

GN 001

GUIDANCE FOR PERONS SEEKING TO ACT AS INSOLVENCY PRACTITIONERS

INTRODUCTION

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

- (a) **In relation to a company** acting as a liquidator (members’ voluntary, creditors’ voluntary or compulsory winding up), administrative receiver, administrator or supervisor of any composition or scheme made under the provisions of the Order;
- (b) **In relation to an individual** acting as a trustee or interim receiver in bankruptcy, as trustee under a deed of arrangement, as supervisor of a scheme or composition made under the provisions of the Order or as administrator of the estate of a deceased insolvent.

It is a criminal offence to undertake any of the above new appointments without first having obtained an authorisation. The order also disqualifies from acting any person who is at the time:

- (a) an undischarged bankrupt or subject to a current sequestration order in respect of his estate;
- (b) subject to a disqualification order made under the provisions of the Company Directors Disqualification Act 1986 or Part I of the Companies (Northern Ireland) Order 1989; or
- (c) a patient within the meaning of part VIII of the Mental Health (Northern Ireland) Order 1986, Part VII of the Mental Health Act 1983 or section 125 (1) of the Mental Health (Scotland) Act 1984.

Practitioners appointed before the coming into operation of the Order to any office(s) covered by the Order, unless they are subsequently disqualified under (a) to (c) above, will be allowed to complete such administration(s) subject to the pre-1989 Insolvency Order Legislation which will continue to govern these administrations.

HOW TO OBTAIN AN AUTHORISATION

The Insolvency (Northern Ireland) Order 1989 provides for authorisations to be granted either in accordance with the rules of professional bodies recognised by the Department of Enterprise, Trade and Investment (“the Department”) under Article 350 for that purpose or by application to the ‘competent authority’ which for the time being is the Department.

Application to Recognised Bodies

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 of Scotland
- The Institute of Chartered Accountants in England and Wales
- The Institute of Chartered Accountants in Ireland
- The Insolvency Practitioners Association
- The Law Society
- The Law Society of Northern Ireland

Application to the Department as the Competent Authority

The application must be made on Form IA1 which, if not received with these notes, may be obtained from the contact point referred to below.

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

Applications will be considered in accordance with the provisions of Articles 351 and 352 of the Insolvency (Northern Ireland) Order 1989, the Insolvency Practitioners Regulations (Northern Ireland) 1991 (“the 1991 Regulations”) and the Insolvency Practitioners (Amendment No.2) Regulations (Northern Ireland) 1993 (“the 1993 Regulations”). In particular, a potential applicant’s attention is drawn to Article 352(2) under which he is required to satisfy the relevant authority that he:

- (a) is a fit and property person to act as an insolvency practitioner; and

- (b) meets prescribed requirements with respect to education and practical training and experience.

'Fit and Proper'

In determining whether an applicant meets the fit and proper requirement the Department will take into account all matters relevant to the question of the applicant's suitability to act as an insolvency practitioner. It is clear from the wide interpretation that the courts have given to the concept of 'fit and proper' in the context of other statutes that not merely is the personal character of the applicant to be taken into account but also the conduct of the business for which he seeks to be authorised.

Accordingly the Department will consider both the personal character of an applicant for authorisation 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 4 of the 1991 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 it will take into account when reaching its decision in any particular case.

The Department will examine whether the applicant's past record reveals that he has committed any offences involving fraud or other dishonesty or violence. It will also consider the applicant's record of compliance with the provisions in both primary and subordinate legislation governing the conduct of insolvency. There is set out in the Appendix to the Notes a list of the more important provisions of this nature which experience has shown are often breached by those whose standards of conduct cast doubt on their fitness to carry out the duties of any insolvency practitioner. **It is emphasised that the list in the Appendix is not exhaustive** and 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.

Regulation 4(d) and (e) of the 1991 Regulations sets out matters relevant to the competence and efficiency of the applicant in the carrying on of his 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. It 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. The measures contained in the Insolvency (Northern Ireland) Order 1989 and Part II of the Companies (Northern Ireland) Order 1989 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 practised as a principal or held offices 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 every matter relevant to the question of an applicant's fitness and competence will be considered and applicants are asked to disclose to the Department any special factors affecting their application or their past record in answering question 36.

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.

'Education and Practical Training and Experience'

Applicants to the Department as the Relevant Authority will be required to show substantial involvement in insolvency work. Regulations will apply the following criteria:

Education An applicant under the age of 35 on 1st August 1991 shall have passes at 'A' or 'H' level and 'O' level at acceptable grades in five different subjects from a recognised Examination Board or Boards (a Schedule of which appears in the regulations), or equivalent qualification, including European Community qualifications or qualifications gained outside Northern Ireland. At least two passes must be at 'A' or 'H' level, obtained at one sitting and one pass at either level in English language.

From 1 January 1994 an applicant must 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 the United Kingdom professional or vocational qualifications which indicate that the applicant has the knowledge and competence that is attested by a pass in that examination.

Practical Training and Experience An applicant shall have either:

- (i.) during the ten years prior to his application held in his own name not less than 30 appointments as liquidator, trustee or receiver, in unrelated matters, as a nominee of creditors, or members not associated with him (see regulation 7(1) of the 1991 Regulations). (Note; Where the nomination is by a debenture holder or other creditor who is an associate (see Article 7) such appointments may be disregarded); or
- (ii.) (a) received training and experience in the employment of an office holder or insolvency specialist over a period of not less than 10 years and shall have spent not less than 7,000 hours of his time on insolvency matters, and
that
(b) during the 5 years preceding the application he shall have spent at least 1,000 hours in managing or supervising the conduct of insolvencies on behalf of his principal; or
- (iii.) by virtue of appointments as an office holder combined with experience in assisting an office holder have had a total involvement in insolvency no less than that required at (ii) (a) above (see regulations 7 (1)(c) of the 1991 Regulations);or
- (iv.) applications will also be considered from persons who have obtained experience outside Northern Ireland who can within the total requirement of 7,000 hours also show 1,400 hours experience of procedures in Northern Ireland or England and Wales or Scotland, and where appropriate a good command of the English Language.

Completion of the Application Form

All questions must be answered before an application can be considered.

Q3 and 4

At Q3 you should state the address at which you work or work most frequently work. All correspondence or notices relating to your application will be sent to that address.

At Q4 you should state the address of any office from which cases in your name are normally dealt with and to which creditors' and other correspondence in respect of those cases would normally be sent.

Q8

To facilitate the processing of reports, returns etc. at the Department of Trade and Industry all practitioners were given an office holder number, with suffixes to differentiate between addresses shown at Q3 and Q4. If you have acted in insolvency matters as a principal in the past under the Insolvency Act 1986 you should have already received such a number; please quote it here.

Office holder for the purpose of any question in the application form means the holder of any office for which an authorisation is required under Article 3 of the Insolvency (Northern Ireland) Order 1989, even though the appointment will have arisen before the commencement of those provisions.

Q9

The Department would not normally process an application where there is a pending application with another body empowered to issue authorisations.

Q13

Please give details here of actual training in the office by principals or at seminars or otherwise, which you have undergone including instruction on casework.

Q30(a)

Removal would not include circumstances where a receiver's appointment is terminated because the relevant debenture had been redeemed.

Q33(c)(i) and Q35

'Consultants' would include any persons whether remunerated or otherwise, who may give advice or assistance other than any solicitor or accountant named at Part IV of the form.

Q37

The answer given here will not affect consideration of the application itself.

Advertisement of Application

If you consider that you can meet the criteria for experience and fitness outlined above and propose to submit an application for an authorisation then before so doing you must arrange to advertise that intention in the Belfast Gazette and in two newspapers with a substantial circulation in the area of your principal business address (applicants should agree the newspapers with the Authorisation Officer). The advertisements 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 Insolvency Service, Fermanagh House, Ormeau Avenue, Belfast, BT2 8NJ.

Change of Information

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

Processing of Applications

If the Department proposes to refuse the grant of an authorisation the applicant will be served with notice to that effect. The notice will state the ground(s) for the proposed refusal. The applicant will also be advised how, if he so desires, his rights under the Insolvency Order to make further representations may be given effect.

Application Fee

A fee, currently £200, must be forwarded with the application and is not returnable in any circumstances.

Duration and ‘Renewal’

An authorisation, if granted, will usually remain in force for 3 years unless revoked. When ‘renewal’ is required the applicant will be required to show with respect to practical training and experience that he has been appointed as an office holder on at least one case during the period of the initial authorisation. Consideration of a renewal application will then be given on the basis of performance in any cases handled during the currency of the initial authorisation. If no appointments have been taken in that period the applicant will be required to show that he can meet the requirement for the grant of an initial authorisation as they then apply.

Contact Point

Application forms may be obtained from, and when completed should be returned to, The Authorisation Officer, The Insolvency Service, Fermanagh House, Ormeau Avenue, Belfast, BT2 8NJ.

Appendix

List of statutory provisions or requirements, non-compliance with which may be taken into consideration by the Department in the authorisation procedure.

An applicant's record will be taken into account in respect of the following;

- (a) the soliciting of appointments to office either for himself or a connected person or of irregularities in the conduct of meetings;
- (b) the operation of a local bank account or of separate accounts for each insolvent estate;
- (c) the fixing of his remuneration or the remuneration of any agent;
- (d) the purchase of any assets of an insolvent estate or obtaining any undisclosed commissions or profit therefrom;
- (e) payment into the Insolvency Account of unclaimed dividends or undistributed funds;
- (f) the admission of claims, including any matters relating to the Employment Rights (Northern Ireland) Order 1996 and similar legislation:
- (g) submission to the Department or the Registrar of Companies of returns, documents, etc. required to be filed in the course of an administration.