INSOLVENCY (AMENDMENT) BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department of Enterprise, Trade and Investment ("the Department") in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or Schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. Insolvency legislation in Northern Ireland is kept as far as possible in parity with that applying in England and Wales.

4. The insolvency legislation applying in both jurisdictions needed to be updated to allow for the use of modern means of electronic communication and to do away with certain procedures and requirements which had outlived their usefulness.

5. The main piece of primary legislation applying to insolvency in GB is the Insolvency Act 1986 (c. 45). This Act was amended by the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010 No. 18) which came into force on 6 April 2010. This Order was made with the object of making the administration of insolvencies faster, more efficient and less expensive, by legitimising the use of up-to-date methods of communication and doing away with burdensome and unnecessary procedural requirements.

6. There is a need to make, where appropriate, similar changes to the main primary legislation applying to insolvency in Northern Ireland, the Insolvency (Northern Ireland) Order 1989 (NI 19) ("the Insolvency Order").

7. A second objective is to undo the provision in the Insolvency Order enabling discharge from bankruptcy to take place before the end of the first year if investigation is unnecessary or complete. The provision has been little used in Northern Ireland and the corresponding provision applying in England and Wales has been repealed because early discharge has proved costly to administer in comparison to the limited benefits it brings.

8. A third objective is to tidy up the statute book by repealing the provisions in the Insolvency Order relating to Deeds of Arrangement which have fallen into disuse.

9. A fourth objective is to make sure that the Lord Chief Justice is consulted about the making of orders creating a right of appeal to the courts in respect of discretionary disqualification from office as a consequence of bankruptcy.

10. A fifth objective is to do away with authorisation of insolvency practitioners by competent authorities and to enable recognised professional bodies to authorise insolvency practitioners to take only personal or corporate insolvencies as an alternative to being authorised to deal with both.

11. A sixth objective is to strengthen the regulatory framework for insolvency practitioners and the recognised professional bodies which authorise and regulate them by introducing regulatory objectives for the recognised professional bodies and a range of proportionate powers which the Department as oversight regulator can use should they fail to meet these objectives.

11. A seventh objective is to undo the provision under which individuals other than insolvency practitioners could be authorised to act as nominees or supervisors in voluntary arrangements.

12. An eighth objective is to remove an obstacle to banks offering accounts to undischarged bankrupts by giving banks immunity from claims by trustees in respect of sums of money passing through a bankrupt’s account unless the trustee has made a specific claim to them.

13. A ninth objective is to correct an error in Article 10 of the Insolvency (Northern Ireland) Order 2005 which would have frustrated the Department’s policy intention that it should have power to make orders providing for any credit union in Northern Ireland to be able to enter a company arrangement or administration.

14. A tenth objective is to make minor miscellaneous amendments to the Insolvency Order.

CONSULTATION

15. The Department carried out a public consultation on its proposals to bring in legislation to mirror the changes made by the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 and to repeal the Deeds of Arrangement provisions during the period 8 May to 31 July 2012. A letter was issued to over 450 individuals and organisations referring to a consultation document and list of questions on the Department’s website. The consultation was also advertised in three Northern Ireland newspapers.

16. Seventeen responses were received, of which five made no comment. The other twelve supported the proposals, subject to adequate safeguards being put in place to prevent members of the public, especially the elderly and those living in rural areas, who do not have access to computers, being placed at a disadvantage.

17. There was a favourable response to the proposed abolition in England and Wales of the provision enabling discharge from bankruptcy to take place in less than a year and it is not considered that any factors exist in Northern Ireland to justify carrying out additional consultation on this issue.

18. The Department carried out an informal consultation with all Northern Ireland insolvency practitioners and the recognised professional bodies on its proposals to change the system of authorisation for insolvency practitioners during the period 16 September to 28 October 2013. Six responses were received.

19. All six respondents agreed with the proposal to end authorisation of insolvency practitioners by competent authorities. Three agreed that it should be possible for insolvency practitioners to be authorised to deal solely with personal or corporate cases as an alternative to being authorised to do both. The three bodies representing chartered accountants in the UK and Ireland did not. They considered that partial authorisation could lead to a lowering of professional standards and that being qualified in either personal or corporate insolvency only could lead to an inability to deal satisfactorily with cases involving an overlap between the two types of insolvency.

20. Under Article 10(4) of the EU Directive on Services (2006/123/EC) authorisation must permit the activity authorised to be carried out anywhere in the national territory. Authorisation can only be restricted to a specific part of a national territory if doing so can be objectively justified by an overriding reason relating to the public interest. Northern Ireland is not a nation in its own right but is part of the United Kingdom. Legislation to permit partial authorisation of insolvency practitioners has been brought in for the rest of the United Kingdom. For insolvency practitioners holding partial authorisation under GB legislation to be able to practise on the same basis in Northern Ireland, as they would be entitled to do under Article 10(4) of the EU Directive on Services, it is essential for a similar system of partial recognition to be established in Northern Ireland. Nothing emerged from the consultation which would constitute an overriding reason for not doing so on the grounds of public interest.

21. The Department wrote to the recognised professional bodies on 16 January 2015 advising them that it was intended to include provision in the Insolvency (Amendment) Bill, equivalent to that in the Small Business, Enterprise and Employment Bill being debated at Westminster, to require them to conduct their authorisation and regulation of insolvency practitioners in accordance with specified objectives. One reply was received, from the Chartered Accountants Regulatory Board. The Board sought and was given an assurance that the Bill would not include a statutory code of conduct for insolvency practitioners.

22. The Department carried out an informal consultation with Northern Ireland insolvency practitioners and their recognised professional bodies, the Chancery Judge in the Northern Ireland High Court, the Master in Bankruptcy, banks and financial institutions and debt advice organisations on its proposal to amend the law to safeguard banks against retrospective claims by trustees in bankruptcy in respect of sums of money passing through a bankrupt's account. Seven responses were received. Apart from one respondent who confined themselves to stating that they had no comment all those who responded were strongly in favour of the proposed amendment.

23. The Department carried out an informal consultation with credit unions, the Irish League of Credit Unions, the Ulster Federation of Credit Unions and insolvency practitioners and their recognised professional bodies on its proposals to correct the error in Article 10 of the Insolvency (Northern Ireland) Order 2005 so that the Department would have power to make

orders enabling any credit union to enter an arrangement or administration irrespective of which piece of legislation it was registered under. Only one response was received. It was from a credit union and was in favour of the proposed correction.

24. It is not considered necessary to consult on the other proposals as no conceivable reason exists to alter them.

OPTIONS CONSIDERED

25. Legitimisation of the use of modern methods of communication in insolvency proceedings involves three separate proposals. They are,

- to put beyond doubt that documents transmitted and stored by electronic means are just as good and valid in law as paper ones
- to allow the use of websites to disseminate documents and information
- to make possible the use of suitable communications technology to save those wishing to take part in meetings having to travel to a single location.

26. Doing nothing would,

- mean that the validity of the use of modern paperless methods of communication by the insolvency profession would remain in doubt leading to insolvency practitioners erring on the side of caution by sending documents through the ordinary post at the cost of reduced payments to creditors
- deny to creditors in insolvency proceedings the cost-savings which would result from the use of websites to communicate large documents or documents required to be seen by a large number of people
- mean that creditors and members of companies wishing to take part in meetings would continue to have to spend time and money travelling to a physical location.

27. Current insolvency legislation does not sanction electronic communications for general use in insolvency proceedings; neither does it confirm that requirements to send, furnish or deliver documents can be met by displaying them on a website. Meetings are solely envisaged to be physical ones. Since the deficiency in all three instances is in legislation it can only be remedied by legislation.

28. The proposals to do away with unnecessary and burdensome requirements are,

(i) To remove the requirement for liquidators and trustees in bankruptcy to obtain sanction to compromise sums due to insolvent estates

Doing nothing would mean that, where it was obvious that it would be pointless or too expensive to pursue full recovery of debts due, liquidators and trustees would continue to have to go through the pointless formality of seeking sanction to settle for a lesser sum. The cost of their time spent doing so would continue to be met in the form of reduced payments to creditors.

As the requirements for sanction are in legislation, to wit, paragraph 3 of Schedule 2 and paragraphs 6 and 8 of Schedule 3 to the Insolvency Order, the policy objective of removing the requirements for sanction for the compromise of debts due can only be achieved by amending that Order.

(ii) To abolish the requirement for a meeting to receive liquidators' accounts.

Doing nothing would mean that in the case of voluntary liquidations time and money would continue to be wasted to the detriment of creditors/ company members holding meetings to receive the liquidator's account of his acts and dealings and of the conduct of the winding up.

As the requirements to hold such meetings are in legislation, to wit, Articles 79 and 91 of the Insolvency Order, the policy objective of removing the requirements for sanction in relation to compromising the realisation of debts due can only be achieved by amending that Order.

(iii) To remove the requirement for a report to be filed in court in Individual Voluntary Arrangements where there is no interim order

Doing nothing would mean that, in cases where a debtor has not considered it necessary to involve the Court by seeking an Order giving them protection from action by their creditors while attempting to set up an individual voluntary arrangement, the insolvency practitioner acting for them as nominee would still be obliged to file a report in Court on the debtor's proposal. The creditors, to whom the report would be of interest, would be denied the benefit of a statutory right to see the report in full.

As the requirement for a report to be submitted to the Court in cases not involving the protection of the Courts is in legislation, to wit, Article 230A of the Insolvency Order, the only way to achieve the policy aim of removing that requirement is through legislation.

29. Doing nothing to alter the law enabling discharge from bankruptcy to take place before the first year is up if investigation is unnecessary or concluded would place the Department at continuing risk of coming under pressure to implement this measure in full with all the expense that doing so would entail.

30. Doing away with the possibility of early discharge would result in all bankrupts being discharged automatically after 12 months providing they were not subject to any restrictions and their discharge had not been suspended. This would avert any possibility of the Official Receiver, business, HMRC and the Northern Ireland Courts and Tribunals Service being burdened by additional administrative costs through the early discharge regime having to be fully implemented in Northern Ireland. As the power to discharge bankrupts early is contained in legislation, to wit, Article 253 of the Insolvency Order, it can only be removed by legislation.

31. Doing nothing to end authorisation of insolvency practitioners by competent authorities would mean the continued existence of a small minority subject to a less effective disciplinary regime than the majority authorised by recognised professional bodies. Doing nothing to provide the option of being authorised as an insolvency practitioner to take only personal or corporate cases would leave those wanting to enter the profession having to

qualify in both areas even if they only intended to practise in one of them. It would result in partially authorised practitioners in GB not being able to practise on the same basis in Northern Ireland. This would contravene Article 10(4) of the EU Directive on Services (2006/123/EC) which provides that authorisation should, as a general rule, permit the exercise of a service activity throughout the national territory.

32. Repeal of the provision for authorisation of insolvency practitioners by competent authorities would result in a single system of authorisation and a uniform disciplinary regime for insolvency practitioners. Legislating to bring in partial authorisation for insolvency practitioners would save those wishing to enter that profession having to undertake unnecessary study and is needed to ensure compliance with Article 10(4) of the EU Directive on Services.

33. Doing nothing about bringing in regulatory objectives for recognised professional bodies and equipping the Department with a range of powers for use if they fail to meet these objectives would mean that there would continue be no clear objectives to use in assessing how well the recognised professional bodes are regulating insolvency practitioners' conduct and performance and the Department would continue to lack a range of proportionate sanctions for dealing with unsatisfactory performance on the part of the recognised professional bodies.

34. Bringing in regulatory objectives for recognised professional bodies would ensure the existence of objective standards against which their performance could be assessed. Bringing in a range of proportionate sanctions would equip the Department with the tools needed to address poor performance on the part of the recognised professional bodies.

35. Doing nothing to undo the provision allowing individuals other than insolvency practitioners to be authorised to act as nominees and supervisors in voluntary arrangements would result in a provision remaining on the statute book in Northern Ireland, the GB equivalent of which has been repealed on the grounds that it is defective.

36. Repeal of the provision would avoid any risk to the public arising from the absence of any requirement under the provision for non-insolvency practitioners acting as nominees or supervisors to be suitably qualified.

37. Doing nothing to give banks immunity from claims by trustees in respect of transactions on bankrupts' accounts would leave banks at risk of incurring financial loss if they allow bankrupts to have accounts.

38. Legislating to give banks immunity from claims by trustees would remove a disincentive to banks allowing bankrupts to have accounts.

39. Doing nothing to correct the error in Article 10 of the Insolvency (Northern Ireland) Order 2005 (NI 10) would mean that the Department would have power under paragraph (2) of that Article to make orders enabling credit unions to enter a company arrangement or administration where a credit union had been registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 but not where it had been registered under the Credit Unions (Northern Ireland) Order 1985.

40. As the error is in legislation it can only be corrected by legislation.

41. Doing nothing about the presence of provision for Deeds of Arrangement in the Insolvency Order would result in something which is no use being retained for no good reason.

42. As the provision for Deeds of Arrangement is in legislation the only way to remove it is by legislation to repeal it.

43. Doing nothing would maintain the unsatisfactory position of the Lord Chief Justice not having a statutory right to be consulted about the making of orders creating a right of appeal in respect of the exercise of discretion to disqualify individuals from certain posts if they become bankrupt.

44. The alternative is to amend Article 24 of the Insolvency (Northern Ireland) Order 2005 with effect that orders providing for discretionary decisions to be subject to appeal to a court can only be made after consultation with the Lord Chief Justice.

45. The minor miscellaneous amendments to the Insolvency Order include,

(i) Abolition of the requirement for the notices of the creditors' meetings in creditors' voluntary liquidations and in members' voluntary liquidations where it has been discovered that the company is insolvent to be sent by post.

Doing nothing would leave in place specific statutory requirements for the notices of meetings which have to be issued to creditors to be sent through the post, which would be contrary to the general policy that it should be possible to use modern electronic methods of communication.

As the requirements for the notices to be sent by post are in legislation, to wit, Articles 81 and 84 of the Insolvency Order, legislation is required to remove them.

(ii) Putting in place in primary legislation a requirement for the Official Receiver to notify the Department whether or not a proposal for a fast-track voluntary arrangement has been approved or rejected by the creditors.

Doing nothing would leave the Department without a statutory right to be informed of the creditors' decision whether or not to accept a bankrupt's proposal for a fast-track voluntary arrangement, which is a type of arrangement which can only be entered into by bankrupts and where the nominee must be the Official Receiver. Having this information would assist the Department to comply with its duty to maintain a register of all individual voluntary arrangements.

Rule 5.44(1) of the Insolvency Rules (Northern Ireland) 1991 requires the Official Receiver to give written notice to the Department if he is appointed as supervisor of a voluntary arrangement. To achieve the policy aim of supplementing this requirement with a clear requirement in primary legislation for the Official Receiver to notify the Department whether or not a proposal for a fast-track voluntary arrangement has been accepted requires an amendment to primary legislation.

OVERVIEW

46. The Bill consists of 29 clauses and 4 Schedules.

COMMENTARY ON CLAUSES

Clause 1: Attendance at meetings and use of websites

Clause 1 inserts new Articles 208ZA, 208ZB, 345A and 345B into the Insolvency Order.

Article 208ZA

Article 208ZA allows meetings to be held in company insolvency proceedings without the participants having to be present at a single physical location.

Paragraph (1) of Article 208ZA provides for that Article to apply to two kinds of meetings. It applies to meetings of the creditors of a company summoned under the Insolvency Order or rules made under Article 359 thereof. It applies to meetings of the members or contributories of a company summoned by the office-holder under the Insolvency Order or rules made under Article 359 thereof, with the exception that it does not apply to meetings of the members of a company in a members' voluntary winding up.

Paragraph (2) of Article 208ZA provides that, where the person summoning a meeting ("the convener") considers it appropriate, a meeting can be conducted and held in such a way that people can attend it without having to be present together at the same place.

Paragraph (3) of Article 208ZA defines attendance at a meeting for the purposes of paragraph (2) as being able to exercise whatever rights a person has to speak and vote at the meeting.

Paragraph (4) of Article 208ZA provides that for the purposes of that Article a person is able to exercise the right to speak at a meeting if, during the time that the meeting is in progress, it is possible for them to communicate any information or opinions they have on the business of the meeting to everyone else attending it. Paragraph (4) further provides that for the purposes of Article 208ZA a person is able to exercise the right to vote at a meeting if it is possible for them to vote during the time that the meeting is in progress on any resolutions which are put to the vote, and if their vote can be counted at the same time as the votes of everyone else attending the meeting.

Paragraph (5) of Article 208ZA places the person summoning a meeting which is to be held in such a way that it can be attended by persons who are not present together at the same place under a duty to make whatever arrangements he considers appropriate to check the identity of those attending, to ensure that they can exercise their right to speak and vote and to make sure that any electronic means used to enable attendance is secure.

Paragraph (6) of Article 208ZA provides that, where there is a requirement under the Insolvency Order or rules made under Article 359 thereof to specify a place for a meeting, in certain circumstances it will be sufficient to specify what arrangements are being made to enable those entitled to attend the meeting to exercise their right to speak and vote. The circumstances are that in the reasonable opinion of the person calling the meeting, it will be attended by persons who will not be present together at the same place and it is unnecessary or inexpedient to specify a place for the meeting.

Paragraph (7) of Article 208ZA provides that, when making the arrangements mentioned in paragraph (5) and forming an opinion that a meeting may be held without specifying that it is to be at a particular location, the convener is required to have regard to the legitimate interests of those who will be attending the meeting in the efficient despatch of the business of the meeting.

Paragraph (8) of Article 208ZA places the convener of a meeting under a duty to specify a place for meeting if, following the issue of a notice of the meeting which does not specify a place, a certain minimum percentage of those entitled to attend request that one should be specified. That percentage is, in the case of a meeting of creditors or contributories, at least ten percent of them by value, and, in the case of a meeting of members, members representing at least ten percent of the total voting rights.

Paragraph (9) of Article 208ZA provides a definition of the term “the office-holder” as used in that Article.

Article 208ZB

Paragraph (1) of Article 208ZB applies in the case of company insolvency and enables an office-holder to comply with requirements in the Insolvency Order and rules made under Article 359 thereof to provide notices, documents or information by making them available on a website. This is subject to the proviso that this can only be done in prescribed circumstances and must be done in accordance with the rules.

Paragraph (2) of Article 208ZB provides a definition of the term “the office-holder” as used in that Article.

Article 345A

Article 345A allows meetings to be held in individual insolvency proceedings without the participants having to be present at a single physical location.

Paragraph (1) of Article 345A provides for that Article to apply to meetings of an individual’s creditors summoned under the Insolvency Order or rules made under Article 359 thereof in certain circumstances. The circumstances are where a bankruptcy order has been made against the individual, where an interim receiver of their property has been appointed or where they are proposing or have had approved a voluntary arrangement under Chapter 2 of Part 8 of the Insolvency Order.

Paragraph (2) of Article 345A provides that, where the person summoning a meeting ("the convener") considers it appropriate, a meeting can be conducted and held in such a way that people can attend it even though they are not present together at the same place.

Paragraph (3) of Article 345A defines attendance at a meeting for the purposes of paragraph (2) as being able to exercise whatever rights a person has to speak and vote at the meeting.

Paragraph (4) of Article 345A provides that for the purposes of that Article a person is able to exercise the right to speak at a meeting if, during the time that the meeting is in progress, it is possible for them to communicate any information or opinions they have on the business of the meeting to everyone else attending it. Paragraph (4) further provides that for the purposes of Article 345A a person is able to exercise the right to vote at a meeting if it is possible for them to vote during the time that the meeting is in progress on any resolutions which are put to the vote, and if their vote can be counted at the same time as the votes of everyone else attending the meeting.

Paragraph (5) of Article 345A places the person summoning a meeting which is to be held in such a way that it can be attended by persons who are not present together at the same place under a duty to make whatever arrangements he considers appropriate to check the identity of those attending, to ensure that they can exercise their right to speak and vote and to make sure that any electronic means used to enable attendance is secure.

Paragraph (6) of Article 345A provides that where there is a requirement under the Insolvency Order or rules made under Article 359 thereof to specify a place for a meeting, in certain circumstances it will be sufficient to specify what arrangements are being made to enable those entitled to attend the meeting to exercise their right to speak and vote. The circumstances are that in the reasonable opinion of the person calling the meeting, it will be attended by persons who will not be present together at the same place and it is unnecessary or inexpedient to specify a place for the meeting.

Paragraph (7) of Article 345A provides that, when making the arrangements mentioned in paragraph (5) and forming an opinion that a meeting may be held without specifying that it is to be at a particular location, the convener is required to have regard to the legitimate interests of those who will be attending the meeting in the efficient despatch of the business of the meeting.

Paragraph (8) of Article 345A places a person summoning a meeting under a duty to specify a place at which to hold it if, in response to the issue of a notice of the meeting which does not specify a place, at least ten percent of the creditors by value request that one should be specified.

Article 345B

Paragraph (1) of Article 345B provides for that Article to apply where a bankruptcy order has been made against the individual, where an interim receiver of their property has been appointed or where they are proposing or have had approved a voluntary arrangement under Chapter 2 of Part 8 of the Insolvency Order. Paragraph (1) also provides a definition of the term "the office-holder" as used in Article 345B.

Paragraph (2) of Article 345B enables an office-holder to comply with requirements in the Order and rules made under Article 359 thereof to provide notices, documents or information by making them available on a website. This is subject to the proviso that this can only be done in prescribed circumstances and must be done in accordance with the rules.

Clause 2: References to things in writing

Clause 2 inserts new Article 2B into the Insolvency Order.

Paragraphs (1) and (2) of new Article 2B apply references in the Insolvency Order to things in writing to those same things if they are in electronic form, subject to certain listed exceptions.

Subsection (2) of Clause 2 provides for the repeal of paragraph 1(2) of Schedule B1 to the Insolvency Order. Paragraph 1(2) of Schedule B1 provided for references within that Schedule to things in writing to be treated as including reference to those things in electronic form.

Clause 3: Removal of requirement for annual meetings in a members' voluntary and a creditors' voluntary winding up

Subsection (1) substitutes Article 79 of the Insolvency Order with a new provision. The Article as substituted provides that in a members' voluntary liquidation the liquidator has to produce a progress report on prescribed matters for each prescribed period and send a copy of it within such further period as may be prescribed to the members of the company and any other persons who are prescribed. Paragraph (2) of the Article as substituted makes it an offence punishable by a fine for a liquidator to fail to comply with the Article.

Subsection (2) substitutes Article 91 of the Insolvency Order with a new provision. The Article as substituted provides that in a creditors' voluntary liquidation the liquidator has to produce a progress report on prescribed matters for each prescribed period and send a copy of it within such further period as may be prescribed to the members and creditors of the company and any other persons who are prescribed. Paragraph (2) of the Article as substituted makes it an offence punishable by a fine for a liquidator to fail to comply with the Article.

Subsection (3) amends Schedule 7 to the Insolvency Order to set the fines for failure to comply with the requirements to issue progress reports under Articles 79 and 91 as substituted.

Clause 4: Requirements in relation to meetings under Articles 81 and 84 of the Insolvency Order

Clause 4 removes the requirement for notice of creditors' meetings in both members' and creditors' voluntary liquidations to be sent by post.

Clause 5: Individual voluntary arrangements: removal of requirement to submit a nominee's report to the High Court

Subsection (1) makes two amendments to Article 230A of the Insolvency Order. Article 230A applies where the debtor has not sought protection from the High Court in the form of an interim order. The amendments have the effect that in cases where Article 230A applies a nominee no longer prepares a report to the High Court but prepares a report to the debtor's creditors.

Subsection (2) substitutes a new paragraph for paragraph (1) of Article 231 of the Insolvency Order. Paragraph (1) as substituted provides for either reporting to the High Court or to the creditors under Article 230A to be the event triggering the requirement for the nominee to summon a meeting of the debtor's creditors. The High Court is given power to direct otherwise, but only in cases to which Article 230 applies i.e. interim order cases.

Subsection (3) amends paragraph (2) of Article 233 of the Insolvency Order to reflect the fact that it is only in cases where a voluntary arrangement has been proposed under Article 230 that an interim order will exist to be discharged by the High Court.

Clause 6: Fast-track voluntary arrangements: notification of the Department

Clause 6 amends Article 237C of the Insolvency Order by adding a requirement for the Official Receiver to notify the Department as well as report to the High Court whether a proposal by a bankrupt for a voluntary arrangement with the Official Receiver acting as nominee (a so-called "fast-track" voluntary arrangement) has been approved or rejected by the bankrupt's creditors.

Clause 7: Powers of liquidator exercisable with or without sanction in a winding up

Clause 7 effects the removal of the powers exercisable by a liquidator under paragraph 3 of Part 1 of Schedule 2 to the Insolvency Order out of that Part and reinserts them in Part 3 of that Schedule. The powers transferred are to compromise calls, debts, and claims due to companies and all questions relating to the assets or winding up of the company. The effect of the transfer is to empower liquidators to reach compromises without having to seek sanction from the liquidation committee, the Court, a meeting of the company's creditors, or the members of the company by extraordinary resolution, as the case may be. A proviso is added that the power in paragraph 7A(b) as transferred is subject to paragraph 2 in Part 1 of the Schedule, so that sanction will still be required to enter a compromise with creditors or others with a claim against the company.

Clause 8: Powers of trustee exercisable with or without sanction in a bankruptcy

Clause 8 effects full removal of the powers exercisable by a trustee under paragraph 6 of Part 1 of Schedule 3 to the Insolvency Order and partial removal of those exercisable under paragraph 8 and reinserts both sets of powers in Part 2 of Schedule 3. The powers transferred are to refer to arbitration or to compromise debts and claims due to bankrupts and to make a compromise or arrangement in respect of any claim on any person in connection with a bankrupt's estate. The effect of the transfer is to empower trustees to exercise these powers without having to seek sanction from the Court, the creditors' committee or the Department.

Clause 9: Definition of debt

Subsection (2) amends Article 2 of the Insolvency Order by providing a substitute for paragraph (3) and inserting a new paragraph (3A). The effect is to separate the criteria governing admissibility of a liability in tort in bankruptcy from those applying in the case of company administration or winding up.

Substitute paragraph (3) specifies the criterion governing whether any liability in tort is a bankruptcy debt. A bankrupt's liability in tort is treated as having arisen as a consequence of an obligation incurred at the time that the cause of action accrued.

New paragraph (3A) establishes new criteria for deciding whether a liability in tort is provable in a company administration or winding up. It will be provable if the cause of action had accrued or all the elements necessary to establish the cause of action except for actionable damage existed before the company went into liquidation or entered administration. In a case where a company has been in the two procedures consecutively it will be provable if the cause of action had accrued, or all the elements necessary to establish the cause of action except for actionable damage, existed before it entered the first procedure.

Subsections (3) and (4) amend Article 5 of the Insolvency Order. The qualification made in the definition of "debt" in paragraph (1) of that Article is amended to refer to Article 2(3A) in recognition of the fact that it is now that paragraph which deals with whether a liability in tort is provable in a company administration or winding up. Amendments made to the definition of "debt" in Article 5(1) by paragraphs (b) to (d) of subsection (3) together with the insertion of new paragraph (1A) by subsection (4) serve to clarify that where liquidation is immediately preceded by administration or vice versa it is the date on which the company entered the earlier proceedings which determines whether debts, liabilities and interest on debt are to be treated as debt for the purposes of the Insolvency Order.

Subsection (5) makes clear that the explanation of the term "the relevant date" in Article 347 of the Insolvency Order does not apply to that term as used in new paragraph (1A) of Article 5.

Clause 10: Treatment of liabilities relating to contracts of employment

Clause 10 repeals one element of the priority given to employees' wages in certain insolvency proceedings, because the type of employment contract to which it relates no longer exists.

In administration and administrative receiverships a company can continue to trade under the direction of the administrator or the administrative receiver, usually pending a sale of the business or assets. All debts incurred by the company after entry into such insolvency proceedings are classified as an expense of the insolvency proceedings and are payable ahead of the fees of the insolvency practitioner. For an employee to become entitled to have their wages paid as an expense, the insolvency practitioner would have to adopt their contract. As well as including salary for actual days worked, the definition of wages extends to cover payment for holiday entitlement, absence and payment in lieu of holiday. Certain employment contracts (year-in-hand schemes) earned an employee holiday entitlement for the year ahead. Social security legislation provides that this holiday is counted as being accrued in the year it was earned.

In order not to discriminate against employees on these schemes, Articles 31(10) (for pre-Schedule B1 administration which continues in operation for some purposes) and 54(2D) (for administrative receiverships) of the Insolvency Order, and paragraphs 100(6)(d) of Schedule B1 (administration) and 15 of Schedule 4 (categories of preferential debts) to that Order, provide that "wages or salary" includes, in respect of a period, a sum which would be treated as earnings for that period for the purposes of an enactment abut social security. This enables a claim for this earned holiday entitlement to be made after entry into insolvency proceedings. However, such provision is now

redundant as 'year in hand' schemes are no longer legally possible since the coming into operation of the Working Time Regulations (Northern Ireland) 1998 (SR 1998 No. 386).

Subsection (2) of clause 10 repeals paragraph (10) of Article 31 of the Insolvency Order, subsection (3) repeals paragraph (2D) of Article 54 of that Order, subsection (4) repeals paragraph 100(6)(d) of Schedule B1 to that Order and subsection (5) repeals paragraph 15(b) of Schedule 4 to that Order.

Clause 11: Deeds of arrangement

Subsection (1) repeals Chapter 1 of Part 8 of the Insolvency Order which dealt with deeds of arrangement.

Subsection (2) enables the Department to make orders amending statutory provisions, including repealing and revoking them, to take account of the repeal of Chapter 1 of Part 8 of the Insolvency Order.

Subsections (3) and (4) provide for orders under subsection (2) to be subject to negative resolution unless they contain provision amending or repealing an Act of Parliament or Northern Ireland legislation, in which case they must be laid and approved by resolution of the Assembly before being made.

Clause 12: Bankruptcy: early discharge procedure

Clause 12 repeals Article 253(2) of the Insolvency Order which allows a bankruptcy to end within one year if the Official Receiver files a notice with the High Court stating that investigation is unnecessary or concluded.

Clause 13: After-acquired property of bankrupt

Clause 13 amends Article 280 of the Insolvency Order to facilitate banks offering accounts to undischarged bankrupts.

Article 280 allows a trustee in bankruptcy to claim by notice after-acquired property, which becomes the property of the bankrupt before they are discharged (usually 12 months after the bankruptcy order was made). Where that property is or becomes money that passes through a bank account, and the trustee is unable to recover it from the bankrupt or ultimate recipient, the trustee may claim against the bank for its loss to the bankrupt's estate. Currently the trustee can consider such a claim as the bank would have been aware of the bankruptcy order.

Article 280(4) of the Insolvency Order prevents the trustee from taking action against certain persons who have dealt with after-acquired property in good faith and without notice of the bankruptcy – namely persons acquiring property for value and bankers entering into transactions. The amendment takes bankers outside the scope of Article 280(4) and instead provides protection for them by means of a new paragraph (4A) inserted into Article 280. The new paragraph (4A) prevents a trustee making a claim against a bank in circumstances where the bank has not been served with notice by the trustee specifically regarding the after-acquired property he or she wishes to claim, regardless of whether the bank has notice of the bankruptcy.

Clause 14: Authorisation of insolvency practitioners

Clause 14 amends Part 12 of the Insolvency Order to introduce a new regime for the partial authorisation of insolvency practitioners. Currently, individuals who are authorised to act as an insolvency practitioner are authorised in relation to all categories of appointment. Under the new regime a person may be authorised to act only in relation to companies, only in relation to individuals or in relation to both.

The main amendments are made by subsections (2) and (3). A new Article 349A will be inserted to provide that an insolvency practitioner who is partially authorised will be authorised to act only in relation to companies, or only in relation to individuals. It will also provide for a person to be fully authorised to act as an insolvency practitioner and practise in all categories of appointment. Individuals who are already authorised to act as an insolvency practitioner will be fully authorised.

A new Article 349B will be inserted to deal with the question of whether insolvency practitioners who are partially authorised may accept appointments to act in relation to a current or former member of a partnership where the member has outstanding liabilities in relation to the partnership. An insolvency practitioner who is partially authorised in relation to companies will not be able to accept an appointment if the company is such a member. Neither will an insolvency practitioner who is partially authorised in relation to individuals unless the partnership is a Scottish partnership. If an insolvency practitioner who is partially authorised in relation to companies becomes aware that they have been appointed to act in relation to a company which is or was a member of a partnership and has outstanding liabilities in relation to the partnership, they will commit an offence if they continue to act in that insolvency without the High Court's permission. The same will apply to an insolvency practitioner who is partially authorised in relation to individuals unless the partnership is a Scottish partnership. There is provision for the insolvency practitioner to be able to continue to act for a limited period without committing an offence whilst the Court's permission is sought. There is also provision for the insolvency practitioner to be able to continue to act for a limited period (without committing an offence) whilst applying for a Court order appointing a fully authorised person to act in his or her place.

Subsection (4) of clause 14 amends the Insolvency Order to enable the Department to recognise a professional body for the purposes of granting either full or partial authorisations to its insolvency specialist members, or for the purposes of granting only partial authorisations, provided that the body regulates the practice of a profession and maintains and enforces certain rules. It requires that, going forward, recognised professional bodies' rules and practices for authorising and regulating insolvency practitioners are designed to ensure that the regulatory objectives (as set out in clause 15) are met. The Department may revoke a professional body's recognition where it appears that the body no longer meets the relevant requirements. The Department may also revoke a professional body's recognition to provide both full and partial authorisations and replace it with recognition to provide partial authorisations only. The Department will be able to make provisions to treat the body's insolvency specialist members as fully or partially authorised, as the case may be, for a specified period after recognition is revoked, or revoked and replaced. Clause 14 will not affect the recognition of any current recognised professional bodies under the existing Article 350. Bodies already recognised under existing provisions will be recognised as if capable of providing their insolvency specialist members with full and partial authorisation (see subsection 7).

Clause 14 also sets out the way in which a body may apply to the Department to become a recognised professional body. Currently, the Insolvency Order does not prescribe the way in which a body may make an application for recognition. Clause 14 inserts new Article 350A which provides for an application process.

Subsection (5) of clause 14 repeals Articles 351 to 354 of the Insolvency Order which provide for a competent authority to grant, refuse and withdraw authorisation to act as an insolvency practitioner. As no other competent authority has been designated, the Department is currently the only competent authority in Northern Ireland. The effect of the repeal will be that the Department will no longer be able to authorise individuals to act as an insolvency practitioner. Individuals will only be able to obtain authorisation from one of a number of professional bodies recognised by the Department for that purpose. The vast majority of insolvency practitioners are already authorised by one of these bodies.

Under Article 361A of the Insolvency Order the Department has the power to charge professional bodies a fee in connection with the granting or maintenance of recognition of the body. Subsection (6) amends Article 361A to enable the Department to vary the fee depending on whether a body is recognised to provide full and partial authorisations or partial authorisations only and to ensure that the Department can refuse or revoke recognition of such a body where the fee is not paid.

Clause 15: Regulatory objectives

This clause inserts new Articles 350B and 350C into the Insolvency Order.

These new Articles define the meaning of regulatory functions and regulatory objectives which will apply to recognised professional bodies. At present, these do not exist in law.

The introduction of regulatory objectives will provide recognised professional bodies with a framework within which to carry out their activities. Regulatory objectives are intended to encourage consistency of approach, and to provide a reference point for discussions between insolvency practitioners and recognised professional bodies, and between recognised professional bodies and the Department "oversight" regulator.

New Article 350B sets out that recognised professional bodies must act and carry out their functions in a way that is compatible with the regulatory objectives.

The regulatory objectives are set out in new Article 350C and are intended to ensure that:

i. the recognised professional bodies have a system of regulating insolvency practitioners that:
   a. delivers fair treatment for persons affected by an insolvency practitioners' acts and omissions;
   b. reflects the regulatory principles that the recognised professional bodies' regulatory activities are transparent, accountable, proportionate, consistent and targeted; and
   c. ensures consistent outcomes;

ii. the recognised professional bodies are encouraging an independent and competitive insolvency practitioner profession, whose members deliver high quality services at a fair and reasonable cost, act with transparency and integrity and consider the interests of creditors in the case;

iii. insolvency practitioners seek to maximise returns to creditors and are prompt in making those returns; and

iv. the public interest is protected and promoted during the insolvency process.

Clause 16: Oversight of recognised professional bodies

Recognised professional bodies are bodies, or professional organisations, which authorise insolvency practitioners to act. They regulate the insolvency practitioners by maintaining and enforcing rules for securing that those who they permit to act, are fit and proper persons to do so and have the correct levels of education, experience and practical training. The recognised professional bodies also have the power to discipline members. A body may be recognised by the Department pursuant to Article 350(1) or (2).

This clause inserts new Articles 350D to 350K into the Insolvency Order. These Articles set out the way in which the Department will be able to sanction recognised professional bodies and also the appeals process available to them.

New Articles 350D and 350E of the Insolvency Order will allow the Department to issue directions to a recognised professional body; they set out what sort of requirements the directions may impose; and the procedure for issuing such directions. The Department would consider using its power to direct a recognised professional body to take such steps as the

Department considers will counter any adverse impact of a failure to act compatibly with the objectives, mitigate its effect or prevent its occurrence or recurrence. An example which might prompt a direction might be if the recognised professional body has failed to address the Department's concerns following a review of the way the recognised professional body handles complaints or a recognised professional body's failure to carry out a targeted monitoring visit of its insolvency practitioners where the Department has requested that it be done.

These Articles set out the procedure and the way in which the Department may direct a recognised body to act following an act or omission which has resulted in one or more of the regulatory objectives not being complied with or which has an unfavourable impact on those objectives. The Department must give at least 28 days notice to the recognised professional body of the proposed direction. The recognised professional body will have the opportunity to make written representations to the Department, which must be considered before a direction is imposed.

New Articles 350F, 350G, 350H and 350I concern the ability of the Department to impose a financial penalty on a recognised professional body if it has failed to comply with a direction imposed under Article 350D, or any other requirement imposed on it under the Insolvency Order or secondary legislation made under that Order, and it is appropriate to impose a financial penalty. Such a penalty should deter future transgressions. Any sums paid over to the Department under this provision will be paid into the Consolidated Fund. There is no financial limit on the penalty. Before imposing a financial penalty, the Department must give at least 28 days notice of the proposed financial penalty, during which time the recognised professional body can make written representations to the Department. Before imposing any penalty, the Department must have considered any such representations.

A recognised professional body may appeal a financial penalty on a number of grounds. These grounds are set out in new Article 350H and include that the Department was not acting within its powers; that the recognised professional body had in fact complied with the requirement – that is the financial penalty should not have been imposed; the correct procedure had not been followed; the amount of the penalty was unreasonable; or that the time given to pay was unreasonable.

New Articles 350J and 350K introduce a reprimand as a sanction available to the Department. This means that the Department will be able to publish a statement reprimanding a recognised professional body for an act or omission which has an adverse impact on one or more of the regulatory objectives. This provision enables the Department to publicly register its disapproval of a recognised professional body's act or omission if it has (or has had) an adverse impact on the regulatory objectives. The recognised professional body must have been given at least 28 days notice of the Department's proposal to use the power under this Article and the Department must consider any written representations that are made by the recognised professional body ahead of publishing the reprimand.

New Article 361A(1B) clarifies that the fee the Department is able to charge the recognised professional bodies for the maintenance of their recognition can include, but is not limited to, the costs in connection with a direction issued to a recognised professional body under Articles 350D and 350E, a reprimand to a recognised professional body given under Articles

350J and 350K and revocation of a recognised professional body's recognition , where it has been requested under Article 350N.

Clause 17: Recognised professional bodies: revocation of recognition

This clause inserts new Articles 350L, 350M and 350N into the Insolvency Order. It relates to removal of a recognised professional body's recognition and subsequently, its ability to regulate and approve a person to act as an insolvency practitioner. The revocation of the recognition to authorise insolvency practitioners can be at the instigation of the Department (Article 350L) or at the instigation of the recognised professional body itself (Article 350N). At present, revocation of recognition is the only sanction available to the Department.

Currently, the Department is not required to follow a statutory procedure before revoking a recognised professional body's recognition. The new Articles inserted by this clause introduce the conditions to be met before a revocation order is made, the procedure to be followed and the date from which a revocation order comes into effect. This clause allows for two types of revocation order: a revocation order and a partial revocation order. Partial revocation of a body's recognition will mean that the recognised professional body is no longer recognised as capable of providing insolvency practitioners with both full and partial authorisation, only as capable of providing partial authorisations of the kind specified. Full authorisation enables individuals to act in relation to both company and personal insolvency, whilst partial authorisation enables individuals to act only in relation to either company or personal insolvency.

Clause 18: Court sanction of insolvency practitioners in public interest cases

This clause inserts new Articles 350O, 350P, 350Q and 350R into the Insolvency Order. These new Articles introduce the power for the Department to apply to the High Court for a direct sanctions order against an insolvency practitioner when it is in the public interest for the Department to take such action.

New Article 350O sets out the sanctions that the Court may impose, if certain conditions set out in new Article 350Q are satisfied (see below), which include requiring the relevant recognised professional body to take the necessary steps to ensure that:

i. the insolvency practitioner is no longer authorised to act as such;

ii. the insolvency practitioner is no longer fully authorised to act, but may be partially authorised to act as specified;

iii. the insolvency practitioner's authorisation is suspended;

iv. other restrictions (as specified in the Court order) are placed on the insolvency practitioner while so acting; and

v. the insolvency practitioner repays to particular creditors part of what he/she has received or expects to receive as remuneration from a particular case.

The Department will not be able to seek a direct sanctions order against an insolvency practitioner whose authorisation to act as an insolvency practitioner is or was granted by the Secretary of State in Great Britain. This is because the Department is not responsible for overseeing the regulation of such insolvency practitioners.

New Article 350P sets out that the Department should only apply to the Court for a direct sanctions order if it appears to the Department that it would be in the public interest for the order to be made. As part of its consideration of the application, the Court will have regard to what, if any, disciplinary action the relevant recognised professional body may have taken against the insolvency practitioner.

New Article 350Q sets out the conditions that must be satisfied before the Court will impose a direct sanctions order. Of these conditions the first must be satisfied (that is that the person acting as an insolvency practitioner has not complied with the rules of their profession) and at least one other. The other conditions include: that the person is not a fit and proper person to act as an insolvency practitioner; the person is not a fit and proper person to act as a fully authorised insolvency practitioner (but could be to partially act); that creditors have suffered a loss as a result of the insolvency practitioner's failure to comply with the rules of their profession.

New Article 350R allows the Department to give a direction to the relevant recognised professional body in relation to a person acting as an insolvency practitioner who is authorised by them, to impose any sanction available under a direct sanctions order, provided the insolvency practitioner has consented to this. This would occur instead of the Department applying to the Court for a direct sanctions order. The conditions set out in 350Q also apply to a direct sanctions direction.

Clause 19: Power for Department to obtain information

This clause inserts new Article 350S into the Insolvency Order which gives the Department the power to require information from specified people to enable the Department to carry out functions under Part 12 of the Insolvency Order.

The people that the Department can, in writing, require information from are:

i. a recognised professional body;

ii. any individual who is or has been authorised to act as an insolvency practitioner; and

iii. any person who is connected to such an individual.

A person 'connected' to the insolvency practitioner in question includes an employee of that individual, a person who acted on that insolvency practitioner's behalf in any other way and the employer of the insolvency practitioner.

Clause 20: Compliance orders

This clause inserts new Article 350T into the Insolvency Order . It will allow the Department to make an application to the Court if it appears that a recognised professional body has failed to comply with a requirement imposed under Part 12 of the Insolvency Order or that any person has failed to comply with a requirement under Article 350S.

This clause will apply to a recognised professional body which has failed to comply with, for example, a direction imposed under new Article 350D or to a person who has failed to provide the Department with the information required under new Article 350S.

Power to establish single regulator of insolvency practitioners

Clause 21: Power to establish single regulator of insolvency practitioners

This clause allows the Department, by regulations made by the affirmative resolution procedure, to designate a body for the purposes of authorising and regulating insolvency practitioners. The body may be a new body set up by regulation, or it may be an existing body. The power to move to a single regulator will only be used if the changes proposed by clauses 145 to 20 do not succeed in improving confidence in the regulatory regime for insolvency practitioners.

The clause sets out the functions that the regulations may confer on the designated body and include:

i. setting out the criteria for assessing whether a person is fit and proper to act as an insolvency practitioner, including the requirements as to education, practical experience and training they must meet;

ii. setting out technical standards for insolvency practitioners and enforcing compliance with those standards; and

iii. investigating complaints about insolvency practitioners.

The clause allows the regulations to require that the designated body, in discharging regulatory functions, acts in a way which is compatible with the regulatory objectives (as introduced by clause 15 of this Bill).

It introduces Schedule 1 which makes supplementary provisions in relation to the designation of a body by regulations. For example, how many members the body should have; appointing the chair of the body; and the setting of fees.

Clause 22: Regulations under section 21: designation of existing body

This clause sets out that the Department may only make regulations designating an existing body as the single regulator if the body is able and willing and it has arrangements in place for its functions to be exercised effectively. It sets out in what circumstances an existing body may become the single regulator and what the Department must do to make this designation.

Clause 23: Power to make regulations

Clause 23 amends Article 363 of the Insolvency Order to give the Department power to make regulations to give effect to Part 12 of that Order.

Clause 24: Company arrangement or administration provision to apply to a credit union

Clause 24 amends Article 10(2) of the Insolvency (Northern Ireland) Order 2005 (S.I. 2005 No. 1455 (NI10)) to make it possible for the Department to make orders enabling societies registered under the Credit Unions (Northern Ireland) Order 1985 as well as societies registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 to enter a company arrangement or administration.

Clause 25: Disqualification from office: duty to consult the Lord Chief Justice

Clause 17 amends paragraph (7) of Article 24 of the Insolvency (Northern Ireland) Order 2005 to create a requirement for the Lord Chief Justice to be consulted about the making of orders creating a right of appeal to a court in respect of discretionary decisions to disqualify bankrupts from offices or positions.

Clause 26: Interpretation

This clause defines a number of terms used in the Act.

Clause 27: Transitional provisions, minor and consequential amendments and repeals

Subsection (1) of clause 27 introduces Schedule 2 which makes transitional provisions in respect of clauses 3, 4, 5, 7, 8 and 9 and with regard to the repeal of the provisions in the Insolvency Order for the authorisation of insolvency practitioners by competent authorities.

Subsection (2) of clause 27 gives effect to the amendments set out in Schedule32 and subsection (3) gives effect to the repeals set out in Schedule 4.

Clause 28: Commencement

Subsection (1) provides for sections 26,28 and 29 to come into operation on the next day after the Act receives Royal Assent.

Subsection (2) provides for commencement of the other provisions of the Act by order made by the Department.

Subsection (3) provides that an order under subsection (2) can contain such transitional or saving provisions as the Department considers appropriate.

Clause 29: Short title

This Act may be cited as the Insolvency (Amendment) Act (Northern Ireland) 2015.

Schedule 1: Single regulator of insolvency practitioners: supplementary provision

This Schedule sets out the matters to be dealt with in regulations which designate a body for the purposes of authorising and regulating insolvency practitioners (which may be an existing body or a new body established by the regulations).

Schedule 2: Transitional Provisions

This Schedule lists the transitional and saving provisions necessary to the Act. Paragraphs 11 to 16 make transitional and saving provisions for two categories of individual, those who are authorised by the Department to act as an insolvency practitioner at the date the repeals made by subsection (5) of clause 14 take effect and those who have applied to the Department for authorisation by that date but whose application has not been dealt with. Those who are already authorised will continue to be authorised during the transitional period. Those who apply to the Department for authorisation before the repeals made by subsection (5) of clause 14 take effect will have their applications determined in accordance with the existing provisions.

Schedule 3: Minor and Consequential Amendments

This Schedule makes amendments to the Solicitors (Northern Ireland) Order 1976, the Insolvency (Northern Ireland) Order 1989, the Pensions (Northern Ireland) Order 2005 and the Insolvency (Northern Ireland) Order 2005.

Articles 103(1), 186(1)(a), 242(1)(a) and 242(2)(a) of the Insolvency Order are amended to achieve greater standardisation of the wording used in these provisions which deal with the service of statutory demands on companies and individuals.

An amendment to Article 185 of the Insolvency Order in conjunction with the repeal of words in paragraph (2) of that Article by Schedule 4 results in an unregistered company's principal place of business in Northern Ireland being deemed to be its registered office for the purposes of winding up.

Paragraphs 14 and 15 repeal Articles 348(1A) and 348A of the Insolvency Order. These provisions allow individuals to be authorised to act solely as nominees or supervisors in voluntary arrangements. No body has ever been recognised for the purpose of authorising such persons and therefore these provisions have never been used. The introduction of a regime for the partial authorisation of insolvency practitioners contained in clause 14 is an evolution of the idea embodied in Articles 348(1A) and 348A and therefore these provisions are no longer required. Schedule 3 also includes repeals to various provisions in the Insolvency Order consequent on the repeal of these two provisions.

Paragraph 16 repeals Article 361A(2) which provided for the charging of a fee by the Department for authorisation to act as an insolvency practitioner.

Paragraph 17 repeals references in Schedule A1 to the Insolvency Order to being authorised to act as nominee or as supervisor, such authorisation having been done away with through the repeals made by paragraphs 14 and 15.

Paragraph 18 puts right an error in paragraph 1A of Schedule B1 to the Insolvency Order by providing that the bar on companies with a principal place of business in GB entering administration unless that they also have a principal place of business in Northern Ireland applies to companies which are incorporated outside the United Kingdom, not companies incorporated outside Northern Ireland.

Paragraph 19 repairs the omission of words which should have been included at the beginning of paragraph (3) of Schedule 1 to the Insolvency Order.

Schedule 4: Repeals

This Schedule lists the repeals brought in by the Act.

FINANCIAL EFFECTS OF THE BILL

47. There is no financial cost to government. It has been calculated that the Bill proposals could result in net savings of £2,275,000 for insolvency practitioners over the period it takes to deal with all insolvency procedures entered into in one year. Some at least of this saving could be expected to be passed on to creditors in the form of increased dividends. It has been calculated that over the same period there would be savings of £19,000 for the Official Receiver, £2,800 for business and £23,740 for HMRC and the Northern Ireland Courts and Tribunals Service.

HUMAN RIGHTS ISSUES

48. The provisions of the Bill are considered to be compatible with the Convention on Human Rights.

49. The effect of subsection (5) of clause 14 is that insolvency practitioners authorised by the Department will not be able to continue to act as insolvency practitioners after a transitional period of one year after the repeals in subsection (5) of clause 14 take effect, unless they have secured alternative authorisation from one of the professional bodies recognised for that purpose by the Department. Article 1 of Protocol 1 of the ECHR (protection of property) is engaged because the loss of a person’s authorisation as an insolvency practitioner will lead to loss of a possession, which is the economic value of marketable goodwill in that person’s business.

50. However, in the Government’s view the interference with Article 1 of Protocol 1 is in the public interest. It will improve the overall regulation of insolvency practitioners and public confidence in the arrangements for their authorisation in that it will remove the preconceived conflict of interest between the Department’s role as the oversight regulator of the insolvency practitioner profession and its role as a direct authoriser of insolvency practitioners. The government also considers that the interference is proportionate and strikes a fair balance. In particular, insolvency practitioners who are authorised by the Department will not have their

authorisation removed immediately once the repeals take effect. Their authorisation will continue for one year after the commencement of the repeals and they may use that period to seek alternative authorisation from one of the recognised professional bodies. The five professional bodies which they would be eligible to apply to have all indicated that they would be happy to authorise the insolvency practitioners authorised by the Department. The authorisation requirements of the recognised professional bodies are broadly the same as each other and the same as those of the Department.

51. For these reasons the government considers that the proposed amendments are compatible with the ECHR.

EQUALITY IMPACT ASSESSMENT

52. As a result of equality impact screening which has been carried out it is not considered that the Bill will have any adverse or negative impact on any of the sections of the community specified in section 75 of the Northern Ireland Act 1998.

SUMMARY OF THE IMPACT ASSESSMENT

53. A Regulatory Impact Assessment has shown that the Bill objectives can only be achieved by legislative change and has shown the existence of cost savings or other tangible benefits sufficient to justify legislative change. The Regulatory Impact Assessment can be viewed at

www.detini.gov.uk/insolvency

LEGISLATION COMPETENCE

The Minister of Enterprise, Trade and Investment has made the following statement under section 9 of the Northern Ireland Act 1998:

"In my view the Insolvency (Amendment) Bill would be within the legislative competence of the Northern Ireland Assembly."