

## STATUTORY INSTRUMENTS

# 1989 No. 2405

## The Insolvency (Northern Ireland) Order 1989

### <sup>F1</sup>PART XII

#### INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION

**F1** Pts. XI-XIV modified by S.R. 2004/307 (as amended (1.10.2006) by Limited Liability Partnerships (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/377), reg. 3, Sch. 2)

*Restrictions on unqualified persons acting as liquidator, trustee in bankruptcy, etc.*

#### **Acting as insolvency practitioner without qualification**

**348.**—(1 <sup>F2</sup> A person who acts as an insolvency practitioner in relation to a company or an individual at a time when he is not qualified to do so shall be guilty of an offence.

[<sup>F3</sup>(1A) This Article is subject to Article 348A.]

(2) This Article does not apply to the official receiver.

**F2** mod. by SR 2004/307

**F3** 2002 NI 6

#### **[<sup>F4</sup>Authorisation of nominees and supervisors**

**348A.**—(1 <sup>F5</sup> Article 348 does not apply to a person acting, in relation to a voluntary arrangement proposed or approved under Part II or Part VIII, as nominee or supervisor if he is authorised so to act.

(2) For the purposes of paragraph (1) and those Parts, an individual to whom paragraph (3) does not apply is authorised to act as nominee or supervisor in relation to such an arrangement if—

- (a) he is a member of a body recognised for the purpose by the Department [<sup>F6</sup> or of a body recognised for the purpose under section 389A(2)(a) of the Insolvency Act 1986], and
- (b) there is in force security for the proper performance of his functions and that security meets the prescribed requirements with respect to his so acting in relation to the arrangement.

(3) This paragraph applies to a person if—

- (a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,
- (b) he is subject to—
  - (i) a disqualification order made under Part II of the Companies (Northern Ireland) Order 1989 (NI 18), or

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- (ii) a disqualification order made or a disqualification undertaking accepted under the Company Directors Disqualification (Northern Ireland) Order 2002 or the Company Directors Disqualification Act 1986 (c. 46), or
- (c) he is a patient within the meaning of Part VIII of the Mental Health (Northern Ireland) Order 1986 (NI 4), Part VII of the Mental Health Act 1983 (c. 20) or [<sup>F7</sup>section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003].
- (4) The Department may by order declare a body which appears to it to fall within paragraph (5) to be a recognised body for the purposes of paragraph (2)(a).
- (5) A body may be recognised if it maintains and enforces rules for securing that its members—
- (a) are fit and proper persons to act as nominees or supervisors, and
  - (b) meet acceptable requirements as to education and practical training and experience.
- (6) For the purposes of this Article, a person is a member of a body only if he is subject to its rules when acting as nominee or supervisor (whether or not he is in fact a member of the body).
- (7) An order made under paragraph (4) in relation to a body may be revoked by a further order if it appears to the Department that the body no longer falls within paragraph (5).
- (8) An order of the Department under this Article has effect from such date as is specified in the order; and any such order revoking a previous order may make provision for members of the body in question to continue to be treated as members of a recognised body for a specified period after the revocation takes effect.]

- F4** 2002 NI 6
- F5** mod. by SR 2004/307
- F6** Words in art. 348A(2)(a) inserted (28.12.2009) by [Provision of Services \(Insolvency Practitioners\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/401\)](#), **reg. 2(2)** (with reg. 4)
- F7** S.I. 2005/2078

#### [<sup>F8</sup>Official receiver as nominee or supervisor

**348B.**—(1) The official receiver is authorised to act as nominee or supervisor in relation to a voluntary arrangement approved under Chapter II of Part VIII provided that the debtor is an undischarged bankrupt when the arrangement is proposed.

- (2) The Department may by order repeal the proviso in paragraph (1).
- (3) An order under paragraph (2) shall be subject to negative resolution.]

- F8** [Art. 348B](#) inserted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 21(1), Sch. 7 para. 3 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

*The requisite qualification, and the means of obtaining it*

#### Persons not qualified to act as insolvency practitioners

- 349.**—(1) A person who is not an individual is not qualified to act as an insolvency practitioner.
- (2) A person is not qualified to act as an insolvency practitioner at any time unless at that time—
- (a) he is authorised so to act by virtue of membership of a professional body recognised under Article 350, being permitted so to act by or under the rules of that body, or
  - (b) he holds an authorisation granted by a competent authority under Article 352 [<sup>F9</sup>;or

- (c) he holds an authorisation for a corresponding purpose granted by a competent authority in Great Britain under Section 393 of the Insolvency Act 1986].
- (3) A person is not qualified to act as an insolvency practitioner in relation to another person at any time unless—
- (a) there is in force at that time security, and
  - (b) that security meets the prescribed requirements with respect to his so acting in relation to that other person.
- (4) A person is not qualified to act as an insolvency practitioner at any time if at that time—
- (a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,
  - <sup>F10</sup>(b) he is subject to a disqualification order made or a disqualification undertaking accepted under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002, or]
  - (c) he is a patient within the meaning of Part VII of the Mental Health Act 1983<sup>F11</sup>, section 125(1) of the Mental Health (Scotland) Act 1984<sup>F12</sup> or Part VIII of the Mental Health (Northern Ireland) Order 1986<sup>F13</sup>.
- <sup>F14</sup>(5) A person is not qualified to act as an insolvency practitioner while a bankruptcy restrictions order is in force in respect of him.]

- F9** Art. 349(2)(c) and preceding word inserted (28.12.2009) by [Provision of Services \(Insolvency Practitioners\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/401\)](#), **reg. 2(3)** (with **reg. 4**)
- F10** 2002 NI 4
- F11** 1983 c. 20
- F12** 1984 c. 36
- F13** 1986 NI 4
- F14** Art. 349(5) inserted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 13(3), Sch. 6 para. 4 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

### Recognised professional bodies

**350.**—(1) The Department may by order subject to negative resolution declare a body which appears to it to fall within paragraph (2) to be a recognised professional body for the purposes of this Article.

<sup>F15</sup>(2) A body may be recognised if it regulates the practice of a profession and maintains and enforces rules for securing that such of its members as are permitted by or under the rules to act as insolvency practitioners—

- (a) are fit and proper persons so to act; and
- (b) meet acceptable requirements as to education, practical training and experience.]

(3) 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; and the reference in Article 349(2) to membership of a professional body recognised under this Article is to be read accordingly.

(4) An order of the Department under this Article has effect from such date as is specified in the order; and any such order revoking a previous order may make provision whereby members of the body in question continue to be treated as authorised to act as insolvency practitioners for a specified period after the revocation takes effect.

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**F15** Art. 350(2) substituted (28.12.2009) by Provision of Services (Insolvency Practitioners) Regulations (Northern Ireland) 2009 (S.R. 2009/401), reg. 2(4) (with reg. 4)

### Authorisation by competent authority

**351.**—(1) Application may be made to a competent authority for authorisation to act as an insolvency practitioner.

(2) The competent authorities for this purpose are—

- (a) in relation to a case of any description specified in directions given by the Department, the body or person so specified in relation to cases of that description, and
- (b) in relation to a case not falling within sub#paragraph (a), the Department.

(3) The application—

- (a) shall be made in such manner as the competent authority may direct,
- (b) shall contain or be accompanied by such information as that authority may reasonably require for the purpose of determining the application, and
- (c) shall be accompanied by the prescribed fee;

and the authority may direct that notice of the making of the application shall be published in such manner as may be specified in the direction.

(4) At any time after receiving the application and before determining it the authority may require the applicant to furnish additional information.

(5) Directions and requirements given or imposed under paragraph (3) or (4) may differ as between different applications.

(6) Any information to be furnished to the competent authority under this Article shall, if it so requires, be in such form or verified in such manner as it may specify.

(7) An application may be withdrawn before it is granted or refused.

(8) Any sums received under this Article by a competent authority other than the Department may be retained by the authority; and any sums so received by the Department shall be applied in such manner as the Department of Finance and Personnel may direct.

[<sup>F16</sup>(9) Paragraph (3)(c) shall not have effect in respect of an application made to the Department (but this paragraph is without prejudice to Article 361A).]

**F16** Art. 351(9) added (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 26(3) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

### Grant, refusal and withdrawal of authorisation

**352.**—(1) The competent authority may, on an application duly made in accordance with Article 351 and after being furnished with all such information as it may require under that Article, grant or refuse the application.

(2) The authority shall grant the application if it appears to it from the information furnished by the applicant and having regard to such other information, if any, as it may have—

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

<sup>F17</sup>(3) An authorisation granted under this Article, if not previously withdrawn, continues in force for one year.

(3A) Where an authorisation is granted under this Article the competent authority shall, before its expiry (and without a further application made in accordance with Article 351), grant a further authorisation under this Article taking effect immediately after the expiry of the previous authorisation, unless it appears to the competent authority that the subject of the authorisation no longer complies with paragraph (2)(a) and (b).]

(4) An authorisation [<sup>F18</sup>granted under this Article] may be withdrawn by the competent authority if it appears to it—

- (a) that the holder of the authorisation is no longer a fit and proper person to act as an insolvency practitioner, or
- (b) without prejudice to sub#paragraph (a), that the holder—
  - (i) has failed to comply with any provision of this Part or of any regulations made under this Part or Part XIII, or
  - (ii) in purported compliance with any such provision, has furnished the competent authority with false, inaccurate or misleading information.

(5) An authorisation granted under this Article may be withdrawn by the competent authority at the request or with the consent of the holder of the authorisation.

<sup>F19</sup>(6) Where an authorisation granted under this Article is withdrawn—

- (a) paragraph (3A) does not require a further authorisation to be granted, or
- (b) if a further authorisation has already been granted at the time of the withdrawal, the further authorisation is also withdrawn.]

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| <p><b>F17</b> Art. 352(3)(3A) substituted (28.12.2009) for art. 352(3) by <a href="#">Provision of Services (Insolvency Practitioners) Regulations (Northern Ireland) 2009 (S.R. 2009/401)</a>, <b>reg. 2(5)(a)</b> (with reg. 4)</p> <p><b>F18</b> Words in art. 352(4) substituted (28.12.2009) by <a href="#">Provision of Services (Insolvency Practitioners) Regulations (Northern Ireland) 2009 (S.R. 2009/401)</a>, <b>reg. 2(5)(b)</b> (with reg. 4)</p> <p><b>F19</b> Art. 352(6) inserted (28.12.2009) by <a href="#">Provision of Services (Insolvency Practitioners) Regulations (Northern Ireland) 2009 (S.R. 2009/401)</a>, <b>reg. 2(5)(c)</b> (with reg. 4)</p> |
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## Notices

**353.**—(1) Where a competent authority grants an authorisation under Article 352, it shall give written notice of that fact to the applicant, specifying the date on which the authorisation takes effect.

(2) Where the authority proposes to refuse an application, or to withdraw an authorisation under Article 352(4), it shall give the applicant or holder of the authorisation written notice of its intention to do so, setting out particulars of the grounds on which it proposes to act.

(3) In the case of a proposed withdrawal the notice shall state the date on which it is proposed that the withdrawal should take effect.

(4) A notice under paragraph (2) shall give particulars of the rights exercisable under Article 354 by a person on whom the notice is served.

## Right to make representations

**354.**—(1) A person on whom a notice is served under Article 353(2) may within 14 days from the date of service make written representations to the competent authority.

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(2) The competent authority shall have regard to any representations so made in determining whether to refuse the application or withdraw the authorisation, as the case may be.

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