

1993 No. 317

INSOLVENCY

**The Insolvency Practitioners (Amendment) Regulations
(Northern Ireland) 1993**

Made 16th July 1993

Coming into operation 1st September 1993

The Department of Economic Development, in exercise of the powers conferred on it by Articles 349(3) and 363 of the Insolvency (Northern Ireland) Order 1989(a) and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Insolvency Practitioners (Amendment) Regulations (Northern Ireland) 1993 and shall come into operation on 1st September 1993.

Interpretation

2. In these Regulations—

“the 1991 Regulations” means the Insolvency Practitioners Regulations (Northern Ireland) 1991(b) and any regulation or Schedule referred to by number means, unless the context otherwise requires, the regulation or Schedule so numbered in the 1991 Regulations;

“the commencement date” means the date on which these Regulations come into operation.

Amendments to 1991 Regulations

3. The 1991 Regulations shall be amended as specified in regulations 4 to 11 of these Regulations.

4.—(1) Regulations 5 to 11 of these Regulations have effect in relation to any person appointed on or after the commencement date to act as an insolvency practitioner in relation to any person.

(2) The 1991 Regulations shall continue to apply and have effect without the amendments provided for in regulations 5 to 11 of these Regulations in relation to any person appointed to act as insolvency practitioner in relation to any person before the commencement date insofar as he continues so to act in relation to that person on or after the commencement date pursuant to that

(a) S.I. 1989/2405 (N.I. 19)

(b) S.R. 1991 No. 302

appointment or (notwithstanding paragraph (1)) to a subsequent appointment to act as an insolvency practitioner within the scope of regulation 12 of the 1991 Regulations made on or after the commencement date.

5. In regulation 2, after the definition of "authorisation" there shall be added the following definitions—

“ “bordereau” means a form upon which an insolvency practitioner enters certain details in relation to his appointment as insolvency practitioner in relation to a person, including the name of that person, the date of appointment, the value of the assets comprised in the estate of the person estimated in accordance with Part II of Schedule 2, any increase in his estimation of the value of those assets and the date of his release or discharge from the appointment, for the purposes of evidencing those matters;

“the Building Societies Commission” means the Building Societies Commission established by section 1 of the Building Societies Act 1986(a);”.

6. There shall be substituted for regulation 11 the following regulation—

“Requirements for security

11.—(1) For the purposes of Article 349(3)(b) of the Order the requirements in respect of security for the proper performance of the functions of an insolvency practitioner are that—

- (a) there is in force at the time when an insolvency practitioner is appointed to act in relation to any person a bond which complies with the requirements set out in Part I of Schedule 2 under which the surety is liable in the general penalty sum of £250,000; and
- (b) there is in force in relation to that bond with effect from the time when an insolvency practitioner is appointed to act in relation to any person a specific penalty in respect of the insolvency practitioner acting in relation to that person under which the specific penalty sum is not less than the value of that person's assets estimated in accordance with Part II of Schedule 2; and
- (c) where, at any time before the insolvency practitioner obtains his release or discharge in respect of his acting in relation to that person, he forms the opinion that the value of the assets comprised in the estate of that person is higher than the penalty sum under the current specific penalty (being a penalty sum less than £5,000,000), there is obtained by the insolvency practitioner a further specific penalty in respect of his acting in relation to that person under which the penalty sum is at least equal to that higher value or £5,000,000 (whichever shall be the less).

(2) In paragraph (1)(c), “the current specific penalty” means the specific penalty for the time being in force which has been obtained pursuant to paragraph (1)(b) or (c), as the case may be.

(3) The bond referred to in paragraph (1) shall be retained by the recognised professional body or, as the case may be, the competent authority by which the insolvency practitioner has been authorised to act as such.”.

7. There shall be substituted for regulation 12 the following regulation—

“Exceptions in relation to requirements for security

12. Where an insolvency practitioner who is appointed to be—

(a) provisional liquidator in the winding up by the High Court of a company is subsequently appointed to be liquidator of that company; or

(b) liquidator in a voluntary winding up of a company is subsequently appointed to be liquidator in the winding up of that company by the High Court; or

(c) an administrator of a company is subsequently appointed to be a liquidator of that company pursuant to Article 119 of the Order; and a specific penalty is obtained under regulation 11(1) in respect of the earlier or earliest such appointment, it shall not be necessary for such a specific penalty to be obtained in respect of the subsequent appointment of the insolvency practitioner in any of those circumstances.”.

8. There shall be substituted for regulation 13 the following regulation—

“Inspection and retention requirements

13.—(1) Where an insolvency practitioner is appointed to act in relation to any person, he shall retain a copy of the bordereau containing the entry evidencing the specific penalty obtained by him in respect of that appointment or any further specific penalty obtained by him in respect of so acting and shall produce it on demand for inspection to any person reasonably appearing to him to be a creditor or contributory of the person to whom he has been appointed, to the person (being an individual) to whom he has been appointed, to any partner in the partnership to which he has been appointed and, where the person to whom he has been appointed is a company, to any director or other officer of the company, and to the Department.

(2) In its application in relation to a building society within the meaning of the Building Societies Act 1986, paragraph (1) shall have effect as if for the reference to the Department there was substituted a reference to the Building Societies Commission.

(3) The insolvency practitioner shall retain the copy of the bordereau containing the entry required to be produced under paragraph (1) for a period of two years from the date on which he is granted his release or discharge in respect of that appointment.”.

9. There shall be inserted after regulation 13 the following regulation—
“*Requirement to submit bordereau to authorising body*

13A.—(1) In respect of each calendar month, an insolvency practitioner shall submit to the authorising body, as defined in regulation 16(1), a copy of the bordereau containing particulars of—

- (a) any appointment during that calendar month to act as insolvency practitioner provided that, where it is not practicable to do so, such particulars may be included in a subsequent bordereau, but no later than the bordereau relating to the second month after the month of appointment;
- (b) any appointment to act as insolvency practitioner in respect of which, during that calendar month, he forms the opinion that the amount of the penalty sum under the current specific penalty must be increased in accordance with regulation 11(1)(c), provided that, where it is not practicable to do so, such particulars may be included in a subsequent bordereau, but no later than the bordereau relating to the second month after the month in which he forms the relevant opinion;
- (c) any appointment to act as insolvency practitioner in respect of which during that calendar month he has obtained his release or discharge, provided that, where it is not practicable to do so, such particulars may be included in a subsequent bordereau.

(2) If, in respect of any calendar month, no particulars as specified in paragraph (1) are contained in the bordereau, it shall nevertheless be supplied to the authorising body, with a statement thereon that either there are no such relevant particulars to be supplied, or that it is not practicable to supply such particulars, as the case may be.”

10. Part I of Schedule 2 shall be amended as follows—

(a) there shall be substituted for paragraph (ii) the following paragraph—

“(ii) the liability of the surety and the insolvency practitioner is in both a general penalty sum and a specific penalty sum in respect of each person in respect of whom the insolvency practitioner acts and is limited to a sum equivalent to the losses caused by the fraud or dishonesty of the insolvency practitioner, whether acting alone or in collusion with one or more persons, or the fraud or dishonesty of any person or persons committed with the connivance of the practitioner.”;

(b) there shall be substituted for paragraph (iii) the following paragraph—

“(iii) a bordereau is to be submitted to the surety containing an entry completed by the practitioner evidencing the acceptance by the surety of liability in respect of the insolvency practitioner acting in relation to a particular person in the amount of the specific penalty, and”.

11. Paragraph 7 of Schedule 3 shall be amended as follows—

(a) there shall be substituted for sub-paragraph (v)(a) the following sub-paragraph—

- “(v) (a) Date of submission to surety of bordereau containing entry evidencing specific penalty under security requirements”;
- (b) sub-paragraph (v)(d) shall be deleted;
- (c) there shall be substituted for sub-paragraph (vi)(a) the following sub-paragraph—
- “(vi) (a) Date of submission to surety of bordereau containing entry evidencing any increase in amount of specific penalty sum”;
- (d) sub-paragraph (vi)(c) shall be deleted;
- (e) there shall be substituted for sub-paragraph (vii) the following sub-paragraph—
- “(vii) Date of submission to surety of bordereau containing entry evidencing termination of office”.

Sealed with the Official Seal of the Department of Economic Development on 16th July 1993.

(L.S.)

A. L. Brown

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend the Insolvency Practitioners Regulations (Northern Ireland) 1991 with effect from 1st September 1993. Subject to certain savings they amend the prescribed requirements in respect of security for the proper performance of the functions of an insolvency practitioner where he is appointed to act in relation to a person on or after that date.

The main changes effected by these Regulations are—

- (a) the bond referred to in regulation 11 of the 1991 Regulations must provide for the submission of a document called a bordereau (as defined in regulation 5 of these Regulations) to the surety evidencing the acceptance by the surety of liability in respect of the insolvency practitioner acting in relation to a particular person in the amount of the specific penalty in place of the requirement for a certificate to be issued by the surety accepting such liability (regulations 6 and 10(b));
- (b) the introduction of inspection and retention requirements in relation to bordereaux (regulation 8);
- (c) the introduction of a requirement to submit bordereaux to an insolvency practitioner's authorising body (regulation 9);
- (d) the introduction of a provision that the liability under the bond for losses caused by the fraud or dishonesty of the insolvency practitioner extends to such losses caused by the practitioner acting in collusion with one or more persons and to fraud or dishonesty of any person or persons committed with the connivance of the practitioner (regulation 10).