



Northern Ireland
Assembly

Insolvency (Amendment) Bill
Notice of Amendments tabled on
12 June 2015 for Consideration Stage

Clause 3, Page 5, Line 30

Leave out ‘at year’s end’

Minister of Enterprise, Trade and Investment

Clause 3, Page 5, Line 31

Leave out from ‘in’ to ‘year,’ on line 32

Minister of Enterprise, Trade and Investment

Clause 3, Page 6, Line 5

Leave out ‘at year’s end’

Minister of Enterprise, Trade and Investment

Clause 3, Page 6, Line 6

Leave out from ‘If’ to ‘year,’ on line 7

Minister of Enterprise, Trade and Investment

Clause 3, Page 6, Line 20

Leave out ‘at year’s end’

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Clause 3, Page 6, Line 23

Leave out ‘at’

Minister of Enterprise, Trade and Investment

Clause 3, Page 6

Leave out line 24

Minister of Enterprise, Trade and Investment

Clause 11, Page 9, Line 38

Leave out subsection (3) and insert -

‘(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.’

Minister of Enterprise, Trade and Investment

Clause 13, Page 10, Line 9

At end insert -

‘(za) in the words before sub-paragraph (a), after “service” insert “on the bankrupt”;

Minister of Enterprise, Trade and Investment

Clause 13, Page 10, Line 15

Leave out the first ‘the’

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Clause 13, Page 10, Line 16

After ‘Article’ insert ‘(and whether before or after service on the bankrupt of a notice under this Article)’

Minister of Enterprise, Trade and Investment

Clause 14, Page 10, Line 28

Leave out ‘or section 390A of the Insolvency Act 1986 (authorisation)’

Minister of Enterprise, Trade and Investment

Clause 14, Page 11, Line 15

After ‘authorised’ insert ‘to act as an insolvency practitioner in relation to companies’

Minister of Enterprise, Trade and Investment

Clause 14, Page 11, Line 15

After ‘may’ insert ‘nonetheless’

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Clause 14, Page 11, Line 16

Leave out ‘as an insolvency practitioner’

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Clause 14, Page 11, Line 17

Leave out ‘or an individual’

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Clause 14, Page 11, Line 18

Leave out ‘or individual’

Minister of Enterprise, Trade and Investment

Clause 14, Page 11, Line 20

At end insert -

‘(1A) 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.’

Minister of Enterprise, Trade and Investment

Clause 14, Page 11, Line 21

After ‘authorised’ insert ‘to act as an insolvency practitioner in relation to companies’

Minister of Enterprise, Trade and Investment

Clause 14, Page 11, Line 21

After ‘may’ insert ‘nonetheless’

Minister of Enterprise, Trade and Investment

Clause 14, Page 11, Line 22

Leave out ‘as an insolvency practitioner’

Minister of Enterprise, Trade and Investment

Clause 14, Page 11, Line 23

Leave out ‘or an individual’

Minister of Enterprise, Trade and Investment

Clause 14, Page 11, Line 23

Leave out from second ‘or’ to ‘individual’ on line 24

Minister of Enterprise, Trade and Investment

Clause 14, Page 11, Line 28

At end insert -

‘(2A) Subject to paragraph (7), 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.’

Minister of Enterprise, Trade and Investment

Clause 14, Page 11, Line 29

Leave out ‘the’ and insert ‘a’

Minister of Enterprise, Trade and Investment

Clause 14, Page 11, Line 29

After ‘act’ insert ‘for the purposes of paragraph (2) or (2A)’

Minister of Enterprise, Trade and Investment

Clause 14, Page 11, Line 32

After ‘(2)’ insert ‘or (2A)’

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Clause 14, Page 11, Line 38

After ‘company,’ insert ‘this Article or, if it applies,’

Minister of Enterprise, Trade and Investment

Clause 14, Page 11, Line 38

Leave out from ‘or’ to ‘Article’ on line 39

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Clause 14, Page 11, Line 40

After ‘individual,’ insert ‘this Article or, if it applies,’

Minister of Enterprise, Trade and Investment

Clause 14, Page 11, Line 40

Leave out from ‘or’ to ‘Article’ on line 41

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Clause 14, Page 11, Line 43

Leave out ‘paragraph (1) or (2)’ and insert ‘any of paragraphs (1) to (2A)’

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Clause 14, Page 12, Line 1

After ‘(2)’ insert ‘or (2A)’

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Clause 14, Page 12, Line 4

Leave out ‘paragraph (2)’ and insert ‘the paragraph’

Minister of Enterprise, Trade and Investment

Clause 14, Page 12, Line 13

After ‘(2)’ insert ‘or (2A)’

Minister of Enterprise, Trade and Investment

Leave out from line 23 to line 21 on page 13 and insert -

‘350.—(1) 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 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 Article 350(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.”’

Minister of Enterprise, Trade and Investment

New Clause

After clause 14 insert -

‘Regulatory objectives

14A.—(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.”?

Minister of Enterprise, Trade and Investment

New Clause

After clause 14 insert -

‘Oversight of recognised professional bodies

14B.—(1) After Article 350C of the Insolvency Order (inserted by section 14A) 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.”.

Minister of Enterprise, Trade and Investment

New Clause

After clause 14 insert -

‘Recognised professional bodies: revocation of recognition

14C.—(1) After Article 350K of the Insolvency Order (inserted by section 14B) 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.”.

Minister of Enterprise, Trade and Investment

New Clause

After clause 14 insert -

‘Court sanction of insolvency practitioners in public interest cases

14D. After Article 350N of the Insolvency Order (inserted by section 14C) 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 person has 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.”.

Minister of Enterprise, Trade and Investment

New Clause

After clause 14 insert -

‘Power for Department to obtain information

14E. After Article 350R of the Insolvency Order (inserted by section 14D) 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.”?

Minister of Enterprise, Trade and Investment

New Clause

After clause 14 insert -

‘Compliance orders

14F. After Article 350S of the Insolvency Order (inserted by section 14E) 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.”?

Minister of Enterprise, Trade and Investment

New Clause

After clause 14 insert -

‘Power to establish single regulator of insolvency practitioners

Power to establish single regulator of insolvency practitioners

14G.—(1) The Department may by regulations designate a body for the purposes of—

- (a) authorising persons to act as insolvency practitioners; and
- (b) regulating persons acting as such.

(2) The designated body may be either—

- (a) a body corporate established by the regulations; or
 - (b) a body (whether a body corporate or an unincorporated association) already in existence when the regulations are made (an “existing body”).
- (3) The regulations may, in particular, confer the following functions on the designated body—
- (a) establishing criteria for determining whether a person is a fit and proper person to act as an insolvency practitioner;
 - (b) establishing the requirements as to education, practical training and experience which a person must meet in order to act as an insolvency practitioner;
 - (c) establishing and maintaining a system for providing full authorisation or partial authorisation to persons who meet those criteria and requirements;
 - (d) imposing technical standards for persons so authorised and enforcing compliance with those standards;
 - (e) imposing professional and ethical standards for persons so authorised and enforcing compliance with those standards;
 - (f) monitoring the performance and conduct of persons so authorised;
 - (g) investigating complaints made against, and other matters concerning the performance or conduct of, persons so authorised.
- (4) The regulations may require the designated body, in discharging regulatory functions, so far as is reasonably practicable, to 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.
- (5) Provision made under subsection (3)(d) or (3)(e) for the enforcement of the standards concerned may include provision enabling the designated body to impose a financial penalty on a person who is or has been authorised to act as an insolvency practitioner.
- (6) The regulations may, in particular, include provision for the purpose of treating a person authorised to act as an insolvency practitioner by virtue of being a member of a professional body recognised under Article 350 of the Insolvency Order immediately before the regulations come into force as authorised to act as an insolvency practitioner by the body designated by the regulations after that time.
- (7) Expressions used in this section which are defined for the purposes of Part 12 of the Insolvency Order have the same meaning in this section as in that Part.
- (8) Regulations under this section shall not be made unless a draft of the regulations has been laid before and approved by resolution of the Assembly.
- (9) Section 14H makes further provision about regulations under this section which designate an existing body.
- (10) Schedule A1 makes supplementary provision in relation to the designation of a body by regulations under this section.’

Minister of Enterprise, Trade and Investment

New Clause

After clause 14 insert -

‘Regulations under section 14G: designation of existing body

14H.—(1) The Department may make regulations under section 14G designating an existing body only if it appears to the Department that—

- (a) the body is able and willing to exercise the functions that would be conferred by the regulations; and
- (b) the body has arrangements in place relating to the exercise of those functions which are such as to be likely to ensure that the conditions in subsection (2) are met.

(2) The conditions are—

- (a) that the functions in question will be exercised effectively; and
- (b) where the regulations are to contain any requirements or other provisions prescribed under subsection (3), that those functions will be exercised in accordance with any such requirements or provisions.

(3) Regulations which designate an existing body may contain such requirements or other provisions relating to the exercise of the functions by the designated body as appear to the Department to be appropriate.’

Minister of Enterprise, Trade and Investment

Clause 15, Page 14, Line 2

At end insert -

‘(5) After that paragraph insert—

“(3) In making regulations under this Article, the Department must have regard to the regulatory objectives (as defined by Article 350C(3)).”.’

Minister of Enterprise, Trade and Investment

New Schedule

Before schedule 1 insert -

‘SCHEDULE 1

Section 14G(10).

SINGLE REGULATOR OF INSOLVENCY PRACTITIONERS: SUPPLEMENTARY PROVISION

Operation of this Schedule

1.—(1) This Schedule has effect in relation to regulations under section 14G designating a body (referred to in this Schedule as “the Regulations”) as follows—

- (a) paragraphs 2 to 13 have effect where the Regulations establish the body;
- (b) paragraphs 6, 7 and 9 to 13 have effect where the Regulations designate an existing body (see section 14G(2)(b));
- (c) paragraph 14 also has effect where the Regulations designate an existing body that is an unincorporated association.

(2) Provision made in the Regulations by virtue of paragraph 6 or 12, where that paragraph has effect as mentioned in sub-paragraph (1)(b), may only apply in relation to—

- (a) things done by or in relation to the body in or in connection with the exercise of functions conferred on it by the Regulations; and
- (b) functions of the body which are functions so conferred.

Name, members and chair

2.—(1) The Regulations must prescribe the name by which the body is to be known.

(2) The Regulations must provide that the members of the body must be appointed by the Department after such consultation as the Department thinks appropriate.

(3) The Regulations must provide that the Department must appoint one of the members as the chair of the body.

(4) The Regulations may include provision about—

- (a) the terms on which the members of the body hold and vacate office;
- (b) the terms on which the person appointed as the chair holds and vacates that office.

Remuneration etc.

3.—(1) The Regulations must provide that the body must pay to its chair and members such remuneration and allowances in respect of expenses properly incurred by them in the exercise of their functions as the Department may determine.

(2) The Regulations must provide that, as regards any member (including the chair) in whose case the Department so determines, the body must pay or make provision for the payment of—

- (a) such pension, allowance or gratuity to or in respect of that person on retirement or death as the Department may determine; or
- (b) such contributions or other payment towards the provision of such a pension, allowance or gratuity as the Department may determine.

(3) The Regulations must provide that where—

- (a) a person ceases to be a member of the body otherwise than on the expiry of the term of office; and
- (b) it appears to the Department that there are special circumstances which make it right for that person to be compensated,

the body must make a payment to the person by way of compensation of such amount as the Department may determine.

Staff

4. The Regulations must provide that—

- (a) the body may appoint such persons to be its employees as the body considers appropriate; and
- (b) the employees are to be appointed on such terms and conditions as the body may determine.

Proceedings

5.—(1) The Regulations may make provision about the proceedings of the body.

(2) The Regulations may, in particular—

- (a) authorise the body to exercise any function by means of committees consisting wholly or partly of members of the body;
- (b) provide that the validity of proceedings of the body, or of any such committee, is not affected by any vacancy among the members or any defect in the appointment of a member.

Fees

6.—(1) The Regulations may make provision—

- (a) about the setting and charging of fees by the body in connection with the exercise of its functions;
- (b) for the retention by the body of any such fees payable to it;
- (c) about the application by the body of such fees.

(2) The Regulations may, in particular, make provision—

- (a) for the body to be able to set such fees as appear to it to be sufficient to defray the expenses of the body exercising its functions, taking one year with another;
- (b) for the setting of fees by the body to be subject to the approval of the Department.

(3) The expenses referred to in sub-paragraph (2)(a) include any expenses incurred by the body on such staff, accommodation, services and other facilities as appear to it to be necessary or expedient for the proper exercise of its functions.

Consultation

7. The Regulations may make provision as to the circumstances and manner in which the body must consult others before exercising any function conferred on it by the Regulations.

Training and other services

8.—(1) The Regulations may make provision authorising the body to provide training or other services to any person.

(2) The Regulations may make provision authorising the body—

- (a) to charge for the provision of any such training or other services; and
- (b) to calculate any such charge on the basis that it considers to be the appropriate commercial basis.

Report and accounts

9.—(1) The Regulations must require the body, at least once in each 12 month period, to report to the Department on—

- (a) the exercise of the functions conferred on it by the Regulations; and
- (b) such other matters as may be prescribed in the Regulations.

(2) The Regulations must require the Department to lay before the Assembly a copy of each report received under this paragraph.

(3) Unless section 394 of the Companies Act 2006 applies to the body (duty on every company to prepare individual accounts), the Regulations must provide that the Department may give directions to the body with respect to the preparation of its accounts.

(4) Unless the body falls within sub-paragraph (5), the Regulations must provide that the Department may give directions to the body with respect to the audit of its accounts.

(5) The body falls within this sub-paragraph if it is a company whose accounts—

- (a) are required to be audited in accordance with Part 16 of the Companies Act 2006 (see section 475 of that Act); or
- (b) are exempt from the requirements of that Part under section 482 of that Act (non-profit making companies subject to public sector audit).

(6) The Regulations may provide that, whether or not section 394 of the Companies Act 2006 applies to the body, the Department may direct that any provisions of that Act specified in the directions are to apply to the body with or without modifications.

Funding

10. The Regulations may provide that the Department may make grants to the body.

Financial penalties

11.—(1) This paragraph applies where the Regulations include provision enabling the body to impose a financial penalty on a person who is, or has been, authorised to act as an insolvency practitioner (see section 14G(5)).

(2) The Regulations—

- (a) must include provision about how the body is to determine the amount of a penalty; and
- (b) may, in particular, prescribe a minimum or maximum amount.

(3) The Regulations must provide that, unless the Department (with the consent of the Department of Finance and Personnel) otherwise directs, income from penalties imposed by the body is to be paid into the Consolidated Fund.

(4) The Regulations may also, in particular—

- (a) include provision for a penalty imposed by the body to be enforced as a debt;
- (b) prescribe conditions that must be met before any action to enforce a penalty may be taken.

Status etc.

12. The Regulations must provide that—

- (a) the body is not to be regarded as acting on behalf of the Crown; and
- (b) its members, officers and employees are not to be regarded as Crown servants.

Transfer schemes

13.—(1) This paragraph applies if the Regulations make provision designating a body (whether one established by the Regulations or one already in existence) in place of a body designated by earlier regulations under section 14G; and those bodies are referred to as the “new body” and the “former body” respectively.

(2) The Regulations may make provision authorising the Department to make a scheme (a “transfer scheme”) for the transfer of property, rights and liabilities from the former body to the new body.

(3) The Regulations may provide that a transfer scheme may include provision—

- (a) about the transfer of property, rights and liabilities that could not otherwise be transferred;
- (b) about the transfer of property acquired, and rights and liabilities arising, after the making of the scheme.

(4) The Regulations may provide that a transfer scheme may make consequential, supplementary, incidental or transitional provision and may in particular—

- (a) create rights, or impose liabilities, in relation to property or rights transferred;
- (b) make provision about the continuing effect of things done by the former body in respect of anything transferred;
- (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the former body in respect of anything transferred;

- (d) make provision for references to the former body in an instrument or other document in respect of anything transferred to be treated as references to the new body;
- (e) make provision for the shared ownership or use of property;
- (f) if the TUPE regulations do not apply to in relation to the transfer, make provision which is the same or similar.

(5) The Regulations must provide that, where the former body is an existing body, a transfer scheme may only make provision in relation to—

- (a) things done by or in relation to the former body in or in connection with the exercise of functions conferred on it by previous regulations under section 14G; and
- (b) functions of the body which are functions so conferred.

(6) In sub-paragraph (4)(f), “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

(7) In this paragraph—

- (a) references to rights and liabilities include rights and liabilities relating to a contract of employment;
- (b) references to the transfer of property include the grant of a lease.

Additional provision where body is unincorporated association

14.—(1) This paragraph applies where the body is an unincorporated association.

(2) The Regulations must provide that any relevant proceedings may be brought by or against the body in the name of any body corporate whose constitution provides for the establishment of the body.

(3) In sub-paragraph (2) “relevant proceedings” means proceedings brought in or in connection with the exercise of any function conferred on the body by the Regulations.’

Minister of Enterprise, Trade and Investment

Schedule 2, Page 18, Line 15

At end insert -

- ‘3A. In Article 14(2), omit “or authorised to act as nominee,”.
- 3B. In Article 15(4), omit “, or authorised to act as nominee,”.
- 3C. In Article 17(2), omit “or authorised to act as nominee,”.
- 3D. In Article 20(5), omit “or authorised to act as supervisor,”.’

Minister of Enterprise, Trade and Investment

Schedule 2, Page 18, Line 28

At end insert -

‘12A. In Schedule A1—

- (a) in paragraph 38(1), omit “, or authorised to act as nominee,”;
- (b) In paragraph 41(2), omit “, or authorised to act as nominee,”;
- (c) In paragraph 43(1), omit “, or authorised to act as nominee,”;
- (d) In paragraph 49(6), omit “, or authorised to act as supervisor,”.’

Minister of Enterprise, Trade and Investment

Schedule 3, Page 19, Line 42

In second column, at end insert -

‘In Article 14(2), the words “or authorised to act as nominee,”.

In Article 15(4), the words “, or authorised to act as nominee,”.

In Article 17(2), the words “or authorised to act as nominee,”.

In Article 20(5), the words “or authorised to act as supervisor,”.’

Minister of Enterprise, Trade and Investment

Schedule 3, Page 20, Line 29

In second column, at end insert -

‘In Schedule A1—

- (a) in paragraph 38(1), the words “, or authorised to act as nominee,”;
- (b) in paragraph 41(2), the words “, or authorised to act as nominee,”;
- (c) in paragraph 43(1), the words “, or authorised to act as nominee,”;
- (d) in paragraph 49(6), the words “, or authorised to act as supervisor,”.’

Minister of Enterprise, Trade and Investment