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

INTRODUCTION

1. These Explanatory Notes relate to the Insolvency (Amendment) Act (Northern Ireland) 2016 which received Royal Assent on 29 January 2016. They have been prepared by the Department of Enterprise, Trade and Investment in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or Schedule does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. Insolvency legislation in Northern Ireland is kept as far as possible in parity with that applying in England and Wales.

4. The insolvency legislation applying in both jurisdictions needed to be updated to allow for the use of modern means of electronic communication and to do away with certain procedures and requirements which had outlived their usefulness.

5. The main piece of primary legislation applying to insolvency in GB is the Insolvency Act 1986 (c. 45). This Act was amended by the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010 No. 18) which came into force on 6 April 2010. This Order was made with the object of making the administration of insolvencies faster, more efficient and less expensive, by legitimising the use of up-to-date methods of communication and doing away with burdensome and unnecessary procedural requirements.

6. There was a need to make, where appropriate, similar changes to the main primary legislation applying to insolvency in Northern Ireland, the Insolvency (Northern Ireland) Order 1989 (NI 19) ("the Insolvency Order").

7. A second objective was to undo the provision in the Insolvency Order enabling discharge from bankruptcy to take place before the end of the first year if

investigation was unnecessary or complete. The provision had been little used in Northern Ireland and the corresponding provision applying in England and Wales had been repealed because early discharge had proved costly to administer in comparison to the limited benefits it brought.

8. A third objective was to tidy up the statute book by repealing the provisions in the Insolvency Order relating to Deeds of Arrangement which had fallen into disuse.

9. A fourth objective was to make sure that the Lord Chief Justice is consulted about the making of orders creating a right of appeal to the courts in respect of discretionary disqualification from office as a consequence of bankruptcy.

10. A fifth objective was to do away with authorisation of insolvency practitioners by competent authorities and to enable recognised professional bodies to authorise insolvency practitioners to take only personal or corporate insolvencies as an alternative to being authorised to deal with both.

11. A sixth objective was to strengthen the regulatory framework for insolvency practitioners and the recognised professional bodies which authorise and regulate them by introducing regulatory objectives for the recognised professional bodies and a range of proportionate powers which the Department as oversight regulator can use should they fail to meet these objectives.

12. A seventh objective was to undo the provision under which individuals other than insolvency practitioners could be authorised to act as nominees or supervisors in voluntary arrangements.

13. An eighth objective was to remove an obstacle to banks offering accounts to undischarged bankrupts by giving banks immunity from claims by trustees in respect of sums of money passing through a bankrupt's account unless the trustee has made a specific claim to them.

14. A ninth objective was to correct an error in Article 10 of the Insolvency (Northern Ireland) Order 2005 which would have frustrated the Department's policy intention that it should have power to make orders providing for any credit union in Northern Ireland to be able to enter a company arrangement or administration.

15. A tenth objective was to make minor miscellaneous amendments to the Insolvency Order.

OVERVIEW

16. The Act has 29 sections and 4 Schedules.

COMMENTARY ON SECTIONS

Section 1: Attendance at meetings and use of websites

Section 1 inserts new Articles 208ZA, 208ZB, 345A and 345B into the Insolvency Order.

Article 208ZA

Article 208ZA allows meetings to be held in company insolvency proceedings without the participants having to be present at a single physical location.

Paragraph (1) of Article 208ZA provides for that Article to apply to two kinds of meetings. It applies to meetings of the creditors of a company summoned under the Insolvency Order or rules made under Article 359 thereof. It applies to meetings of the members or contributories of a company summoned by the office-holder under the Insolvency Order or rules made under Article 359 thereof, with the exception that it does not apply to meetings of the members of a company in a members' voluntary winding up.

Paragraph (2) of Article 208ZA provides that, where the person summoning a meeting ("the convener") considers it appropriate, a meeting can be conducted and held in such a way that people can attend it without having to be present together at the same place.

Paragraph (3) of Article 208ZA defines attendance at a meeting for the purposes of paragraph (2) as being able to exercise whatever rights a person has to speak and vote at the meeting.

Paragraph (4) of Article 208ZA provides that for the purposes of that Article a person is able to exercise the right to speak at a meeting if, during the time that the meeting is in progress, it is possible for them to communicate any information or opinions they have on the business of the meeting to everyone else attending it. Paragraph (4) further provides that for the purposes of Article 208ZA a person is able to exercise the right to vote at a meeting if it is possible for them to vote during the time that the meeting is in progress on any resolutions which are put to the vote, and if their vote can be counted at the same time as the votes of everyone else attending the meeting.

Paragraph (5) of Article 208ZA places the person summoning a meeting which is to be held in such a way that it can be attended by persons who are not present together at the same place under a duty to make whatever arrangements he considers appropriate to check the identity of those attending, to ensure that they can exercise their right to speak and vote and to make sure that any electronic means used to enable attendance is secure.

Paragraph (6) of Article 208ZA provides that, where there is a requirement under the Insolvency Order or rules made under Article 359 thereof to specify a place for a meeting, in certain circumstances it will be sufficient to specify what arrangements are being made to enable those entitled to attend the meeting

to exercise their right to speak and vote. The circumstances are that in the reasonable opinion of the person calling the meeting, it will be attended by persons who will not be present together at the same place and it is unnecessary or inexpedient to specify a place for the meeting.

Paragraph (7) of Article 208ZA provides that, when making the arrangements mentioned in paragraph (5) and forming an opinion that a meeting may be held without specifying that it is to be at a particular location, the convener is required to have regard to the legitimate interests of those who will be attending the meeting in the efficient despatch of the business of the meeting.

Paragraph (8) of Article 208ZA places the convener of a meeting under a duty to specify a place for meeting if, following the issue of a notice of the meeting which does not specify a place, a certain minimum percentage of those entitled to attend request that one should be specified. That percentage is, in the case of a meeting of creditors or contributories, at least ten percent of them by value, and, in the case of a meeting of members, members representing at least ten percent of the total voting rights.

Paragraph (9) of Article 208ZA provides a definition of the term "the office-holder" as used in that Article.

Article 208ZB

Paragraph (1) of Article 208ZB applies in the case of company insolvency and enables an office-holder to comply with requirements in the Insolvency Order and rules made under Article 359 thereof to provide notices, documents or information by making them available on a website. This is subject to the proviso that this can only be done in prescribed circumstances and must be done in accordance with the rules.

Paragraph (2) of Article 208ZB provides a definition of the term "the office-holder" as used in that Article.

Article 345A

Article 345A allows meetings to be held in individual insolvency proceedings without the participants having to be present at a single physical location.

Paragraph (1) of Article 345A provides for that Article to apply to meetings of an individual's creditors summoned under the Insolvency Order or rules made under Article 359 thereof in certain circumstances. The circumstances are where a bankruptcy order has been made against the individual, where an interim receiver of their property has been appointed or where they are proposing or have had approved a voluntary arrangement under Chapter 2 of Part 8 of the Insolvency Order.

Paragraph (2) of Article 345A provides that, where the person summoning a meeting ("the convener") considers it appropriate, a meeting can be conducted

and held in such a way that people can attend it even though they are not present together at the same place.

Paragraph (3) of Article 345A defines attendance at a meeting for the purposes of paragraph (2) as being able to exercise whatever rights a person has to speak and vote at the meeting.

Paragraph (4) of Article 345A provides that for the purposes of that Article a person is able to exercise the right to speak at a meeting if, during the time that the meeting is in progress, it is possible for them to communicate any information or opinions they have on the business of the meeting to everyone else attending it. Paragraph (4) further provides that for the purposes of Article 345A a person is able to exercise the right to vote at a meeting if it is possible for them to vote during the time that the meeting is in progress on any resolutions which are put to the vote, and if their vote can be counted at the same time as the votes of everyone else attending the meeting.

Paragraph (5) of Article 345A places the person summoning a meeting which is to be held in such a way that it can be attended by persons who are not present together at the same place under a duty to make whatever arrangements he considers appropriate to check the identity of those attending, to ensure that they can exercise their right to speak and vote and to make sure that any electronic means used to enable attendance is secure.

Paragraph (6) of Article 345A provides that where there is a requirement under the Insolvency Order or rules made under Article 359 thereof to specify a place for a meeting, in certain circumstances it will be sufficient to specify what arrangements are being made to enable those entitled to attend the meeting to exercise their right to speak and vote. The circumstances are that in the reasonable opinion of the person calling the meeting, it will be attended by persons who will not be present together at the same place and it is unnecessary or inexpedient to specify a place for the meeting.

Paragraph (7) of Article 345A provides that, when making the arrangements mentioned in paragraph (5) and forming an opinion that a meeting may be held without specifying that it is to be at a particular location, the convener is required to have regard to the legitimate interests of those who will be attending the meeting in the efficient despatch of the business of the meeting.

Paragraph (8) of Article 345A places a person summoning a meeting under a duty to specify a place at which to hold it if, in response to the issue of a notice of the meeting which does not specify a place, at least ten percent of the creditors by value request that one should be specified.

Article 345B

Paragraph (1) of Article 345B provides for that Article to apply where a bankruptcy order has been made against the individual, where an interim receiver of their property has been appointed or where they are proposing or have had approved a voluntary arrangement under Chapter 2 of Part 8 of the

Insolvency Order. Paragraph (1) also provides a definition of the term "the office-holder" as used in Article 345B.

Paragraph (2) of Article 345B enables an office-holder to comply with requirements in the Order and rules made under Article 359 thereof to provide notices, documents or information by making them available on a website. This is subject to the proviso that this can only be done in prescribed circumstances and must be done in accordance with the rules.

Section 2: References to things in writing

Section 2 inserts new Article 2B into the Insolvency Order.

Paragraphs (1) and (2) of new Article 2B apply references in the Insolvency Order to things in writing to those same things if they are in electronic form, subject to certain listed exceptions.

Subsection (2) of section 2 provides for the repeal of paragraph 1(2) of Schedule B1 to the Insolvency Order. Paragraph 1(2) of Schedule B1 provided for references within that Schedule to things in writing to be treated as including reference to those things in electronic form.

Section 3: Removal of requirement for annual meetings in a members' voluntary and a creditors' voluntary winding up

Subsection (1) substitutes Article 79 of the Insolvency Order with a new provision. The Article as substituted provides that in a members' voluntary liquidation the liquidator has to produce a progress report on prescribed matters for each prescribed period and send a copy of it within such further period as may be prescribed to the members of the company and any other persons who are prescribed. Paragraph (2) of the Article as substituted makes it an offence punishable by a fine for a liquidator to fail to comply with the Article.

Subsection (2) substitutes Article 91 of the Insolvency Order with a new provision. The Article as substituted provides that in a creditors' voluntary liquidation the liquidator has to produce a progress report on prescribed matters for each prescribed period and send a copy of it within such further period as may be prescribed to the members and creditors of the company and any other persons who are prescribed. Paragraph (2) of the Article as substituted makes it an offence punishable by a fine for a liquidator to fail to comply with the Article.

Subsection (3) amends Schedule 7 to the Insolvency Order to set the fines for failure to comply with the requirements to issue progress reports under Articles 79 and 91 as substituted.

Section 4: Requirements in relation to meetings under Articles 81 and 84 of the Insolvency Order

Section 4 removes the requirement for notice of creditors' meetings in both members' and creditors' voluntary liquidations to be sent by post.

Section 5: Individual voluntary arrangements: removal of requirement to submit a nominee's report to the High Court

Subsection (1) makes two amendments to Article 230A of the Insolvency Order. Article 230A applies where the debtor has not sought protection from the High Court in the form of an interim order. The amendments have the effect that in cases where Article 230A applies a nominee no longer prepares a report to the High Court but prepares a report to the debtor's creditors.

Subsection (2) substitutes a new paragraph for paragraph (1) of Article 231 of the Insolvency Order. Paragraph (1) as substituted provides for either reporting to the High Court or to the creditors under Article 230A to be the event triggering the requirement for the nominee to summon a meeting of the debtor's creditors. The High Court is given power to direct otherwise, but only in cases to which Article 230 applies i.e. interim order cases.

Subsection (3) amends paragraph (2) of Article 233 of the Insolvency Order to reflect the fact that it is only in cases where a voluntary arrangement has been proposed under Article 230 that an interim order will exist to be discharged by the High Court.

Section 6: Fast-track voluntary arrangements: notification of the Department

Section 6 amends Article 237C of the Insolvency Order by adding a requirement for the Official Receiver to notify the Department as well as report to the High Court whether a proposal by a bankrupt for a voluntary arrangement with the Official Receiver acting as nominee (a so-called "fast-track" voluntary arrangement) has been approved or rejected by the bankrupt's creditors.

Section 7: Powers of liquidator exercisable with or without sanction in a winding up

Section 7 effects the removal of the powers exercisable by a liquidator under paragraph 3 of Part 1 of Schedule 2 to the Insolvency Order out of that Part and reinserts them in Part 3 of that Schedule. The powers transferred are to compromise calls, debts, and claims due to companies and all questions relating to the assets or winding up of the company. The effect of the transfer is to empower liquidators to reach compromises without having to seek sanction from the liquidation committee, the Court, a meeting of the company's creditors, or the members of the company by extraordinary resolution, as the case may be. A proviso is added that the power in paragraph 7A(b) as transferred is subject to paragraph 2 in Part 1 of the Schedule, so that sanction will still be required to enter a compromise with creditors or others with a claim against the company.

Section 8: Powers of trustee exercisable with or without sanction in a bankruptcy

Section 8 effects full removal of the powers exercisable by a trustee under paragraph 6 of Part 1 of Schedule 3 to the Insolvency Order and partial removal

of those exercisable under paragraph 8 and reinserts both sets of powers in Part 2 of Schedule 3. The powers transferred are to refer to arbitration or to compromise debts and claims due to bankrupts and to make a compromise or arrangement in respect of any claim on any person in connection with a bankrupt's estate.

The effect of the transfer is to empower trustees to exercise these powers without having to seek sanction from the Court, the creditors' committee or the Department.

Section 9: Definition of debt

Subsection (2) amends Article 2 of the Insolvency Order by providing a substitute for paragraph (3) and inserting a new paragraph (3A). The effect is to separate the criteria governing admissibility of a liability in tort in bankruptcy from those applying in the case of company administration or winding up.

Substitute paragraph (3) specifies the criterion governing whether any liability in tort is a bankruptcy debt. A bankrupt's liability in tort is treated as having arisen as a consequence of an obligation incurred at the time that the cause of action accrued.

New paragraph (3A) establishes new criteria for deciding whether a liability in tort is provable in a company administration or winding up. It will be provable if the cause of action had accrued or all the elements necessary to establish the cause of action except for actionable damage existed before the company went into liquidation or entered administration. In a case where a company has been in the two procedures consecutively it will be provable if the cause of action had accrued, or all the elements necessary to establish the cause of action except for actionable damage, existed before it entered the first procedure.

Subsections (3) and (4) amend Article 5 of the Insolvency Order. The qualification made in the definition of "debt" in paragraph (1) of that Article is amended to refer to Article 2(3A) in recognition of the fact that it is now that paragraph which deals with whether a liability in tort is provable in a company administration or winding up. Amendments made to the definition of "debt" in Article 5(1) by paragraphs (b) to (d) of subsection (3) together with the insertion of new paragraph (1A) by subsection (4) serve to clarify that where liquidation is immediately preceded by administration or vice versa it is the date on which the company entered the earlier proceedings which determines whether debts, liabilities and interest on debt are to be treated as debt for the purposes of the Insolvency Order.

Subsection (5) makes clear that the explanation of the term "the relevant date" in Article 347 of the Insolvency Order does not apply to that term as used in new paragraph (1A) of Article 5.

Section 10: Treatment of liabilities relating to contracts of employment

Section 10 repeals one element of the priority given to employees' wages in certain insolvency proceedings, because the type of employment contract to which it relates no longer exists.

In administration and administrative receiverships a company can continue to trade under the direction of the administrator or the administrative receiver, usually pending a sale of the business or assets. All debts incurred by the company after entry into such insolvency proceedings are classified as an expense of the insolvency proceedings and are payable ahead of the fees of the insolvency practitioner. For an employee to become entitled to have their wages paid as an expense, the insolvency practitioner would have to adopt their contract. As well as including salary for actual days worked, the definition of wages extends to cover payment for holiday entitlement, absence and payment in lieu of holiday. Certain employment contracts (year-in-hand schemes) earned an employee holiday entitlement for the year ahead. Social security legislation provides that this holiday is counted as being accrued in the year it was earned.

In order not to discriminate against employees on these schemes, Articles 31(10) (for pre-Schedule B1 administration which continues in operation for some purposes) and 54(2D) (for administrative receiverships) of the Insolvency Order, and paragraphs 100(6)(d) of Schedule B1 (administration) and 15 of Schedule 4 (categories of preferential debts) to that Order, provide that "wages or salary" includes, in respect of a period, a sum which would be treated as earnings for that period for the purposes of an enactment about social security. This enables a claim for this earned holiday entitlement to be made after entry into insolvency proceedings. However, such provision is now redundant as 'year in hand' schemes are no longer legally possible since the coming into operation of the Working Time Regulations (Northern Ireland) 1998 (SR 1998 No. 386).

Subsection (2) of section 10 repeals paragraph (10) of Article 31 of the Insolvency Order, subsection (3) repeals paragraph (2D) of Article 54 of that Order, subsection (4) repeals paragraph 100(6)(d) of Schedule B1 to that Order and subsection (5) repeals paragraph 15(b) of Schedule 4 to that Order.

Section 11: Deeds of arrangement

Subsection (1) repeals Chapter 1 of Part 8 of the Insolvency Order which dealt with deeds of arrangement.

Subsection (2) enables the Department to make orders amending statutory provisions, including repealing and revoking them, to take account of the repeal of Chapter 1 of Part 8 of the Insolvency Order.

Subsections (3) and (4) provide for orders under subsection (2) to be subject to negative resolution unless they contain provision amending or repealing an Act of Parliament or Northern Ireland legislation, in which case they must be laid and approved by resolution of the Assembly before being made.

Section 12: Bankruptcy: early discharge procedure

Section 12 repeals Article 253(2) of the Insolvency Order which allows a bankruptcy to end within one year if the Official Receiver files a notice with the High Court stating that investigation is unnecessary or concluded.

Section 13: After-acquired property of bankrupt

Section 13 amends Article 280 of the Insolvency Order to facilitate banks offering accounts to undischarged bankrupts.

Article 280 allows a trustee in bankruptcy to claim by notice after-acquired property, which becomes the property of the bankrupt before they are discharged (usually 12 months after the bankruptcy order was made). Where that property is or becomes money that passes through a bank account, and the trustee is unable to recover it from the bankrupt or ultimate recipient, the trustee may claim against the bank for its loss to the bankrupt's estate. Currently the trustee can consider such a claim as the bank would have been aware of the bankruptcy order.

Article 280(4) of the Insolvency Order prevents the trustee from taking action against certain persons who have dealt with after-acquired property in good faith and without notice of the bankruptcy – namely persons acquiring property for value and bankers entering into transactions. The amendment takes bankers outside the scope of Article 280(4) and instead provides protection for them by means of a new paragraph (4A) inserted into Article 280. The new paragraph (4A) prevents a trustee making a claim against a bank in circumstances where the bank has not been served with notice by the trustee specifically regarding the after-acquired property he or she wishes to claim, regardless of whether the bank has notice of the bankruptcy.

Section 14: Authorisation of insolvency practitioners

Section 14 amends Part 12 of the Insolvency Order to introduce a new regime for the partial authorisation of insolvency practitioners. Currently, individuals who are authorised to act as an insolvency practitioner are authorised in relation to all categories of appointment. Under the new regime a person may be authorised to act only in relation to companies, only in relation to individuals or in relation to both.

The main amendments are made by subsections (2) and (3). A new Article 349A will be inserted to provide that an insolvency practitioner who is partially authorised will be authorised to act only in relation to companies, or only in relation to individuals. It will also provide for a person to be fully authorised to act as an insolvency practitioner and practise in all categories of appointment. Individuals who are already authorised to act as an insolvency practitioner will be fully authorised.

A new Article 349B will be inserted to deal with the question of whether insolvency practitioners who are partially authorised may accept appointments to act in relation to a current or former member of a partnership where the member has outstanding liabilities in relation to the partnership. An insolvency practitioner who is partially authorised in relation to companies will not be able to accept an appointment if the company is such a member. Neither will an insolvency practitioner who is partially authorised in relation to individuals

unless the partnership is a Scottish partnership. If an insolvency practitioner who is partially authorised in relation to companies becomes aware that they have been appointed to act in relation to a company which is or was a member of a partnership and has outstanding liabilities in relation to the partnership, they will commit an offence if they continue to act in that insolvency without the High Court's permission. The same will apply to an insolvency practitioner who is partially authorised in relation to individuals unless the partnership is a Scottish partnership. There is provision for the insolvency practitioner to be able to continue to act for a limited period without committing an offence whilst the Court's permission is sought. There is also provision for the insolvency practitioner to be able to continue to act for a limited period (without committing an offence) whilst applying for a Court order appointing a fully authorised person to act in his or her place.

Subsection (4) of section 14 amends the Insolvency Order to enable the Department to recognise a professional body for the purposes of granting either full or partial authorisations to its insolvency specialist members, or for the purposes of granting only partial authorisations, provided that the body regulates the practice of a profession and maintains and enforces certain rules. It requires that, going forward, recognised professional bodies' rules and practices for authorising and regulating insolvency practitioners are designed to ensure that the regulatory objectives (as set out in section 15) are met. The Department may revoke a professional body's recognition where it appears that the body no longer meets the relevant requirements. The Department may also revoke a professional body's recognition to provide both full and partial authorisations and replace it with recognition to provide partial authorisations only. The Department will be able to make provisions to treat the body's insolvency specialist members as fully or partially authorised, as the case may be, for a specified period after recognition is revoked, or revoked and replaced. Section 14 will not affect the recognition of any current recognised professional bodies under the existing Article 350. Bodies already recognised under existing provisions will be recognised as if capable of providing their insolvency specialist members with full and partial authorisation (see subsection 7).

Section 14 also sets out the way in which a body may apply to the Department to become a recognised professional body. Currently, the Insolvency Order does not prescribe the way in which a body may make an application for recognition. Section 14 inserts new Article 350A which provides for an application process.

Subsection (5) of section 14 repeals Articles 351 to 354 of the Insolvency Order which provide for a competent authority to grant, refuse and withdraw authorisation to act as an insolvency practitioner. As no other competent authority has been designated, the Department is currently the only competent authority in Northern Ireland. The effect of the repeal will be that the Department will no longer be able to authorise individuals to act as an insolvency practitioner. Individuals will only be able to obtain authorisation from one of a number of professional bodies recognised by the Department for that

purpose. The vast majority of insolvency practitioners are already authorised by one of these bodies.

Under Article 361A of the Insolvency Order the Department has the power to charge professional bodies a fee in connection with the granting or maintenance of recognition of the body. Subsection (6) amends Article 361A to enable the Department to vary the fee depending on whether a body is recognised to provide full and partial authorisations or partial authorisations only and to ensure that the Department can refuse or revoke recognition of such a body where the fee is not paid.

Section 15: Regulatory objectives

This section inserts new Articles 350B and 350C into the Insolvency Order.

These new Articles define the meaning of regulatory functions and regulatory objectives which will apply to recognised professional bodies. At present, these do not exist in law.

The introduction of regulatory objectives will provide recognised professional bodies with a framework within which to carry out their activities. Regulatory objectives are intended to encourage consistency of approach, and to provide a reference point for discussions between insolvency practitioners and recognised professional bodies, and between recognised professional bodies and the Department "oversight" regulator.

New Article 350B sets out that recognised professional bodies must act and carry out their functions in a way that is compatible with the regulatory objectives.

The regulatory objectives are set out in new Article 350C and are intended to ensure that:

i. the recognised professional bodies have a system of regulating insolvency practitioners that:

    a. delivers fair treatment for persons affected by an insolvency practitioners' acts and omissions;

    b. reflects the regulatory principles that the recognised professional bodies' regulatory activities are transparent, accountable, proportionate, consistent and targeted; and

    c. ensures consistent outcomes;

ii. the recognised professional bodies are encouraging an independent and competitive insolvency practitioner profession, whose members deliver high quality services at a fair and reasonable cost, act with transparency and integrity and consider the interests of creditors in the case;

iii. insolvency practitioners seek to maximise returns to creditors and are prompt in making those returns; and

iv. the public interest is protected and promoted during the insolvency process.

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.

Section 17: Recognised professional bodies: revocation of recognition

This section inserts new Articles 350L, 350M and 350N into the Insolvency Order. It relates to removal of a recognised professional body's recognition and subsequently, its ability to regulate and approve a person to act as an insolvency practitioner. The revocation of the recognition to authorise insolvency practitioners can be at the instigation of the Department (Article 350L) or at the instigation of the recognised professional body itself (Article 350N). At present, revocation of recognition is the only sanction available to the Department.

Currently, the Department is not required to follow a statutory procedure before revoking a recognised professional body's recognition. The new Articles inserted by this section introduce the conditions to be met before a revocation order is made, the procedure to be followed and the date from which a revocation order comes into effect. This section allows for two types of revocation order: a revocation order and a partial revocation order. Partial revocation of a body's recognition will mean that the recognised professional body is no longer recognised as capable of providing insolvency practitioners with both

full and partial authorisation, only as capable of providing partial authorisations of the kind specified. Full authorisation enables individuals to act in relation to both company and personal insolvency, whilst partial authorisation enables individuals to act only in relation to either company or personal insolvency.

***Section 18*: Court sanction of insolvency practitioners in public interest cases**

This section inserts new Articles 350O, 350P, 350Q and 350R into the Insolvency Order. These new Articles introduce the power for the Department to apply to the High Court for a direct sanctions order against an insolvency practitioner when it is in the public interest for the Department to take such action.

New Article 350O sets out the sanctions that the Court may impose, if certain conditions set out in new Article 350Q are satisfied (see below), which include requiring the relevant recognised professional body to take the necessary steps to ensure that:

i. the insolvency practitioner is no longer authorised to act as such;

ii. the insolvency practitioner is no longer fully authorised to act, but may be partially authorised to act as specified;

iii. the insolvency practitioner's authorisation is suspended;

iv. other restrictions (as specified in the Court order) are placed on the insolvency practitioner while so acting; and

v. the insolvency practitioner repays to particular creditors part of what he/she has received or expects to receive as remuneration from a particular case.

The Department will not be able to seek a direct sanctions order against an insolvency practitioner whose authorisation to act as an insolvency practitioner is or was granted by the Secretary of State in Great Britain. This is because the Department is not responsible for overseeing the regulation of such insolvency practitioners.

New Article 350P sets out that the Department should only apply to the Court for a direct sanctions order if it appears to the Department that it would be in the public interest for the order to be made. As part of its consideration of the application, the Court will have regard to what, if any, disciplinary action the relevant recognised professional body may have taken against the insolvency practitioner.

New Article 350Q sets out the conditions that must be satisfied before the Court will impose a direct sanctions order. Of these conditions the first must be satisfied (that is that the person acting as an insolvency practitioner has not complied with the rules of their profession) and at least one other. The other conditions include: that the person is not a fit and proper person to act as an insolvency practitioner; the person is not a fit and proper person to act as a fully

authorised insolvency practitioner (but could be to partially act); that creditors have suffered a loss as a result of the insolvency practitioner's failure to comply with the rules of their profession.

New Article 350R allows the Department to give a direction to the relevant recognised professional body in relation to a person acting as an insolvency practitioner who is authorised by them, to impose any sanction available under a direct sanctions order, provided the insolvency practitioner has consented to this. This would occur instead of the Department applying to the Court for a direct sanctions order. The conditions set out in 350Q also apply to a direct sanctions direction.

Section 19: Power for Department to obtain information

This section inserts new Article 350S into the Insolvency Order which gives the Department the power to require information from specified people to enable the Department to carry out functions under Part 12 of the Insolvency Order.

The people that the Department can, in writing, require information from are:

i. a recognised professional body;

ii. any individual who is or has been authorised to act as an insolvency practitioner; and

iii. any person who is connected to such an individual.

A person 'connected' to the insolvency practitioner in question includes an employee of that individual, a person who acted on that insolvency practitioner's behalf in any other way and the employer of the insolvency practitioner.

Section 20: Compliance orders

This section inserts new Article 350T into the Insolvency Order. It will allow the Department to make an application to the Court if it appears that a recognised professional body has failed to comply with a requirement imposed under Part 12 of the Insolvency Order or that any person has failed to comply with a requirement under Article 350S.

This section will apply to a recognised professional body which has failed to comply with, for example, a direction imposed under new Article 350D or to a person who has failed to provide the Department with the information required under new Article 350S.

Power to establish single regulator of insolvency practitioners

Section 21: Power to establish single regulator of insolvency practitioners

This section allows the Department, by regulations made by the affirmative resolution procedure, to designate a body for the purposes of authorising and regulating insolvency practitioners. The body may be a new body set up by regulation, or it may be an existing body. The power to move to a single regulator

will only be used if the changes proposed by sections 145 to 20 do not succeed in improving confidence in the regulatory regime for insolvency practitioners.

The section sets out the functions that the regulations may confer on the designated body and include:

i. setting out the criteria for assessing whether a person is fit and proper to act as an insolvency practitioner, including the requirements as to education, practical experience and training they must meet;

ii. setting out technical standards for insolvency practitioners and enforcing compliance with those standards; and

iii. investigating complaints about insolvency practitioners.

The section allows the regulations to require that the designated body, in discharging regulatory functions, acts in a way which is compatible with the regulatory objectives (as introduced by section 15 of this Act).

It introduces Schedule 1 which makes supplementary provisions in relation to the designation of a body by regulations. For example, how many members the body should have; appointing the chair of the body; and the setting of fees.

Section 22: Regulations under section 21: designation of existing body

This section sets out that the Department may only make regulations designating an existing body as the single regulator if the body is able and willing and it has arrangements in place for its functions to be exercised effectively. It sets out in what circumstances an existing body may become the single regulator and what the Department must do to make this designation.

Section 23: Power to make regulations

Section 23 amends Article 363 of the Insolvency Order to give the Department power to make regulations to give effect to Part 12 of that Order.

Section 24: Company arrangement or administration provision to apply to a credit union

Section 24 amends Article 10(2) of the Insolvency (Northern Ireland) Order 2005 (S.I. 2005 No. 1455 (NI10)) to make it possible for the Department to make orders enabling societies registered under the Credit Unions (Northern Ireland) Order 1985 as well as societies registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 to enter a company arrangement or administration.

Section 25: Disqualification from office: duty to consult the Lord Chief Justice

Section 17 amends paragraph (7) of Article 24 of the Insolvency (Northern Ireland) Order 2005 to create a requirement for the Lord Chief Justice to be consulted about the making of orders creating a right of appeal to a court

in respect of discretionary decisions to disqualify bankrupts from offices or positions.

Section 26: Interpretation

This section defines a number of terms used in the Act.

Section 27: Transitional provisions, minor and consequential amendments and repeals

Subsection (1) of section 27 introduces Schedule 2 which makes transitional provisions in respect of sections 3, 4, 5, 7, 8 and 9 and with regard to the repeal of the provisions in the Insolvency Order for the authorisation of insolvency practitioners by competent authorities.

Subsection (2) of section 27 gives effect to the amendments set out in Schedule 3 and subsection (3) gives effect to the repeals set out in Schedule 4.

Section 28: Commencement

Subsection (1) provides for sections 26, 28 and 29 to come into operation on the next day after the Act receives Royal Assent.

Subsection (2) provides for commencement of the other provisions of the Act by order made by the Department.

Subsection (3) provides that an order under subsection (2) can contain such transitional or saving provisions as the Department considers appropriate.

Section 29: Short title

This Act may be cited as the Insolvency (Amendment) Act (Northern Ireland) 2016.

Schedule 1: Single regulator of insolvency practitioners: supplementary provision

This Schedule sets out the matters to be dealt with in regulations which designate a body for the purposes of authorising and regulating insolvency practitioners (which may be an existing body or a new body established by the regulations).

Schedule 2: Transitional Provisions

This Schedule lists the transitional and saving provisions necessary to the Act. Paragraphs 11 to 16 make transitional and saving provisions for two categories of individual, those who are authorised by the Department to act as an insolvency practitioner at the date the repeals made by subsection (5) of section 14 take effect and those who have applied to the Department for authorisation by that date but whose application has not been dealt with. Those who are already authorised will continue to be authorised during the transitional period. Those who apply to the Department for authorisation before the repeals made by

subsection (5) of section 14 take effect will have their applications determined in accordance with the existing provisions.

Schedule 3: Minor and Consequential Amendments

This Schedule makes amendments to the Solicitors (Northern Ireland) Order 1976, the Insolvency (Northern Ireland) Order 1989, the Pensions (Northern Ireland) Order 2005 and the Insolvency (Northern Ireland) Order 2005.

Articles 103(1), 186(1)(a), 242(1)(a) and 242(2)(a) of the Insolvency Order are amended to achieve greater standardisation of the wording used in these provisions which deal with the service of statutory demands on companies and individuals.

An amendment to Article 185 of the Insolvency Order in conjunction with the repeal of words in paragraph (2) of that Article by Schedule 4 results in an unregistered company's principal place of business in Northern Ireland being deemed to be its registered office for the purposes of winding up.

Paragraphs 14 and 15 repeal Articles 348(1A) and 348A of the Insolvency Order. These provisions allow individuals to be authorised to act solely as nominees or supervisors in voluntary arrangements. No body has ever been recognised for the purpose of authorising such persons and therefore these provisions have never been used. The introduction of a regime for the partial authorisation of insolvency practitioners contained in section 14 is an evolution of the idea embodied in Articles 348(1A) and 348A and therefore these provisions are no longer required. Schedule 3 also includes repeals to various provisions in the Insolvency Order consequent on the repeal of these two provisions.

Paragraph 16 repeals Article 361A(2) which provided for the charging of a fee by the Department for authorisation to act as an insolvency practitioner.

Paragraph 17 repeals references in Schedule A1 to the Insolvency Order to being authorised to act as nominee or as supervisor, such authorisation having been done away with through the repeals made by paragraphs 14 and 15.

Paragraph 18 puts right an error in paragraph 1A of Schedule B1 to the Insolvency Order by providing that the bar on companies with a principal place of business in GB entering administration unless that they also have a principal place of business in Northern Ireland applies to companies which are incorporated outside the United Kingdom, not companies incorporated outside Northern Ireland.

Paragraph 19 repairs the omission of words which should have been included at the beginning of paragraph (3) of Schedule 1 to the Insolvency Order.

Schedule 4: Repeals

This Schedule lists the repeals brought in by the Act.

HANSARD REPORTS

17. The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly.

STAGE	***DATE***
Introduction	7 October 2014
Second Stage	10 November 2014
Committee Stage – oral briefing by Insolvency Service officials	11 November 2014
Committee Stage – extension of committee stage	8 December 2014
Committee Stage – oral evidence from the Institute of Chartered Accountants Ireland and PricewaterhouseCoopers	9 December 2014
Committee Stage – oral briefing by Insolvency Service officials	13 January 2015
Committee Stage – oral briefing by Insolvency Service officials	3 February 2015
Committee Stage – Committee report	3 March 2015 – Report number NIA 227/11-16
Consideration Stage	23 June 2015
Further Consideration Stage	6 October 2015
Final Stage	8 December 2015
Royal Assent	29 January 2016