
EXPLANATORY NOTE

(This note is not part of the Regulations)

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

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

In particular, the Directive provides that—

- in the absence of an overriding reason relating to the public interest, limitation of an authorisation to provide a service to a particular part of a territory is prohibited (Article 10(4));
- authorisation granted to a provider of services must not be for a limited period except where authorisation is automatically renewed or is subject only to continued fulfilment of requirements (Article 11(1));
- any fee in connection with authorisation procedures to provide a service must be reasonable and proportionate to the service provided in consideration of the fee and must not exceed the cost of the procedures (Article 13(2)); and
- where a provider of services has professional liability insurance or a guarantee in a member State where the provider is already established which is equivalent or essentially comparable to that required in another member State, there must be no requirement for further professional liability insurance or guarantee (Article 23(2)).

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

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

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

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

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

Paragraph 3 of the Schedule provides that the number of hours of insolvency work experience required by an applicant to the Secretary of State for authorisation to act as an insolvency practitioner

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who has never previously been authorised to act as an insolvency practitioner is reduced from 7000 to 2000 hours.

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

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

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

Paragraph 8 of the Schedule provides that professional liability insurance or a guarantee in an EEA State in which the insolvency practitioner is already established which is equivalent or essentially comparable to a bond approved by the Secretary of State is prescribed security or caution for the purposes of section 390(3)(b) of the Insolvency Act 1986. It also provides for the procedure by which such equivalence or essential comparability is determined. Sub-paragraph (7) provides that the bond or professional liability insurance or guarantee and evidence of its equivalence or essential comparability to a bond or a copy thereof must be sent to the authorising body and may be sent electronically.

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

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