



2016 CHAPTER 2

Miscellaneous

Oversight of recognised professional bodies

16.—(1) After Article 350C of the Insolvency Order (inserted by section 15) insert—

“Oversight of recognised professional bodies

350D Directions

(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.

350E Directions: procedure

(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.

Status: This is the original version (as it was originally enacted).

(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.

350F Financial penalty

(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.

350G Financial penalty: procedure

(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.

350H Appeal against financial penalty

(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.

350I Recovery of financial penalties

(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.

350J Reprimand

(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).

350K Reprimand: procedure

(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.”.