

2008 No. 1897

COMPANIES

**The Companies (Trading Disclosures) (Insolvency) Regulations
2008**

<i>Made</i> - - - -	<i>16th July 2008</i>
<i>Laid before Parliament</i>	<i>18th July 2008</i>
<i>Coming into force</i> - -	<i>1st October 2008</i>

The Secretary of State is a Minister designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to the creation, operation, regulation or dissolution of companies and other forms of business organisation.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act.

Citation and commencement

1.—(1) These Regulations may be cited as the Companies (Trading Disclosures) (Insolvency) Regulations 2008.

(2) They come into force on 1st October 2008.

Statement that a company is in administrative receivership or receivership

2.—(1) For section 39(1) of the Insolvency Act 1986^(c) substitute—

“(1) Where a receiver or manager of the property of a company has been appointed—

- (a) every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company or the receiver or manager or the liquidator of the company; and
- (b) all the company’s websites,

must contain a statement that a receiver or manager has been appointed.”.

(2) For section 64(1) of the Insolvency Act 1986 substitute—

“(1) Where a receiver has been appointed—

- (a) every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company or the receiver or the liquidator of the company; and
- (b) all the company’s websites,

^(a) S.I. 2007/193.
^(b) 1972 c.68.
^(c) 1986 c.45.

must contain a statement that a receiver has been appointed.”.

(3) For article 49(1) of the Insolvency (Northern Ireland) Order 1989(a) substitute—

“(1) Where a receiver or manager of the property of a company has been appointed—

- (a) every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company or the receiver or manager or the liquidator of the company; and
- (b) all the company’s websites,

must contain a statement that a receiver or manager has been appointed.”.

Statement that moratorium is in force for a company

3.—(1) For paragraph 16(1) of Schedule A1 to the Insolvency Act 1986(b) substitute—

“(1) Every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company, and all the company’s websites, must also contain the nominee’s name and a statement that the moratorium is in force for the company.”.

(2) For paragraph 27(1) of Schedule A1 to the Insolvency (Northern Ireland) Order 1989(c) substitute—

“(1) Every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company, and all the company’s websites, must also contain the nominee’s name and a statement that the moratorium is in force for the company.”.

Statement that a company is in administration

4.—(1) For paragraph 45 of Schedule B1 to the Insolvency Act 1986(d) substitute—

“45.—(1) While a company is in administration, every business document issued by or on behalf of the company or the administrator, and all the company’s websites, must state—

- (a) the name of the administrator, and
- (b) that the affairs, business and property of the company are being managed by the administrator.

(2) Any of the following persons commits an offence if without reasonable excuse the person authorises or permits a contravention of sub-paragraph (1)—

- (a) the administrator,
- (b) an officer of the company, and
- (c) the company.

(3) In sub-paragraph (1) “business document” means—

- (a) an invoice,
- (b) an order for goods or services,
- (c) a business letter, and
- (d) an order form,

whether in hard copy, electronic or any other form.”.

(a) S.I. 1989/2405 (N.I. 19).

(b) Schedule A1 was inserted by the Insolvency Act 2000 (c.39), section 1 and Schedule 1.

(c) Schedule A1 was inserted by the Insolvency (Northern Ireland) Order 2002 (S.I. 2002/3152 (N.I. 6)), Article 3 and Schedule 1.

(d) Schedule B1 was inserted by the Enterprise Act 2002 (c.40), section 248(2) and Schedule 16.

(2) For paragraph 46 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989(a) substitute—

“46.—(1) While a company is in administration, every business document issued by or on behalf of the company or the administrator, and all the company’s websites, must state—

- (a) the name of the administrator, and
- (b) that the affairs, business and property of the company are being managed by the administrator.

(2) Any of the following persons commits an offence if without reasonable excuse the person authorises or permits a contravention of sub-paragraph (1)—

- (a) the administrator,
- (b) an officer of the company, and
- (c) the company.

(3) In sub-paragraph (1) “business document” means—

- (a) an invoice,
- (b) an order for goods or services,
- (c) a business letter, and
- (d) an order form,

whether in hard copy, electronic or any other form.”.

Statement that a company is being wound up

5.—(1) In section 188(1)(a) of the Insolvency Act 1986(b)—

- (a) after “order for goods” insert “or services”, and
- (b) omit “being a document on or in which the name of the company appears,”.

(2) In Article 159(1)(a) of the Insolvency (Northern Ireland) Order 1989(c)

- (a) after “order for goods” insert “or services”, and
- (b) omit “being a document on or in which the name of the company appears,”.

16th July 2008

Gareth Thomas
Parliamentary Under Secretary of State for Trade and Consumer Affairs
Department for Business, Enterprise and Regulatory Reform

(a) Schedule B1 was inserted by the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), Article 3(2) and Schedule 1.

(b) Section 188(1)(a) was substituted by S.I. 2006/3429, regulation 7(1).

(c) Article 159(1)(a) was substituted by S.I. 2006/3429, regulation 7(2).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further implement Article 1.5 of Directive 2003/58/EC of the European Parliament and the Council of 15th July 2003 amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of insolvency (O.J. L221, 4.9.2003, p.13).

Regulations 2, 3 and 4 amend the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989 so as to include websites and documents in electronic form in provisions requiring the fact that a company is in administrative receivership (or, in Scotland, receivership) or administration, or that a moratorium from creditors is in force, to appear on correspondence, publications and other documents (including order forms). Where the company is in administrative receivership (or, in Scotland, receivership) or a moratorium is in force, the limitation of the requirement to documents on which the name of the company appears is removed (there is already no such requirement where the company is in administration).

Regulation 5 amends section 188 of the 1986 Act and Article 159 of the 1989 Order (as already amended by regulation 7 of the Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429)) so as to include orders for services among the documents on which the fact that a company is being wound up must appear and remove the limitation of the requirement to documents on which the name of the company appears.

A full Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen beyond that of the Companies (Registrar, Languages and Trading Disclosures) Regulations 2006. Copies of the Impact Assessment produced for those Regulations can be obtained from Corporate Law and Governance, Department for Business, Enterprise and Regulatory Reform, 1 Victoria Street, London, SW1H 0ET or from its website. Copies were placed in the libraries of both Houses of Parliament.

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