

EXPLANATORY MEMORANDUM TO

The Insolvency (Northern Ireland) Order 1989 (Prescribed Part) (Amendment) Order (Northern Ireland) 2022

2022 No 242

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for the Economy to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under the powers conferred by Article 150A of the Insolvency (Northern Ireland) Order 1989 ("the Insolvency Order) and is subject to the negative resolution procedure.

2. Purpose

- 2.1. This instrument increases the cap set by Article 3(2) of the Insolvency (Northern Ireland) Order 1989 (Prescribed Part) Order (Northern Ireland) 2006, on the part of a company's net assets (the "prescribed part") that must, in certain circumstances be distributed to the unsecured creditors of a company which has entered an insolvency process, from £600,000 to £800,000.

3. Background

- 3.1. The Insolvency Order establishes different categories of creditors and the order in which any funds raised from the realisation of assets during the liquidation, administration, or receivership of a company are to be distributed to them. Unsecured creditors rank lowest in the order of priority and unless sufficient funds are realised to pay all creditors in full, will at best receive only a percentage of the sums due to them. and may receive nothing at all.
- 3.2. The prescribed part is a percentage of a company's net property which is ring-fenced and distributed to unsecured creditors. A company's net property is the full amount which floating charge holders, who are a higher-ranking category of creditor, would be entitled to receive, were it not for the existence of the prescribed part. Making part of the funds which would otherwise go to floating charge holders available for distribution to unsecured creditors increases the likelihood of the unsecured creditors recovering some of the money they are owed.
- 3.3. The prescribed part has been capped at £600,000 since it was introduced in 2006. This instrument increases that cap to £800,000 thereby adjusting it in line with inflation.
- 3.4. The existing cap applies where a company's has net assets of over £2,985,000, the new cap will apply where the net assets exceed £3,985,000.
- 3.5. In such cases the increased cap will reduce the amount available for floating charge holders. Therefore, this instrument also contains

transitional provisions to ensure that the increase does not operate to reduce the amount that is available to that category of creditor in cases where their interest pre-dates the coming into operation of the Order.

4. Consultation

4.1. It is not intended to carry out any consultation. The Order increases the existing cap in line with inflation and by the same amount as in the rest of the United Kingdom.

5. Equality Impact

5.1. Equality screening has been carried out and has shown that the Order will not have any differential impact on any of the section 75 groups.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment has not been prepared for this instrument as it has no significant impact on business, charities, social enterprise or statutory bodies.

7. Financial Implications

7.1. This instrument does not involve any cost to the public purse.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department considers that the Order complies with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. None.

10. Parity or Replicatory Measure

10.1. This Order replicates the Insolvency Act 1986 (Prescribed Part) (Amendment) Order 2020 applying in GB.

11. Additional Information

11.1. N/A.