EXPLANATORY MEMORANDUM TO

The Insolvency Practitioners (Amendment) Regulations (Northern Ireland) 2022

SR No 241

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department for the Economy ("the Department") to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under Articles 349 and 363 of the Insolvency (Northern Ireland) Order 1989 and is subject to the negative resolution procedure.

2. Purpose

2.1. The Insolvency Practitioners (Amendment) Regulations (Northern Ireland) 2020 ("the Amendment Regulations") amend the Insolvency Practitioners Regulations (Northern Ireland) 2006 (S.R. 2006 No. 33) ("the 2006 Regulations") to take account of changes made to the licensing system for insolvency practitioners by the Insolvency (Amendment) Act (Northern Ireland) 2016 ("the 2016 Act"), notably the repeal by section 14(5) of that Act of Articles 351 to 354 of the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") which allowed for authorisation by competent authorities.

2.2. The Amendment Regulations also amend the 2006 Regulations by doing away with the requirement for insolvency practitioners to maintain records capable of being separately produced and containing applicable specified information, for each of their cases. This requirement is replaced with a broader requirement to keep records sufficient to show and explain the administration of each case and any decisions taken by the insolvency practitioner which materially affect that case.

2.3. The Amendment Regulations also do away with the requirement in the 2006 Regulations for insolvency practitioners to notify the recognised professional body by which they are authorised of the place where the records are kept,

3. Background

3.1. Section 14 of the 2016 Act makes changes to the legislation under which insolvency practitioners are authorised.

3.2. Section 14 inserts new Article 349A into the 1989 Order. New Article 349A provides for two forms of authorisation to act as an insolvency practitioner, full and partial. . A partially authorised insolvency practitioner is able to act either solely in personal insolvencies or solely in corporate insolvencies.

3.3. Section 14 also repeals Articles 351 to 354 of of the 1989 Order, which enabled the Department, as the sole competent authority in Northern Ireland, to authorise insolvency practitioners. Transitional provisions,

which preserved this form of authorisation to apply to the one remaining insolvency practitioner with this form of authorisation, ceased on 31 March 2017.

3.4. The Amendment Regulations change the definition of the term "insolvency practitioner" in the 2006 Regulations to reflect the fact that authorisation of insolvency practitioners now takes place under Article 349A of the 1989 Order. They revoke Part 2 of the 2006 Regulations which set out requirements in relation to being authorised to act as an insolvency practitioner by a competent authority and is defunct now that this form of authorisation no longer exists. They remove references elsewhere in the 2006 Regulations to authorisation by competent authorities.

3.5. As a separate matter the Amendment Regulations make changes to the requirements for insolvency practitioners to keep records of cases they are dealing with. Insolvency practitioners are regulated professionals and maintain comprehensive records of their administration of insolvency cases in respect of which they have beeen appointed in order to ensure (and demonstrate to their regulators) that cases are being effectively managed and progressed. This includes the recording and justification of material decisions taken in cases. In many cases the records are kept electronically and can be easily accessed when required. The requirement to maintain records which contain at least specified information as is applicable to the case and are capable of being produced separately has led to many insolvnency practitioners maintaining duplicate records. The Amendment Regulations replace the specified list in the 2006 Regulations with a broader requirement to keep records of information sufficient to show and explain the administration of the case and the decisions made by the insolvency practitioner materially affecting the case. The result will be that records will still be kept and accessible to regulators but there will no longer be any reason for duplication.

3.6. The Amendment Regulations also remove the requirement for insolvency practitioners to notify the recognised professional body by which they are authorised of the whereabouts of the records they are required to keep. This is a matter which would more properly be dealt with in the bodies' membership rules.

4. Consultation

4.1. A four week consultation with insolvency practitioners and their recognised professional bodies about the planned changes to the 2006 Regulations was issued on 23 February 2017. The respondents who replied ageed with the proposed amendments.

5. Equality Impact

5.1. Formal equality screening has not been prepared for these Regulations as they only affect insolveny practitioners and do not have any differential impact on any of the section 75 groups.

6. Regulatory Impact

6.1. Removal of the requirement for insolvency practitioners to maintain separate records containing specified information for each case will reduce

unnecessary duplication of records. This will reduce the cost of all insolvency proceedings in which an insolvency practitioner is appointed as the office holder.

6.2. There is no impact on charities, voluntary bodies or the public sector.

6.3. A Regulatory Impact Assessment has been carried out and copies can be obtained from the Legislation Unit, Insolvency Service, Fermanagh House, 20A Ormeau Avenue, Belfast BT2 8NJ.

7. Financial Implications

7.1. There is no cost to the public purse.

8. Section 24 of the Northern Ireland Act 1998

8.1. The provisions of these regulations are considered to be compliant with section 24 of the Northern Ireland Act 1998, including that they are compatible with Community Law and Convention Rights as defined in the Human Rights Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. The amendments made to provisions in the 2006 Regulations requiring insolvency practitioners to maintain records for cases they are dealing with are in line with ones made to the Insolvency Practitioners Regulations 2005 (S.I. 2005/524) applying in GB by the Insolvency Practitioners (Amendment) Regulations 2015 (S.I 2015/391) .

10.2. The amendments made to the 2006 Regulations in consequences of the changes made by section 14 of the 2016 Act to the authorisation system for insolvency practitioners are in line with amendments made to the Insolvency Practitioners Regulations 2005 (S.I. 2005.524) by Article 4 of and paragraph (5) of Schedule 1 to the Deregulation Act 2015 (Insolvency) (Consequential Amendments and Transitional and Savings Provisions) Order 2015 (S.I. 2015/1641).

11. Additional Information

11.1. "Not applicable"