

**EXPLANATORY MEMORANDUM TO  
THE FINANCIAL MARKETS AND INSOLVENCY (SETTLEMENT  
FINALITY)(AMENDMENT) REGULATIONS 2009**

**2009 No. 1972**

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

2.1 Is to make amendments to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (“the 1999 Regulations”) to reflect changes in insolvency law.

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

3.1 None.

**4. Legislative Context**

4.1 The 1999 Regulations implement Directive 98/26/EC of the European Parliament and of the Council on settlement finality in payment and securities systems (OJ L166, 19.5.98 p.45) (“the SFD”), which seeks to minimise the disruption caused by insolvency proceedings brought against a participant in designated payment and securities systems and a provider of collateral security in connection with participation in designated systems and the functions of a central bank. The protection given by the 1999 Regulations applies to any system which has been designated by the Bank of England or the Financial Services Authority and to any EU central bank (including the Bank of England and the European Central Bank) as the holder of such collateral security.

4.2 The amendments made to the 1999 Regulations—

- ensure that the claim of such a participant or central bank to collateral security takes priority, inter alia, over—
  - payment of the expenses of winding-up;
  - the requirement that part of a company’s net property which is subject to a floating charge is made available to satisfy unsecured debts;
  - payment of debts or liabilities arising out of contracts entered into by a former administrator

whether the security in question is provided by a company or by a building society;

- ensure that the protection given to the proceedings of a designated system apply to administration proceedings in the same way as winding up proceedings;
- ensure that transfer orders, collateral security and related dispositions are given greater protection against powers to disclaim transactions;
- ensure that protection given to collateral security charges applies equally in cases where the administration is still governed by the old administration regime under Part 2 of the Insolvency Act 1986;
- removes the power of a company to dispose of charged property without regard to a collateral security charge and ensures that the chargee's right to enforce that security is preserved.

## **5. Territorial Extent and Application**

5.1 This instrument applies 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, a compatibility statement is not required.

## **7. Policy background**

7.1 The SFD protects payment and settlement systems (such as CREST UK or the London Clearing House) and central banks by minimising the disruption caused by the insolvency of participants or the providers of collateral security. The SFD requires Member States to ensure that the rights of participants and central banks take priority over the normal principles of insolvency.

7.2 This instrument updates the 1999 Regulations to reflect subsequent changes in insolvency law, to clarify some inconsistencies and give legal certainty going forward. The 1999 regulations need to be updated, to ensure that the protection given by the 1999 Regulations to systems and central banks remains effective in the event of the insolvency of a participant or a provider of collateral security, as required by the SFD.

## **8. Consolidation**

8.1 The Treasury does not have plans to consolidate the 1999 regulations with amendments at this time. Commercial publishers produce consolidated versions of the 1999 Regulations, both in electronic and hard copy versions.

## **9. Consultation outcome**

9.1 The changes made by these regulations are primarily technical amendments required to reflect changes to insolvency law which have themselves been the

subject of full consultation. They have not therefore been subject to further public consultation.

## **10. Impact**

10.1 The legislation does not have any impact on business, charities or voluntary bodies.

10.2 The legislation does not have any impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 This legislation applies to small businesses which are counterparties to central bank operations and participants in designated systems. It is not anticipated that any small business would be adversely impacted by these proposals.

## **12. Monitoring & review**

12.1 There are no formal plans for the legislation to be reviewed at set intervals. However, the legislation is likely to be reviewed at appropriate intervals to ensure that it reflects the current insolvency law.

## **13. Contact**

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