

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

COMMENTARY ON SECTIONS

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.