

**EXPLANATORY MEMORANDUM TO THE
INSOLVENCY (AMENDMENT) REGULATIONS 2005**

2005 No.512

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Insolvency Regulations 1994 (S.I. 1994/2507) are made under powers in the Insolvency Act 1986. This instrument makes further changes to those Regulations.

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

None.

4. Legislative background

4.1 The power of the Secretary of State to make the Insolvency (Amendment) Regulations 2005 is contained in Rule 12.1 of the Insolvency Rules 1986. Sections 411(5) and 412(4) of the Insolvency Act 1986 provides that Regulations made by the Secretary of State under a power conferred by rules under that section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.

4.2 The SI further amends The Insolvency Regulations 1994 (S.I. 1994/2507). The Regulations were last amended by The Insolvency (Amendment) Regulations 2004 (S.I. 2004/472) to take account of changes to the Insolvency Act 1986 by the Enterprise Act 2002.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State for Competition, Consumers and Markets has made the following statement regarding Human rights.

6.2 In my view the provisions of the Insolvency (Amendment) Regulations 2005 are compatible with the Convention rights.

7. Policy background

7.1 These Regulations amend the Insolvency Regulations 1994. Regulation 3A makes provision for when the Secretary of State can require information from the insolvency

practitioner in administration and circumstances in which an administrator can dispose of company's records.

7.2 Regulation 35 is amended to provide that the official receiver can charge an hourly rate for any work relating to the realisation of assets on behalf of the holder of a fixed or floating charge. These activities have been specifically excluded from the official receiver's administration fees in The Insolvency Proceedings (Fees) Order 2004 (as amended) and therefore the legislation provides clarity and consistency.

7.3 Regulation 36A provides that an insolvency practitioner can be required to provide a statement to creditors about the time spent on a case.

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.

9. Contact

9.1 Steve Quick at the Department of Trade and Industry, Insolvency Service. Tel: 020 7291 6747 or e-mail. Steve.Quick@insolvency.gsi.gov.uk can answer any queries regarding the instrument.