

EXPLANATORY MEMORANDUM TO THE CROSS-BORDER INSOLVENCY REGULATIONS (NORTHERN IRELAND) 2007

2007 No. 115

1. This explanatory memorandum has been prepared by the Department of Enterprise, Trade and Investment and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 In 1997 the United Nations Commission of International Trade Law (“UNCITRAL”) adopted the text of a model law designed to assist States to equip their insolvency laws with a framework to address instances of cross-border insolvency such as where a debtor has assets in more than one State or where there are creditors in States other than the one in which the insolvency proceeding is taking place.
 - 2.2 The Regulations give effect to the model law in Northern Ireland and establish procedural rules for its operation.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None
4. **Legislative Background**
 - 4.1 The Regulations are made under Article 11 of the Insolvency (Northern Ireland) Order 2002 (S.I. 2002/3152 (N.I. 6)). Article 11 allows the Department of Enterprise, Trade and Investment by regulations to make any provision, which it considers necessary or expedient for the purpose of giving effect, with or without modifications, to the UNCITRAL model law on cross-border insolvency. This is the first use of the power in Article 11 to give effect to the model law in Northern Ireland.
 - 4.2 The Regulations are subject to affirmative resolution by the Northern Ireland Assembly. However, since the Assembly is suspended they are, under paragraph 7(3) of the Schedule to the Northern Ireland Act 2000, subject to negative resolution by either House of Parliament. The Lord Chancellor’s agreement is required to the making of the Regulations.
5. **Extent**
 - 5.1 This instrument applies to Northern Ireland.
 - 5.2 This instrument is in parity with the Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030) applying in Great Britain, which were made on 3 April 2006.
6. **European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 National insolvency laws are often not designed to provide a legal framework for the administration of insolvencies with a trans-national dimension. The issue of insolvencies involving more than one member state within the European Union has already been addressed through the adoption by the European Union in May 2002 of the EC Insolvency Regulation. The UNCITRAL model law provides a complementary regime to deal with cross-border insolvency involving non-EU countries.
- 7.3 The regulations incorporate the model law directly into Northern Ireland law. This will have the effect of affording the person administering a foreign insolvency proceeding (the foreign representative) direct access to the High Court in Northern Ireland to seek to have the foreign proceeding recognised and to apply for relief or coordination. The foreign representative will be given the right to participate in Northern Ireland insolvency proceedings affecting the debtor. A legislative framework is provided for cooperation and coordination between courts and insolvency officeholders in different countries.
- 7.4 Consultation has been carried out through the issue of the draft regulations to individuals and organisations on 30 November 2006. At the close of the consultation period on 22 February 2007 no responses were received.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 Likewise there will be no impact on the public sector.

9. Contact

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