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STATUTORY INSTRUMENTS

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**2009 No. 3081**

**PROVISION OF SERVICES  
INSOLVENCY**

**The Provision of Services (Insolvency  
Practitioners) Regulations 2009**

*Made - - - - 23rd November 2009*  
*Laid before Parliament 25th November 2009*  
*Coming into force - - 28th December 2009*

These Regulations are made in the exercise of powers conferred by section 2(2) of the European Communities Act 1972(1) and sections 389A, 390, 392, 393, 415A and 419 of the Insolvency Act 1986(2).

The Secretary of State is a Minister designated(3) in relation to services in the internal market for the purposes of section 2(2) of the European Communities Act 1972.

Accordingly, the Secretary of State makes the following Regulations.

**Citation and commencement**

<sup>F1</sup>1. ....

**F1** Regulations revoked (except reg. 4 and Sch. paras. 2, 8(1)-(4)(7)) (31.12.2020) by [The Provision of Services \(Amendment etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1329\)](#), **reg. 22**; 2020 c. 1, Sch. 5 para. 1(1)

**Amendments to the Insolvency Act 1986**

<sup>F1</sup>2. ....

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(1) [1972 c.68](#), to which there are amendments not relevant to these Regulations.  
(2) [1986 c.45](#). Section 389A was inserted by the Insolvency Act [2000 \(c.23\)](#), section 4(1) and (4). Section 415A was inserted by section 270 of the Enterprise Act [2002 \(c. 40\)](#). There are amendments to sections 389A, 390 and 392 which are not relevant to these Regulations.  
(3) [S.I. 2009/221](#).

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The Provision of Services (Insolvency Practitioners) Regulations 2009. (See end of Document for details)*

**F1** Regulations revoked (except reg. 4 and Sch. paras. 2, 8(1)-(4)(7)) (31.12.2020) by [The Provision of Services \(Amendment etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1329\)](#), [reg. 22](#); 2020 c. 1, Sch. 5 para. 1(1)

### **Amendment to article 3 of the Insolvency Practitioners and Insolvency Services Account (Fees) Order 2003**

**<sup>F1</sup>3.** .....

**F1** Regulations revoked (except reg. 4 and Sch. paras. 2, 8(1)-(4)(7)) (31.12.2020) by [The Provision of Services \(Amendment etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1329\)](#), [reg. 22](#); 2020 c. 1, Sch. 5 para. 1(1)

### **Amendments to the Insolvency Practitioners Regulations 2005**

**4.** The Insolvency Practitioners Regulations 2005(4) are amended as set out in the Schedule to these Regulations.

#### **Commencement Information**

**II** [Reg. 4](#) in force at 28.12.2009, see [reg. 1](#)

### **Transitional provision**

**<sup>F1</sup>5.** .....

**F1** Regulations revoked (except reg. 4 and Sch. paras. 2, 8(1)-(4)(7)) (31.12.2020) by [The Provision of Services \(Amendment etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1329\)](#), [reg. 22](#); 2020 c. 1, Sch. 5 para. 1(1)

*Ian Lucas*  
Minister for Business and Regulatory Reform  
Department for Business, Innovation & Skills

## SCHEDULE

Regulation 4

### Amendments to the Insolvency Practitioners Regulations 2005

**F1**1. ....

**F1** Regulations revoked (except reg. 4 and Sch. paras. 2, 8(1)-(4)(7)) (31.12.2020) by The Provision of Services (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1329), **reg. 22**; 2020 c. 1, Sch. 5 para. 1(1)

**2.** The principal Regulations are amended as set out in paragraphs 3 to 9 of this schedule.

#### Commencement Information

**I2** Sch. para. 2 in force at 28.12.2009, see **reg. 1**

#### Amendment to regulation 7

**F1**3. ....

**F1** Regulations revoked (except reg. 4 and Sch. paras. 2, 8(1)-(4)(7)) (31.12.2020) by The Provision of Services (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1329), **reg. 22**; 2020 c. 1, Sch. 5 para. 1(1)

#### Amendments to regulation 8

**F1**4. ....

**F1** Regulations revoked (except reg. 4 and Sch. paras. 2, 8(1)-(4)(7)) (31.12.2020) by The Provision of Services (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1329), **reg. 22**; 2020 c. 1, Sch. 5 para. 1(1)

#### Amendment to regulation 10

**F1**5. ....

**F1** Regulations revoked (except reg. 4 and Sch. paras. 2, 8(1)-(4)(7)) (31.12.2020) by The Provision of Services (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1329), **reg. 22**; 2020 c. 1, Sch. 5 para. 1(1)

#### Amendment to regulation 11

**F1**6. ....

**F1** Regulations revoked (except reg. 4 and Sch. paras. 2, 8(1)-(4)(7)) (31.12.2020) by The Provision of Services (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1329), **reg. 22**; 2020 c. 1, Sch. 5 para. 1(1)

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Changes to legislation: There are currently no known outstanding effects for the The Provision of Services (Insolvency Practitioners) Regulations 2009. (See end of Document for details)

**Amendment to regulation 12**

<sup>F1</sup>7. ....

**F1** Regulations revoked (except reg. 4 and Sch. paras. 2, 8(1)-(4)(7)) (31.12.2020) by The Provision of Services (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1329), reg. 22; 2020 c. 1, Sch. 5 para. 1(1)

**Amendments to Schedule 2**

8.—(1) Schedule 2 (requirements for security or caution and related matters) is amended as follows.

- (2) In paragraph 1 (interpretation) after the definition of “insolvent’s assets” insert—
  - ““professional liability insurance” means insurance taken out by the insolvency practitioner in respect of potential liabilities to the insolvent and third parties arising out of acting as an insolvency practitioner;”.
- (3) After paragraph 2 add—

**“Requirement for bond or professional liability insurance**

**2A.** Where an insolvency practitioner is appointed to act in respect of an insolvent there must be in force—

- (a) a bond in a form approved by the Secretary of State which complies with paragraph 3; or
  - (b) where the insolvency practitioner is already established in another EEA state and is already covered in that state by professional liability insurance or a guarantee, professional liability insurance or a guarantee which complies with paragraph 8A.”.
- (4) In paragraph 3 (requirement for bonding—terms of the bond)—
- (a) for the title substitute “**Terms of the bond**”; and
  - (b) for sub-paragraph (1) substitute—
    - “(1) The bond must—
      - (a) be in writing or in electronic form;
      - (b) contain provision whereby a surety or cautioner undertakes to be jointly and severally liable for losses in relation to the insolvent caused by—
        - (i) the fraud or dishonesty of the insolvency practitioner whether acting alone or in collusion with one or more persons; or
        - (ii) the fraud or dishonesty of any person committed with the connivance of the insolvency practitioner; and
      - (c) otherwise conform to the requirements of this paragraph and paragraphs 4 to 8.”.

<sup>F1</sup>(5) .....

<sup>F1</sup>(6) .....

- (7) In paragraph 10 (retention of bond by recognised professional body or competent authority)—
  - (a) for “The bond referred to in paragraph 3 shall” substitute “(1) The documents in sub-paragraph (2) or a copy must”; and
  - (b) after sub-paragraph (b) add—
    - “(2) The documents in this sub-paragraph are—

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- (a) the bond referred to in paragraph 3;
  - (b) where the Secretary of State has determined under paragraph 8B(4)—
    - (i) the document in paragraph 8B(1)(a) and (b); and
    - (ii) the notice under paragraph 8B(4);
  - (c) where the Secretary of State has determined under paragraph 8C(4)
    - (i) the documents in paragraphs 8B(1)(a) and (b) and 8C(1)(a) and (b); and
    - (ii) the notice under paragraph 8C(3).
- (3) The document in sub-paragraph (2) or a copy of it may be sent electronically.”.

<sup>F1</sup>(8) .....

**F1** Regulations revoked (except reg. 4 and Sch. paras. 2, 8(1)-(4)(7)) (31.12.2020) by The Provision of Services (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1329), **reg. 22**; 2020 c. 1, Sch. 5 para. 1(1)

**Commencement Information**

**I3** Sch. para. 8 in force at 28.12.2009, see **reg. 1**

**Amendments to Schedule 3**

<sup>F19</sup> .....

**F1** Regulations revoked (except reg. 4 and Sch. paras. 2, 8(1)-(4)(7)) (31.12.2020) by The Provision of Services (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1329), **reg. 22**; 2020 c. 1, Sch. 5 para. 1(1)

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**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations implement Directive [2006/123/EC](#) of the European Parliament and of the Council on services in the internal market (OJNo. L 376, 21.12.2006, p.36) (“the Directive”) as it relates to insolvency practitioners.

The Directive establishes general provisions facilitating the exercise of freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services.

In particular, the Directive provides that—

- in the absence of an overriding reason relating to the public interest, limitation of an authorisation to provide a service to a particular part of a territory is prohibited (Article 10(4));
- authorisation granted to a provider of services must not be for a limited period except where authorisation is automatically renewed or is subject only to continued fulfilment of requirements (Article 11(1));

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- any fee in connection with authorisation procedures to provide a service must be reasonable and proportionate to the service provided in consideration of the fee and must not exceed the cost of the procedures (Article 13(2)); and
- where a provider of services has professional liability insurance or a guarantee in a member State where the provider is already established which is equivalent or essentially comparable to that required in another member State, there must be no requirement for further professional liability insurance or guarantee (Article 23(2)).

Regulation 2(2) amends section 389A of the Insolvency Act 1986 (c. 45) with the effect that an individual who is authorised by a body recognised by the Department of Enterprise, Trade and Investment for Northern Ireland to act solely as a nominee or supervisor in voluntary arrangements in Northern Ireland is also authorised to act in that capacity in Great Britain.

Regulation 2(3) amends section 390(2)(b) of the Insolvency Act 1986 with the effect that an individual who is authorised by the Department of Enterprise, Trade and Investment for Northern Ireland to act as an insolvency practitioner in Northern Ireland is also authorised to act as an insolvency practitioner in Great Britain.

Regulation 2(4) amends section 393(3) of the Insolvency Act 1986 with the effect that the period of an authorisation by the Secretary of State to act as an insolvency practitioner is reduced from a maximum of three years to a period of one year but the insolvency practitioner can be further authorised for further periods of one year without the requirement for an application where the insolvency practitioner continues to be a fit and proper person to act as an insolvency practitioner and to meet prescribed requirements with respect to education and practical training and experience.

Regulation 3 amends article 3 of the Insolvency Practitioners and Insolvency Services Account (Fees) Order 2003 (S.I. 2003/3363) with the effect that an applicant is required to send the fee in connection with administration of the application with the application. The fee in connection with the maintenance of the authorisation is required to be sent where the application is granted.

Regulation 4 makes amendments to the Insolvency Practitioners Regulations (S.I. 2005/524) as set out in the Schedule to these Regulations.

Paragraph 3 of the Schedule provides that the number of hours of insolvency work experience required by an applicant to the Secretary of State for authorisation to act as an insolvency practitioner who has never previously been authorised to act as an insolvency practitioner is reduced from 7000 to 2000 hours.

Paragraph 4 of the Schedule prescribes a reduced number of hours of practical experience required by an applicant who has previously been authorised to act as an insolvency practitioner to reflect the reduction in the authorisation period from three years to a fixed period of one year. A further reduction in hours for the first period of authorisation is prescribed to compensate for the fact that in the first year of authorisation the period covered by the return is reduced on account of the amendment in paragraph 6 of the Schedule which amends regulation 11 of the Insolvency Practitioners Regulations with the effect that an insolvency practitioner submits the return by reference to the period of authorisation. A new regulation is inserted prescribing the education and training required for the period of a further authorisation.

Paragraph 5 of the Schedule revokes the maximum period of authorisation in consequence of the amendment to section 393(3) of the Insolvency Act 1986.

Paragraph 7 of the Schedule applies the bonding requirements prescribed for insolvency practitioners authorised by recognised professional bodies and competent authorities in Great Britain to insolvency practitioners authorised by the Department of Enterprise, Trade and Investment for Northern Ireland who hold office in insolvency procedures in Great Britain.

Paragraph 8 of the Schedule provides that professional liability insurance or a guarantee in an EEA State in which the insolvency practitioner is already established which is equivalent or essentially comparable to a bond approved by the Secretary of State is prescribed security or caution for the

purposes of section 390(3)(b) of the Insolvency Act 1986. It also provides for the procedure by which such equivalence or essential comparability is determined. Sub-paragraph (7) provides that the bond or professional liability insurance or guarantee and evidence of its equivalence or essential comparability to a bond or a copy thereof must be sent to the authorising body and may be sent electronically.

Paragraph 9 of the Schedule amends the minimum requirements for records that an insolvency practitioner must keep in consequence of regulation 2(3).

A full impact assessment has not been prepared for these Regulations as no impact on the private, public or voluntary sectors is foreseen. As these Regulations partially transpose a Directive, a Transposition Note has been prepared. Copies of the Transposition Note are available from the Insolvency Practitioner Policy Section, The Insolvency Service, 21 Bloomsbury Street, London WC1B 3QW or from the Insolvency Service website [www.insolvency.gsi.gov.uk](http://www.insolvency.gsi.gov.uk). Copies of the Transposition Note have been placed in the libraries of both Houses of Parliament and are also annexed to the Explanatory Memorandum which is available alongside this instrument on the OPSI website.

**Status:**

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**Changes to legislation:**

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