

DEPARTMENT OF ENTERPRISE, TRADE and INVESTMENT

INSOLVENCY (NORTHERN IRELAND) ORDER 1989

Qualification and Authorisation of Insolvency Practitioners

**Guidance Notes for Persons Seeking Authorisation to Act as
an Insolvency Practitioner from the Insolvency Service**

To be used when completing Form **IA1** (applicants who are not
already the holder of an authorisation granted by the Department
of Enterprise, Trade and Investment)

1. INTERPRETATION

“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, and for this purpose acting as an insolvency practitioner shall include acting as a judicial factor on the bankruptcy estate of a deceased person.

“insolvency work experience” means engagement in work related to the administration of insolvency proceedings:-

- (a) as the office-holder in those proceedings
- (b) in the employment of a firm or a body whose members or employees act as insolvency practitioners
- (c) in the course of employment in the Insolvency Service of the Department of Enterprise, trade and Investment.

“higher insolvency work experience” means engagement in work in relation to insolvency proceedings where the work involves the management or supervision of the conduct of those proceedings on behalf of the office-holder acting in relation to them

“office holder” means a person who acts as an insolvency practitioner or in a corresponding capacity under the law of any country or territory outside Northern Ireland and includes the Official Receiver acting as liquidator, provisional liquidator, trustee, interim receiver or nominee or supervisor of a voluntary arrangement.

2. INTRODUCTION

The Insolvency (Northern Ireland) Order 1989 (“The Order”) introduced an authorisation procedure for persons undertaking prescribed types of insolvency work. These are:-

In relation to a company acting as a liquidator (members voluntary, creditors voluntary or compulsory winding up), provisional liquidator, administrative receiver, administrator or nominee or supervisor of a voluntary arrangement approved by it.

In relation to an individual acting as a trustee or interim receiver in bankruptcy, as interim or permanent trustee in the sequestration of his estate, as trustee under a deed of arrangement or, in Scotland, a trust deed for his creditors, as supervisor or nominee of a voluntary arrangement approved by the Order or as administrator of the insolvent estate of a deceased person.

In relation to an insolvent partnership acting as a liquidator, provisional liquidator or administrator; or as trustee of the partnership under article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995, or as supervisor of a voluntary arrangement approved in relation to it under the Order.

The Order disqualifies from acting any person who is at the time:

- An undischarged bankrupt or subject to a current sequestration order in respect of his estate;
- Subject to a disqualification order made or a disqualification undertaking accepted under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification Order 2002;
- A patient within the meaning of Part VII of the Mental Health Act 1983 or Section 125(1) of the Mental Health (Scotland) Act 1984 or Part V111. of the Mental Health (Northern Ireland) Order 1986;
- Subject to a bankruptcy restrictions order.

Where a person fails to comply with an administration order under Part VI of the County Courts Act 1984, the court may revoke that order and make an order directing that section 12 of the Company Directors Disqualification Act 1986 shall apply to the person for period not exceeding 2 years. A person to whom this section applies may not, without the leave of the court which made the order, act as liquidator of a company.

It is an offence under Article 349 of the Order for a person to act as insolvency practitioner in relation to a company or individual unless at that time he has obtained an authorisation, he holds the requisite security and he is not disqualified from acting.

3. BODIES FROM WHOM AN AUTHORISATION MAY BE OBTAINED

Authorisation to act as an insolvency practitioner may be granted by a professional body recognised by the Department of Enterprise, Trade and Investment or by a 'competent authority' which for the time being is the Department of Enterprise, Trade and Investment, (the Department)

If you wish to obtain an authorisation and are a member of any of the recognised bodies listed below you are strongly advised to consult that body before taking further action.

The Association of Chartered Certified Accountants

The Institute of Chartered Accountants in England and Wales

The Institute of Chartered Accountants in Scotland

The Institute of Chartered Accountants in Ireland

The Insolvency Practitioners Association

The Law Society of Northern Ireland

The Law Society (E&W)

4. APPLICATION TO THE DEPARTMENT OF ENTERPRISE, TRADE AND INVESTMENT AS A COMPETENT AUTHORITY

An application to the Department must be made on form IA1 if you have not previously been authorised to act as an Insolvency Practitioner and IA5 if you have at any time been authorised to act as an Insolvency Practitioner. If not received with these notes, forms IA1 and IA5 may be obtained from the contact point given at paragraph 11.

Applications may be made by individuals only; there is no provision for authorisation to be granted to firms, partnerships, companies, etc.

Applications will be considered in accordance with the provisions of Article 351 and 352 of the Order and the provisions of the Insolvency Practitioners Regulations (Northern Ireland) 2006.

Article 352 (1) of the Order states that the Department of Enterprise, Trade and Investment shall grant an authorisation if it appears that the applicant:-

- is a fit and proper person to act as an insolvency practitioner (see paragraph 5),
- and,
- meets the prescribed requirements with respect to education and practical training and experience (see paragraph 5).

5. REQUIREMENTS FOR AUTHORISATION

Fit And Proper

All applicants must be fit and proper. The matters, which the Department shall take into account in determining whether a person is fit and proper, shall include, but are not limited to, those set out in regulation 6 of the Regulations.

The Department will consider both the personal character of the applicant, i.e. his honesty and integrity etc, and whether his competence and efficiency in the conduct of his practice and the offices he holds in the course of it are adequate to ensure the proper performance of his duties in respect of those offices. Regulation 6 of the Regulations sets out in broad terms the range of factors which the Department considers relevant to the decision as to whether an applicant is fit and proper and which she will take into account when reaching her decision in any particular case.

The Department will examine whether the applicant's past record reveals that they have been convicted of any offences involving fraud or other dishonesty or violence.

The Department will also consider the applicant's record of compliance with the provisions in both primary and subordinate legislation covering the conduct of insolvency. All contraventions of the relevant legislation will be taken into account.

The Department will also be concerned with any practices in which an applicant has engaged in the course of any business or employment, whether or not related to the practice of insolvency (and whether or not those practices are unlawful in themselves), which do not conform with the best standards for professional conduct required from those acting as insolvency practitioners. Particular attention will be paid to matters such as compliance with Statements of Insolvency Practice and ethical guidance.

Regulations 6 (d) and (e) set out matters relevant to the competence and efficiency of the applicant in the carrying on of their practice. The Department will be concerned to establish in relation to insolvency practices which are being carried on at the time of the application, whether they are structured in such a way as to ensure the efficient despatch of the work taken on by the practice for which the applicant is responsible. The Department will, for example, consider whether the number of staff available to deal with casework is adequate, what arrangements there are for the effective control of delegated work and whether the accounting procedures operated ensure proper control.

The performance of the practice, as well as its structure will be assessed. Evidence showing delays in dealing with cases, failure to answer correspondence and failures or delays in responding to enquiries from regulatory and revenue authorities will raise doubts as to the competence of the applicant and the adequacy of his arrangements for carrying on his practice.

The Department attaches considerable importance to the requirement that insolvency practitioners show a high standard of independence and integrity in carrying on their practices. Too often in the past holders of corporate insolvency offices have acted at the direction of and as a front for those whose aim has been to deprive the company,

and thereby its creditors, of its assets by various improper schemes or otherwise exploit the privileges of limited liability. The practitioners concerned have conducted the administration of the affairs of such companies in a manner calculated to assist such schemes. The measures contained in the Insolvency (Northern Ireland) Order 1989 and the Company Directors Disqualification Order 2002 to counter malpractices place an even greater importance on the qualities of insolvency practitioners.

Finally, it is recognised that some applicants for authorisation will not have practiced as a principal or held office in their own right. In deciding whether to grant authorisation to such persons the Department will seek to ensure that their past experience has prepared them sufficiently for the responsibilities of holding office outside the framework of supervision.

The Department wishes to emphasise that all matters relevant to the question of the applicant's fitness and competence will be considered and applicants are asked to disclose any special factors affecting their application or their past record when submitting an application.

The assessment of fitness is not a mechanical exercise where compliance with a number of specific requirements ensures the grant of an authorisation; it is rather a judgement based on a review of the applicant's whole record and individual circumstances. A full disclosure of all relevant facts is therefore essential and non-disclosure of such facts will itself be taken into account when considering your fitness to act as an insolvency practitioner.

Education And Practical Training And Experience

The requirements as to education and training in respect of applicants who have never previously been authorised to act as insolvency practitioners are set out in Regulation 7

- (1) The requirements as to education, training and practical experience prescribed for the purposes of Article 352 of the Order in relation to an applicant who has never previously been authorised to act as an insolvency practitioner (whether by virtue of membership of a body recognised under Article 350 of the Order or by virtue of an authorisation granted by a competent authority under Article 352 of the Order) shall be as set out in this regulation.
- (2) An applicant must at the date of the making of his application have passed the Joint Insolvency Examination set by the Joint Insolvency Examination Board or have acquired in, or been awarded in, a country or territory outside Northern Ireland professional or vocational qualifications which indicate that the applicant has the knowledge and competence that is attested by a pass in that examination.
- (3) An applicant must either –
 - (a) have held office as an office-holder in not less than 30 cases during the period of 10 years immediately preceding the date on which he made his application for authorisation; or

(b) have acquired not less than 7000 hours of insolvency work experience of which no less than 1400 hours must have been acquired within the period of two years immediately prior to the date of the making of his application and show that he satisfies one of the three requirements set out in paragraph (4).

(4) The three requirements referred to in paragraph (3)(b) are -

(a) the applicant has become an office-holder in at least 5 cases within the period of 5 years immediately prior to the date of the making of his application;

(b) the applicant has acquired 1,000 hours or more of higher insolvency work experience or experience as an office-holder within the period referred to in sub-paragraph (a); and

(c) the applicant can show that within the period referred to in sub-paragraph (a) he has achieved one of the following combinations of positions as an office-holder and hours acquired of higher insolvency work experience -

(i) 4 cases and 200 hours;

(ii) 3 cases and 400 hours;

(iii) 2 cases and 600 hours; or

(iv) 1 case and 800 hours.

6. ADVERTISEMENT OF APPLICATION

If you are not the holder of an existing authorisation to act as an insolvency practitioner, you must arrange to advertise your intention to apply in the Belfast Gazette as appropriate and in two newspapers with a substantial circulation in the area of your principal business address **before** submitting your application. The advertisement should be in the following form.

“Insolvency (Northern Ireland) Order 1989 – Articles 351 & 352. Authorisation of Insolvency Practitioners

TAKE NOTE that I (**full name of applicant in capital letters**) (previously known as **any former names**) of (**principal trading address**) intend to apply to the Department of Enterprise, Trade and Investment under the provisions of the above Order for authorisation to act as an Insolvency Practitioner.

Any person having reason to believe that such authorisation should not be granted should; within 28 days of publication of this notice communicate such reason to the Department.

Fermanagh House
Ormeau Ave
Belfast
BT2 8NJ

7. CHANGE OF INFORMATION

If pending consideration of an application any change occurs in the information given, details should be forwarded to the contact point below forthwith.

8. REFUSAL OF YOUR APPLICATION

If the Department proposes to refuse your application you will be served with a written notice to that effect. The notice will state the ground(s) on which the Department proposes to act and shall give particulars of the rights exercisable by you under Article 353 and 354 of the Order. These are the right to make written representations to the Department.

9. APPLICATION FEE

The following fee must be forwarded with the application and is not returnable if an application is refused or withdrawn:

- £1,025

Cheques should be made payable to The Insolvency Services Account

10. DURATION

An authorisation may be granted for a maximum period of 3 years but in some cases the Department may consider it appropriate to grant an authorisation for a lesser period.

11. CONTACT POINT

Application forms may be obtained from and when completed should be returned to:

The Authorisation Officer
Insolvency Practitioner Unit
Fermanagh House
Ormeau Ave
Belfast
BT2 8NJ

Tel: 02890 548532
Fax: 02890 548520

12. SUPPLEMENTARY

If your application for authorisation is granted, you may wish to be considered for referrals of debtors by the Court made under the provisions of Article 247 (2) of the Insolvency (NI) Order 1989.

You may also wish to be considered for appointment by the Department as trustee in any bankruptcy or liquidator in any compulsory winding up. The Department maintains a “rota” of insolvency practitioners to facilitate such appointments and, if you wish to be included in the rota, you should contact The Insolvency Practitioner Unit in Fermanagh House, Ormeau Ave, Belfast BT2 8NJ.