2016 CHAPTER 2

Miscellaneous

Definition of debt

9.—(1) The Insolvency Order is amended as follows.

(2) In Article 2 (general interpretation), for paragraph (3) substitute—

"(3) In determining for the purposes of any provision of this Order whether any liability in tort is a bankruptcy debt, the bankrupt is deemed to become subject to that liability by reason of an obligation incurred at the time when the cause of action accrued.

(3A) In determining for the purposes of any provision in this Order whether any liability in tort is a debt provable in the winding up of a company or where a company is in administration, that liability is provable if either—

(a) the cause of action has accrued—

(i) in the case of a winding up which was not immediately preceded by an administration, at the date on which the company went into liquidation;

(ii) in the case of a winding up which was immediately preceded by an administration, at the date on which the company entered administration;

(iii) in the case of an administration which was not immediately preceded by a winding up, at the date on which the company entered administration;

(iv) in the case of an administration which was immediately preceded by a winding up, at the date on which the company went into liquidation; or

(b) all the elements necessary to establish the cause of action exist at that date except for actionable damage.".

(3) In Article 5(1) (interpretation for Parts 2 to 7), in the definition of "debt"—

(a) for "Article 2(3)" substitute " Article 2(3A) ";

(b) in sub-paragraph (a) for the words from "date" to the end substitute " relevant date; ";

(c) in sub-paragraph (b) for "that date" in the first place it occurs substitute " the relevant date ";

(d) in sub-paragraph (c) for the words from "company" to the end substitute " relevant date; ".

(4) In Article 5, after paragraph (1) insert—

"(1A) For the purposes of the definition of "debt" in paragraph (1), "the relevant date" means—

(a) in the case of a winding up which was not immediately preceded by an administration, the date on which the company went into liquidation;

(b) in the case of a winding up which was immediately preceded by an administration, the date on which the company entered administration;

(c) in the case of an administration which was not immediately preceded by a winding up, the date on which the company entered administration;

(d) in the case of an administration which was immediately preceded by a winding up, the date on which the company went into liquidation.".

(5) In Article 347 (the relevant date), after paragraph (6) insert—

"(7) Nothing in this Article affects the definition of "the relevant date" in Article 5(1A).".

Commencement Information

I1 S. 9 in operation at 1.4.2016 by S.R. 2016/203, **art. 2**

Treatment of liabilities relating to contracts of employment

10.—(1) The Insolvency Order is amended as follows.

(2) In Article 31 (vacation of office by administrator), as continued in operation by virtue of Article 4(1) of the Insolvency (Northern Ireland) Order 2005 (special administration regimes), paragraph (10) is repealed (what "wages or salary" includes for the purposes of paragraph (9)(a)).

(3) In Article 54 (receivership: agency and liability for contracts), paragraph (2D) is repealed (what "wages or salary" includes for the purposes of paragraph (2C)(a)).

(4) In Schedule B1 (administration of companies) in paragraph 100 (vacation of office by administrator: charges and liabilities), sub-paragraph (6)(d) is repealed (what "wages or salary" includes for the purposes of sub-paragraph (5)(c)) but not the "and" following it.

(5) In Schedule 4 (categories of preferential debt), in paragraph 15 (what "wages or salary" includes for the purposes of determining what is a category 5 preferential debt), paragraph (b) is repealed including the preceding "and".

Commencement Information

I2 S. 10 in operation at 1.4.2016 by S.R. 2016/203, **art. 2**

Deeds of arrangement

11.—(1) Chapter 1 of Part 8 of the Insolvency Order (deeds of arrangement) is repealed.

(2) The Department may by order make such amendments (including repeals and revocations) to any statutory provision as it considers appropriate in consequence of this section.

(3) No order may be made under subsection (2) containing provision which amends or repeals a provision of an Act of Parliament or Northern Ireland legislation unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

(4) Any other orders under subsection (2) are subject to negative resolution.

Commencement Information

I3 S. 11 in operation at 1.4.2016 by S.R. 2016/203, **art. 2**

Bankruptcy: early discharge procedure

12 Article 253(2) of the Insolvency Order (duration of bankruptcy) is repealed.

Commencement Information

I4 S. 12 in operation at 4.11.2020 by S.R. 2020/236, **art. 2(b)** (with art. 3)

After-acquired property of bankrupt

13.—(1) Article 280 of the Insolvency Order (power of trustee in bankruptcy to claim, for the bankrupt's estate, property which has been acquired by, or has devolved upon, the bankrupt after commencement of the bankruptcy) is amended as follows.

(2) In paragraph (3) (property to vest in trustee on service of notice on bankrupt), for "paragraph 4" substitute " paragraphs (4) and (4A) ".

(3) In paragraph (4) (trustee not entitled to remedy against certain persons and certain bankers)—

(a) in the words before sub-paragraph (a), after "service" insert " on the bankrupt ";

(b) omit sub-paragraph (b) (provision about bankers) and the preceding "or";

(c) in the words after sub-paragraph (b)—

(i) omit "or transaction";

(ii) omit "or banker" (in both places where the words occur).

(4) After paragraph (4) insert—

"(4A) Where a banker enters into a transaction beforeservice on the banker of a notice under this Article (and whether before or after service on the bankrupt of a notice under this Article) the trustee is not in respect of that transaction entitled by virtue of this Article to any remedy against the banker.

This paragraph applies whether or not the banker has notice of the bankruptcy.".

Commencement Information

I5 S. 13 in operation at 1.4.2016 by S.R. 2016/203, **art. 2**

Authorisation of insolvency practitioners

14.—(1) Part 12 of the Insolvency Order (insolvency practitioners and their qualification) is amended as set out in subsections (2) to (5).

(2) In Article 349 (persons not qualified to act as insolvency practitioners), for paragraph (2) substitute—

"(2) A person is not qualified to act as an insolvency practitioner at any time unless at that time the person is appropriately authorised under Article 349A of this Order.".

(3) After Article 349 insert—

"**Authorisation**

349A.—(1) In this Part—

"partial authorisation" means authorisation to act as an insolvency practitioner—

(a) only in relation to companies, or

(b) only in relation to individuals;

"full authorisation" means authorisation to act as an insolvency practitioner in relation to companies, individuals and insolvent partnerships;

"partially authorised" and "fully authorised" are to be construed accordingly.

(2) A person is fully authorised under this Article to act as an insolvency practitioner by virtue of being a member of a professional body recognised under Article 350(1) and being permitted to act as an insolvency practitioner for all purposes by or under the rules of that body.

(3) A person is partially authorised under this Article to act as an insolvency practitioner—

(a) by virtue of being a member of a professional body recognised under Article 350(1) and being permitted to act as an insolvency practitioner in relation only to companies or only to individuals by or under the rules of that body, or

(b) by virtue of being a member of a professional body recognised under Article 350(2) and being permitted to act as an insolvency practitioner by or under the rules of that body.

Partial authorisation: acting in relation to partnerships

349B.—(1) A person who is partially authorised to act as an insolvency practitioner in relation to companies may nonetheless not accept an appointment to actin relation to a company if at the time of the appointment the person is aware that the company—

(a) is or was a member of a partnership; and

(b) has outstanding liabilities in relation to the partnership.

(2) A person who is partially authorised to act as an insolvency practitioner in relation to individuals may nonetheless not accept an appointment to act in

relation to an individual if at the time of the appointment the person is aware that the individual—

(a) is or was a member of a partnership other than a Scottish partnership, and

(b) has outstanding liabilities in relation to the partnership.

(3) Subject to paragraph (9), a person who is partially authorised to act as an insolvency practitioner in relation to companies may nonetheless not continue to actin relation to a company if the person becomes aware that the company—

(a) is or was a member of a partnership, and

(b) has outstanding liabilities in relation to the partnership,

unless the person is granted permission to continue to act by the High Court.

(4) Subject to paragraph (9), a person who is partially authorised to act as an insolvency practitioner in relation to individuals may nonetheless not continue to act in relation to an individual if the person becomes aware that the individual—

(a) is or was a member of a partnership other than a Scottish partnership, and

(b) has outstanding liabilities in relation to the partnership,

unless the person is granted permission to continue to act by the High Court.

(5) The High Court may granta person permission to continue to act for the purposes of paragraph (3) or (4) if it is satisfied that the person is competent to do so.

(6) A person who is partially authorised and becomes aware as mentioned in paragraph (3) or (4) may alternatively apply to the High Court for an order (a " replacement order ") appointing in his or her place a person who is fully authorised to act as an insolvency practitioner in relation to the company or (as the case may be) the individual.

(7) A person may apply to the High Court for permission to continue to act or for a replacement order under—

(a) where acting in relation to a company, this Article or, if it applies, Article 143(5B);

(b) where acting in relation to an individual, this Article or, if it applies, Article 276(2C).

(8) A person who acts as an insolvency practitioner in contravention ofany of paragraphs (1) to (4) is guilty of an offence under Article 348 (acting without qualification).

(9) A person does not contravene paragraph (3) or (4) by continuing to act as an insolvency practitioner during the permitted period if, within the period

of 7 business days beginning with the day after the day on which the person becomes aware as mentioned inthe paragraph, the person—

(a) applies to the High Court for permission to continue to act, or

(b) applies to the High Court for a replacement order.

(10) For the purposes of paragraph (9)—

"business day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971;

"permitted period" means the period beginning with the day on which the person became aware as mentioned in paragraph (3) or (4) and ending on the earlier of—

(a) the expiry of the period of 6 weeks beginning with the day on which the person applies to the High Court as mentioned in paragraph (9)(a) or (b), and

(b) the day on which the High Court disposes of the application (by granting or refusing it

"replacement order" has the meaning given by paragraph (6).".";

(4) For Article 350 (recognised professional bodies) substitute—

"**Recognised professional bodies**

350.—(1) The Department may by order, if satisfied that a body meets the requirements of paragraph (4), declare the body to be a recognisedprofessional body which is capable of providing its insolvency specialist members with full authorisation or partial authorisation.

(2) The Department may by order, if satisfied that a body meets the requirements of paragraph (4), declare the body to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order (as to which, see Article 349A(1)).

(3) Article 350A makes provision about the making by a body of an application to the Department for an order under this Article.

(4) The requirements are that—

(a) the body regulates (or is going to regulate) the practice of a profession;

(b) the body has rules which it is going to maintain and enforce for securing that its insolvency specialist members—

(i) are fit and proper persons to act as insolvency practitioners; and

(ii) meet acceptable requirements as to education and practical training and experience; and

(c) the body's rules and practices for or in connection with authorising persons to act as insolvency practitioners, and its rules and practices for or in connection with regulating persons acting as such, are designed to ensure that the regulatory objectives are met (as to which, see Article 350C).

(5) An order of the Department under this Article has effect from such date as is specified in the order.

(6) An order under this Article may be revoked by an order under Article 350L or 350N (and see Article 361A(1)(b)).

(7) In this Part—

(a) references to members of a recognised professional body are to persons who, whether members of that body or not, are subject to its rules in the practice of the profession in question;

(b) references to insolvency specialist members of a professional body are to members who are permitted by or under the rules of the body to act as insolvency practitioners.

(8) A reference in this Part to a recognised professional body is to a body recognised under this Article (and see Articles 350L(6) and 350N(5)).

Application for recognition as recognised professional body

350A.—(1) An application for an order under Article 350(1) or (2) must—

(a) be made to the Department in such form and manner as the Department may require;

(b) be accompanied by such information as the Department may require;

(c) be supplemented by such additional information as the Department may require at any time between receiving the application and determining it.

(2) The requirements which may be imposed under paragraph (1) may differ as between different applications.

(3) The Department may require information provided under this Article to be in such form, and verified in such manner, as the Department may specify.

(4) An application for an order under Article 350(1) or (2) must be accompanied by—

(a) a copy of the applicant's rules;

(b) a copy of the applicant's policies and practices; and

(c) a copy of any guidance issued by the applicant in writing.

(5) The reference in paragraph (4)(c) to guidance issued by the applicant is a reference to guidance or recommendations which are—

(a) issued or made by it which will apply to its insolvency specialist members or to persons seeking to become such members;

(b) relevant for the purposes of this Part; and

(c) intended to have continuing effect,

including guidance or recommendations relating to the admission or expulsion of members.

(6) The Department may refuse an application for an order under Article350(1) or (2) if the Department considers that recognition of the body concerned is unnecessary having regard to the existence of one or more other bodies which have been or are likely to be recognised under Article 350.

(7) Paragraph (8) applies where the Department refuses an application for an order under Article 350(1) or (2); and it applies regardless of whether the application is refused on the ground mentioned in paragraph (6), because the Department is not satisfied as mentioned in Article 350(1) or (2) or because a fee has not been paid (see Article 361A(1)(b)).

(8) The Department must give the applicant a written notice of the Department's decision; and the notice must set out the reasons for refusing the application.”.

(5) Articles 351 to 354 (authorisation: supplementary provisions) are repealed.

(6) In Article 361A of the Insolvency Order (fees orders (supplementary))—

(a) in paragraph (1)(b) after “Article 350(1)” insert “ or (2) ”;

(b) after paragraph (1) (fees for grant or maintenance of recognition of professional body) insert—

“(1A) Fees under paragraph (1) may vary according to whether the body is recognised under Article 350(1) (body providing full and partial authorisation) or under Article 350(2) (body providing partial authorisation).”.

(7) An order under Article 350(1) of the Insolvency Order (recognised professional bodies) made before the coming into operation of this section is, following the coming into operation of this section, to be treated as if it were made under Article 350(1) as substituted by subsection (4) of this section.

Commencement Information

I6 S. 14 in operation at 1.4.2016 by S.R. 2016/203, **art. 2**

Regulatory objectives

15.—(1) After Article 350A of the Insolvency Order (inserted by section 14) insert—

"Regulatory objectives

Application of regulatory objectives

350B.—(1) In discharging regulatory functions, a recognised professional body must, so far as is reasonably practicable, act in a way—

(a) which is compatible with the regulatory objectives; and

(b) which the body considers most appropriate for the purpose of meeting those objectives.

(2) In discharging functions under this Part, the Department must have regard to the regulatory objectives.

Meaning of "regulatory functions" and "regulatory objectives"

350C.—(1) This Article has effect for the purposes of this Part.

(2) "Regulatory functions", in relation to a recognised professional body, means any functions the body has—

(a) under or in relation to its arrangements for or in connection with—

(i) authorising persons to act as insolvency practitioners; or

(ii) regulating persons acting as insolvency practitioners; or

(b) in connection with the making or alteration of those arrangements.

(3) "Regulatory objectives" means the objectives of—

(a) having a system of regulating persons acting as insolvency practitioners that—

(i) secures fair treatment for persons affected by their acts and omissions;

(ii) reflects the regulatory principles; and

(iii) ensures consistent outcomes;

(b) encouraging an independent and competitive insolvency-practitioner profession whose members—

(i) provide high quality services at a cost to the recipient which is fair and reasonable;

(ii) act transparently and with integrity; and

(iii) consider the interests of all creditors in any particular case;

(c) promoting the maximisation of the value of returns to creditors and promptness in making those returns; and

(d) protecting and promoting the public interest.

(4) In paragraph (3)(a), "regulatory principles" means—

(a) the principles that regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and

(b) any other principle appearing to the body concerned (in the case of the duty under Article 350B(1)), or to the Department (in the case of the duty under Article 350B(2)), to lead to best regulatory practice.".

Commencement Information

I7 S. 15 in operation at 1.4.2016 by S.R. 2016/203, **art. 2**

Oversight of recognised professional bodies

16.—(1) After Article 350C of the Insolvency Order (inserted by section 15) insert—

"Oversight of recognised professional bodies

Directions

350D.—(1) This Article applies if the Department is satisfied that an act or omission of a recognised professional body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives.

(2) The Department may, if in all the circumstances of the case satisfied that it is appropriate to do so, direct the body to take such steps as the Department considers will counter the adverse impact, mitigate its effect or prevent its occurrence or recurrence.

(3) A direction under this Article may require a recognised professional body—

(a) to take only such steps as it has power to take under its regulatory arrangements;

(b) to take steps with a view to the modification of any part of its regulatory arrangements.

(4) A direction under this Article may require a recognised professional body—

(a) to take steps with a view to the institution of, or otherwise in respect of, specific regulatory proceedings;

(b) to take steps in respect of all, or a specified class of, such proceedings.

(5) For the purposes of this Article, a direction to take steps includes a direction which requires a recognised professional body to refrain from taking a particular course of action.

(6) In this Article "regulatory arrangements", in relation to a recognised professional body, means the arrangements that the body has for or in connection with—

(a) authorising persons to act as insolvency practitioners; or

(b) regulating persons acting as insolvency practitioners.

Directions: procedure

350E.—(1) Before giving a recognised professional body a direction under Article 350D, the Department must give the body a notice accompanied by a draft of the proposed direction.

(2) The notice under paragraph (1) must—

(a) state that the Department proposes to give the body a direction in the form of the accompanying draft;

(b) specify why the Department has reached the conclusions mentioned in Article 350D(1) and (2); and

(c) specify a period within which the body may make written representations with respect to the proposal.

(3) The period specified under paragraph (2)(c)—

(a) must begin with the date on which the notice is given to the body; and

(b) must not be less than 28 days.

(4) On the expiry of that period, the Department must decide whether to give the body the proposed direction.

(5) The Department must give notice of that decision to the body.

(6) Where the Department decides to give the proposed direction, the notice under paragraph (5) must—

(a) contain the direction;

(b) state the time at which the direction is to take effect; and

(c) specify the Department's reasons for the decision to give the direction.

(7) Where the Department decides to give the proposed direction, the Department must publish the notice under paragraph (5); but this paragraph

does not apply to a direction to take any step with a view to the institution of, or otherwise in respect of, regulatory proceedings against an individual.

(8) The Department may revoke a direction under Article 350D; and, where doing so, the Department—

(a) must give the body to which the direction was given notice of the revocation; and

(b) must publish the notice and, if the notice under paragraph (5) was published under paragraph (7), must do so (if possible) in the same manner as that in which that notice was published.

Financial penalty

350F.—(1) This Article applies if the Department is satisfied—

(a) that a recognised professional body has failed to comply with a requirement to which this Article applies; and

(b) that, in all the circumstances of the case, it is appropriate to impose a financial penalty on the body.

(2) This Article applies to a requirement imposed on the recognised professional body—

(a) by a direction given under Article 350D; or

(b) by a provision of this Order or of subordinate legislation under this Order.

(3) The Department may impose a financial penalty, in respect of the failure, of such amount as the Department considers appropriate.

(4) In deciding what amount is appropriate, the Department—

(a) must have regard to the nature of the requirement which has not been complied with; and

(b) must not take into account the Department's costs in discharging functions under this Part.

(5) A financial penalty under this Article is payable to the Department; and sums received by the Department in respect of a financial penalty under this Article (including by way of interest) are to be paid into the Consolidated Fund.

(6) In Articles 350G to 350I, "penalty" means a financial penalty under this Article.

Financial penalty: procedure

350G.—(1) Before imposing a penalty on a recognised professional body, the Department must give notice to the body—

(a) stating that the Department proposes to impose a penalty and the amount of the proposed penalty;

(b) specifying the requirement in question;

(c) stating why the Department is satisfied as mentioned in Article 350F(1); and

(d) specifying a period within which the body may make written representations with respect to the proposal.

(2) The period specified under paragraph (1)(d)—

(a) must begin with the date on which the notice is given to the body; and

(b) must not be less than 28 days.

(3) On the expiry of that period, the Department must decide—

(a) whether to impose a penalty; and

(b) whether the penalty should be the amount stated in the notice or a reduced amount.

(4) The Department must give notice of the decision to the body.

(5) Where the Department decides to impose a penalty, the notice under paragraph (4) must—

(a) state that the Department has imposed a penalty on the body and its amount;

(b) specify the requirement in question and state—

(i) why it appears to the Department that the requirement has not been complied with; or

(ii) where, by that time, the requirement has been complied with, why it appeared to the Department when giving the notice under paragraph (1) that the requirement had not been complied with; and

(c) specify a time by which the penalty is required to be paid.

(6) The time specified under paragraph (5)(c) must be at least three months after the date on which the notice under paragraph (4) is given to the body.

(7) Where the Department decides to impose a penalty, the Department must publish the notice under paragraph (4).

(8) The Department may rescind or reduce a penalty imposed on a recognised professional body; and, where doing so, the Department—

(a) must give the body notice that the penalty has been rescinded or reduced to the amount stated in the notice; and

(b) must publish the notice; and it must (if possible) be published in the same manner as that in which the notice under paragraph (4) was published.

Appeal against financial penalty

350H.—(1) A recognised professional body on which a penalty is imposed may appeal to the High Court on one or more of the appeal grounds.

(2) The appeal grounds are—

(a) that the imposition of the penalty was not within the Department's power under Article 350F;

(b) that the requirement in respect of which the penalty was imposed had been complied with before the notice under Article 350G(1) was given;

(c) that the requirements of Article 350G have not been complied with in relation to the imposition of the penalty and the interests of the body have been substantially prejudiced as a result;

(d) that the amount of the penalty is unreasonable;

(e) that it was unreasonable of the Department to require the penalty imposed to be paid by the time specified in the notice under Article 350G(5)(c).

(3) An appeal under this Article must be made within the period of three months beginning with the day on which the notice under Article 350G(4) in respect of the penalty is given to the body.

(4) On an appeal under this Article the Court may—

(a) quash the penalty;

(b) substitute a penalty of such lesser amount as the Court considers appropriate; or

(c) in the case of the appeal ground in paragraph (2)(e), substitute for the time imposed by the Department a different time.

(5) Where the Court substitutes a penalty of a lesser amount, it may require the payment of interest on the substituted penalty from such time, and at such rate, as it considers just and equitable.

(6) Where the Court substitutes a later time for the time specified in the notice under Article 350G(5)(c), it may require the payment of interest on the penalty from the substituted time at such rate as it considers just and equitable.

(7) Where the Court dismisses the appeal, it may require the payment of interest on the penalty from the time specified in the notice under Article 350G(5)(c) at such rate as it considers just and equitable.

Recovery of financial penalties

350I.—(1) If the whole or part of a penalty is not paid by the time by which it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being applicable to a money judgment of the High Court

(but this is subject to any requirement imposed by the Court under Article 350H(5), (6) or (7)).

(2) If an appeal is made under Article 350H in relation to a penalty, the penalty is not required to be paid until the appeal has been determined or withdrawn.

(3) Paragraph (4) applies where the whole or part of a penalty has not been paid by the time it is required to be paid and—

(a) no appeal relating to the penalty has been made under Article 350H during the period within which an appeal may be made under that Article; or

(b) an appeal has been made under that Article and determined or withdrawn.

(4) The Department may recover from the recognised professional body in question, as a debt due to the Department, any of the penalty and any interest which has not been paid.

Reprimand

350J.—(1) This Article applies if the Department is satisfied that an act or omission of a recognised professional body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives.

(2) The Department may, if in all the circumstances of the case satisfied that it is appropriate to do so, publish a statement reprimanding the body for the act or omission (or series of acts or omissions).

Reprimand: procedure

350K.—(1) If the Department proposes to publish a statement under Article 350J in respect of a recognised professional body, it must give the body a notice—

(a) stating that the Department proposes to publish such a statement and setting out the terms of the proposed statement;

(b) specifying the acts or omissions to which the proposed statement relates; and

(c) specifying a period within which the body may make written representations with respect to the proposal.

(2) The period specified under paragraph (1)(c)—

(a) must begin with the date on which the notice is given to the body; and

(b) must not be less than 28 days.

(3) On the expiry of that period, the Department must decide whether to publish the statement.

(4) The Department may vary the proposed statement; but before doing so, the Department must give the body notice—

(a) setting out the proposed variation and the reasons for it; and

(b) specifying a period within which the body may make written representations with respect to the proposed variation.

(5) The period specified under paragraph (4)(b)—

(a) must begin with the date on which the notice is given to the body; and

(b) must not be less than 28 days.

(6) On the expiry of that period, the Department must decide whether to publish the statement as varied.".

(2) In Article 361A of the Insolvency Order (fees orders (supplementary)), after paragraph (1A) (inserted by section 14(6)(b)) insert—

"(1B) In setting under paragraph (1) the amount of a fee in connection with maintenance of recognition, the matters to which the Department may have regard include, in particular, the costs of the Department in connection with any functions under Articles 350D, 350E, 350J, 350K and 350N.".

Commencement Information

I8 S. 16 in operation at 1.4.2016 by S.R. 2016/203, **art. 2**

Recognised professional bodies: revocation of recognition

17.—(1) After Article 350K of the Insolvency Order (inserted by section 16) insert—

"Revocation etc. of recognition

Revocation of recognition at instigation of Department

350L.—(1) An order under Article 350(1) or (2) in relation to a recognised professional body may be revoked by the Department by order if the Department is satisfied that—

(a) an act or omission of the body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives; and

(b) it is appropriate in all the circumstances of the case to revoke the body's recognition under Article 350.

(2) If the condition set out in paragraph (3) is met, an order under Article 350(1) in relation to a recognised professional body may be revoked by the Department by an order which also declares the body concerned to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order (see Article 349A(1)).

(3) The condition is that the Department is satisfied—

(a) as mentioned in paragraph (1)(a); and

(b) that it is appropriate in all the circumstances of the case for the body to be declared to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order.

(4) In this Part—

(a) an order under paragraph (1) is referred to as a "revocation order";

(b) an order under paragraph (2) is referred to as a "partial revocation order".

(5) A revocation order or partial revocation order—

(a) has effect from such date as is specified in the order; and

(b) may make provision for members of the body in question to continue to be treated as fully or partially authorised (as the case may be) to act as insolvency practitioners for a specified period after the order takes effect.

(6) A partial revocation order has effect as if it were an order made under Article 350(2).

Orders under Article 350L: procedure

350M.—(1) Before making a revocation order or partial revocation order in relation to a recognised professional body, the Department must give notice to the body—

(a) stating that the Department proposes to make the order and the terms of the proposed order;

(b) specifying the Department's reasons for proposing to make the order; and

(c) specifying a period within which the body, members of the body or other persons likely to be affected by the proposal may make written representations with respect to it.

(2) Where the Department gives a notice under paragraph (1), the Department must publish the notice on the same day.

(3) The period specified under paragraph (1)(c)—

(a) must begin with the date on which the notice is given to the body; and

(b) must not be less than 28 days.

(4) On the expiry of that period, the Department must decide whether to make the revocation order or (as the case may be) partial revocation order in relation to the body.

(5) The Department must give notice of the decision to the body.

(6) Where the Department decides to make the order, the notice under paragraph (5) must specify—

(a) when the order is to take effect; and

(b) the Department's reasons for making the order.

(7) A notice under paragraph (5) must be published; and it must (if possible) be published in the same manner as that in which the notice under paragraph (1) was published.

Revocation of recognition at request of body

350N.—(1) An order under Article 350(1) or (2) in relation to a recognised professional body may be revoked by the Department by order if—

(a) the body has requested that an order be made under this paragraph; and

(b) the Department is satisfied that it is appropriate in all the circumstances of the case to revoke the body's recognition under Article 350.

(2) An order under Article 350(1) in relation to a recognised professional body may be revoked by the Department by an order which also declares the body concerned to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order (see Article 349A(1)) if—

(a) the body has requested that an order be made under this paragraph; and

(b) the Department is satisfied that it is appropriate in all the circumstances of the case for the body to be declared to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order.

(3) Where the Department decides to make an order under this Article the Department must publish a notice specifying—

(a) when the order is to take effect; and

(b) the Department's reasons for making the order.

(4) An order under this Article—

(a) has effect from such date as is specified in the order; and

(b) may make provision for members of the body in question to continue to be treated as fully or partially authorised (as the case may be) to act as insolvency practitioners for a specified period after the order takes effect.

(5) An order under paragraph (2) has effect as if it were an order made under Article 350(2).".

(2) In Article 361A of the Insolvency Order (fees orders (supplementary)), after paragraph (5) insert—

"(5A) Article 350M applies for the purposes of an order under paragraph (1)(b) as it applies for the purposes of a revocation order made under Article 350L.".

Commencement Information

I9 S. 17 in operation at 1.4.2016 by S.R. 2016/203, **art. 2**

Court sanction of insolvency practitioners in public interest cases

18 After Article 350N of the Insolvency Order (inserted by section 17) insert—

"Court sanction of insolvency practitioners in public interest cases

Direct sanction orders

350O.—(1) For the purposes of this Part a "direct sanctions order" is an order made by the High Court against a person who is acting as an insolvency practitioner which—

(a) declares that the person is no longer authorised (whether fully or partially) to act as an insolvency practitioner;

(b) declares that the person is no longer fully authorised to act as an insolvency practitioner but remains partially authorised to act as such either in relation to companies or individuals, as specified in the order;

(c) declares that the person's authorisation to act as an insolvency practitioner is suspended for the period specified in the order or until such time as the requirements so specified are complied with;

(d) requires the person to comply with such other requirements as may be specified in the order while acting as an insolvency practitioner;

(e) requires the person to make such contribution as may be specified in the order to one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.

(2) Where the Court makes a direct sanctions order, the relevant recognised professional body must take all necessary steps to give effect to the order.

(3) A direct sanctions order must not specify a contribution as mentioned in paragraph (1)(e) which is more than the remuneration that the personhas received or will receive in respect of acting as an insolvency practitioner in the case.

(4) In this Article and Article 350P, "relevant recognised professional body", in relation to a person who is acting as an insolvency practitioner, means the recognised professional body by virtue of which the person is authorised so to act.

Application for, and power to make, direct sanctions order

350P.—(1) The Department may apply to the High Court for a direct sanctions order to be made against a person if it appears to the Department that it would be in the public interest for the order to be made.

(2) The Department must send a copy of the application to the relevant recognised professional body.

(3) The Court may make a direct sanctions order against a person where, on an application under this Article, the Court is satisfied that condition 1 and at least one of conditions 2, 3, 4 and 5 are met in relation to the person.

(4) The conditions are set out in Article 350Q.

(5) In deciding whether to make a direct sanctions order against a person the Court must have regard to the extent to which—

(a) the relevant recognised professional body has taken action against the person in respect of the failure mentioned in condition 1; and

(b) that action is sufficient to address the failure.

Direct sanctions order: conditions

350Q.—(1) Condition 1 is that the person, in acting as an insolvency practitioner or in connection with any appointment as such, has failed to comply with—

(a) a requirement imposed by the rules of the relevant recognised professional body;

(b) any standards, or code of ethics, for the insolvency-practitioner profession adopted from time to time by the relevant recognised professional body.

(2) Condition 2 is that the person—

(a) is not a fit and proper person to act as an insolvency practitioner;

(b) is a fit and proper person to act as an insolvency practitioner only in relation to companies, but the person's authorisation is not so limited; or

(c) is a fit and proper person to act as an insolvency practitioner only in relation to individuals, but the person's authorisation is not so limited.

(3) Condition 3 is that it is appropriate for the person's authorisation to act as an insolvency practitioner to be suspended for a period or until one or more requirements are complied with.

(4) Condition 4 is that it is appropriate to impose other restrictions on the person acting as an insolvency practitioner.

(5) Condition 5 is that loss has been suffered as a result of the failure mentioned in condition 1 by one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.

(6) In this Article "relevant recognised professional body" has the same meaning as in Article 350O.

Direct sanctions direction instead of order

350R.—(1) The Department may give a direction (a "direct sanctions direction") in relation to a person acting as an insolvency practitioner to the relevant recognised professional body (instead of applying, or continuing with an application, for a direct sanctions order against the person) if the Department is satisfied that—

(a) condition 1 and at least one of conditions 2, 3, 4 and 5 are met in relation to the person (see Article 350Q); and

(b) it is in the public interest for the direction to be given.

(2) But the Department may not give a direct sanctions direction in relation to a person without that person's consent.

(3) A direct sanctions direction may require the relevant recognised professional body to take all necessary steps to secure that—

(a) the person is no longer authorised (whether fully or partially) to act as an insolvency practitioner;

(b) the person is no longer fully authorised to act as an insolvency practitioner but remains partially authorised to act as such either in relation to companies or individuals, as specified in the direction;

(c) the person's authorisation to act as an insolvency practitioner is suspended for the period specified in the direction or until such time as the requirements so specified are complied with;

(d) the person must comply with such other requirements as may be specified in the direction while acting as an insolvency practitioner;

(e) the person makes such contribution as may be specified in the direction to one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.

(4) A direct sanctions direction must not specify a contribution as mentioned in paragraph (3)(e) which is more than the remuneration that the person has received or will receive in respect of acting as an insolvency practitioner in the case.

(5) In this Article "relevant recognised professional body" has the same meaning as in Article 350O.".

Commencement Information

I10 S. 18 in operation at 1.4.2016 by S.R. 2016/203, **art. 2** (with art. 3)

Power for Department to obtain information

19 After Article 350R of the Insolvency Order (inserted by section 18) insert—

"General

Power for Department to obtain information

350S.—(1) A person mentioned in paragraph (2) must give the Department such information as the Department may by notice in writing require for the exercise of the Department's functions under this Part.

(2) Those persons are—

(a) a recognised professional body;

(b) any individual who is or has been authorised under Article 349A to act as an insolvency practitioner;

(c) any person who is connected to such an individual.

(3) A person is connected to an individual who is or has been authorised to act as an insolvency practitioner if, at any time during the authorisation—

(a) the person was an employee of the individual;

(b) the person acted on behalf of the individual in any other way;

(c) the person employed the individual;

(d) the person was a fellow employee of the individual's employer;

(e) in a case where the individual was employed by a firm, partnership or company, the person was a member of the firm or partnership or (as the case may be) a director of the company.

(4) In imposing a requirement under paragraph (1) the Department may specify—

(a) the time period within which the information in question is to be given; and

(b) the manner in which it is to be verified.”.

Commencement Information

I11 S. 19 in operation at 1.4.2016 by S.R. 2016/203, **art. 2**

Compliance orders

20 After Article 350S of the Insolvency Order (inserted by section 19) insert—

“**Compliance orders**

350T.—(1) If at any time it appears to the Department that—

(a) a recognised professional body has failed to comply with a requirement imposed on it by or by virtue of this Part; or

(b) any other person has failed to comply with a requirement imposed on the person by virtue of Article 350S,

the Department may make an application to the High Court.

(2) If, on an application under this Article, the Court decides that the body or other person has failed to comply with the requirement in question, it may order the body or person to take such steps as the Court considers will secure that the requirement is complied with.”.

Commencement Information

I12 S. 20 in operation at 1.4.2016 by S.R. 2016/203, **art. 2**

Status:
Point in time view as at 04/11/2020.

Changes to legislation:
There are currently no known outstanding effects for the Insolvency (Amendment) Act (Northern Ireland) 2016, Cross Heading: Miscellaneous.