

Implementation of the EU Directive 2006/123/EC (The Services Directive)

The provisions of the EU Services Directive come into operation on 28 December 2009. This Directive seeks to provide for the opening up of the internal market in services through the removal of unjustifiable national barriers to service provision. It is expected that the measures will help create more jobs and facilitate the cross border provision of services by making it easier for businesses to set up in other EU countries and to provide services across national borders on a temporary or permanent basis.

Service providers based in one country can be hindered in their attempts to do business in another because of the need to meet the different requirements in that country. The Directive obliges EU countries to examine all legislation and practices which regulate service provision, and check whether discriminatory, unnecessary or disproportionate provisions exist, which act as a barrier to operating in that country. Where rules and requirements cannot be justified, they must be amended.

Consequently, to comply with the requirements of the Directive, amendments will be made to insolvency legislation to come into operation by the effective date of 28 December 2009.

Changes to be made to the Insolvency (Northern Ireland) Order 1989:

- To provide for persons authorised to act as insolvency practitioners in Great Britain by the Secretary of State, under the Insolvency Act 1986, to act as insolvency practitioners in Northern Ireland.
- To provide for persons authorised to act solely as nominees and supervisors of company voluntary arrangements and individual voluntary arrangements (authorised persons) in Great Britain to act as authorised persons in Northern Ireland.
- To provide discretion for office holders to relay information by electronic means.

Background

In the absence of an overriding reason relating to the public interest, article 10(4) of the Services Directive prohibits limitation of an authorisation to provide a service to a particular part of a territory. Currently there is no mutual recognition of insolvency practitioners who are authorised directly by either the Secretary of State or DETINI. Persons wishing to be authorised directly (i.e. not by one of the RPBs) to practice throughout the UK have to make separate applications in each jurisdiction.

Although no bodies have yet been recognised under A.348A of the Insolvency (NI) Order 1989 (or the equivalent provision in GB) to allow its members to act as authorised persons in voluntary arrangements, the same arguments apply as those in respect of insolvency practitioners.

The Directive provides that authorisations granted to a provider shall not be for a limited period, except where the authorisation is being automatically renewed or is subject only to the continued fulfilment of requirements. We do not consider that retention of a three year period of authorisation can be justified by an overriding reason relating to the public interest.

Changes to be made to the Insolvency Practitioners Regulations (Northern Ireland) 2006

- To reduce the insolvency experience requirement for applicants seeking authorisation from the Department from 7000 hours to 2000 hours.
- To provide for an authorisation period of 12 months, which will be renewed automatically, subject to continued fulfilment of conditions contained in the Regulations.
- Following the amendment to the period of authorisation there will be consequential amendments to the ongoing experience and educational requirements for insolvency practitioners authorised by the Department to reflect the fact that authorisations will be renewed annually, as compared to the practitioner re-applying for authorisation at intervals of up to 3 years.

- To allow an insolvency practitioner from another European Economic Area State to meet the strict insolvency bonding requirements where that person has existing professional liability insurance cover or a guarantee which provides equivalent or essentially comparable cover to that provided by a bond.
- To relax the requirement that all insolvency practitioners send the original bond or caution to their authorising body and allow electronic copies to be sent instead.

Background

The existing experience requirements for persons seeking their first authorisation as an insolvency practitioner from the Department include a requirement that applicants have 7,000 hours of insolvency experience at the date of their application. This requirement is in addition to the requirement to pass the Joint Insolvency Examination. We believe that the current requirement may be considered an unjustifiable barrier to service provision.

The Directive provides that where a service provider has equivalent or essentially comparable cover to that required under national law (in respect of the risk insured, the sum or ceiling, or possible exclusions from cover) the Member State may not require further cover from the provider.

The Directive provides that Member States may not require original documents or certified copies (or translations) unless they can be justified on overriding reasons related to the public interest.

The Directive also provides that all procedures and formalities (with some very limited exceptions) relating to access to a service activity must be completed at a distance and by electronic means. We do not consider that there is an overriding reason relating to the public interest for justifying receipt of the original bond. We consider that it should be possible to verify the authenticity of bonds without having access to the original document and the legislation will be amended to reflect that.