

SCHEDULE

Regulation 4

Amendments to the Insolvency Practitioners Regulations 2005

1. In this schedule—
“the principal Regulations” mean the Insolvency Practitioners Regulations 2005 and any reference to a numbered Part or regulation is a reference to a Part or regulation so numbered in the principal Regulations;
2. The principal Regulations are amended as set out in paragraphs 3 to 9 of this schedule.

Amendment to regulation 7

- 3.—(1) Regulation 7 (requirements as to education and training – applicants who have never previously been authorised to act as insolvency practitioners) is amended as follows.
(2) In paragraph (3)(b) for “7000” substitute “2000”.

Amendments to regulation 8

- 4.—(1) Regulation 8 (requirements relating to education and training etc. – applicants previously authorised to act as insolvency practitioners) is amended as follows.
(2) In paragraph (2)(a) for “500” substitute “450”.
(3) After regulation 8 add—

“Requirements relating to education and training etc. – further authorisation to act as insolvency practitioners

- 8A.—(1) The requirements prescribed under section 393(2)(b) of the Act in relation to further authorisation under section 393(3A) of the Act are as set out in this regulation.
(2) The individual must—
 - (a) have acquired within the period in regulation 11(1A) 150 hours of any combination of the following types of experience—
 - (i) experience as an office-holder;
 - (ii) higher insolvency work experience;
 - (iii) regulatory work experience; or
 - (iv) advisory work experience; and
 - (b) have completed within the period in regulation 11(1A) at least 36 hours of continuing professional development of which 18 hours must fall into the categories in regulation 8(3)(b)(i) to (v).
- (3) In the first period after the grant of an authorisation an individual must comply with—
 - (a) paragraph (2)(a) where the number of hours is 125; and
 - (b) paragraph (2)(b) where the number of hours are 30 and 15 respectively.”.

Amendment to regulation 10

5. Regulation 10 (maximum period of authorisation) is revoked.

Amendment to regulation 11

6.—(1) Regulation 11 (returns by insolvency practitioners authorised by the Secretary of State) is amended as follows.

(2) In paragraph (1)—

(a) for “of 12 months ending on 31st December” substitute “in paragraph (1A)”;

(b) in sub-paragraph (b) at the end, omit “and”; and

(c) after sub-paragraph (c) after “activity” where it last occurs, insert—

“; and

(d) the number of hours of any experience of the types in regulation 8A(2)(a)(i) to (iv).

(1A) The period is the period of 12 months ending two months before the anniversary of the grant of the authorisation or the last further authorisation”.

(3) In paragraph (2) for “within one month of” substitute “no later than 6 weeks before”.

Amendment to regulation 12

7.—(1) Regulation 12 (requirements for security and caution for the proper performance of the functions of an insolvency practitioner etc.) is amended as follows.

(2) After paragraph (2) insert—

“(3) Where, in accordance with section 390(2)(c) of the Act a person is qualified to act as an insolvency practitioner by virtue of an authorisation granted by the Department of Enterprise, Trade and Investment for Northern Ireland under Article 352 of the Insolvency (Northern Ireland) Order 1989, this Part applies in relation to that person as if that authorisation had been granted pursuant to section 393 of the Act.”.

Amendments to Schedule 2

8.—(1) Schedule 2 (requirements for security or caution and related matters) is amended as follows.

(2) In paragraph 1 (interpretation) after the definition of “insolvent’s assets” insert—

““professional liability insurance” means insurance taken out by the insolvency practitioner in respect of potential liabilities to the insolvent and third parties arising out of acting as an insolvency practitioner;”.

(3) After paragraph 2 add—

“Requirement for bond or professional liability insurance

2A. Where an insolvency practitioner is appointed to act in respect of an insolvent there must be in force—

(a) a bond in a form approved by the Secretary of State which complies with paragraph 3; or

(b) where the insolvency practitioner is already established in another EEA state and is already covered in that state by professional liability insurance or a guarantee, professional liability insurance or a guarantee which complies with paragraph 8A.”.

(4) In paragraph 3 (requirement for bonding—terms of the bond)—

(a) for the title substitute “**Terms of the bond**”; and

(b) for sub-paragraph (1) substitute—

- “(1) The bond must—
- (a) be in writing or in electronic form;
 - (b) contain provision whereby a surety or cautioner undertakes to be jointly and severally liable for losses in relation to the insolvent caused by—
 - (i) the fraud or dishonesty of the insolvency practitioner whether acting alone or in collusion with one or more persons; or
 - (ii) the fraud or dishonesty of any person committed with the connivance of the insolvency practitioner; and
 - (c) otherwise conform to the requirements of this paragraph and paragraphs 4 to 8.”.
- (5) After paragraph 8 add—

“Compliance of professional liability insurance cover in another EEA state

8A. Where paragraph 2A(b) applies to an insolvency practitioner, the professional liability insurance or guarantee complies with this paragraph if the Secretary of State determines that it is equivalent or essentially comparable to the bond referred to in paragraph 3 as regards—

- (a) its purpose, and
- (b) the cover it provides in terms of—
 - (i) the risk covered,
 - (ii) the amount covered, and
 - (iii) exclusions from the cover.

Procedure for determining compliance of professional liability insurance or guarantee

8B.—(1) Where an insolvency practitioner seeks a determination under paragraph 8A, the insolvency practitioner must send to the Secretary of State—

- (a) a copy of the document providing the professional liability insurance or guarantee cover in the EEA state in which the insolvency practitioner is established;
- (b) where the document in sub-paragraph (a) is not in English, a translation of it into English; and
- (c) a notice—
 - (i) where the insolvency practitioner intends to act in respect of an insolvent, specifying—
 - (aa) the name of the insolvent; and
 - (bb) the time and date when the insolvency practitioner intends to consent to be appointed to act; or
 - (ii) that the insolvency practitioner seeks a determination without reference to a specific appointment.

(2) Where there is a notice sent under sub-paragraph (1)(c)(i), the documents sent under sub-paragraph (1) must be sent to the Secretary of State such that the Secretary of State receives them no later than 5 business days before the date in the notice.

(3) Where the Secretary of State receives the documents sent under sub-paragraph (1), the Secretary of State must—

- (a) as soon as is reasonably practicable, notify the insolvency practitioner whether they were received in accordance with sub-paragraph (2);

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- (b) consider them; and
 - (c) determine whether the document sent under sub-paragraph (1)(a) complies with paragraph 8A.
- (4) Where the Secretary of State determines that the document sent under sub-paragraph (1)(a) complies with paragraph 8A, the Secretary of State must—
- (a) notify the insolvency practitioner that it complies with paragraph 8A; and
 - (b) determine whether it contains a term equivalent or essentially comparable to a requirement to provide—
 - (i) a specific penalty sum; or
 - (ii) a cover schedule.
- (5) Where the Secretary of State determines under sub-paragraph (4)(b) that the document sent under sub-paragraph (1)(a)—
- (a) contains a term equivalent or essentially comparable to a requirement to provide a specific penalty sum or a cover schedule, the notice sent under paragraph (4)(a) must specify—
 - (i) the term equivalent or essentially comparable to a requirement to provide a specific penalty sum or a cover schedule; and
 - (ii) the thing in the term in sub-paragraph (i) which is equivalent or essentially comparable to a specific penalty sum or a cover schedule; or
 - (b) does not contain a term equivalent or essentially comparable to a requirement to provide a specific penalty sum or a cover schedule, the notice sent under paragraph (4)(a) must state that determination.
- (6) Where the Secretary of State determines that the document sent under sub-paragraph (1)(a) does not comply with paragraph 8A, the Secretary of State must notify the insolvency practitioner and—
- (a) give reasons for the determination; and
 - (b) specify any terms which, if included in a supplementary guarantee, will cause the Secretary of State to make a determination in accordance with paragraph 8A.
- (7) In this paragraph a “business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under or by virtue of the Banking and Financial Dealings Act 1971⁽¹⁾.
- (8) Any documents in this paragraph or paragraph 8C or 8D may be sent electronically.

Procedure for determining compliance of supplementary guarantee

- 8C.**—(1) Where the Secretary of State has made a determination under paragraph 8B(6), the insolvency practitioner may send to the Secretary of State—
- (a) a supplementary guarantee purporting to provide for the matters specified in paragraph 8B(6)(b); and
 - (b) where the supplementary guarantee is not in English, a translation of it into English.
- (2) Where the Secretary of State receives the documents sent under sub-paragraph (1), the Secretary of State must—
- (a) as soon as is reasonably practicable, notify the insolvency practitioner of the date and time of their receipt;

(1) 1971 c. 80, to which there are amendments not relevant to these Regulations.

- (b) consider them; and
 - (c) determine whether the document sent under sub-paragraph (1)(a) provides for the matters specified in paragraph 8B(6)(b).
- (3) Where the Secretary of State determines that the document sent under sub-paragraph (1)(a)—
- (a) provides for the matters in specified in paragraph 8B(6)(b); and
 - (b) together with the document in paragraph 8B(1)(a) complies with paragraph 8A,
- the Secretary of State must notify the insolvency practitioner that the documents sent under sub-paragraph (1)(a) and paragraph 8B(1)(a) together comply with paragraph 8A.
- (4) Where the Secretary of State determines in accordance with sub-paragraph (3), the Secretary of State must also determine whether the document sent under sub-paragraph (1)(a) or paragraph 8B(1)(a) contains a term equivalent or essentially comparable to a requirement to provide—
- (a) a specific penalty sum; or
 - (b) a cover schedule.
- (5) Where the Secretary of State determines under sub-paragraph (4) that the document sent under sub-paragraph (1)(a) or paragraph 8B(1)(a)—
- (a) contains a term equivalent or essentially comparable to a requirement to provide a specific penalty sum or a cover schedule, the notice sent under sub-paragraph (3) must specify—
 - (i) the term equivalent or essentially comparable to a requirement to provide a specific penalty sum or a cover schedule;
 - (ii) the thing in the term in sub-paragraph (i) which is equivalent or essentially comparable to a requirement to a specific penalty sum or a cover schedule; and
 - (iii) the document in which the term in sub-paragraph (i) and the thing in sub-paragraph (ii) are to be found; or
 - (b) does not contain a term equivalent or essentially comparable to a requirement to provide a specific penalty sum or a cover schedule, the notice sent under sub-paragraph (3) must state that determination.
- (6) Where the Secretary of State determines that the document sent under sub-paragraph (1)(a)—
- (a) does not provide for the matters specified in paragraph 8B(6)(b), or
 - (b) together with the document sent under paragraph 8B(1)(a) does not comply with paragraph 8A,

the Secretary of State must notify the insolvency practitioner that the documents sent under sub-paragraphs (1)(a) and paragraph 8B(1)(a) together do not comply with paragraph 8A.

Time for notification of determinations

- 8D.—**(1) The Secretary of State must notify the insolvency practitioner of the determinations under paragraph 8B or 8C in the periods set out in this paragraph.
- (2) The Secretary of State must notify the insolvency practitioner—
- (a) where a notice under paragraph 8B(1)(c)(i) is received by the Secretary of State in accordance with paragraph 8B(2) and the determination is under—

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- (i) paragraph 8B(4), (5) or (6), such that the insolvency practitioner receives the notice sent under paragraph 8B(4) or (6) or before the time and date in the notice sent under paragraph 8B(1)(c)(i); or
- (ii) paragraph 8C(4), (5) or (6), as soon as is reasonably practicable after receipt of the documents sent under paragraph 8C(1);
- (b) where a notice sent under paragraph 8B(1)(c)(i) is received by the Secretary of State but not in accordance with paragraph 8B(2), and the determination is under—
 - (i) paragraph 8B(4), (5) or (6), as soon as is reasonably practicable after receipt of the documents sent under paragraph 8B(1); or
 - (ii) paragraph 8C(3), (5) or (6), as soon as is reasonably practicable after receipt of the documents sent under paragraph 8C(1); or
- (c) where the notice is sent under paragraph 8B(1)(c)(ii), and the determination is under—
 - (i) paragraph 8B(4), (5) or (6), within 28 days of receipt of the documents sent under paragraph 8B(1); or
 - (ii) paragraph 8C(3), (5) or (6), within 14 days of receipt of the documents sent under paragraph 8C(1).

Notification of determination out of time

8E.—(1) This paragraph applies where the insolvency practitioner—

- (a) sends a notice under paragraph 8B(1)(c)(i);
- (b) receives notification sent under paragraph 8B(3)(a) that the Secretary of State received the documents in paragraph 8B(1) in accordance with paragraph 8B(2); and
- (c) does not receive the notifications in the time in paragraph 8D(2)(a)(i).

(2) The insolvency practitioner is qualified to act as an insolvency practitioner in respect of the insolvent specified in the notice under paragraph 8B(1)(c)(i) until the Secretary of State notifies the insolvency practitioner of the determination under paragraph 8B or 8C.

(3) Subject to sub-paragraph (4), where the Secretary of State notifies the insolvency practitioner of the determination under paragraph 8B or 8C—

- (a) the determination applies; and
- (b) the insolvency practitioner ceases to be qualified to act as an insolvency practitioner under sub-paragraph (2).

(4) Where—

- (a) the Secretary of State gives notice under paragraph 8B(6); and
- (b) the insolvency practitioner sends the documents in paragraph 8C(1),

the insolvency practitioner is qualified to act as an insolvency practitioner under sub-paragraph (2) until the Secretary of State determines in accordance with paragraph 8C(4) or (6).”.

(6) In paragraph 9 (record of specific penalty sums to be maintained by insolvency practitioner), after sub-paragraph (2) add—

“(3) Subject to sub-paragraph (4), where the Secretary of State has notified the insolvency practitioner in accordance with paragraph 8B(5)(a) or 8C(5)(a) in relation to a specific penalty sum, the thing notified under paragraph 8B(5)(a)(ii) or 8C(5)(a)(ii) is construed as a specific penalty sum for the purposes of this paragraph and Schedule 3.

- (4) Where the Secretary of State has notified the insolvency practitioner in accordance with paragraph 8B(5)(b) or 8C(5)(b) in relation to a specific penalty sum, this paragraph does not apply.”.
- (7) In paragraph 10 (retention of bond by recognised professional body or competent authority)—
- (a) for “The bond referred to in paragraph 3 shall” substitute “(1) The documents in sub-paragraph (2) or a copy must”; and
- (b) after sub-paragraph (b) add—
- “ (2) The documents in this sub-paragraph are—
- (a) the bond referred to in paragraph 3;
- (b) where the Secretary of State has determined under paragraph 8B(4)—
- (i) the document in paragraph 8B(1)(a) and (b); and
- (ii) the notice under paragraph 8B(4);
- (c) where the Secretary of State has determined under paragraph 8C(4)
- (i) the documents in paragraphs 8B(1)(a) and (b) and 8C(1)(a) and (b); and
- (ii) the notice under paragraph 8C(3).
- (3) The document in sub-paragraph (2) or a copy of it may be sent electronically.”.
- (8) In paragraph 11 (inspection and retention requirements relating to cover schedule – England and Wales), after sub-paragraph (3) add—
- “ (4) Subject to sub-paragraph (5), where the Secretary of State has notified the insolvency practitioner in accordance with paragraph 8B(5)(a) or 8C(5)(a) in relation to a cover schedule, the thing notified under paragraph 8B(5)(a)(ii) or 8C(5)(a)(ii) is construed as a cover schedule for the purposes of this paragraph, paragraph 12, paragraph 13 and Schedule 3.
- (5) Where the Secretary of State has notified the insolvency practitioner in accordance with paragraph 8B(5)(b) or 8C(5)(b) in relation to a cover schedule, this paragraph, paragraph 12 and paragraph 13 do not apply.”.

Amendments to Schedule 3

- 9.**—(1) Schedule 3 (records to be maintained – minimum requirements) is amended as follows.
- (2) In paragraph 2 for “a” to “Act” substitute—
- “—
- (a) a competent authority;
- (b) the Department of Enterprise, Trade and Investment for Northern Ireland; or
- (c) any body recognised under section 391 of the Act”.
- (3) For paragraph 4 substitute—
- 4.** Either—
- (a) the name of—
- (i) any body by virtue of whose rules the insolvency practitioner is entitled to practise; or
- (ii) any competent authority by whom the insolvency practitioner is authorised;
- or

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- (b) where the insolvency practitioner is authorised by the Department of Enterprise, Trade and Investment for Northern Ireland under Article 352 of the Insolvency (Northern Ireland) Order 1989, that such an authorisation has been granted.”.