
STATUTORY INSTRUMENTS

2005 No. 524

The Insolvency Practitioners Regulations 2005

PART 1

Introductory

Citation and commencement.

1. These Regulations may be cited as the Insolvency Practitioners Regulations 2005 and shall come into force on 1st April 2005.

Interpretation: general

2.—(1) In these Regulations—

“the Act” means the Insolvency Act 1986;

“commencement date” means the date on which these Regulations come into force;

“initial capacity” shall be construed in accordance with regulation 3;

“insolvency practitioner” means a person who is authorised to act as an insolvency practitioner by virtue of—

(a) membership of a body recognised pursuant to section 391 of the Act; or

(b) an authorisation granted pursuant to section 393 of the Act;

“insolvent” means a person in respect of whom an insolvency practitioner is acting;

“interim trustee”, “permanent trustee” and “trust deed for creditors” have the same meanings as in the Bankruptcy (Scotland) Act 1985(1);

“subsequent capacity” shall be construed in accordance with regulation 3.

(2) In these Regulations a reference to the date of release or discharge of an insolvency practitioner includes—

(a) where the insolvency practitioner acts as nominee in relation to proposals for a voluntary arrangement under Part I or VIII of the Act, whichever is the earlier of the date on which—

(i) the proposals are rejected by creditors;

(ii) he is replaced as nominee by another insolvency practitioner; or

(iii) the arrangement takes effect without his becoming supervisor in relation to it; and

(b) where an insolvency practitioner acts as supervisor of a voluntary arrangement, whichever is the earlier of the date on which —

(i) the arrangement is completed or terminated; or

(ii) the insolvency practitioner otherwise ceases to act as supervisor in relation to the arrangement.

Interpretation - meaning of initial and subsequent capacity

3.—(1) In these Regulations an insolvency practitioner holds office in relation to an insolvent in a “subsequent capacity” where he holds office in relation to that insolvent in one of the capacities referred to in paragraph (3) and immediately prior to his holding office in that capacity, he held office in relation to that insolvent in another of the capacities referred to in that paragraph.

(2) The first office held by the insolvency practitioner in the circumstances referred to in paragraph (1) is referred to in these Regulations as the “initial capacity”.

(3) The capacities referred to in paragraph (1) are, nominee in relation to proposals for a voluntary arrangement under Part I of the Act, supervisor of a voluntary arrangement under Part I of the Act, administrator, provisional liquidator, liquidator, nominee in relation to proposals for a voluntary arrangement under Part VIII of the Act, supervisor of a voluntary arrangement under Part VIII of the Act, trustee, interim trustee and permanent trustee.

Revocations and transitional and saving provisions

4.—(1) Subject to paragraphs (2), (3) and (4), the Regulations listed in Schedule 1 are revoked.

(2) Parts I and II of the Insolvency Practitioners Regulations 1990⁽²⁾ shall continue to apply in relation to an application for authorisation under section 393 of the Act to act as an insolvency practitioner made to the Secretary of State before the commencement date and accordingly nothing in these Regulations shall apply to such an application.

(3) Parts I, III and IV of the Insolvency Practitioners Regulations 1990 shall continue to apply in relation to any case in respect of which an insolvency practitioner is appointed —

- (a) before the commencement date; or
- (b) in a subsequent capacity and he was appointed in an initial capacity in that case before the commencement date.

(4) Only regulations 16 and 17 of these Regulations shall apply in relation to the cases mentioned in paragraph (3).

PART 2**Authorisation of Insolvency Practitioners by Competent Authorities****Interpretation of Part**

5. In this Part—

“advisory work experience” means experience obtained in providing advice to the office-holder in insolvency proceedings or anyone who is a party to, or whose interests are affected by, those proceedings;

“application” means an application made by an individual to the competent authority for authorisation under section 393 of the Act to act as an insolvency practitioner and “applicant” shall be construed accordingly;

“authorisation” means an authorisation to act as an insolvency practitioner granted under section 393 of the Act;

“continuing professional development” has the meaning given to it by regulation 8(3);

“higher insolvency work experience” means engagement in work in relation to insolvency proceedings where the work involves the management or supervision of the conduct of those proceedings on behalf of the office-holder acting in relation to them;

“insolvency legislation” means the provisions of, or any provision made under, the Act, the Bankruptcy (Scotland) Act 1985⁽³⁾ or the Deeds of Arrangement Act 1914⁽⁴⁾ and any other enactment past or present applying to Great Britain (or any part of it) that relates to the insolvency of any person;

“insolvency practice” means the carrying on of the business of acting as an insolvency practitioner or in a corresponding capacity under the law of any country or territory outside Great Britain, and for this purpose acting as an insolvency practitioner shall include acting as a judicial factor on the bankrupt estate of a deceased person;

“insolvency proceedings” means any proceedings in which an office-holder acts under any provision of insolvency legislation or the corresponding provision of the law of any country or territory outside Great Britain;

“insolvency work experience” means engagement in work related to the administration of insolvency proceedings—

- (a) as the office-holder in those proceedings;
- (b) in the employment of a firm or body whose members or employees act as insolvency practitioners; or
- (c) in the course of employment in the Insolvency Service of the Department of Trade and Industry.

“office-holder” means a person who acts as an insolvency practitioner or a judicial factor on the bankrupt estate of a deceased person or in a corresponding capacity under the law of any country or territory outside Great Britain and includes the official receiver acting as liquidator, provisional liquidator, trustee, interim receiver or nominee or supervisor of a voluntary arrangement; and

“regulatory work experience” means experience of work relating to the regulation of insolvency practitioners for or on behalf of a competent authority or a body recognised pursuant to section 391 of the Act or experience of work in connection with any function of the Secretary of State under that section.

Matters for determining whether an applicant for an authorisation is a fit and proper person

6. The matters to be taken into account by a competent authority in deciding whether an individual is a fit and proper person to act as an insolvency practitioner for the purpose of section 393(2)(a) or 393(4)(a) shall include :—

- (a) whether the applicant has been convicted of any offence involving fraud or other dishonesty or violence;
- (b) whether the applicant has contravened any provision in any enactment contained in insolvency legislation;
- (c) whether the applicant has engaged in any practices in the course of carrying on any trade, profession or vocation or in the course of the discharge of any functions relating to any office or employment appearing to be deceitful or oppressive or otherwise unfair or improper, whether unlawful or not, or which otherwise cast doubt upon his probity or competence for discharging the duties of an insolvency practitioner;

(3) 1985 c. 66.

(4) 1914 c. 47.

- (d) whether in respect of any insolvency practice carried on by the applicant at the date of or at any time prior to the making of the application, there were established adequate systems of control of the practice and adequate records relating to the practice, including accounting records, and whether such systems of control and records have been or were maintained on an adequate basis;
- (e) whether the insolvency practice of the applicant is, has been or, where the applicant is not yet carrying on such a practice, will be, carried on with the independence, integrity and the professional skills appropriate to the range and scale of the practice and the proper performance of the duties of an insolvency practitioner and in accordance with generally accepted professional standards, practices and principles;
- (f) whether the applicant, in any case where he has acted as an insolvency practitioner, has failed to disclose fully to such persons as might reasonably be expected to be affected thereby circumstances where there is or appears to be a conflict of interest between his so acting and any interest of his own, whether personal, financial or otherwise, without having received such consent as might be appropriate to his acting or continuing to act despite the existence of such circumstances.

Requirements as to education and training – applicants who have never previously been authorised to act as insolvency practitioners

7.—(1) The requirements as to education, training and practical experience prescribed for the purposes of section 393(2)(b) of the Act in relation to an applicant who has never previously been authorised to act as an insolvency practitioner (whether by virtue of membership of a body recognised under section 391 of the Act or by virtue of an authorisation granted by a competent authority under section 393 of the Act) shall be as set out in this regulation.

(2) An applicant must at the date of the making of his application have passed the Joint Insolvency Examination set by the Joint Insolvency Examination Board or have acquired in, or been awarded in, a country or territory outside Great Britain professional or vocational qualifications which indicate that the applicant has the knowledge and competence that is attested by a pass in that examination.

(3) An applicant must either—

- (a) have held office as an office-holder in not less than 30 cases during the period of 10 years immediately preceding the date on which he made his application for authorisation; or
- (b) have acquired not less than 7000 hours of insolvency work experience of which no less than 1400 hours must have been acquired within the period of two years immediately prior to the date of the making of his application and show that he satisfies one of the three requirements set out in paragraph (4).

(4) The three requirements referred to in paragraph (3)(b) are—

- (a) the applicant has become an office-holder in at least 5 cases within the period of 5 years immediately prior to the date of the making of his application;
- (b) the applicant has acquired 1,000 hours or more of higher insolvency work experience or experience as an office-holder within the period referred to in sub-paragraph (a); and
- (c) the applicant can show that within the period referred to in sub-paragraph (a) he has achieved one of the following combinations of positions as an office-holder and hours acquired of higher insolvency work experience—
 - (i) 4 cases and 200 hours;
 - (ii) 3 cases and 400 hours;
 - (iii) 2 cases and 600 hours; or
 - (iv) 1 case and 800 hours.

(5) Where in order to satisfy all or any of the requirements set out in paragraphs (3) and (4) an applicant relies on appointment as an office-holder or the acquisition of insolvency work experience or higher insolvency work experience in relation to cases under the laws of a country or territory outside the United Kingdom, he shall demonstrate that he has no less than 1,400 hours of insolvency work experience in cases under the law of any part of the United Kingdom acquired within the period of two years immediately prior to the date of the making of his application.

(6) In ascertaining whether an applicant meets all or any of the requirements of paragraphs (3) and (4)—

(a) no account shall be taken of any case where—

(i) he was appointed to the office of receiver (or to a corresponding office under the law of a country or territory outside Great Britain) by or on behalf of a creditor who at the time of the appointment was an associate of the applicant; or

(ii) in a members' voluntary winding up or in a corresponding procedure under the laws of a country or territory outside Great Britain he was appointed liquidator at a general meeting where his associates were entitled to exercise or control the exercise of one third or more of the voting power at that general meeting;

(b) where the applicant has been an office-holder in relation to—

(i) two or more companies which were associates at the time of appointment; or

(ii) two or more individuals who were carrying on business in partnership with each other at the time of appointment,

he shall be treated as having held office in only one case in respect of all offices held in relation to the companies which were associates or in respect of all offices held in relation to the individuals who were in partnership, as the case may be.

(7) An applicant must have a good command of the English language.

Requirements relating to education and training etc. – applicants previously authorised to act as insolvency practitioners

8.—(1) The requirements prescribed for the purposes of section 393(2)(b) of the Act in relation to an applicant who has at any time been authorised to act as an insolvency practitioner (whether by virtue of membership of a body recognised under section 391 of the Act or an authorisation granted by a competent authority under section 393 of the Act) shall be as set out in this regulation.

(2) The applicant must—

(a) satisfy the requirements set out in regulation 7(3) to (5) or have acquired within the period of three years preceding the date of the making of his application 500 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) subject to paragraph (4), have completed at least 108 hours of continuing professional development in the period of three years ending on the day before the date of the making of his application of which—

(i) a minimum of 12 hours must be completed in each of those years; and

(ii) 54 hours must fall into the categories in paragraphs (3)(b)(i) to (v).

(3) “Continuing professional development” means any activities which—

- (a) relate to insolvency law or practice or the management of the practice of an insolvency practitioner; and
- (b) fall into any of the following categories—
 - (i) the production of written material for publication;
 - (ii) attendance at courses, seminars or conferences;
 - (iii) the viewing of any recording of a course, seminar or conference;
 - (iv) the giving of lectures or the presentation of papers at courses, seminars or conferences;
 - (v) the completion of on-line tests; and
 - (vi) the reading of books or periodical publications (including any on-line publication).

(4) The requirement in paragraph (2)(b) shall only apply in relation to any application made on or after the third anniversary of the commencement date.

(5) For the purposes of paragraph (3)(b)(i), “publication” includes making material available to a body recognised in pursuance of section 391 of the Act or any association or body representing the interests of those who act as insolvency practitioners.

Records of continuing professional development activities

9.—(1) Every holder of an authorisation granted by the Secretary of State shall maintain a record of each continuing professional development activity undertaken by him for a period of six years from the date on which the activity was completed.

- (2) The record shall contain details of—
 - (a) which of the categories in regulation 8(3)(b) the activity comes within;
 - (b) the date that the activity was undertaken;
 - (c) the duration of the activity; and
 - (d) the topics covered by the activity.
- (3) Where the continuing professional development comprises—
 - (a) attendance at a course, seminar or conference; or
 - (b) the giving of a lecture or presentation of a paper at a course, seminar or conference,

the holder of the authorisation shall keep with the record evidence from the organiser of the course, seminar or conference of the attendance of the holder at the course, seminar or conference.

(4) The Secretary of State may, on the giving of reasonable notice, inspect and take copies of any records or evidence maintained pursuant to this regulation.

Maximum period of authorisation

10. For the purposes of section 393(3) of the Act, the maximum period that an authorisation may continue in force shall be three years.

Returns by insolvency practitioners authorised by the Secretary of State

11.—(1) Every holder of an authorisation granted by the Secretary of State shall make a return to the Secretary of State in respect of each period of 12 months ending on 31st December during the whole or any part of which he held an authorisation granted by the Secretary of State containing the following information—

- (a) the number of cases in respect of whom the holder of the authorisation has acted as an insolvency practitioner during the period;

- (b) in respect of each case where the holder of the authorisation has acted as an insolvency practitioner—
 - (i) the name of the person in respect of whom the insolvency practitioner is acting,
 - (ii) the date of the appointment of the holder of the authorisation,
 - (iii) the type of proceedings involved, and
 - (iv) the number of hours worked in relation to the case by the holder of the authorisation and any person assigned to assist him in the case; and
 - (c) the following details of any continuing professional development undertaken activity during the period by the holder of the authorisation—
 - (i) the nature of the activity;
 - (ii) the date that the activity was undertaken;
 - (iii) the duration of the activity; and
 - (iv) the topics covered by the activity.
- (2) Every return required to be submitted pursuant to this regulation shall be submitted within one month of the end of the period to which it relates.
- (3) The Secretary of State may at any time request the holder of an authorisation to provide any information relating to any matters of the kind referred to in paragraph (1) and any such request shall be complied with by the holder of the authorisation within one month of its receipt or such longer period as the Secretary of State may allow.

PART 3

The Requirements for Security and Caution for the Proper Performance of the Functions of an Insolvency Practitioner etc.

- 12.**—(1) Schedule 2 shall have effect in respect of the requirements prescribed for the purposes of section 390(3)(b) in relation to security or caution for the proper performance of the functions of an insolvency practitioner and for related matters.
- (2) Where two or more persons are appointed jointly to act as insolvency practitioners in relation to any person, the provisions of this regulation shall apply to each of them individually.

PART 4

Records to be maintained by Insolvency Practitioners — Inspection of Records

Records to be maintained by insolvency practitioners

- 13.**—(1) In respect of each case in which he acts, an insolvency practitioner shall maintain records containing at least the information specified in Schedule 3 to these Regulations as is applicable to the case.
- (2) Where at any time the records referred to in paragraph (1) do not contain all the information referred to in Schedule 3 as is applicable to the case, the insolvency practitioner shall forthwith make such changes to the records as are necessary to ensure that the records contains all such information.

(3) References in Schedule 3 to “the Accountant in Bankruptcy” shall be construed in accordance with section 1 of the Bankruptcy (Scotland) Act 1985⁽⁵⁾.

(4) Each record maintained pursuant to paragraph (1) shall be capable of being produced by the insolvency practitioner separately from any other record.

(5) Any records created in relation to a case pursuant to this regulation shall be preserved by the insolvency practitioner until whichever is the later of—

- (a) the sixth anniversary of the date of the grant to the insolvency practitioner of his release or discharge in that case; or
- (b) the sixth anniversary of the date on which any security or caution maintained in that case expires or otherwise ceases to have effect.

Notification of whereabouts of records

14. The insolvency practitioner shall notify the persons referred to in regulation 15(1)(a) and 15(1)(b) of the place where the records required to be maintained under this Part are so maintained and the place (if different) where they may be inspected pursuant to regulation 15.

Inspection of records

15.—(1) Any records maintained by an insolvency practitioner pursuant to this Part shall on the giving of reasonable notice be made available by him for inspection by—

- (a) any professional body recognised under section 391 of the Act of which he is a member and the rules of membership of which entitle him to act as an insolvency practitioner;
- (b) any competent authority by whom the insolvency practitioner is authorised to act pursuant to section 393 of the Act; and
- (c) the Secretary of State.

(2) Any person who is entitled to inspect any record pursuant to paragraph (1) shall also be entitled to take a copy of those records.

Inspection of practice records

16.—(1) This regulation applies to any relevant records which are held by—

- (a) the holder of an authorisation to act as an insolvency practitioner granted by the Secretary of State pursuant to section 393 of the Act;
- (b) his employer or former employer; or
- (c) any firm or other body of which he is or was a member or partner.

(2) In this regulation “relevant records” mean any records which relate to any case where the holder of the authorisation mentioned in paragraph (1) has acted as an insolvency practitioner and which—

- (a) record receipts and payments made in relation to, or in connection with, that case;
- (b) record time spent on that case by the holder of the authorisation or any person assigned to assist the holder;
- (c) relate to any business carried on in the case by or at the direction of the holder of the authorisation; or
- (d) otherwise relate to the management of that case.

(5) 1985 c. 66.

(3) The Secretary of State may, on the giving of reasonable notice to their holder, inspect and take copies of any records to which this regulation applies.

Inspection of records in administration and administrative receiverships

17. On the giving of reasonable notice to the insolvency practitioner, the Secretary of State shall be entitled to inspect and take copies of any records in the possession or control of that insolvency practitioner which—

- (a) were required to be created by or under any provision of the Act (or any provision made under the Act); and
- (b) relate to an administration or an administrative receivership.

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