

## **EXPLANATORY MEMORANDUM TO**

### **The Insolvency (Amendment) Regulations (Northern Ireland) 2009**

#### **S.R. 2009 No. 202**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Rule 12.01 of the Insolvency Rules (Northern Ireland) 1991 and Article 359 of, and paragraphs 27 of Schedule 5 and 28 of Schedule 6 to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) ("the 1989 Order") and is subject to the affirmative resolution procedure.
- 1.3. The rule is due to come into operation on 01 October 2009.

#### **2. Purpose**

- 2.1. These Regulations amend the Insolvency Regulations (Northern Ireland) 1996 (SR 1996 No 574 as amended by S.I. 2004/355 and SR 2006 No 23) "the principal Regulations". They aim to maintain parity with England and Wales in respect of Insolvency legislation concerning payments into the Insolvency Account (IA) and the remuneration of the Official Receiver and his officers.

#### **3. Background**

- 3.1. Rule 12.01 of the Insolvency Rules (Northern Ireland) 1991 empowers the Department to make regulations with respect to the operation of the Insolvency Account (IA). This is an account maintained by the Insolvency Service with the Bank of Ireland, made up of separate estate accounts containing the proceeds from the sale of assets in bankruptcies and liquidations. These Regulations make provision to allow unclaimed funds and dividends to be paid into the IA, on payment of a fee, in respect of dissolved companies which were formerly in administration or administrative receivership. The existing mandatory requirement for such monies to be paid into the IA where companies were formerly in voluntary liquidation is hereby replaced by a discretionary provision.
- 3.2. Regulation 3A of the principal Regulations requires administrators or former administrators to give the Department details of monies in their hands representing unclaimed or undistributed assets of a company which has been dissolved. No provision had been made for such monies to be paid into the IA. During a consultation process in England and Wales in 2006 members of the insolvency profession raised the issue with the Insolvency Service as to what to do with unclaimed dividends in administration and administrative receivership cases. The amendments proposed by the insertions of Regulations 3B and 3C and the amendment of Regulation 18 are primarily aimed at dealing with this problem.

- 3.3. Regulation 18 as amended ensures consistency between the provisions for administrators, administrative receivers and liquidators making payments of unclaimed dividends or other money into the IA. It remains mandatory for companies which have been compulsorily wound up but permissive for voluntary winding ups. In both voluntary and compulsory winding ups payments into the IA are limited to monies in the hands of a former liquidator at the date of the dissolution of the company representing unclaimed dividends or held by the company on trust in respect of sums due to anyone as a member or former member of the company. This reflects the provisions of Article 605 of the Companies (Northern Ireland) Order 1986 (repealed and replaced by section 1012 of the Companies Act 2006, coming into force on 01 October 2009), which provides that when a company is dissolved, all property and rights whatsoever vested in or held in trust for the company immediately before its dissolution (including leasehold property, but not including property held by the company on trust for any other person) are deemed to be "bona vacantia" and payable to the Crown.
- 3.4. Regulation 18 as amended limits payments into the IA, in both voluntary and compulsory winding ups, to unclaimed dividends or other funds held on trust by the company for other persons immediately before its dissolution and excludes undistributed assets or dividends.
- 3.5. Regulation 34 of the principal Regulations provides that the Official Receiver and his officers are entitled to remuneration for their services in supervising a special manager; acting as interim receiver or provisional liquidator and when, acting as liquidator or trustee, they make a distribution to creditors. The rates of remuneration payable are hourly rates according to the grade of the officer acting. Regulation 7 effects an up-rating in these rates, increased in line with inflation since March 2006, to ensure the recovery of the costs of the functions in respect of which the remuneration is payable.

#### **4. Matters of Special Interest to the Enterprise, Trade and Investment Committee**

- 4.1. None.

#### **5. Consultation**

- 5.1. The Insolvency Service has not consulted on these fee changes. The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)) ("the 2005 Order") modernised the financial regime of the Service by simplifying the fee structure and ensuring increased transparency. The principles of the new financial regime included that Case Administration costs would be met by creditors. The 2005 Order was preceded by an extensive consultation exercise and the provisions relating to insolvency reform were generally welcomed. A Regulatory Impact Assessment was prepared for the 2005 Order. The changes proposed by these Regulations are designed to ensure that the principles of the financial regime which came into operation in March 2006 are being maintained, in particular, that fees are set to match costs.

## **6. Position in Great Britain**

- 6.1. The equivalent instruments for England and Wales are: The Insolvency (Amendment) Regulations 2008 (S.I. 2008/670), which came into force on 6 April 2008, and The Insolvency (Amendment) Regulations 2009 (S.I. 2009/482), which came into force on 6 April 2009.

## **7. Equality Impact**

- 7.1. An equality impact assessment has not been prepared as the proposed Regulations will not have any differential impact in terms of equality.

## **8. Regulatory Impact**

- 8.1. A Regulatory Impact assessment has not been prepared as the Regulations do not impose any additional costs on business and do not impact on charities, social enterprise or voluntary bodies.

## **9. Financial Implications**

- 9.1. The changes in the fee structure aim to achieve full cost recovery of the Official Receiver's case administration functions. The fees will continue to be subject to annual review and the legislation may be further amended accordingly.

## **10. Section 24 of the Northern Ireland Act 1998**

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

## **11. EU Implications**

- 11.1. Not applicable.

## **12. Additional Information**

- 12.1. Not applicable.