

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (ADMINISTRATION
ORDERS RELATING TO INSURERS)(NORTHERN IRELAND) ORDER 2007
2007 No. 846

1. This explanatory memorandum has been prepared by Her Majesty's Treasury 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 (Northern Ireland) Order 2005, S.I. 2005/1455 (N.I. 10) ("the 2005 Order") revised the administration regime for Northern Ireland companies. The administration regime applies with modifications to insurers and therefore those modifications require adjustment in the light of the changes to the underlying administration regime.

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

3.1 None

4. **Legislative Background**

4.1 The 2005 Order amends among other things the administration regime in Part III of the Insolvency (Northern Ireland) Order 1989, S.I. 1989/2405 (N.I.) ("the 1989 Order") which is the principle piece of insolvency law in Northern Ireland. Section 360 of the Financial Services and Markets Act 2000 ("FSMA") permits the Treasury to make an order to apply specified provisions (including with modification) of Part III of the 1989 Order to insurers. Sections 426 and 428(3) of FSMA permit the making of consequential, incidental, supplemental and transitional provisions.

4.2 The 2005 Order inserts into the 1989 Order new schedule B1 which contains the new administration regime. Paragraph 10(2) of Schedule B1 states that "a person may not be appointed as administrator of a company which effects or carries out contracts of insurance." Article 2 of the 2007 Order applies Part III of the 1989 Order to insurers with the key modification that an insurer may only enter administration by virtue of a court order. The Schedule to the 2007 Order sets out more detailed modifications to the regime. Article 3 adds the Financial Services Authority to the list of those who are permitted to appear or be heard at the hearing of the administration application under the Insolvency Rules (Northern Ireland) 1991. Article 4 ensures that debts of an insurer incurred in an administration which subsequently goes into liquidation cannot be set-off against another party. Article 5 revokes the FSMA (Administration Orders relating to Insurers)(Northern Ireland) Order 2005, S.I. 2005/1644, which previously provided for the necessary modifications to the previous administration regime. Article 6 inserts references to the Northern Ireland administration process into sections 15 and 16 of the Policyholders Protection Act

1975 (“PPA”) which are modified and saved by the FSMA (Transitional Provisions, Repeals and Savings) (Financial Services Compensation Scheme) Order 2001. These modifications ensure that those sections of the PPA are not affected by an insurer entering into administration under the provisions of this Order.

5. Extent

5.1 This instrument extends to the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 The administration regime is a process through which a company in difficulties can benefit from a moratorium on legal action against it for a period during which it can seek to work through its financial difficulties under the control of the administrator who is an insolvency practitioner and is, or is deemed to be, an officer of the court. The changes made by the 2005 Order in Northern Ireland reflect those made to the administration regime in Great Britain by virtue of the Enterprise Act 2002 and identical modifications to those made in this instrument are made to the administration regime in Great Britain. As noted above the administration regime requires modification in relation to insurers. The key modification of the administration regime is that in contrast to an ordinary company, a company that effects or carries out insurance contracts may only enter administration following an application to the courts.

8. Impact

8.1 A separate Regulatory Impact Assessment has not been prepared for this instrument as it is consequential on the making of the 2005 Order in respect of which a Regulatory Impact Assessment (RIA) was prepared. The Regulatory Impact Assessment prepared by the Department of Enterprise, Trade and Investment in relation to the amendments made to the administration regime in Northern Ireland was placed in the libraries of each House of Parliament and is available at www.insolvencyservice.detini.gov.uk and from the Insolvency Service, Fermanagh House, Ormeau Avenue, Belfast BT2 8NG.

9. Contact

9.1 Darren Philp at Her Majesty's Treasury Tel: 020-7270 5468 or e-mail: Darren.philp@hm.treasury.x.gsi.gov.uk can answer any queries regarding the instrument.