1991 No. 302

INSOLVENCY

The Insolvency Practitioners Regulations (Northern Ireland) 1991

Made . . . . . *9th July 1991*

Coming into operation . . *5th August 1991*

ARRANGEMENT OF REGULATIONS

PART I

INTRODUCTORY

1. Citation and commencement
2. Interpretation

PART II

AUTHORISATION OF INSOLVENCY PRACTITIONERS

3. Application of this Part
4. Matters for determining whether an applicant is fit and proper
5. Application of regulations 6 and 7
6. Education
7. Practical training and experience
8. Fees
9. Maximum period of authorisation

PART III

REQUIREMENTS FOR SECURITY FOR THE PROPER PERFORMANCE OF THE FUNCTIONS OF AN INSOLVENCY PRACTITIONER

10. Application of this Part
11. Requirements for security
12. Exceptions in relation to requirements for security
13. Registration and filing requirements

PART IV

RECORDS TO BE KEPT BY INSOLVENCY PRACTITIONERS

14. Application of this Part

15. The records to be kept
16. Inspection of records
17. Notification
18. Preservation of records

SCHEDULES

Schedule 1 — Academic Qualification
Schedule 2 — Requirements for Security
Schedule 3 — Matters to be Included in Case Record

The Department of Economic Development, in the exercise of the powers conferred on it by Articles 349(3), 351(3), 352(2) and (3) and 363 of the Insolvency (Northern Ireland) Order 1989(**a**), and of every other power enabling it in that behalf, hereby makes the following Regulations:

PART I

INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the Insolvency Practitioners Regulations (Northern Ireland) 1991 and shall come into operation on 5th August 1991.

Interpretation

2. In these Regulations —

"application" means an application made by an individual to the competent authority for authorisation under Article 352 of the Order to act as an insolvency practitioner;

"associate" shall be construed in accordance with Article 4 of the Order;

"authorisation" means an authorisation to act as an insolvency practitioner granted under Article 352 of the Order;

"business" includes the carrying on of any trade, profession or vocation and the discharge of the functions relating to any office or employment;

"commencement date" means 1st October 1991;

"company" has the meaning assigned to it by Article 3(4) of the Order;

(a) S.I. 1989/2405 (N.I. 19)

"Crown employment" shall be construed in accordance with sub-paragraph (2) of paragraph 11A of Schedule I to the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965(**a**) or as the case may be, in accordance with section 121(2) of the Employment Protection Act 1975(**b**);

"higher insolvency work experience" means engagement in work related to the administration of the estates of persons in respect of which an office-holder has been appointed where the work involves the management or supervision of the conduct of a case on behalf of that office-holder;

"the insolvency legislation" means the following enactments —

the Order;

Parts XIX to XXI of the Companies (Northern Ireland) Order 1986(**c**);

Articles 42 to 47 of the Industrial Relations (Northern Ireland) Order 1976(**d**);

the Bankruptcy Acts (Northern Ireland) 1857 to 1980(**e**);

the Deeds of Arrangement Act 1887(**f**);

the Deeds of Arrangement Amendment Act 1890(**g**); and

the provisions of the enactments repealed by Schedule 2 to the Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986(**h**) relating to insolvency;

"insolvency practice" means the carrying on of the business of acting as an insolvency practitioner or in a corresponding capacity under the law of any country or territory outside Northern Ireland;

"insolvency practitioner" shall be construed in accordance with Article 3 of the Order;

"insolvency proceedings" means any of the proceedings under the Order in which a person may be appointed to act as an insolvency practitioner;

"insolvency work experience" means engagement in work related to the administration of the estates of persons in respect of which an office-holder has been appointed;

"office-holder" means a person who acts or has acted as an insolvency practitioner or who has acted in a corresponding capacity before the commencement of Article 3 of the Order or under the law of any country or territory outside Northern Ireland;

(a) 1965 c. 19 (N.I.); paragraph 11A of Schedule 1 was inserted by S.I. 1976/1043 (N.I. 16) Article 82(1) and Schedule 5 Part II
(b) 1975 c. 71
(c) S.I. 1986/1032 (N.I. 6)
(d) S.I. 1976/1043 (N.I. 16)
(e) 1857 c. 60; 1872 c. 57, 1872 c. 58, 1929 c. 1 (N.I.) 1963 c. 23 (N.I.), S.I. 1980/561 (N.I. 4)
(f) 1887 c. 57
(g) 1890 c. 24
(h) S.I. 1986/1035 (N.I. 9)

"the Order" means the Insolvency (Northern Ireland) Order 1989;

"the registrar" means the registrar of companies appointed under Article 653 of the Companies Order and, for the purposes of this Order, includes an assistant registrar; and

"relevant time" in relation to an individual making an application or his application means the time of making the application.

PART II

AUTHORISATION OF INSOLVENCY PRACTITIONERS

Application of this Part

3. This Part applies in relation to any applications made to a competent authority and to any withdrawal of an authorisation granted by a competent authority.

Matters for determining whether an applicant is fit and proper

4.—(1) Without prejudice to the generality of Article 352(2)(*a*) or (4)(*a*) of the Order, in determining whether an applicant is a fit and proper person to act as an insolvency practitioner the matters to be taken into account shall include —

(*a*) whether the applicant has been convicted of any offence involving fraud or other dishonesty or violence;

(*b*) whether the applicant has contravened any statutory provision contained in the insolvency legislation or in subordinate legislation made under any such statutory provision or any provision of the law of a country or territory outside Northern Ireland which corresponds to such legislation;

(*c*) whether the applicant has engaged in any practices in the course of carrying on business appearing to be deceitful or oppressive or otherwise unfair or improper, whether unlawful or not, or which otherwise cast doubt upon his probity or competence for discharging the duties of an insolvency practitioner;

(*d*) whether, in respect of any insolvency practice carried on by the applicant at the date of or at any time prior to the making of the application, there were established adequate systems of control of the practice and adequate records relating to the practice, including accounting records, and whether such systems of control and records have been or were maintained on an adequate basis;

(*e*) whether the insolvency practice of the applicant is, has been or, where the applicant is not yet carrying on such a practice, will be, carried on with the independence, integrity and the professional skills appropriate to the range and scale of the practice and the proper performance of the duties of an insolvency practitioner;

(*f*) whether the applicant, in any case where he has acted as an insolvency practitioner, has failed to disclose fully to such persons as might reasonably be expected to be affected thereby circumstances where there is or appears to be a conflict of interest between his so acting and

any interest of his own, whether personal, financial or otherwise, without having received such consent as might be appropriate to his acting or continuing to act despite the existence of such circumstances.

(2) In this regulation "applicant" includes, where it is proposed to withdraw any authorisation on the grounds that the holder is not a fit and proper person, the holder of the authorisation.

Application of regulations 6 and 7

5.—(1) The requirements with respect to education and practical training and experience which are prescribed for the purposes of Article 352(2)(*b*) of the Order are set out in regulations 6 and 7, which shall apply to applicants for authorisation as specified in paragraphs (2) and (3).

(2) Regulation 6 shall apply to all applicants other than an applicant who—

(*a*) has attained the age of 35 on or before 1st August 1991; or

(*b*) at the relevant time is the holder of an authorisation.

(3) Regulation 7 shall apply to all applicants other than an applicant who at the relevant time —

(*a*) is the holder of an authorisation; and

(*b*) (i) has been appointed an office-holder in at least one case; or

(ii) has acquired not less than 500 hours of higher insolvency work experience;

within the period of three years immediately prior to the relevant time and in determining whether an applicant falls within this subparagraph the provisions of regulation 7(2) shall apply.

Education

6. An applicant to whom this regulation applies by virtue of regulation 5(2) must at the relevant time possess one or more of the academic qualifications listed in Part I of Schedule 1 or such other academic or professional qualifications as shall indicate the attainment of an equivalent level of education to that attested by that qualification or, as the case may be, those qualifications.

Practical training and experience

7.—(1) An applicant to whom this regulation applies by virtue of regulation 5(3) must either —

(*a*) have been appointed an office-holder in not less than 30 cases within the period of 10 years immediately prior to the relevant time; or

(*b*) (i) have been first employed by a person carrying on insolvency practice in that practice not later than 10 years prior to the relevant time; and

(ii) within the period of 10 years referred to in subparagraph (*a*) have acquired not less than 7,000 hours of insolvency work experience whether in the employment of a person carrying on an insolvency practice or as an office-holder; and