

EXPLANATORY MEMORANDUM TO THE
INSOLVENCY ACT 1986 (AMENDMENT) REGULATIONS 2005
2005 No 879

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 The Insolvency Act 1986 (Amendment) Regulations 2005 clarifies the effect of the EC Regulation on Insolvency Proceedings 2000 (“the EC Regulation”) on the definition of company in Parts I and II of the Insolvency Act 1986 (“the 1986 Act”) to deal with uncertainty that has arisen following the decision of the High Court in *Re Salvage Association* [2003] 3 All ER 246.

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

3.1 The purpose of these Regulations is to clarify the implementation of the EC Insolvency Regulation in the context of the 1986 Act. The definition of “company” in the 1986 Act was originally amended by SI 2002/1240 to ensure that the provisions of the 1986 Act were compatible with the Regulation. As far as bodies incorporated in the United Kingdom are concerned, there was never any intention to extend the company voluntary arrangement and administration provisions to bodies or associations which were not companies within the meaning of section 735(1) of the Companies Act 1985. Some confusion has arisen in the light of the decision in *Re Salvage Association*. In particular it has been suggested that the administration provisions extend to industrial and provident societies. These Regulations are therefore a partial reimplementation of the EC Insolvency Regulation to make it clear that as far as bodies incorporated under UK law are concerned the provisions of Parts I and II of the 1986 Act only extend to companies within the meaning of section 735(1) of the Companies Act 1985.

4. **Legislative background**

4.1 The EC Regulation came into force on 31 May 2002 and has direct effect on UK insolvency law. However, at the same time, in order to provide guidance on the EC Regulation’s impact a number of amendments were made to the 1986 Act and related legislation using the Order making power in section 2(2) of the European Communities Act 1972 (“the 1972 Act”).

4.2 Amendments were made to Parts I and II the 1986 Act by the Insolvency Act 1986 (Amendment)(No. 2) Regulations 2002 (“the 2002

Regulations”). This instrument inserted new sub-sections into sections 1 and 8¹ (as it then was) of the 1986 Act, which provide that a reference to a company includes one that could enter a voluntary arrangement or administration by virtue of Article 3 of the EC Regulation.

4.3 The purpose of Article 3 of the EC Regulation is to determine which Member State has jurisdiction to deal with the “main” insolvency proceedings of a debtor, either corporate or a legal or natural person, where their interests extend across more than one Member State. Article 4 provides that having established the relevant Member State, under Article 3, the local insolvency laws of that Member State apply with respect to the relevant debtor. The EC Regulation does not change the type of debtor to which the various insolvency proceedings of a Member State apply.

4.4 However, in the case of *Re Salvage Association* (a company incorporated by Royal Charter) the Court was persuaded that the amendments made to sections 1 and 8 of the 1986 Act had the effect of extending the scope of voluntary arrangements and administrations to incorporated entities other than limited companies. This decided case has been used to allow the Dean and Chapter of Bradford Cathedral (a corporation aggregate) to enter a voluntary arrangement.

4.5 It has been argued that the definition of company inserted by the 2002 Regulations was not cast in clear terms and was open to the interpretation put on it in Counsel’s submission to the Court in *Re Salvage Association* case. The amendments in the Insolvency Act 1986 (Amendment) Regulations 2005 are designed to bring certainty to the definition of company in section 1(4) of and paragraph 111(1) of Schedule B1 to the 1986 Act. The purpose of the amendments is to ensure that our domestic insolvency legislation gives proper effect to the EC Regulation.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

The Parliamentary Under-Secretary of State for Employment Relations, Consumers and Postal Services has made the following statement regarding Human Rights:

In my view the provisions of the Insolvency Act 1986 (Amendment) Regulations 2005 are compatible with the Convention rights.

7. Policy background

7.1 Voluntary arrangements and administrations are only available to companies incorporated under section 735(1) of the Companies Act 1985. The

¹ The Enterprise Act 2002 replaced sections 8 to 27 of the 1986 Act with Schedule B1 of the 1986 Act. The definition of company is now provided for in paragraph 111(1) of Schedule B1.

impact of the EC Regulation is that companies incorporated outside the United Kingdom which have their “centre of main interests” located within the United Kingdom can also enter a voluntary arrangement or administration.

8. Impact

8.1 There is no requirement to prepare a Regulatory Impact Assessment, as the Regulations will not impose any significant costs on business. There are no identifiable costs to the Exchequer.

9. Contact

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