

EXPLANATORY MEMORANDUM TO THE INSOLVENCY PRACTITIONERS (AMENDMENT) REGULATIONS 2015

2015 No. 391

1. This explanatory memorandum has been prepared by the Insolvency Service and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Insolvency Practitioners (Amendment) Regulations 2015 (“the Amendment Regulations”) amend the Insolvency Practitioners Regulations 2005 (SI 2005/524) (“the 2005 Regulations”) by removing the requirement for insolvency practitioners, in respect of each case in which they act, to maintain records which contain at least specified information as is applicable to the case and are capable of being produced separately to other records. This will be replaced with a broader requirement to keep records sufficient to show and explain the administration of that case and any decisions taken by the insolvency practitioner which materially affect that case. Where the insolvency practitioner is authorised by a recognised professional body the Amendment Regulations remove the requirement for the practitioner to notify that body of the place where the records are maintained.

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

- 3.1 None.

4. Legislative Context

- 4.1 Insolvency practitioners can be authorised by one of seven bodies recognised for that purpose by the Secretary of State, or by a competent authority. The Secretary of State is the only competent authority. The 2005 Regulations include provisions about the records that must be maintained by all insolvency practitioners and the inspection of them, together with the requirements for security and caution that all insolvency practitioners must have in place to protect creditors from fraud and dishonesty before they are qualified to be appointed to a case.

5. Territorial Extent and Application

- 5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The Amendment Regulations implement measures arising from the insolvency theme of the Red Tape Challenge initiative to improve the efficiency of insolvency proceedings and the return to creditors.
- 7.2 Insolvency practitioners are regulated professionals and maintain comprehensive records relevant to the administration of insolvency cases in respect of which they are appointed in order to ensure (and demonstrate to their regulators) that cases are effectively managed and progressed. This includes the recording and justification of material decisions taken on cases. In many cases these records are kept electronically and can be easily accessed when required. The requirement to maintain records which contain at least specified information as is applicable to the case and are capable of being produced separately to other records has led to many insolvency practitioners maintaining duplicate records. The Amendment Regulations replace the specified list in the 2005 Regulations with a broader requirement to keep records of information sufficient to show and explain the administration of the case and the decisions made by the insolvency practitioner materially affecting the case. The result will be that records will still be kept and accessible to regulators but no duplication will be perceived as being required.
- 7.3 The requirement that an insolvency practitioner tell the recognised professional body by which they are authorised of the records' whereabouts is also removed. This requirement can be imposed by the bodies' membership rules. The requirement is retained for the small number of insolvency practitioners authorised by a competent authority. The Secretary of State is not a membership body.
- 7.4 There are no plans to consolidate the Amendment Regulations with the 2005 Regulations.

8. Consultation outcome

- 8.1 The measures in the Amendment Regulations were included in the consultation "Red Tape Challenge – changes to insolvency law to reduce unnecessary regulation and simplify procedures" which ran from 18 July to 18 October 2013. A link to the consultation published on the Insolvency Service website was sent to a wide range of stakeholders, including business representatives, insolvency practitioners and regulators. Responses demonstrated a high level of support for the measures. All but one of the 13 who responded supported the proposal for removal of the requirement to maintain records of certain relevant matters capable of being produced separately to other records

9. Guidance

- 9.1 Insolvency practitioners and their regulators will be alerted to the Amendment Regulations by an entry in the Insolvency Service newsletter "Dear IP" which is published electronically, in hard copy form and available on the Insolvency Service website at www.gov.uk/government/organisations/insolvency-service.

10. Impact

- 10.1 The impact on business is a reduction in unnecessary duplication of record keeping. This will reduce the cost of all insolvency proceedings where an

insolvency practitioner is appointed as the office holder. There is no impact on charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 There is no adverse impact on small business. These are deregulatory measures which will be of advantage to all sizes of business.

12. Monitoring & review

12.1 The changes are designed to reduce unnecessary regulation in administering insolvency proceedings and reduce costs. The Insolvency Service monitors the efficient working of the insolvency framework and evaluates legislative changes to the insolvency legislation. The Insolvency Service will monitor these changes as it is required to do so.

13. Contact

Mike Chapman at the Insolvency Service Tel: 020 7291 6765 or email:
Policy.Unit@insolvency.gsi.gov.uk can answer any queries regarding the instrument.