
STATUTORY INSTRUMENTS

2005 No. 512

INSOLVENCY, ENGLAND AND WALES

The Insolvency (Amendment) Regulations 2005

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| <i>Made</i> | - - - - | <i>2nd March 2005</i> |
| <i>Laid before Parliament</i> | | <i>8th March 2005</i> |
| <i>Coming into force</i> | - - | <i>1st April 2005</i> |

The Secretary of State, in exercise of the powers conferred upon her by Rule 12.1 of the Insolvency Rules 1986(1) and sections 411 and 412 of, and paragraphs 27 of Schedule 8 and 30 of Schedule 9 to, the Insolvency Act 1986(2) hereby makes the following Regulations:

Citation and Commencement

1. These Regulations may be cited as the Insolvency (Amendment) Regulations 2005 and shall come into force on 1st April 2005 (“the commencement date”).

Interpretation

2. In these Regulations “the principal Regulations” means the Insolvency Regulations 1994(3) and, unless otherwise expressly provided, a reference in these Regulations to a numbered Part or regulation is to the Part or regulation so numbered in the principal Regulations.

Transitional provisions

3. The substitution of regulation 35 by regulation 7 of these Regulations only applies in relation to services provided by the official receiver (or any of his officers) in relation to—

- (a) a company in respect of which a winding-up order is made on or after the commencement date;
- (b) a bankruptcy where the bankruptcy order is made on or after the commencement date; or
- (c) his appointment as an interim receiver or provisional liquidator where he is appointed on or after the commencement date.

(1) S.I. 1986/1925, amended by S.I. 1987/1919, 1989/397, 1991/495, 1993/602, 1995/586, 1999/359, 1999/1022, 2001/763, 2002/1307, 2002/2712, 2003/1730, 2004/584 and 2004/1070.
(2) 1986 c. 45. Sections 411 and 412 were amended by the Insolvency Act 1986 (Amendment) Regulations 2002 (S.I. 2002/1037).
(3) S.I. 1994/2507. This instrument has been amended a number of times but only the amendments made by S.I. 2004/472 are relevant.

Amendments to the principal Regulations

4. The principal Regulations shall be amended as set out in these Regulations.

Amendments to regulation 3 of the principal Regulations

- 5.—(1) Regulation 3 is amended as follows.

(2) In paragraph (5) after the words “these Regulations” there is inserted “(except for regulations 3A and 36A)”.

- (3) After paragraph (5) there is inserted—

“(6) Regulation 3A applies in any case where a company entered into administration on or after 15th September 2003 other than a case where the company entered into administration by virtue of a petition presented before that date.

(7) Regulation 36A applies in any case where an insolvency practitioner is appointed on or after 1st April 2005.”.

Insertion of new Part 1A into the principal Regulations

6. After regulation 3 there is inserted—

“PART 1A ADMINISTRATION

Disposal of company’s records and provision of information to the Secretary of State

3A.—(1) The person who was the last administrator of a company which has been dissolved may, at any time after the expiration of a period of one year from the date of dissolution, destroy or otherwise dispose of the books, papers and other records of the company.

(2) An administrator or former administrator shall within 14 days of a request by the Secretary of State give the Secretary of State particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the company or dividends or other sums due to any person as a member or former member of the company.”

Substitution of regulation 35 of the principal Regulations

7. For regulation 35 there is substituted—

“Official receiver’s general remuneration while acting as interim receiver, provisional liquidator, liquidator or trustee

35.—(1) The official receiver shall be entitled to remuneration calculated in accordance with the applicable hourly rates set out in paragraph (2) for services provided by him (or any of his officers) in relation to—

- (a) a distribution made by him when acting as liquidator or trustee to creditors (including preferential or secured creditors or both such classes of creditor);
- (b) the realisation of assets on behalf of the holder of a fixed or floating charge or both types of those charges;
- (c) the supervision of a special manager;

- (d) the performance by him of any functions where he acts as provisional liquidator; or
 - (e) the performance by him of any functions where he acts as an interim receiver.
- (2) The applicable hourly rates referred to in paragraph (1) are—
- (a) in relation to the official receiver of the London insolvency district, those set out in Table 2 in Schedule 2; and
 - (b) in relation to any other official receiver, those set out in Table 3 in Schedule 2.”.

Insertion of new Part 5A into the principal Regulations

8. After regulation 36 there is inserted—

“PART 5A

INFORMATION ABOUT TIME SPENT ON A CASE TO BE PROVIDED BY INSOLVENCY PRACTITIONER TO CREDITORS ETC.

36A.—(1) Subject as set out in this regulation, in respect of any case in which he acts, an insolvency practitioner shall on request in writing made by any person mentioned in paragraph (2), supply free of charge to that person a statement of the kind described in paragraph (3).

(2) The persons referred to in paragraph (1) are—

- (a) any creditor in the case;
- (b) where the case relates to a company, any director or contributory of that company; and
- (c) where the case relates to an individual, that individual.

(3) The statement referred to in paragraph (1) shall comprise in relation to the period beginning with the date of the insolvency practitioner’s appointment and ending with the relevant date the following details—

- (a) the total number of hours spent on the case by the insolvency practitioner and any staff assigned to the case during that period;
- (b) for each grade of individual so engaged, the average hourly rate at which any work carried out by individuals in that grade is charged; and
- (c) the number of hours spent by each grade of staff during that period.

(4) In relation to paragraph (3) the “relevant date ” means the date next before the date of the making of the request on which the insolvency practitioner has completed any period in office which is a multiple of six months or, where the insolvency practitioner has vacated office, the date that he vacated office.

(5) Where an insolvency practitioner has vacated office, an obligation to provide information under this regulation shall only arise in relation to a request that is made within 2 years of the date he vacates office.

(6) Any statement required to be provided to any person under this regulation shall be supplied within 28 days of the date of the receipt of the request by the insolvency practitioner.

(7) In this regulation the expression “insolvency practitioner” shall be construed in accordance with section 388 of the Insolvency Act 1986.”

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

Gerry Sutcliffe
Parliamentary Under Secretary of State for
Employment Relations, Consumers and Postal
Services
Department of Trade and Industry

2nd March 2005

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Insolvency Regulations 1994 (S.I.1994/2507). Regulation 6 of these Regulations inserts a new regulation 3A into the Insolvency Regulations 1994 to make provision for when the Secretary of State can require information from an administrator and the circumstances in which an administrator can dispose of company's records.

A new version of regulation 35 of the 1994 Regulations is substituted by regulation 7 of these Regulations. This sets out an exhaustive list of the circumstances in which the official receiver is entitled to charge remuneration.

Regulation 8 of these Regulations inserts a new regulation 36A into the 1994 Regulations. This provides that an insolvency practitioner can be required to provide a statement of the number of hours spent on a case by the insolvency practitioner and his staff by grade and further makes provision for the circumstances in which a statement should be made and the information to be included in that statement.

A number of other changes to the Insolvency Regulations 1994 consequential on the above mentioned changes are also made.

No Regulatory Impact Assessment has been prepared in relation to these Regulations as they will not impose any significant costs on business.