of regulation 8(2) below shall apply.

6. An applicant to whom this regulation applies by virtue of regulation 5(2) must at the relevant time possess one or more of the academic qualifications listed in Part I of Schedule 1 to these Regulations or such other academic or professional qualifications as shall indicate the attainment of an equivalent level of education to that attested by that qualification or, as the case may be, those qualifications.

7. An applicant to whom this regulation applies by virtue of regulation 5(3) must at the relevant time have passed the Joint Insolvency Examination set by the Joint Insolvency Examination Board or have acquired in, or been awarded in, a country or territory outside the United Kingdom professional or vocational qualifications which indicate that the applicant has the knowledge and competence that is attested by a pass in that examination.

8.—(1) An applicant to whom this regulation applies by virtue of regulation 5(3) must either:—

- (a) have been appointed an office-holder in not less than 30 cases within the period of 10 years immediately prior to the relevant time; or
- (b) (i) have been first employed by a person carrying on insolvency practice in that practice not later than 10 years prior to the relevant time; and
 - (ii) within the period of 10 years referred to in sub-paragraph (a) above have acquired not less than 7,000 hours of insolvency work experience whether in the employment of a person carrying on an insolvency practice or as an office-holder; and
 - (iii) satisfy the condition set out in sub-paragraph (c) below.
- (c) The condition referred to in sub-paragraph (1)(b)(iii) is that the applicant must show he satisfies one of the following three requirements:—
 - (i) he has been appointed an office-holder in at least 5 cases within the period of 5 years immediately prior to the relevant time; or

- (ii) he has acquired 1,000 hours or more of higher insolvency work experience within such period; or
 - (iii) he can show that within such period he has achieved one of the following combinations of appointments as an office-holder and hours acquired of higher insolvency work experience:–
 - (a) not less than 4 cases and 200 hours;
 - (b) not less than 3 cases and 400 hours;
 - (c) not less than 2 cases and 600 hours;
 - (d) not less than 1 case and 800 hours.
- (2) In determining whether an applicant falls within paragraph (1) above:–
- (a) no account shall be taken of any case where:–
 - (i) he was appointed to the office of receiver or to a corresponding office under the law of a country or territory outside Great Britain by or on behalf of a creditor who at the time of appointment was an associate of the applicant; or
 - (ii) in a members' voluntary winding up or in a corresponding procedure under the laws of a country or territory outside Great Britain, he was appointed liquidator at a general meeting where his associates were entitled to exercise or control the exercise of one third or more of the voting power at that general meeting;
 - (b) where the applicant has been an office-holder in relation to:–
 - (i) two or more companies which were associates at the time of appointment; or
 - (ii) two or more individuals who were carrying on business in partnership with each other at the time of appointment;

he shall be treated as having held office in only one case in respect of all offices held in relation to the companies which were associates or in respect of all offices held in relation to the individuals who were in partnership as the case may be.

(3) Where in order to satisfy all or any of the requirements set out in paragraph (1) above an applicant relies on appointment as an office-holder or the acquisition of insolvency work experience or higher insolvency work experience in relation to cases under the laws of a country or territory outside Great Britain, he shall demonstrate that he has no less than 1,400 hours of insolvency work experience or higher insolvency work experience in cases under the law of England and Wales or Scotland acquired within the period of the two years immediately prior to the relevant time and that where appropriate he has a good command of the English language.

(4) For the purposes of sub-paragraph (1)(b) above employment by a person carrying on insolvency practice includes Crown employment in the Insolvency Service of the Department of Trade and Industry.

(5) For the purposes of paragraph (1) above, the reference to an insolvency practitioner in the definition of office-holder in regulation 1(3) shall be construed in accordance with section 388 of the Act but without regard to subsection (5) of that section and references to an office-holder who has been appointed or to a person who has been appointed an office-holder shall include the official receiver in any case where the official receiver is or has been an office-holder whether by virtue of his office or otherwise.

(6) For the purposes of paragraph (1) above a person carrying on insolvency practice includes a firm or partnership.

Fees

9. The fee to accompany an application to which the Regulations in this Part apply shall be:–

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) in a case where, at the relevant time, the applicant is the holder of an authorisation, £100;
and
- (b) in any other case, £200.

Maximum period of authorisation

10. No authorisation granted pursuant to an application to which the Regulations in this Part apply shall continue in force for a period of more than 3 years from the date on which it is granted.