

**EXPLANATORY MEMORANDUM TO THE
FINANCIAL SERVICES AND MARKETS ACT 2000 (ADMINISTRATION ORDERS
RELATING TO INSURERS) (NORTHERN IRELAND) ORDER 2005**

2005 No.1644

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order applies, in relation to insurers, Part III of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)) with various modifications set out in the Schedule. Article 2 enables administration orders to be made in relation to such insurers. Article 4 provides that insolvency rules relating to mutual credit and set-off do not apply to sums due from an insurer to another party where, at the time the sums became due, an application for an administration order had been made in relation to the insurer.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Section 360 of the Financial Services and Markets Act 2000 gives the Treasury power to provide that Part II (Administration Orders) of the Insolvency Act 1986 or Part III of the Insolvency (Northern Ireland) Order 1989 apply to insurers with such modifications as may be specified as long as the consent of a Secretary of State is received. The result of providing that Part II of the Insolvency Act 1986 and Part III of the Insolvency (Northern Ireland) Order 1989 apply to insurers is that administration orders can be made in relation to insurers.

4.2 Part II of the Insolvency Act 1986 is applied to insurers by Article 3 of, and the Schedule to, the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002 but it does not apply Part III of the Insolvency (Northern Ireland) Order 1989 which is the equivalent to Part II of the 1986 Act.

5. Extent

5.1 This instrument applies to Northern Ireland.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 Following public consultation, the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002 ('the Order')¹ applied a modified version of the existing Insolvency Act administration regime to insurers. It was laid before Parliament on 31 May 2002.

7.2 It made one substantial modification to Part 4 of the Insolvency Rules (companies winding up) addressing the issue of the 'setting off' of debts against insurers that, having been in administration, subsequently enter into liquidation. This provision is aimed at deterring individual creditors and debtors of an insurer in financial difficulties from engaging in certain trades that would harm the interests of creditors as a whole. The Order modified the powers of an administrator to include the power to make payments due to creditors, or to make payments on an on account basis to creditors.

7.3 Two further statutory instruments² amended the Order to reflect changes brought about by the Enterprise Act, which altered the basis upon which a company can enter administration, and to remove the possibility of informal applications for administration as a result of the requirement in the EU Insurers Reorganisation and Winding-up Directive³ for involvement of court and/or other competent bodies.

7.4 The Order did not apply to Northern Ireland. Northern Ireland legislation is therefore out of step with Great Britain as regards the Insurers (Reorganisation and Winding Up) Regulations. This SI ensures that Part III of the Insolvency (Northern Ireland) Order 1989 is applied to insurers.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no further impact on business, charities or voluntary bodies.⁴

9. Contact

9.1 Paul Pippard at HM Treasury (Tel: 0207 270 5266 or e-mail: paul.pippard@hm-treasury.gov.uk) can answer any queries regarding the instrument.

¹ S.I. 2002/1242

² The Financial Services and Markets Act 2000 (Administration for Insurers) (Amendment) Order 2003 (SI 2003/2822); The Insurers (Reorganisation and Winding Up) Regulations 2004 (SI 2004/353)

³ 2001/17/EC

⁴ Original RIA can be obtained at: http://www.hm-treasury.gov.uk/consultations_and_legislation/ria/consult_ria_fsmaadmin.cfm