

2007 No. 851

INSOLVENCY

COMPANIES

**The Insurers (Reorganisation and Winding Up)(Amendment)
Regulations 2007**

<i>Made</i> - - - -	<i>14th March 2007</i>
<i>Laid before Parliament</i>	<i>15th March 2007</i>
<i>Coming into force</i> - -	<i>6th April 2007</i>

The Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the insolvency of insurers.

In exercise of the powers conferred by that section the Treasury make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Insurers (Reorganisation and Winding Up)(Amendment) Regulations 2007, and come into force on 6th April 2007.

Amendments to Insurers (Reorganisation and Winding Up) Regulations 2004

2.—(1) The Insurers (Reorganisation and Winding Up) Regulations 2004(c) are amended as follows.

(2) In regulation 2(1) (interpretation)—

- (a) at the end of the definition of “administrator” add “, or by paragraph 14 of Schedule B1 to the 1989 Order”(d); and
- (b) at the end of the definition of “Schedule B1” add “, unless specified otherwise”.

(3) At the end of regulation 4(5) (prohibition against administration out of court) add “or paragraph 15 or 23 of Schedule B1 to the 1989 Order.”.

(a) S.I. 2002/2840.

(b) 1972 c.68; by virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created or arising by or under the agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the agreement signed at Brussels on 17th March 1993 (Cm 2183). Directive (2001/17/EC) of the European Parliament and the Council of 19th March 2001 on the reorganisation and winding up of insurance undertakings applies in the EEA by virtue of EEA Council Decision No. 166/2002 (OJ No L 38, 13.2.2003, p.26). Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 c.51.

(c) S.I. 2004/353; as amended by S.I. 2004/546; there are other amending instruments but none are relevant.

(d) S.I. 1989/2405 (N.I. 19); Schedule B1 to the Insolvency (Northern Ireland) Order 1989 is inserted into that Order by Article 3(2) of the Insolvency (Northern Ireland) Order 2005, S.I. 2005/1455 (N.I. 10).

(4) For regulation 4(8) (prohibition against winding up etc. EEA insurers in the United Kingdom) substitute—

“(8) An order under section 254 of the Enterprise Act 2002 (application of insolvency law to a foreign company) or under Article 9 of the Insolvency (Northern Ireland) Order 2005^(a) (application of insolvency law to company incorporated outside Northern Ireland) may not provide for any of the following provisions of the 1986 Act or of the 1989 Order to apply in relation to an EEA insurer—

- (a) Part I of the 1986 Act or Part II of the 1989 Order (company voluntary arrangements);
- (b) Part II of the 1986 Act or Part III of the 1989 Order (administration);
- (c) Chapter VI of Part IV of the 1986 Act (winding up by the Court) or Chapter VI of Part V of the 1989 Order (winding up by the High Court).”

(5) In regulation 9(1) (notification of relevant decision to the Authority)—

- (a) at the end of sub-paragraph (a), add “, or paragraph 14 of Schedule B1 to the 1989 Order”; and
- (b) at the end of sub-paragraph (d), add “or paragraph 14(1)(d) of Schedule B1 to the 1989 Order”.

(6) In regulation 9(3) after “paragraph 83 of Schedule B1” insert “, paragraph 84 of Schedule B1 to the 1989 Order”.

(7) At the end of regulation 11(2)(b)(i) (publication), add “or under paragraph 14 of Schedule B1 to the 1989 Order”.

(8) At the end of regulation 12(3)(a)(i) (notification to creditors in winding up), add “ or under paragraph 14 of Schedule B1 to the 1989 Order in the prescribed circumstances”.

(9) For regulation 12(10) substitute—

“(10) The prescribed circumstances are where the administrator includes in the statement required under Rule 2.3 of the Insolvency Rules or under Rule 2.003 of the Insolvency Rules (Northern Ireland) a statement to the effect that the objective set out in paragraph 3(1)(a) of Schedule B1 or in paragraph 4(1)(a) of Schedule B1 to the 1989 Order is not reasonably likely to be achieved.”

(10) In regulation 12(11) after “Schedule B1” insert “or in paragraph 4(1)(a) of Schedule B1 to the 1989 Order”.

(11) In regulation 14(1) (reports to creditors)—

- (a) in sub-paragraph (a) after “Schedule B1” insert “or paragraph 84 of Schedule B1 to the 1989 Order”; and
- (b) at the end of sub-paragraph (d) add “or under paragraph 14 of Schedule B1 to the 1989 Order.”

(12) In regulation 18(1)(b) (application of regulations 19 to 27) after “Schedule B1” insert “, paragraph 84 of Schedule B1 to the 1989 Order”.

(13) In regulation 21(7) (preferential debts: long term insurers and general insurers) after “section 176A of the 1986 Act” insert “and Article 150A of the 1989 Order” and for the word “has” substitute “have”.

(14) In regulation 34(1)(b) (application of Part V) after “Schedule B1” insert “or under paragraph 14 of Schedule B1 to the 1989 Order”.

(15) In regulation 34(3)(b) after “Schedule B1” insert “, paragraph 84 of Schedule B1 to the 1989 Order”.

(16) In regulation 36(2) (interpretation of Part V)—

(a) S.I. 2005/1455 (N.I. 10).

- (a) at the end of sub-paragraph (a)(ii) add “or paragraph 84 of Schedule B1 to the 1989 Order”;
- (b) in sub-paragraph (c) after “Schedule B1” insert “or under paragraph 14 of Schedule B1 to the 1989 Order”; and
- (c) in sub-paragraph (d) after “Schedule B1” insert “or under paragraph 15 or 23 of Schedule B1 to the 1989 Order.”.

(17) At the end of regulation 48(1)(a)(ii) (interpretation of Part 6) add “or under paragraph 14 of Schedule B1 to the 1989 Order”.

Amendments to the Insurers (Reorganisation and Winding Up)(Lloyds) Regulations 2005

3.—(1) The Insurers (Reorganisation and Winding Up) (Lloyds) Regulations 2005(a) are amended as follows.

(2) In regulation 2 (interpretation) at the end of the definition of “the Administration for Insurers Order” add “and the “Administration for Insurers (Northern Ireland) Order” means the Financial Services and Markets Act 2000 (Administration Relating to Insurers)(Northern Ireland) Order 2007”(b).

(3) In regulation 8 (moratorium)—

- (a) in paragraph (6)(a) after “Schedule B1” insert “or in Schedule B1 to the 1989 Order”; and
- (b) in paragraph (7) after “notice” insert “in writing”.

(4) In regulation 9(2) (reorganisation controller) after “under Part 13 of the 1986 Act” insert “or under Part 12 of the 1989 Order”.

(5) In regulation 13 (treatment of members)—

- (a) in paragraph (2) for “and the Administration for Insurers Order” substitute “, the Administration for Insurers Order and the Administration for Insurers (Northern Ireland) Order”;
- (b) in paragraph (2)(b) after “Insurers Order” insert “or the Administration for Insurers (Northern Ireland) Order”;
- (c) in paragraph (4)(b) after “Schedule B1” insert “or in Schedule B1 to the 1989 Order”; and
- (d) in paragraph (5) after “notified” insert “in writing”.

(6) In regulation 14(4) after “Insurers Order” insert “or the Administration for Insurers (Northern Ireland) Order”.

(7) In regulation 16(5) (reorganisation controller’s powers) after “given” insert “in writing”.

(8) In regulation 19(1) (appointment of an administrator etc.)—

- (a) at the end of sub-paragraph (a) insert “or under paragraph 15 of Schedule B1 to the 1989 Order”; and
- (b) at the end of sub-paragraph (b) insert “or under paragraph 23 of Schedule B1 to the 1989 Order”.

(9) In regulation 20 (reorganisation controller’s powers: administration)—

- (a) in paragraph (1) after “Schedule B1” insert “or under paragraph 13 of Schedule B1 to the 1989 Order”;
- (b) in paragraph (2)(a) after “Schedule B1” insert “, or under Schedule B1 to the 1989 Order.”;
- (c) in paragraph (3)(b) for “(or Part 3 of the 1989 Order)” substitute “or under Schedule B1 to the 1989 Order”; and

(a) S.I. 2005/1998.
 (b) S.I. 2005/1998.

- (d) in paragraph (5)(b) after “Schedule B1” insert “or under paragraph 58 of Schedule B1 to the 1989 Order”.
- (10) In regulation 21(reorganisation controller’s powers: receivership in relation to members)—
- (a) in paragraph (5)(b) for “Article 58” substitute “Article 59”; and
 - (b) in paragraph (6) after “Schedule B1” insert “or paragraph 40 of Schedule B1 to the 1989 Order”.
- (11) In regulation 22(2) (syndicate set-off) after “Rule 4.90 of the Insolvency Rules or” insert “Rule 2.086 and”.
- (12) In regulation 25 (petition for winding up of a member by reorganisation controller), in paragraph (3) for “Article 102(1)” substitute “Article 102”.
- (13) In regulation 31(payments from central funds)—
- (a) in paragraph (1) after “5 working days” insert “written”; and
 - (b) in paragraph (4)(b) after “notice” insert “in writing”.
- (14) In regulation 33 (notification of relevant decision to Authority) in paragraph (3)(a) for “Article 245 or 247” substitute “Article 238”.
- (15) In regulation 38 (reports to creditors)
- (a) in paragraph (1)(a)(ii) after “Schedule B1” insert “or paragraph 84 of Schedule B1 to the 1989 Order”;
 - (b) for paragraph (1)(d) substitute—
 - “(d) an administrator (within the meaning given by paragraph 1(1) of Schedule B1 or paragraph 2(1) of Schedule B1 to the 1989 Order) of a member or former member includes in the statement required by Rule 2.3 of the Insolvency Rules or by Rule 2.003 of the Insolvency Rules (Northern Ireland) a statement to the effect that the objective set out in paragraph 3(1)(a) of Schedule B1 or paragraph 4(1)(a) of Schedule B1 to the 1989 Order is not reasonably likely to be achieved;”;
 - (c) in paragraph (2)(a) after “Schedule B1” insert “or in paragraph 4(1)(a) of Schedule B1 to the 1989 Order”;
 - (d) in paragraph (3)(b) for “Article 149” substitute “Article 248”;
 - (e) in paragraph (3)(c)—
 - (i) after “Schedule B1” insert “or in paragraph 4(1)(a) of Schedule B1 to the 1989 Order”; and
 - (ii) for “that Schedule” substitute “Schedule B1 or under paragraph 48(1) of Schedule B1 to the 1989 Order”.
- (16) At the end of regulation 45(2)(b) (application of Part 5 of the 2004 Regulations) add “or under paragraph 14 of Schedule B1 to the 1989 Order”.
- (17) In regulation 47(application of Part 5 of the 2004 Regulations: protection of dispositions etc.)—
- (a) in paragraph (4)(b) after “Schedule B1” insert “or with Schedule B1 to the 1989 Order”; and
 - (b) in paragraph (5)(d)(i) after “Part 8 of the 1986 Act” add “or Part 8 of the 1989 Order”.

Frank Roy
Alan Campbell

14th March 2007

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation 2 amends the Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353) (“the 2004 Regulations”) in the light of the changes made to the administration process in Northern Ireland by the Insolvency (Northern Ireland) Order 2005, S.I. 2005/1455 (NI 10) (“the 2005 Order”). The 2005 Order introduces Schedule B1 into the Insolvency (Northern Ireland) Order 1989, which thoroughly updates the administration process in Northern Ireland. The new administration procedure is applied to insurers in Northern Ireland by the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers)(Northern Ireland) Order 2007. It is therefore necessary to amend the 2004 Regulations to ensure the correct references to the administration procedure are made.

The 2004 Regulations implement Council Directive 2001/17/EC on the reorganisation and winding up of insurance undertakings (OJ L110, 20.4.2001, p.28). The administration procedure falls within the scope of the 2004 Regulations and the Directive.

Regulation 2(4) and 2(9) of these Regulations also correct incorrect references to a provision of the Enterprise Act 2002 (c. 40) and the Insolvency Rules 1986 (S.I. 1986/1925) respectively.

Regulation 3 makes amendments for the same purpose as regulation 2 in relation to the Insurers (Reorganisation and Winding Up)(Lloyds) Regulations 2005 (S.I. 2005/1998) and also makes certain minor corrections to those regulations.

No Regulatory Impact Assessment has been prepared for this instrument as these amendments are consequential on the changes made to the administration procedure in Northern Ireland by the 2005 Order. A Regulatory Impact Assessment was prepared for the 2005 Order and was placed in the library of each House of Parliament. Copies can be obtained from the Insolvency Service Fermanagh House, Ormeau Avenue, Belfast, BT2 8NJ or from the Service’s web-site at www.insolvencyservice.detini.gov.uk.

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