

Insolvency Service



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Dear IP 22

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Dear Insolvency Practitioner,

Introduction

This issue of Dear IP is intended to provide guidance on specific aspects of some of the secondary legislation made in conjunction with the Insolvency (Northern Ireland) Order 2005, especially the Amendment Rules, on developments in relevant case law and on liaison with the Inland Revenue. It also includes guidance on what level of payment should be claimed under an income payments order/agreement, and there is a section on the potential impact of early discharge where a bankrupt was subject to an income payments order on the date the 2005 Order came into operation and how to counteract that impact. The guidance provided is not a substitute for the actual legislation but should be read in conjunction with it. The guidance is not exhaustive and should not be regarded as a definitive interpretation. Neither is it to be treated as a full and substantive statement of the law. Practitioners should refer to the legislation itself for a full statement of the requirements, and in the case of any doubt should take independent advice, including legal advice.

The Rules may be changed from time to time, so users should take care to keep themselves informed.

1. Amendments to Rules, Regulations and Fees Orders 2006

The Insolvency (Amendment) Rules (Northern Ireland) 2006 (S.R. 2006 No. 47)

The Insolvency (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006 No. 23)

The Insolvency (Fees) Order (Northern Ireland) 2006 (S.R. 2006 No. 54)

The Insolvency Practitioners and Insolvency Account (Fees) Order 2005 (Northern Ireland) 2006 (S.R. 2006 No. 53)

The Insolvency (Deposits) Order (Northern Ireland) 2006 (S.R. 2006 No 55)

The Insolvency Practitioners Regulations (Northern Ireland) 2006 (S.R. 2006 No. 33)

The above statutory rules as referred to in this letter came into operation on 27 March 2005. Details of issues that may be of interest to insolvency practitioners are outlined below. However, full details of the changes are contained in the legislation which may be accessed on the Insolvency Service website, at www.insolvencyservice.detini.gov.uk Alternatively, the legislation will shortly be available through HMSO at <http://www.opsi.gov.uk/legislation/northernireland/ni.legislation.htm>

2. The Insolvency (Amendment) Rules (Northern Ireland) 2006 (S.R. 2006 No. 47)

- 2.1 These Rules came into operation on 27 March 2006 (the commencement date) and make a number of changes to the Insolvency Rules (Northern Ireland) 1991.
- 2.2 The changes only apply where a company has entered administration or gone into liquidation, or where a bankruptcy order has been made, **after** the commencement date, unless otherwise indicated.

3. Proof of Debt forms in bankruptcy and company liquidation and Changes to the Procedures to be Adopted by the Official Receiver (OR) for Proving Debts

- 3.1.1 From 27 March 2006 it will no longer be necessary for a proof of debt form to be sent to all creditors in every bankruptcy case. Rule 6.095 has been amended to provide that a creditor must be sent a proof of debt form upon request but other than that the trustee will be able to send out proof of debt forms at his/her discretion.
- 3.1.2 The Official Receiver will issue proof of debt forms to creditors where a creditors' meeting is convened for the appointment of a trustee, and insolvency practitioners should, following appointment as trustee, continue to receive the proofs from the official receiver after handover of the estate. However, there may be cases where a trustee is appointed and where the official receiver has not issued proof of debt forms. Otherwise, the Official Receiver will only be required to send proof of debt forms to creditors on request and will no longer be obliged to lodge proofs of debt in court on completion of the bankruptcy or winding up. These new provisions became effective on 27 March 2006, and apply to all cases as from that date, irrespective of whether the bankruptcy or winding-up order was made before or after 27 March 2006.
- 3.1.3 The information that is required to be detailed in the proof of debt forms themselves is set out in Rule 4.081(1) and Rules 6.096(1) of the Insolvency Rules (Northern Ireland) 1991, both of which have been amended by the Insolvency (Amendment) Rules (Northern Ireland) 2006.
- 3.1.4 The proof of debt form (form 6.40) has been simplified and is now a one-page document.
- 3.1.5 Rule 6.143(2) has been deleted. It will no longer be necessary for a trustee to file proof of debt forms at court when he/she has completed the administration of the bankrupt's estate.

- 3.1.6 Equivalent changes have been made for compulsory liquidation (rule 4.080, form 4.26 and rule 4.145(2)). No changes have been made to the current procedure for voluntary liquidations.
- 3.1.7 As the procedural changes to be adopted by the OR may be of interest to IPs, both in respect of advising creditor clients and to explain when proofs of debt are likely to be available in cases where they are appointed office holder in bankruptcies and compulsory liquidations, they are set out below.
- 3.1.8 From 27 March 2006, in the absence of a specific request, proof of debt forms will only be sent out by the OR in the following circumstances:
- in cases in which a decision has been made to hold a meeting of creditors;
 - in cases in which a dividend is to be paid (and assuming that proofs have not previously been sent out, eg for a meeting); normally the forms will be sent out when a distribution is to be made accompanied by a notice of intended dividend;
 - in connection with an application for annulment in cases in which forms have not already been sent out; in such cases the proof will be accompanied by a standard letter;
 - when the OR considers that the submission of formal proofs of debt would aid his or her investigation.
- 3.1.9 Creditors who are not sent a proof of debt form by the OR, but who wish to complete one, can access the form on The Service's Internet site (www.insolvencyservice.detini.gov.uk) or request one from the OR.

3.2 Notice to Official Receiver of Intention to Vacate Office: Returning Proofs of Debt.

- 3.2.1 Under rules 4.144 and 6.142 of the Insolvency Rules (NI) 1991 a liquidator/trustee must give at least 21 days notice of his intention to vacate office to the official receiver together with notice of any creditors' meeting. The notice must contain details of any property which has not been realised, applied, distributed or otherwise fully dealt with in the liquidation/bankruptcy.
- 3.2.2 With effect from 27 March 2006 the requirement that a liquidator/trustee file proofs of debt in court on the conclusion of his/her administration under rules 4.145(2) and 6.143(2) of the Insolvency Rules (NI) 1991 were repealed. (Insolvency (Amendment) Rules (Northern Ireland) 2006 (SR 2006 No. 47)).
- 3.2.3 The Official Receivers is therefore now in the position of being required to deal with assets without the ability to recover the proofs of debt from the Court file.

3.2.4 Where a practitioner vacates office having notified the official receiver of property which has not been realised, applied, distributed or otherwise fully dealt he/she is requested to forward any proof of debt held to the official receiver.

3.3 Mutual credit and set-off

3.3.1 There is no change to the provisions relating to mutual credit and set-off in bankruptcy. However, the following Rules that relate to administration and liquidation have been revised and new Rules substituted: -

- Rules 2.086 and 4.096

3.3.2 The substituted Rules are designed to provide greater detail and clarity of meaning for the user to reflect the applicable case law and bring the rule on set-off for liquidation into line with the rule in administration. The main points to note are: -

- “Mutual dealings” that are not to be included in the set-off account are defined; these include any debt acquired by a creditor by way of an agreement entered into after one of the dates set out in Rules 2.086(2)(e) and 4.096(2)(d). If a creditor acquires, or re-acquires, a debt after one of those dates, as a result of an agreement entered into at an earlier date, then such a debt would be considered a “mutual dealing” for the purposes of the set-off account
- Set-off in liquidation proceedings and administration proceedings are harmonised so that all amounts due to and from a company are “mutual dealings” to be included in, or excluded from, the set-off account, as applicable.
- The provision of a meaning for the term “sums due” drawing on the definition of “debt or liability” in Article 2(4) of the 1989 Order;
- For the purposes of calculating the set-off account, the Rules which relate to the quantification of debts (Rules 2.082, 2.087 to 2.089, 2.106, 4.092, 4.097 to 4.099 and 11.13) are extended to cover debts owed to a company, as well as debts owed by a company. Accordingly, debts owed to the company that are contingent or payable at a future time are to be included in the set-off account and liquidators and administrators will be able to place a value on such debts.
- Rules 2.079 and 4.089 provide the means of appeal if a mutual third party disagrees with an administrator’s or liquidator’s valuation of a debt that a third party owes to a company;
- Where, after the calculation of the set-off account an amount is owed to the company arising from a contingent debt or a debt payable at a future time, such an amount only has to be paid to the liquidator or administrator if and when it becomes due and payable.

3.4 Debts payable at a future time

3.4.1 An amendment to Rules 2.106 and 11.13 (and, consequentially, to Rule 2.089(7)) to the formula for use in calculating the discounted value of a debt which is not due for payment at the date of payment. This change responds to criticism made by the House of Lords in Re Park Air Services Limited [2000] 2 AC 172.

3.5 Relevant insolvency date

3.5.1 As a result of the changes made to the law on administration by the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)) a company can move between liquidation and administration or between administration and liquidation. Both of these procedures enable creditors to prove their debts at the date of the administration or liquidation respectively. By way of clarification of the existing rules, the amendments provide that the relevant date is the date that the first insolvency procedure commenced.

4. Remuneration of non OR liquidator and trustee – these provisions apply in any case where, on or after 27 March 2006, a winding-up order has been made or a resolution for the winding-up of a company has been passed or, a bankruptcy order has been made.

4.1 Provisions relating to the calculation of the remuneration of a non official receiver liquidator or trustee, post 27 March 2006 are set out in the Rules. There was no intention to change the substance of the provisions in force pre 27 March 2006 (which were set out in Regulations 34, 35 and 37 of the Insolvency Regulations (Northern Ireland) 1996) – the amendments introduced in the Rules are simply intended to restate the substance of the legislation that had previously been set out in the Regulations.

5. Company registration number

5.1 In order to assist the identification of a company entering into liquidation Forms 4.06, 4.11, 4.12, 4.13, and 4.14 have been amended to require the inclusion of a company's registered number in liquidation proceedings.

6. Postal redirection in bankruptcy

6.1 Article 342 of the 1989 Order permits the court to make an order, on the application of the official receiver or the trustee of the bankrupt's estate, for the redirection by a postal operator of a bankrupt's post for a period not exceeding three months. Postal redirection orders are typically sought only in cases of non-co-operation or where the applicant believes that a bankrupt has not made a full disclosure of his affairs (for example, in an attempt to conceal assets).

- 6.2 A new Rule, 6.227A, provides for procedure on the application for such an order and Form 6.83 is revised. The Rule provides for 'without notice' application, embodies the current operational practice of the Insolvency Service regarding provision of a report setting out the reasons why the order is sought, and gives the court wide power to make the order on such conditions as it thinks fit.

7. Individual Insolvency Registers

- 7.1 The rules governing the Individual Insolvency Register are now placed in new Part 6A, including those relating to Individual Voluntary Arrangements (IVAs) (omission of rule 5.27).
- 7.2 Details will be maintained of Individual Voluntary Arrangements, Bankruptcy Restrictions Orders, Interim Bankruptcy Restrictions Orders and Bankruptcy Restrictions Undertakings.
- 7.3 The registers will be maintained by the Department and made available to the public for inspection within office opening hours. The Department has an obligation to enter and remove such information as soon as reasonably practicable (new rule 6A.1)
- 7.4 Rectification of inaccuracies on any register to be made as soon as reasonably possible and the date of death of a bankrupt is to be recorded on the register on receipt of notice to that effect (new rule 6A.6).
- 7.5 Information relating to all existing and new IVAs and fast-track IVAs is to be entered on receipt of the appropriate notice.
- 7.6 Those details are to be deleted immediately on notice of the completion, termination or revocation of the IVA (new rules 6A.2 to 6A.3).
- 7.7 Information relating to Bankruptcy Restrictions Orders, Interim Bankruptcy Restrictions Orders and Bankruptcy Restrictions Undertakings to be entered when made or accepted. Such details to be deleted immediately on expiry or ceasing to have effect (new rules 6A.4 to 6A.5).

8. IVA details

- 8.1 Individual Voluntary Arrangements will in future include details of the debtor's gender, date of birth and any name by which the debtor was known, not being the name in which they entered the IVA.
- 8.2 Registrations received by the Insolvency Service after 27 March 2006 that do not include this information will be returned to the Supervisor.
- 8.3 The Insolvency Service is issuing a new form, which will standardise Individual Voluntary Arrangement (IVA) registration and incorporate new legislative changes. Insolvency practitioners should note that it is not necessary to enclose a copy of the proposal when registering the IVA. To expedite registration and avoid the need for further referral, insolvency practitioners are

requested to complete all available boxes including gender, and aliases, if any, together with their insolvency practitioner number. The new form is available as an attachment to this article and should be used with immediate effect.

IVA REGISTRATION

Title

Gender

Debtors Name and address

Debtors Date of Birth

Date of approval by creditors

Aliases (if none please state "none known")

Name of Supervisor

IP Number

Address of Supervisor

DATE:

Please note that ALL fields should be completed as incomplete forms will require follow up.

9. Family proceedings

- 9.1 Rule 12.03(2)(a) is amended to provide that lump sum and costs arising as a result of an order made in family proceedings are now provable in bankruptcy proceedings whilst periodical payments continue to be non-provable.

Insolvency (Northern Ireland) Order 2005 and Finance Acts; Tax Changes

10. PAYE and NI in administration

10.1.1 PAYE and NI is one area where Finance Act changes have not been made. The GB case of *CIR v Lawrence (Re Falmer's Jeans Ltd)* held that an administrator who retains employees to keep the business trading has a responsibility, when paying the employees' emoluments, to deduct and pay over the appropriate tax and NI from those emoluments. Although this case did not address specifically the employer's Class 1 Secondary NI.

10.1.2 The Inland Revenue consider that there is no reason why this existing case law should not remain good for new administrations.

10.2 Corporation Tax in administration

10.2.1 It has generally been the practice for administrators not to file CT returns for the post administration period. Any CT accruing during this period has also not tended to be paid.

10.2.2 With the introduction of the 2005 Insolvency Order the Insolvency Service has addressed this and provided for the payment of expenses for the purpose of administration at Rule 2.068 of The Insolvency (Amendment) Rules (Northern Ireland) 2005. The rule broadly mirrors Rule 4.228 of The Insolvency Rules (Northern Ireland) 1991 which deals with the priority of expenses in liquidations.

10.2.3 Case law relating to the GB equivalent to Rule 4.228, principally *CIR v Kahn (Re Toshoku Finance Ltd)* has held that CT on income and gains is included in the expenses to be paid under the Rule. Given that the same wording is used for new Rule 2.068 it is considered this new Rule means administrators must pay any CT on income or gains arising during the administration as an expense of the administration.

10.3 Accounting periods

10.3.1 The Finance Act 2003 changed the accounting period rules that previously applied to administrations; commencement of an administration now automatically starts a new accounting period.

10.3.2 This new accounting period is different to liquidation where the accounting period always runs for 12 months. In administrations although a new accounting period starts on commencement of administration, the accounting period runs only until the company's next accounting date, not for a full 12 months. So there will be one short period pre-appointment and one short period post-appointment followed by a restoration of the company's normal 12 month accounting period on its historical accounting date.

10.4 Proper officer

10.4.1 A further change has been made to the provisions at S108 Taxes Management Act 1970 regarding a company's 'proper officer'.

10.4.2 S108 has now been amended in relation to administrators to ensure that where a company is in administration its administrator will be its proper officer. Although the Department may continue to deal with people who have the 'express, implied or apparent authority of the company to act on its behalf' This includes directors who may be retained by the administrator to run the business. If the administrator wishes to deal with the Department exclusively, i.e. the directors do not have authority to deal with the Department, the administrator can inform the Inland Revenue of this.

10.5 New Administrations – Information to the Inland Revenue

10.5.1 Notification of the administration order (Rule 2.028 - form 2.12B) be sent to HM Revenue and Customs at the Enforcement & Insolvency Service (EIS), 4th Floor, Olivetree House, 23 Fountain Street, Belfast BT1 5EP.

All subsequent reports, including details of the administrator's proposals and details of any creditors' meeting should also be sent to EIS, unless a specific request relating to that individual case is made.

11. Notice

Changes

11.1.1 Rule 4.029(3) is amended to provide that a copy of the provisional liquidation order must be sent to the registrar of companies by the provisional liquidator

(whether the official receiver or otherwise). A new statutory form (Form 4.16A) is introduced for this purpose.

11.1.2 The duty to send a copy of the notice (of a final meeting) to the official receiver in Rule 4.132(4) is replaced by a duty to send a copy of the notice to the Department. The address where notices should be sent is: Insolvency Service, Fermanagh House, Ormeau Avenue, Belfast BT2 8NJ. Rule 6.134(4) is similarly amended for bankruptcy.

11.1.3 Although the requirement to submit receipts and payments accounts to the registrar of companies remains post 27 March 2006, there is no longer any need for the Insolvency Service to receive a copy. The duplicate copy sent to the registrar of companies is thus redundant and a waste of resource. Sub-rule 4.233-CVL(5) is therefore redundant and deleted. Consequential amendments are made to Form 4.69.

12. Restrictions on individuals becoming members of a creditors' committee (or liquidation committee)

12.1.1 Rule 6.153 has been changed to provide that a member of a creditors' committee in bankruptcy proceedings cannot be represented by a person who is subject to a bankruptcy restrictions order, bankruptcy restrictions undertaking, or an interim bankruptcy restrictions order, or who is a disqualified director. However, a member can be represented by a person who has entered into a composition or arrangement with his own creditors.

12.1.2 Rule 6.155 has been changed to remove the automatic termination of a person's membership of a creditors' committee following the member's entry into a composition or arrangement with his own creditors.

12.1.3 Equivalent changes have been made for liquidation (rules 4.167 and 4.169), administration (rules 2.056 and 2.060) and administrative receivership (rules 3.21 and 3.23).

13. Miscellaneous

- A new sub-rule is added to Rule 4.012 (mirroring the wording in Rule 2.004(4)) to provide that the affidavit in support of a winding-up petition must include a statement as to the (non) applicability of the EC Regulation. This will then reflect the requirement of the winding up petition (Form 4.02). In order to harmonise with the administration procedure, the prescribed form of affidavit (Form 4.03) is deleted.
- Rule 6.038 is amended to provide that a debtor is only required to file one copy of the SA with his petition; and that the court is to send that copy to the official receiver if a bankruptcy order is made. The SA itself (Form 6.31) is amended to require additional information from a debtor.

- Rule 12.12 is also amended by the inclusion of a reference to Rule 12.13 to enforce the point that insolvency proceedings have their own free-standing rules regarding dealing with service outside the jurisdiction.

14. The Insolvency (Amendment) Regulations (Northern Ireland) 2006 (SR 2006 No. 23)

- 14.1.1 A new regulation (regulation 3A) is inserted into the 1996 Regulations to make provision for when the Department can require information from an administrator and the circumstances in which an administrator can dispose of a company's records.
- 14.1.2 New Part 5A inserted into the 1996 Regulations provides that an insolvency practitioner 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 on which a statement should be made and the information to be included in that statement.
- 14.1.3 The circumstances in which an official receiver can draw remuneration on a time cost basis are now given in Regulation 34; these are linked with those functions not included within the definition of the official receiver's "general duties" in the Insolvency Proceedings (Fees) Order (Northern Ireland) 2006 – see paragraph 3 of this article.

15. The Insolvency (Fees) Order (Northern Ireland) 2006 (SR 2006 No. 54)

- 15.1.1 Functions not included as part of the official receiver's "general duties" in respect of which the administration fee (Fee B1 or W1) is payable are given in paragraph 1(2) of Schedule 2. The official receiver's "general duties" do not include anything done by him in connection with or for the purposes of-
- The appointment of agents re realising assets.
 - The making of a distribution to creditors (including preferential or secured creditors)
 - The realisation of assets on behalf of holders of fixed or floating charges
 - The supervision of a special manager
- 15.1.2 Where the official receiver acts in relation to any of the above he is entitled to remuneration on a time cost basis – in accordance with new Regulation 34 of the 1996 Regulations as inserted by the Insolvency (Amendment) Regulations (Northern Ireland) 2006.

16. The Insolvency (Deposits) Order (Northern Ireland) 2006 (S.R. 2006 No. 55)

- 16.1.1 Provision is included in Article 4(1)(c) to require a deposit to be paid on presentation of a bankruptcy petition by a temporary administrator or a liquidator within the meaning of Council Regulation (EC) No. 1346/2000.

17. The Insolvency Practitioners and Insolvency Account (Fees) Order (Northern Ireland) 2006 (S.R. 2006 No. 53)

17.1.1 Provision for the circumstances where an account relating to monies held in the Insolvency Account will no longer be regarded as being “maintained” is included in the Schedule. Where an account ceases to be maintained this terminates liability for the payment of fees under the Order.

18. The Insolvency Account – Administering the Banking Fee and the Priority of Payment

18.1.1 The purpose of this notice is to inform insolvency practitioners why the banking fees are charged, how the Central Accounting Unit administers them, and the priority of payment of them.

18.1.2 The banking fee is set to recover the cost of banking services provided to users of the Insolvency Account (IA). It is charged quarterly to spread the cost more evenly over a year; more frequent charging would add to the number of financial transactions without adding any real value to the process.

18.1.3 Office holders need to be mindful that a banking fee will be charged if a case is open on the quarterly charge date. If the formalities of case closure (see next paragraph) are not likely to be completed before the next fee charge date, the office holder should take this into account when calculating closing costs and expenses.

18.1.4 To close a bankruptcy or compulsory liquidation a final receipts and payments account and release document (form 6.53 or 4.43) are required and should be sent to CAU at the address below. The absence of any of these documents will delay closure. In all cases where account closure is planned close to the quarterly charge date for banking fees, insolvency practitioners should allow five working days for CAU to complete the closure of the account. Where the closure request is received with less than five working days notice before a quarterly charge date for the banking fee, the fee will be charged to the estate if the closure process has not been completed before the charge date.

18.1.5 Insolvency Practitioners are advised that the quarterly banking fee of £15.00 will be taken for so long as an account is open and a final receipts and payments account and release document (form 6.53 or 4.43) have not been received. **This means that if an insolvency practitioner keeps a case open while an individual voluntary arrangement is underway, the quarterly banking fee will still be taken.**

An exception is that if an annulment or rescission order has been made by the court, no banking fees will be due after the date on which the order was made. If any are taken pending closure of the account, they will be refunded.

18.1.6 S.R 2006 No. 53 was made under powers provided by Article 361A of the Insolvency (Northern Ireland) Order 1989. As such, and in accordance with rules 4.228(1)(c) and 6.222(1)(c), the fee is payable in priority to the remuneration of the office holder in liquidations and bankruptcies. In circumstances where an office holder has drawn remuneration leaving statutory fees unpaid, the office holder will be required to pay the fee and reduce his remuneration. Failure to pay statutory fees when funds are available is viewed as a serious conduct issue by the Insolvency Service, details of which will be passed on to the insolvency practitioner's authorising body.

19. The Insolvency Practitioners Regulations (Northern Ireland) 2006 (S.R. 2006 No. 33)

19.1.1 The following notes are intended to illuminate certain provisions of the Regulations and a provision about time records to be provided by insolvency practitioners in the Insolvency (Amendment) Regulations (Northern Ireland) 2006. Provisions in the legislation that appear self-explanatory are not further addressed in these notes.

Regulation 3 – In relation to some offices, an office-holder who changes office but continues to act on an on-going basis in respect of the same insolvent may rely upon the security he has obtained in relation to the first office (i.e. “the initial capacity”) for the second office (i.e. “the subsequent capacity”). He need not obtain new security for the second office save where there has been an increase in the value of the assets. The offices to which this applies are set out in regulation 3(3).

Regulation 4(1) – Revokes the Insolvency Practitioners Regulations (Northern Ireland) 1991 and subsequent amendments.

Regulation 4(2) – Parts I and II of the Insolvency Practitioners Regulations (Northern Ireland) 1991 will continue to apply to an application for authorisation from the Department, made before commencement.

Regulation 4(3) – Parts I, III, and IV of the Insolvency Practitioners Regulations (Northern Ireland) 1991 will continue to apply where an insolvency practitioner was appointed before commencement or where an insolvency practitioner, now acting in a “subsequent capacity”, was appointed in an “initial capacity” before commencement. Only regulations 16 and 17 of the Insolvency Practitioners Regulations (Northern Ireland) 2006 will apply in these cases.

Regulation 6(e) – The scope of matters that shall be taken into account when determining if an individual is a “fit and proper person” to act as an insolvency practitioner is extended to include whether or not that individual acts in accordance with generally accepted professional standards, practices and principles. Such professional standards, practices, and principles, may include, but are not limited to, Statements of Insolvency Practice and ethical guidelines.

Regulation 7 and Regulation 8 – These regulations are concerned with applications for authorisation by Department and reflect two policy changes.

The first policy change relates to those who are able to apply to the Department for an authorisation. The Insolvency Practitioners Regulations (Northern Ireland) 1991 did not allow insolvency practitioners who had been authorised to act by Recognised Professional Bodies but who did not hold a pass in the Joint Insolvency Exam to apply for ‘re-authorisation’ by the Department; a position ‘at odds’ with insolvency practitioners who held an authorisation from the Department but who also did not hold a pass in the Joint Insolvency Exam. It was decided that given the equality of standards and requirements between the Recognised Professional Bodies and the Department this inconsistency was not sustainable. Consequently policy has been changed so as not to prevent applications for ‘re-authorisation’ by the Department from insolvency practitioners without a pass in the Joint Insolvency Exam who had been authorised to act by Recognised Professional Bodies.

The second policy change relates to applications from those who have either previously been authorised to act by a Recognised Professional Body or held an authorisation from the Department but who are not authorised to act or holders of an authorisation at the time of application. ‘Re-authorisations’ under the Insolvency Practitioners Regulations (Northern Ireland) 1991 required insolvency practitioners granted an authorisation by the Department but not holding a pass in the Joint Insolvency Exam, to be the “holder of an authorisation” at the date of application for a ‘re-authorisation’ i.e. that there had been ‘no lapse or break between authorisations’. Having given further thought to this, we appreciate that there may be reasonable grounds – health grounds, career break, or simple human error – why such a ‘break in authorisation’ might occur. It was decided that to require the applicant to be the “holder of an authorisation” at the time of application was no longer necessary given that in respect of ‘re-authorisations’ by the Department under the 2006 regulations we have retained the practical experience requirements contained in the 1991 regulations, we have introduced requirements for at least 108 hours of Continuing Professional Development to be obtained in the three years immediately preceding the date of the application, and we have extended the matters which are to be included when assessing an applicants status as “a fit and proper person”. Failure either to meet the prescribed requirements or to be deemed “a fit and proper person” will result in an application for an authorisation being rejected; we do not anticipate a significant number of ‘speculative’ applications as each application is to be accompanied by the application fee of, currently, £1025. We similarly recognise that ‘breaks in authorisation’ such as those we have considered might occur where the insolvency practitioner holds a pass in the Joint Insolvency Exam and consequently the regulations are drafted to accommodate applicants in this position too.

The effect of this policy change is to allow insolvency practitioners who were authorised to act or held an authorisation but who are not so ‘authorised’ at

the date of application and who may or may not hold a pass in the Joint Insolvency Exam to apply to the Department for 're-authorisation'.

Regulation 7 – This regulation applies to applicants who have neither held an authorisation from the Department nor been authorised to act by a Recognised Professional Body. All applicants must hold a pass in the Joint Insolvency Exam or equivalent, and have a good command of the English language.

Regulation 8 – This regulation applies to applicants who have either previously held an authorisation from the Department or have been authorised to act by a Recognised Professional Body but are not so authorised at the date of application; and, applicants who at the date of application hold an authorisation from the Department or are authorised to act by a Recognised Professional Body, including applicants who do not hold a pass in the Joint Insolvency Exam (or equivalent) but have previously been authorised by the Department or a Recognised Professional Body.

Regulation 8(2)(a) – When an applicant is seeking 're-authorisation' by the Department regulation 8(2)(a) provides two sets of practical experience criteria either of which can be relied upon by the applicant. Each set of criteria is mutually exclusive. Regulation 8(2)(a) also extends the categories of practical experience that can be relied upon by a holder of an authorisation to include regulatory work experience and advisory work experience. The definitions of such experience are included in regulation 5.

Regulation 8(2)(b) – Introduces a new prescribed requirement to the regulatory regime, which applies to an applicant seeking 're-authorisation' by the Department. All applicants must have completed at least 108 hours of Continuing Professional Development (CPD) in the three years immediately preceding the date of his or her application; 54 of those 108 hours must fall into specific categories as detailed in regulation 8(3)(b)(i) – (v). In each of the three years the applicant must undertake a minimum of 12 hours CPD the balance being achieved in the remaining year(s) in the period.

Regulation 8(3) – Directs an applicant as to the nature of CPD required and provides for all CPD activity to relate to insolvency law or practice or to the management of the practice of a insolvency practitioner. Matters 8(3)(b)(i) – (v) represent what is often termed 'structured learning', 8(3)(b)(vi), 'unstructured learning'.

Regulation 8(4) – The requirement to have completed CPD in order to comply with the requirements for authorisation will become effective on the third anniversary of commencement i.e. 27th March 2009. Consequently, an applicant applying for an authorisation from the Department between commencement and the third anniversary of commencement will not have to meet the requirement of the regulation but will have to do so when applying for authorisation thereafter. It's important to note that whilst regulation 8(2)(b) does not apply until the third anniversary of commencement, regulations 9 and 11(1)(c) will apply from 27th March 2006.

Regulation 9 – Introduces new prescribed requirements as to the content and maintenance of records of CPD. This regulation will apply from commencement.

Regulation 11 – Introduces a new prescribed requirement to the regulatory regime for a holder of an authorisation from the Department to submit an annual return providing information to the Department, which will assist in making ‘risk assessments’ in pursuance of the statutory monitoring function by, for example, monitoring the number of open cases and the number of hours worked being recorded ‘against’ each case. The return will be in respect of each period of 12 months ending on 31 December and will be submitted to the Department within one month of that date. The first return to be submitted will be for the 12 months to 31 December 2006. The regulation also provides for the Department to request, at any time, information relating to any matters therein and for that request to be complied with, within one month.

Regulation 12(1) Sets out the requirements for Security for the Proper Performance of the Functions of an Insolvency Practitioner and directs the reader to Schedule 2 to the new Regulations.

Regulation 12(2)- This regulation clarifies the requirements where more than one office-holder has been appointed.

Regulation 13(1) – Sets out a prescribed requirement for a minimum ‘body of records’ that an insolvency practitioner must maintain in respect of each case to which he is appointed office-holder. The minimum of information required is set out in Schedule 3 to the regulations.

Regulation 13(2) – The effect of regulation 13(2) is to establish the requirement that all records maintained pursuant to paragraph (1) of this regulation are maintained on a contemporaneous basis.

Regulation 13(4) – Provides for records to be preserved for a period of six years from either the date of release or discharge of the insolvency practitioner, or the expiry of any security maintained in respect of the case, whichever is later.

Regulation 16 – Where the holder of an authorisation from the Department is, or has been, office-holder, this regulation provides for the Department, upon the giving of reasonable notice, to inspect and take copies of those records relating to the case as set out in regulation 16(2) but which may not be held directly by the holder of the authorisation.

Regulation 17 – Provides for the Department to inspect and take copies of records relating to administration and administrative receivership proceedings. The extent to which the regulation will be utilised will be limited to the Department’s supervisory and monitoring functions.

Schedule 1 – Provides a summary of statutory rules to be revoked on commencement of the Insolvency Practitioners Regulations (Northern Ireland) 2006.

Sch 2 Part 2 para. 3(3)(a) – The terms of the bond may provide for a limit to be placed on the total amount of bond cover available to an insolvency practitioner for all cases to which he is appointed. That limit cannot be less than £25,000,000.

Sch 2 Part 2 paras. 4 and 5– The definition of “insolvent’s assets” is given at Schedule 2 Part 1 paragraph 1 to the Regulations. All of the assets – subject to paragraph 4(a) and (b) are to be bonded for from the outset, including cases where assets are received over the course of the administration (e.g. in Voluntary Arrangements and Trust Deeds) and irrespective of whether or not the assets are in his, the office-holder’s, possession; the legislation does not provide for ‘staged realisation’ of assets. Interest paid and antecedent recoveries comprise in the insolvent’s assets.

Sch.3 para. 13(c) – Provides for the amount of capital returned to be included in the ‘body of records’.

Sch.3 para. 15 – Establishes the requirement that time-records must be maintained as a feature of the minimum ‘body of records’ that an insolvency practitioner must maintain pursuant to regulation 13 in relation to each case to which he is appointed.

The Insolvency (Amendment) Regulations (Northern Ireland) 2006 introduce a new prescribed requirement (regulation 35) providing for any creditor, contributory, director or bankrupt to be provided within 28 days of the receipt of the request and free of charge, a statement of time and cost expended on a case, in the terms set down in the provision. The vires for the Department’s power to make regulations are provided by Rule 12.01 of the Insolvency Rules (Northern Ireland) 1991 and Article 359 of the Insolvency (Northern Ireland) Order 1989. Rule 12.01 does not include insolvency practitioners acting in the capacity of nominee and supervisor, and therefore regulation 35 does not extend to insolvency practitioners as officeholder in an IVA or CVA.

We anticipate that such a statement will be founded upon the information maintained pursuant to paragraph 15 of Schedule 3 to the Insolvency Practitioners Regulations (Northern Ireland) 2006.

Time/cost statements will be provided to creditors and others entitled to them on a request basis for no charge. There is no on-going obligation on an insolvency practitioner to provide time/cost statements throughout the period of the proceedings based on a single request; each request is separate and requires only the most recent time/cost statement in response. Time/cost statements produced in response to requests are produced at six-month intervals and must cover the period of the insolvency procedure from the date of the office-holder’s appointment. Any person requesting a time/cost statement within the first six-months of the date of appointment should be

advised that the relevant statement will be produced at six months and the statement should then be provided at that date. Any person requesting a time/cost statement within the second six months of appointment should be provided with the statement produced at the end of the first six months; any person requesting a time/cost statement in the third period of six months from the date of the office-holders appointment should be provided with the statement produced at the end of the second six months, which will be a time/cost statement covering the period of twelve months from the date of the office-holders appointment. All requests for statements should be complied with within 28 days of receiving the request.

20. Conclusion of administrator's appointment

Although GB law is not binding on the courts in Northern Ireland the GB case of Ballast Plc and others is considered to be of sufficient importance for details to be given. Legislative references have been changed to their Northern Ireland equivalents.

In the case of Ballast Plc and others [2004] EWHC 2356, the High Court held that, following the making of an administration order, it was possible for the company concerned to go straight into creditors' voluntary liquidation using the provisions of paragraph 84 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989, or into dissolution using the provisions of paragraph 85 of that Schedule. There was no need for the administrator to apply to the court for orders under paragraphs 80 or 86.

The Judge considered that paragraph 80 provides a separate exit route from administration to that provided by paragraph 84. The purpose of paragraph 80, where the circumstances set out in paragraph 80(2) or 80(3) were met, was to enable the court to make an order which would bring the administrators' appointment to an end on a different date from the one on which it would otherwise come to an end.

In a case where the administrator uses the provisions of paragraph 84 the registration of the relevant notice by the Registrar of Companies has the effect of bringing the appointment of the administrator to an end and discharging the administration order. The Judge considered that an application for an order under paragraph 80, in such a case, would be an unnecessary duplication. The Judge also considered that the same interpretation should apply when paragraph 85 is used as an exit route from administration.

The Judge made a parenthetical comment that he understood that paragraph 85 could only apply in cases where there had been no property at any time during the administration. The Insolvency Service would confirm that the policy intention behind this provision was to include it as an exit route in cases where assets had been realised and the proceeds had been distributed to creditors as a consequence of which the company no longer had any property.

Generally speaking, it would be inappropriate for a company to enter administration if it had no assets, and if it had the administrator would be under a duty to make an application to the court under paragraph 80(2). One possible exception to this is

where an individual company, which was part of a group, entered administration with the other group companies.

It is the view of the Insolvency Service that if paragraph 85 were not available as an exit route in such cases it would be difficult to see what an administrator could do in a case where the assets had been realised and distributed. Clearly a paragraph 84 creditors' voluntary liquidation would not be available as there would not be a prospective distribution to unsecured creditors, and a paragraph 80 application or paragraph 81 filing would end the administration but leave the company in limbo.

Taking all of this into account, the view of the Insolvency Service is that the only sensible interpretation of the legislation is that paragraph 85 provides an exit route out of administration for companies whose assets have been realised and distributed during the administration.

21. Guidance under which Insolvency Service staff operate regarding allowable expenses when considering an income payments agreement (IPA) or income payments order (IPO)

IPs may be interested in the following guidance applied by the Official Receiver.

In order to achieve as consistent a policy as possible when dealing with IPAs and/or IPOs, an internal notice has been issued to Insolvency Service staff setting out guidance on what may be regarded as acceptable family expenditure before an IPA or IPO should be considered. This guidance is similar to guidance in Chapter 31.7 of the Technical Manual used by the Insolvency Service in England which is general guidance to their staff on the administration of bankruptcy and compulsory liquidation cases and is available on-line through the Freedom of Information Publications Scheme (www.insolvency.gov.uk/pubsscheme). It should be remembered that the guidance is exactly that – ie guidance. Individual cases and circumstances will always be considered on their own merits.

In addition to the Technical Manual, Insolvency Service staff are guided towards the Family Expenditure survey, which is carried out each year by the Office of National Statistics. A link to the family Spending Review for 2004/05 is: www.statistics.gov.uk/StatBase/Product.asp?vlnk=361.

Once a person's real disposable income has been assessed, ie the income remaining after all expenditure necessary to finance the reasonable domestic needs of the bankrupt and his/her family, the Service guide is that between 50 and 70% of this should be sought by way of monthly payments under an IPA or, if necessary, an IPO. As a general rule, the higher the real disposable income, the higher the percentage which should be sought. Guidance as to what amount is appropriate is contained in the table below. Again, it should be stressed, this is a guide to staff only; all cases should be judged on their own merits and circumstances.

IPO/IPA Table

All figures are on a monthly basis

Surplus income £	Amount to be paid £	% of disposable income
50	Nil	
60	Nil	
70	Nil	
80	Nil	
90	Nil	
100	50	50
110	55	50
120	60	50
130	65	50
140	70	50
150	75	50
160	80	50
170	85	50
180	90	50
190	95	50
200	100	50
210	105	50
220	110	50
230	115	50
240	120	50
250	150	60
260	156	60
270	162	60
280	168	60
290	174	60
300	180	60
310	186	60
320	192	60

Surplus income £	Amount to be paid £	% of disposable income
330	198	60
340	204	60
350	231	66
360	238	66
370	244	66
380	251	66
390	257	66
400	264	66
410	271	66
420	277	66
430	284	66
440	290	66
450	297	66
460	304	66
470	310	66
480	317	66
490	323	66
500	350	70
510	357	70
520	364	70
530	371	70
540	378	70
550	385	70
560	392	70
570	399	70
580	406	70
590	413	70
600	420	70

22. Income Payments Orders in Existence at Commencement of the 2005 Order – Implications of Early Discharge

Under the transitional provisions of the Insolvency (Northern Ireland) Order 2005, if a bankruptcy order was made prior to 27 March 2006, the bankrupt will now be discharged at the latest on 27 March 2007.

It has come to our attention that some Income Payments Orders (IPOs) obtained prior to 27 March 2006 may state that payments should continue “*until the date of discharge*”, rather than referring to the specific date of discharge. There may be scope for confusion due to the earlier date of discharge, about the date up to which payments should be made. The Insolvency Service in England has obtained legal advice, and their counsel considers that the courts should interpret any reference in an IPO to the date of discharge as referring to the original date of discharge. However, the advice does not exclude the possibility of the court taking a different view. If the court did take such a view, and the OR, as trustee, has continued to collect payments of the IPOs, there might be an obligation to reimburse bankrupts for payments made after 26 March 2006.

Counsel advised that the safest course is for the OR to apply to the court in each relevant case, where he is trustee, to have the IPO varied to reflect the parties’ original intentions.

Pursuant to the legal advice, the Service has decided to make applications to the court to vary those IPOs which are affected. In light of such proposed applications, insolvency practitioners may wish to review the Income Payments Orders in relation to their cases, and consider whether they have any similarly worded Orders and decide whether, as trustee, they wish to make a similar application(s). A copy of the specimen applications drawn up by the Treasury Solicitors in England for use by ORs, adapted for Northern Ireland, is attached. Insolvency practitioners are welcome to adopt and tailor these to their own needs. These documents are:

- (a) Form 6.67 - application for variation of IPO
- (b) Statement of grounds in support
- (c) Form 6.71 - Variation of Order
- (d) Form 6.68 - Specimen varied order
- (e) Letter to bankrupts
- (f) Consent form.

Rules: 6.186
6.190

Notice to Bankrupt of Application Under Article 283(6A) of the Insolvency (Northern Ireland) Order 1989 for the variation of an Income Payments Order

No.

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION (BANKRUPTCY)

Re*

*Insert title

To (a) [add bankrupt's full name]

TAKE notice that I intend to apply to this court as follows:

Date

Time

hours

Place

for an order under Article 283(6A) of the Insolvency (Northern Ireland) Order 1989 varying the Income Payments Order dated [add date] in accordance with the draft amended order attached hereto.

Attached is a statement of the grounds for this application. You are required to attend the hearing of my application unless by (a)

.....

(a) Insert a date not less than 7 days before the hearing

you send to me, using the consent form attached, written consent to the making of such order.

If you attend the hearing, you will be given an opportunity to show cause why the order should not be made, or why it should be in different terms.

Dated: _____

Signed: _____

Trustee

Name: _____

(in BLOCK LETTERS)

Address of Trustee:

Statement of grounds in support of the Official Receiver's application under section Article 283(6A) of the Insolvency (Northern Ireland) Order 1989

This statement is drafted in general terms to reflect the changes introduced to the insolvency regime by the commencement of the Insolvency (Northern Ireland) Order 2005. As a result it is not intended to reflect the position of individual bankrupts. This statement outlines the position of the Official Receiver and should not be regarded as constituting legal advice.

The insolvency provisions on discharge from bankruptcy introduced by Article 12 of the Insolvency (Northern Ireland) Order 2005 (reflected by consequential amendment to Article 253 of the Insolvency (Northern Ireland) Order 1989) came into effect in March 2006. A person whose bankruptcy existed as at 27 March 2006 is now discharged from bankruptcy at the end of the period of one year beginning with the date on which the bankruptcy commences. Prior to March 2006, the standard period of bankruptcy was three years (or two years if the court issued a certificate of summary administration). Those individuals subject to IPOs made before 27 March 2006 (pre-commencement IPOs) can now expect to be discharged from bankruptcy at a point sooner than they would have expected when their IPOs were made. For example, an individual made bankrupt in February 2006 would not, under the old provisions, have been discharged from bankruptcy until February 2009; however, following the transitional provisions set out in Schedule 4(4) of Insolvency (Northern Ireland) Order 2005, the bankrupt can now expect to be discharged from bankruptcy at the end of a period of one year beginning with the commencement of the Insolvency (Northern Ireland) Order 2005 provisions on insolvency – ie 27 March 2006.

Each pre-commencement IPO records that the bankrupt is to pay a specified sum of money to his estate by monthly instalments of a set amount. It was intended at the time the IPO was made that the date on which the lump sum was to be fully paid off would be identical to the date on which the bankrupt would be discharged from bankruptcy. With this in mind the pre-commencement IPOs state that the bankrupt do pay monthly instalments '*until the date of discharge from bankruptcy*'.

As a result of this amendment to the underlying legislation, an unintended consequence of this form of order is that the date of the bankrupt's discharge will no longer coincide with the date on which the final IPO instalment payment is to be made. As a bankrupt subject to a pre-commencement IPO is now discharged earlier from their bankruptcy, the date on which the final instalment payment is set to occur arises after the bankrupt's discharge. There is no provision under the Insolvency (Northern Ireland) Order 1989 which restricts an IPO to the period in which the individual is bankrupt; in fact, Article 283(6) of the Insolvency (Northern Ireland) Order 1989 (which was reconstituted by Article 15 of the Insolvency (Northern Ireland) Order 2005, with effect from 27 March 2006) states that the period of an IPO may end after the discharge of the bankrupt (but may not end after the period of three years beginning on the date the order was made).

The Official Receiver makes these applications in order to vary the pre-commencement IPOs so that the references to the date of discharge are removed in accordance with Article 283(6). If the pre-commencement IPOs are varied in this manner, they will continue to accurately reflect the intention of the court and the parties at the time the IPO was made.

Discharge or Variation of Order for Income Claimed Under Article 283 of the Insolvency (Northern Ireland) Order 1989

No.

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION (BANKRUPTCY)

Re*

Master in chambers

*Insert title

Upon the application of [**add full name**], the Official Receiver
the trustee of the above-named bankrupt's estate

And upon hearing

And upon reading the evidence

It is ordered that the order for income claimed under Article 283 of the
Insolvency (Northern Ireland) Order 1989 dated [**add date of order**] be
varied as follows:

- 1. By deleting the words '*until the date of discharge from bankruptcy*'.**
- 2. By inserting therein '*until [insert specific original date of discharge]*'.**
- 3. By inserting the requisite number of monthly instalments, namely '*[insert total number of instalments]*'.**
- 4. By making provision for '*Liberty to apply in respect of any failure to make the payments referred to in this order*'.**

All in accordance with the draft amended order attached hereto.

Dated: _____

Order for Income Claimed Under Article 283(3)(a) of The Insolvency (Northern Ireland) Order 1989

No.

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION (BANKRUPTCY)

Insert title Re

Before Master

Upon the application of [INSERT NAME], Official Receiver

And upon the consent of the above named bankrupt

And it appearing to the Court that the sum of £ be paid by the above named bankrupt by monthly instalments of £ to the Trustee until [original date of discharge].

It is Ordered that until [insert original date of discharge from bankruptcy], the bankrupt do pay [insert number] monthly instalments of £ out of his income, the first of such instalments to be paid on or before [date].

And it is Ordered that there be Liberty to Apply in respect of any failure to make the payments referred to in this order.

And it is Ordered that the above named bankrupt do send payments to:-

The Official Receiver or to any subsequently appointed Trustee of his estate or to their debt collection agent.

Dated: [date]

Dear Sir

In Bankruptcy

***In the High Court of Justice in Northern Ireland, Chancery Division
(Bankruptcy), No. [add number] of [add year]
Application for a variation of your Income Payments Order***

As you will be aware, Master [add name] made an Income Payments Order (“IPO”) against you on [add date]. The IPO states that you are to pay a total of £[how much] in monthly instalments of £[how much], with instalments commencing on [when].

Introduction of the Insolvency (Northern Ireland) Order 2005

At the time your IPO was made, it was not anticipated that you would be discharged from bankruptcy until [add date]. However, the commencement of the Insolvency (Northern Ireland) Order 2005 means that, in respect of bankruptcy orders made from 27 March 2006, the standard date of discharge from bankruptcy is now 1 year from the date of the bankruptcy order. The effect of this on individuals like yourself, who are subject to a bankruptcy order made before 27 March 2006, is that they will, unless they are subject to other restrictions, be discharged from bankruptcy 1 year from the date of commencement of the Insolvency (Northern Ireland) Order 2005 (i.e. 27 March 2006), unless the applicable period of bankruptcy ends before that date. Accordingly, the date of your discharge from bankruptcy now differs to what it was when your IPO was made. As a result of this, the reference in your IPO to making payments until ‘*the date of discharge from bankruptcy*’ is now incorrect, as it no longer reflects the instalment plan set out by your IPO.

Application to vary your IPO

In order to ensure your IPO continues to reflect the intentions of the parties at the time it was made, the Official Receiver, as trustee of your bankruptcy estate, has made an application to the High Court under Article 283(6A) of the Insolvency (Northern Ireland) Order 1989 for the variation of your IPO. The application is to be heard at the High Court on [add date and time].

The application will not seek to add to the payment arrangements currently set out in your IPO, but will request that the reference to payments being made ‘*until the date of discharge from bankruptcy*’ be removed. It is intended to replace these words with the date upon which your last instalment is due to be repaid under your IPO. This change will eliminate any unintended confusion regarding the duration of your IPO which may have been caused by the changes introduced to the bankruptcy regime by the introduction of the Insolvency (Northern Ireland) Order 2005. The Insolvency (Northern Ireland) Order 1989 permits IPOs to continue beyond the period of an individual’s bankruptcy; Article 283(6) states as follows:

“An income payments order shall specify the period during which it is to have effect; and that period-

- a) may end after the discharge of the bankrupt, but*
- b) may not end after the period of three years beginning with the date on which the order is made.”*

Further, in the interests of clarity, the Official Receiver has requested that the precise number of monthly instalments you are to pay be introduced into the IPO. The order will also include a *‘liberty to apply’* provision which allows the court to review your IPO in the event that you miss an instalment payment.

Enclosures

Enclosed with this letter are the following documents:

- a) Annex A: A copy of your IPO in its present form.
- b) Annex B: Form 6.67 – *‘Notice to Bankrupt of Application Under Article 283(6A) of the Insolvency (Northern Ireland) Order 1989 for the Variation of an Income Payments Order’*. This is the Official Receiver’s application to have your IPO varied; attached to it are: i) a statement of grounds upon which the application is made ii) draft Form 6.71 (this is a draft of the order sought by the Official Receiver – annexed to it is a draft of your IPO in the varied form sought).
- c) Annex C: *‘Notice to Trustee: Consent of Bankrupt to Variation of Order under Article 283 of the Insolvency (Northern Ireland) Order 1989’* (this is essentially the same document as at b(ii), above; it is for you to sign and return if you wish to consent to the variation of your IPO – the following paragraph provides more information about this).

Attendance at the hearing

If you wish to consent to the variation of your IPO, you are not required to attend the hearing of the Official Receiver’s application. To consent to the variation sought by the Official Receiver, please sign the *‘Notice to Trustee: Consent of Bankrupt to Variation of Order under Article 283 of the Insolvency (Northern Ireland) Order 1989’* enclosed at Annex C to this letter (the Notice has at its foot the words *‘I [add full name] consent to the variation to the Income Payments Order dated [insert date] as provided for in the terms set out above and in the draft order attached hereto’*, with a space for your signature and the date). This consent form, signed and dated, should be returned to me at the above address by **[date to be added and underlined]**.

If you do not wish to consent to the order sought by the Official Receiver, you are required to attend the hearing of the application. At the hearing you will be given the opportunity to show cause why the order should not be made.

Legal advice

The object of this letter is to explain to you the nature of the application made by the Official Receiver and the reasons for it in light of the recent changes to the bankruptcy regime introduced by the Insolvency (Northern Ireland) Order 2005. This letter reflects the views of the Official Receiver and is not intended to constitute legal advice. Consequently, you may wish to seek independent legal advice before responding to any of the points raised in this letter.

Yours faithfully

[Add name and position]

Rule 6.190 Discharge or Variation of Order for Income Claimed Under Article 283 of the Insolvency (Northern Ireland) Order 1989

No.

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION (BANKRUPTCY)

Re*

*Insert title

Master in chambers

Upon the application of [add full name], Official Receiver

the trustee of the above-named bankrupt's estate

And upon hearing

And upon reading the evidence

It is ordered that the order for income claimed under Article 283 of the Insolvency (Northern Ireland) Order 1989 dated [add date of order] be varied as follows:

- 1. By deleting the words '*until the date of discharge from bankruptcy*'.**
- 2. By inserting therein '*until [insert specific date of discharge]*'.**
- 3. By inserting the requisite number of monthly instalments, namely '*[insert total number of instalments]*'.**
- 4. By making provision for '*Liberty to apply in respect of any failure to make the payments referred to in this order*'.**

All in accordance with the draft amended order attached hereto.

Dated: _____

I [add full name in bold] consent to the variation to the Income Payments Order dated [insert date] as provided for in the terms set out above and in the draft order attached hereto:

Signed:

Dated: