STATUTORY RULES OF NORTHERN IRELAND

2006 No. 23

INSOLVENCY

The Insolvency (Amendment) Regulations (Northern Ireland) 2006

Made - - - - 2nd February 2006

Coming into operation - 27th March 2006

To be laid before Parliament under paragraph 7(3) of the Schedule to the Northern Ireland Act 2000

The Department of Enterprise, Trade and Investment(**a**), makes the following Regulations in exercise of the powers conferred by Rule 12.01 of the Insolvency Rules (Northern Ireland 1991(**b**), and by Article 359 of, and paragraph 27 of Schedule 5 and paragraph 28 of Schedule 6 to, the Insolvency (Northern Ireland Order 1989(**c**):

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Insolvency (Amendment) Regulations (Northern Ireland) 2006 and shall come into operation on 27 March 2006.

(2) In these Regulations "the principal Regulations" means the Insolvency Regulations (Northern Ireland) 1996(**d**)

Transitional provisions

2. The substitution of Part 5 of, and Schedule 1 to, the principal Regulations by paragraphs 21 and 23 of the Schedule only applies in relation to services provided by the official receiver (or any of his officers) in relation to—

(a) a company in respect of which a winding-up order is made on or after 27 March 2006;

(b) a bankruptcy where the bankruptcy order is made on or after 27 March 2006; or

(c) his appointment as an interim receiver or provisional liquidator when he is appointed on or after 27 March 2006.

Amendment of the principal Regulations

3. The principal Regulations shall be amended in accordance with the provisions of the Schedule.

(**a**) Formerly the Department of Economic Development; *see* S.I. 1999/283 (N.I. 1), Article 3(5)

(**b**) S.R. 1991 No. 364 as amended by S. R. 1994 No. 26, S.R. 1995 No. 291, S.R. 2000 No. 247, S.R. 2002 No.261, S.R. 2003 No. 549 and S.I. 2004/355

(**c**) S.I. 1989/2405 (N.I. 19); see Article 2(2) for the definition of "the Department"; Article 359 was amended by S.R. 2002 No. 223

(**d**) S.R. 1996 No. 574 as amended by S.I. 2004/355

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 2 February 2006



Michael J Bohill
A senior officer of the
Department of Enterprise, Trade and Investment

SCHEDULE

Regulation 3

Amendment of regulation 3

1. In paragraph (1) of regulation 3, after the definition of "debtor" there shall be inserted the following definition—

""electronic transfer" means transmission by any electronic means;".

2. In paragraph (5) of regulation 3 after the words "these Regulations" there shall be inserted "(except for regulations 3A and 35)".

3. After paragraph (5) of regulation 3 there shall be inserted—

"(6) Regulation 3A applies in any case where a company entered into administration on or after 27 March 2006 other than a case where the company entered into administration by virtue of a petition presented before that date.

(7) Regulation 35 applies in any case where an insolvency practitioner is appointed on or after 27 March 2006.".

Insertion of new Part 1A

4. After regulation 3 there shall be inserted—

"PART 1A

ADMINISTRATION

Disposal of company's records and provision of information to the Department

3A—(1) The person who was the last administrator of a company which has been dissolved may, at any time after the expiration of a period of one year from the date of dissolution, destroy or otherwise dispose of the books, papers and other records of the company.

(2) An administrator or former administrator shall within 14 days of a request by the Department give the Department particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the company or dividends or other sums due to any person as a member or former member of the company.".

Amendment of regulation 5

5. For paragraph (2) of regulation 5 there shall be substituted the following paragraph—

"(2) Every payment of money into the Insolvency Account under paragraph (1) shall be—

(a) sent direct to the bank where the Insolvency Account is kept by cheque drawn in favour of the "Insolvency Account" and crossed "A/c payee only" or

(b) made by electronic transfer,

and the liquidator shall on request be given by the Department a receipt for the money so paid.".

6. In paragraph (3) of regulation 5, for the words "under paragraph (1)" there shall be substituted the words "made under sub-paragraph (a) of paragraph (2)" and at the end there shall be inserted the following words—

"and every payment of money made under sub-paragraph (b) of paragraph (2) shall specify the name of the liquidator making the payment and the name of the company to whose credit such payment is made.".

Amendment of regulation 7

7. In regulation 7, the following paragraph shall be inserted after paragraph (1)—

"(1A) Paragraphs (2) and (3) are subject to paragraph (3A).".

8. The following paragraph shall be inserted after paragraph (3) of regulation 7—

"(3A) In respect of an application made by the liquidator under paragraphs (2) and (3), the Department, if requested to do so by the liquidator, may, at its discretion—

(a) make the payment which is the subject of the application to the liquidator by electronic transfer, or

(b) as an alternative to the issue of payment instruments, make payment by electronic transfer to the person to whom the liquidator would otherwise deliver payment instruments.".

Amendment of regulation 8

9. In regulation 8, the following paragraph shall be inserted after paragraph (1)—

"(1A) Paragraphs (2) and (3) are subject to paragraph (3A).".

10. The following paragraph shall be inserted after paragraph (3) of regulation 8—

"(3A) In respect of an application made by the liquidator under paragraphs (2) and (3), the Department, if requested to do so by the liquidator, may at its discretion as an alternative to the issue of payment instruments, make payment by electronic transfer to the persons to whom the liquidator would otherwise deliver payment instruments.".

11. In paragraph (4) of regulation 8 the following words shall be inserted after the word "instrument"—

"or payment by electronic transfer".

Substitution of regulation 9

12. For regulation 9 there shall be substituted the following regulation—

"Interest

9. At any time on or after 27 March 2006 whenever there are any monies standing to the credit of a company in the Insolvency Account the company shall be entitled to any interest received in respect of those monies.".

Amendment of regulation 20

13. For paragraph (2) of regulation 20 there shall be substituted the following paragraph—

"(2) Every payment of money into the Insolvency Account under paragraph (1) shall be—

(a) sent direct to the bank where the Insolvency Account is kept by cheque drawn in favour of the "Insolvency Account" and crossed "A/c payee only"; or

(b) made by electronic transfer,

and the trustee shall on request be given by the Department a receipt for the money so paid. ".

14. In paragraph (3) of regulation 20 for the words "under paragraph (1)" there shall be substituted the words "made under sub-paragraph (a) of paragraph (2)" and at the end there shall be inserted the following words—

"and every payment of money made under sub-paragraph (b) of paragraph (2) shall specify the name of the trustee making the payment and the name of the bankrupt to whose credit such payment is made.".

Amendment of regulation 22

15. In regulation 22 the following paragraph shall be inserted before paragraph (1)—

"(A1) Paragraphs (1) and (2) are subject to paragraph (2A).".

16. The following paragraph shall be inserted after paragraph (2) of regulation 22—

"(2A) In respect of an application made by the trustee under paragraph (1) or (2), the Department, if requested to do so by the trustee, may at its discretion—

(a) make the payment which is the subject of the application to the trustee by electronic transfer, or

(b) as an alternative to the issue of payment instruments, make payment by electronic transfer to the persons to whom the trustee would otherwise deliver payment instruments.".

Amendment of regulation 23

17. In paragraph (1) of regulation 23 the following words shall be inserted at the beginning—

"Subject to paragraph (1A),".

18. The following paragraph shall be inserted after paragraph (1) of regulation 23—

"(1A) In respect of an application made by the trustee under paragraph (1), the Department, if requested to do so by the trustee, may, at its discretion, as an alternative to the issue of payment instruments, make payment by electronic transfer to the persons to whom the trustee would otherwise deliver payment instruments.".

19. In paragraph (2) of regulation 23, the following words shall be inserted after the word "instrument"—

"or payment by electronic transfer".

Substitution of regulation 24

20. For regulation 24 there shall be substituted the following regulation—

"Interest

24. At any time on or after 27 March 2006 whenever there are any monies standing to the credit of the estate of a bankrupt in the Insolvency Account the estate shall be entitled to any interest received in respect of those monies.".

Substitution of Part 5

21. For Part 5 there shall be substituted—

“PART 5

REMUNERATION OF OFFICIAL RECEIVER

Official receiver’s remuneration while acting as interim receiver, provisional liquidator, liquidator or trustee

34. The official receiver shall be entitled to remuneration calculated in accordance with the applicable hourly rates set out in Schedule 1 for services provided by him (or any of his officers) in relation to—

(a) a distribution made by him when acting as liquidator or trustee to creditors (including preferential or secured creditors or both such classes of creditor);

(b) the realisation of assets on behalf of the holder of a fixed or floating charge or both types of those charges;

(c) the supervision of a special manager;

(d) the performance by him of any functions where he acts as provisional liquidator; or

(e) the performance by him of any functions where he acts as an interim receiver.”.

Insertion of new Part 5A

22. After Part 5 (as inserted by paragraph 21) there shall be inserted—

“PART 5A

INFORMATION ABOUT TIME SPENT ON A CASE TO BE PROVIDED BY INSOLVENCY PRACTITIONER TO CREDITORS ETC.

35.—(1) Subject as set out in this regulation, in respect of any case in which he acts, an insolvency practitioner shall on request in writing made by any person mentioned in paragraph (2), supply free of charge to that person a statement of the kind described in paragraph (3).

(2) The persons referred to in paragraph (1) are –

(a) any creditor in the case;

(b) where the case relates to a company, any director or contributory of that company; and

(c) where the case relates to an individual, that individual.

(3) The statement referred to in paragraph (1) shall comprise in relation to the period beginning with the date of the insolvency practitioner’s appointment and ending with the relevant date the following details—

(a) the total number of hours spent on the case by the insolvency practitioner and any staff assigned to the case during that period;

(b) for each grade of individual so engaged, the average hourly rate at which any work carried out by individuals in that grade is charged; and

(c) the number of hours spent by each grade of staff during that period.

(4) In relation to paragraph (3) the “relevant date” means the date next before the date of the making of the request on which the insolvency practitioner has completed any period in office which is a multiple of six months or, where the insolvency practitioner has vacated office, the date that he vacated office.

(5) Where an insolvency practitioner has vacated office, an obligation to provide information under this regulation shall only arise in relation to a request that is made within 2 years of the date he vacates office.

(6) Any statement required to be provided to any person under this regulation shall be supplied within 28 days of the date of the receipt of the request by the insolvency practitioner.

(7) In this regulation the expression "insolvency practitioner" shall be construed in accordance with Article 3 except that such expression shall not include an insolvency practitioner acting as nominee or supervisor where a voluntary arrangement in relation to a company or insolvent partnership is proposed or approved under Part II of the Order nor shall it include an insolvency practitioner acting as nominee or supervisor where a voluntary arrangement in relation to an individual is proposed or approved under Part VIII of the Order.

(8) In paragraph (7) the reference to Part II of the Order is, in the case of an insolvent partnership, a reference to that Part as it applies by virtue of the Insolvent Partnerships Order (Northern Ireland) 1995(**a**).".

Substitution of Schedule 1

23. For Schedule 1 there shall be substituted—

"SCHEDULE 1 Regulation 34

Grade according to the Insolvency Service grading structure/Status of Official	**Total hourly rate £**
Official Receiver	60
Deputy Official Receiver	50
Examiner/Staff Officer administrator	40
Assistant Examiner/EOI administrator	37
Trainee Examiner/EOII administrator	33
Administrative Officer	31
Administrative Assistant	27"

(**a**) S.R. 1995 No. 225 as amended by S.R. 1996 No. 472, S.R. 2003 No. 144, S.R. 2003 No. 359 and S.R. 2003 No. 550

EXPLANATORY NOTE

(This note is not part of the Regulations).

These Regulations amend the Insolvency Regulations (Northern Ireland) 1996 ("the 1996 Regulations") which make provision for the regulation of administrative matters arising in connection with the winding up of companies and the bankruptcy of individuals in Northern Ireland.

The Regulations make provision for payments into the Insolvency Account to be transmitted by electronic means in addition to the existing paper-based methods of payment. They also provide that the Department of Enterprise, Trade and Investment may at its discretion, and provided that the liquidator or trustee requests this, authorise payments out of the Insolvency Account by electronic means (paragraphs 1, 5 to 11 and 13 to 19 of the Schedule).

A new regulation 3A is inserted into the 1996 Regulations to make provision for when the Department of Enterprise, Trade and Investment can require information from an administrator and the circumstances in which an administrator can dispose of a company's records (paragraphs 3 and 4 of the Schedule).

The Regulations also provide that whenever there are any monies standing to the credit of a company or the estate of a bankrupt in the Insolvency Account the company or, as the case may be, the estate of the bankrupt shall be entitled to any interest received in respect of those monies (paragraphs 12 and 20 of the schedule). Prior to the coming into operation of these Regulations, interest was only payable on balances in the Insolvency Account which were in excess of £2,000.

The Regulations provide for the remuneration of the official receiver to be calculated on the basis of hourly rates for his officers and himself (paragraphs 21 and 23 of the Schedule). Prior to the coming into operation of these Regulations, the remuneration of the official receiver was, in certain circumstances, calculated by reference to a percentage of assets realised and distributed. The new remuneration provisions will apply where a winding-up order, bankruptcy order or an appointment as interim receiver or provisional liquidator is made on or after 27 March 2006 (regulation 2).

A new regulation 35 is inserted into the 1996 Regulations. This provides that an insolvency practitioner appointed on or after 27 March 2006 can be required to provide a statement of the number of hours spent on a case by the insolvency practitioner and his staff by grade and further makes provision for the circumstances in which a statement should be made and the information to be included in that statement (paragraphs 3 and 22 of the Schedule).

These Regulations make amendments to the financial arrangements in connection with the operation of the Insolvency (Northern Ireland) Order 1989. These arrangements were considered in a Regulatory Impact Assessment that was prepared in connection with the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)). Copies of this assessment are available from the Legislation Unit, The Insolvency Service, Fermanagh House, 20A Ormeau Avenue, Belfast BT2 8NJ.

© Crown Copyright 2006

Published and printed in the UK by The
Stationery Office Limited
under the authority and
superintendence of Carol
Tullo, Controller of
Her Majesty's Stationery
Office being the Government
Printer for Northern Ireland and
the Officer appointed to print the
Acts of the Northern Ireland Assembly

Dd. N2484. C3. 2/06. Gp. 130. 14567.
£3·00