

2007 No. 846

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers)(Northern Ireland) Order 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, in exercise of the powers conferred by sections 360, 426 and 428(3) of the Financial Services and Markets Act 2000(a), with the consent of the Secretary of State, makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers)(Northern Ireland) Order 2007 and comes into force on 6th April 2007.

(2) In this Order—

“the 1989 Order” means the Insolvency (Northern Ireland) Order 1989(b);

“the 1991 Rules” means the Insolvency Rules (Northern Ireland) 1991(c);

“initial creditors’ meeting” has the meaning given by paragraph 52(1) of Schedule B1 to the 1989 Order.

Modification of Part III of the 1989 Order in relation to insurers

2. Part III of the 1989 Order (administration), other than paragraph 15 of Schedule B1 (power of holder of a floating charge to appoint administrator) and paragraph 23 of Schedule B1 (power of company or directors to appoint administrator) applies in relation to insurers with the modifications specified in the Schedule to this Order, and accordingly paragraph 10(2) of Schedule B1 to the 1989 Order does not preclude the making of an administration order in relation to an insurer.

Modification of the Insolvency Rules (Northern Ireland) 1991 in relation to insurers

3. The 1991 Rules, so far as they give effect to Part III of the 1989 Order, have effect in relation to insurers with the modification that in Rule 2.012(1) of the 1991 Rules (the hearing), there is inserted after sub-paragraph (a) the following sub-paragraph—

“(aa) the Financial Services Authority;”.

(a) 2000 c. 8.

(b) S.I. 1989/2405 (N.I.19), amended by S.I. 2005/1455 (N.I. 10); there are other amending instruments but none is relevant.

(c) S.R. (N.I.) 1991 No. 364; amended by S.R. (N.I.) 2006 No.47; there are other amending instruments but none is relevant.

Mutual credit and set-off

4. Where an insurer, in relation to which an administration order has been made subsequently goes into liquidation, sums due from the insurer to another party are not to be included in the account of mutual dealings rendered under rule 4.096 of the 1991 Rules (mutual credits and set-off) if, at the time they became due, an administration application had been made under paragraph 13 of Schedule B1 to the 1989 Order in relation to the insurer.

Revocation and saving

5.—(1) The Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers)(Northern Ireland) Order 2005(a) is revoked.

(2) Paragraph (1) and articles 2 to 4 (including the modifications set out in the Schedule) do not apply in relation to any case where a petition for an administration order has been presented to the High Court before the coming into force of this Order.

Amendment to the Financial Services and Markets Act 2000 (Transitional Provisions, Repeals and Savings) (Financial Services Compensation Scheme) Order 2001

6. The first table (modifications to the Policyholders Protection Act) in Part 1 of Schedule 1 to the Financial Services and Markets Act 2000 (Transitional Provisions, Repeals and Savings) (Financial Services Compensation Scheme) Order 2001(b) is amended as follows—

- (a) in the entry relating to section 15 after “Insolvency Act 1986” insert “or under Part III of the Insolvency (Northern Ireland) Order 1989”; and
- (b) in the entry relating to section 16 after “Insolvency Act 1986” insert “or under Part III of the Insolvency (Northern Ireland) Order 1989”.

14th March 2007

Frank Roy
Alan Campbell
Two of the Lords Commissioners of Her Majesty’s Treasury

I consent

Peter Hain
One of Her Majesty’s Principal Secretaries of State

Northern Ireland Office
14th March 2007

SCHEDULE

Article 2

MODIFICATIONS OF PART III OF THE 1989 ORDER IN RELATION TO INSURERS

1. In paragraph 50(4) of Schedule B1 to the 1989 Order (administrator’s proposals)—
- (a) at the end of paragraph (b) omit “and”; and
 - (b) at the end of paragraph (c) add “and, (d) to the Financial Services Authority”.

(a) S.I. 2005/1644.

(b) S.I. 2001/2967; amended by S.I. 2003/2134; there is another amending instrument but it is not relevant.

2. In paragraph 54(2) of Schedule B1 to the 1989 Order (business and result of initial creditors' meeting) in paragraph (b) after "the registrar," add, "(ba) the Financial Services Authority,".

3. In paragraph 55(2)(b) of Schedule B1 to the 1989 Order (revision of the administrator's proposals), after "creditor" insert "and the Financial Services Authority".

4. In paragraph 77(1) of Schedule B1 to the 1989 Order (automatic end of administration), for "one year" substitute "30 months".

5. In paragraph 77(2)(b) of Schedule B1 to the 1989 Order (extension of administrator's term of office by consent) for "6" substitute "12".

6. In paragraph 80(1) of Schedule B1 to the 1989 Order (court ending administration on application of administrator), after the first reference to "company" insert "or the Financial Services Authority".

7. In paragraph 92(1) of Schedule B1 (supplying vacancy in office of administrator)—

(a) at the end of paragraph (d) omit "or"; and

(b) at the end of paragraph (e) add ", or (f) the Financial Services Authority".

8.—(1) The powers of the administrator referred to in Schedule 1 to the 1989 Order (powers of administrator or administrative receiver) include the power to make—

(a) any payments due to a creditor; or

(b) any payments on account of any sum which may become due to a creditor.

(2) Any payments to a creditor made pursuant to sub-paragraph (1) must not exceed, in aggregate, the amount which the administrator reasonably considers that the creditor would be entitled to receive on a distribution of the insurer's assets in a winding up.

(3) The powers conferred by sub-paragraph (1) may be exercised until an initial creditors' meeting but may only be exercised thereafter—

(a) if the following conditions are met—

(i) the administrator has laid before that meeting or any subsequent creditors' meeting ("the relevant meeting") a statement containing the information mentioned in sub-paragraph (4); and

(ii) the powers are exercised with the consent of a majority in number representing three-fourths in value of the creditors present and voting either in person or by proxy at the relevant meeting; or

(b) with the consent of the High Court.

(4) The information referred to in sub-paragraph (3)(a) is an estimate of the aggregate amount of—

(a) the insurer's assets and liabilities (whether actual, contingent or prospective); and

(b) all payments which the administrator proposes to make to creditors pursuant to sub-paragraph (1);

including any assumptions which the administrator has made in calculating that estimate.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies Part III of the Insolvency (Northern Ireland) Order 1989, S.I. 1989 No. 2405 (N.I. 19) as amended by the Insolvency (Northern Ireland) Order 2005, S.I. 2005 No. 1455 (N.I. 10) (“the 2005 Order”), with modifications, to insurers. It also applies, again with modifications, the Insolvency Rules (Northern Ireland) 1991, S.R. 1991 No. 364, as they are amended by the Insolvency (Amendment) Rules (Northern Ireland) 2006, S.R. 2006 No. 47. These changes reflect the changes made to the administration procedure by the 2005 Order.

The order permits insurers to enter into administration via the making of an administration order by the High Court.

As is presently the case where an insurer which has been in administration goes into liquidation sums due from the insurer to another party are not subject to the set off rule where at the time they became due an administration application has been made.

The modifications in relation to insurers made to the administration procedure by this Order also include—

- provision for notices at various stages of the administration procedure to be given to the Financial Services Authority;
- an increase in the standard length of administration from one year to 30 months;
- an increase in the extension period from 6 to 12 months;
- a modified rule in relation to payments to creditors.

This Order also amends the Financial Services and Markets Act 2000 (Transitional Provisions, Repeals and Savings) (Financial Services Compensation Scheme) Order 2001 so that cases dealt with by the Financial Services Compensation Scheme relating to insurers in provisional liquidation or in financial difficulties are not affected (for the purposes of sections 15 and 16 of the Policyholders Protection Act 1975) by administration orders made in relation to those insurers.

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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