

EXPLANATORY MEMORANDUM TO
THE BANKS (FORMER AUTHORISED INSTITUTIONS) (INSOLVENCY) ORDER
2006

2006 No. 3107

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

The Banks (Former Authorised Institutions) (Insolvency) Order 2006 revokes the Banks (Administration Proceedings) Order 1989, subject to savings. This is necessary to apply the changes to administration introduced by the Enterprise Act 2002 to former authorised institutions.

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

None.

4. Legislative Background

4.1 Section 422 of the Insolvency Act 1986 allows the Secretary of State with the concurrence of the Treasury and after consulting the FSA to make an order that specified provisions of Parts 1 to 7 of the Insolvency Act 1986 apply with modifications to “former authorised institutions”. These are defined as persons who:

- (a) have a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 or 1987, but
- (b) do not have permission under Part IV of the Financial Services and Markets Act 2000 to accept deposits.

4.2 The Banks (Former Authorised Institutions) (Insolvency) Order 2006 makes provision for the application of Part 2 of, and Schedule B1 to, the Insolvency Act 1986 to any company within the meaning of Section 735(1) of the Companies Act 1985 that is a former authorised institution.

4.3 The Schedule to the Order sets out modifications of Schedule B1 to the Insolvency Act 1986 in its application to such companies. Broadly speaking these confer rights on the Financial Services Authority to participate in administration proceedings, which are commenced as a result of the application of this Order. The Order is made as a consequence of the amendments made to Part II of the Insolvency Act 1986 by the Enterprise Act 2002.

5. Extent

This instrument applies to Great Britain.

6. European Convention on Human Rights

In the Minister's view the provisions of The Banks (Former Authorised Institutions) (Insolvency) Order 2006 are compatible with the European Convention on Human Rights.

7. Policy background

7.1 The Order follows on from the package of reforms to corporate insolvency law introduced by Part 10 of the Enterprise Act 2002, which aim to encourage the rescue of viable companies that get into financial difficulties.

7.2 Administration was introduced by the Insolvency Act 1986 to provide a company facing financial difficulties with a breathing space during which time a rescue package or a scheme for the more advantageous realisation of assets could be put in place. The procedure was changed by the Enterprise Act 2002 with the aim of increasing its flexibility and making it quicker, cheaper and less bureaucratic.

7.3 Administration proceedings are intended primarily to facilitate the rescue and rehabilitation of insolvent but potentially viable companies. To promote the use of administration as a rescue vehicle, the Enterprise Act streamlined the procedure by creating without court order entry routes and introducing simpler means of exit. In addition, the Act requires administrators to perform their functions as quickly and efficiently as possible, time limits within the procedure have been reduced greatly and an overall time limit of 1 year has been introduced.

7.4 Former Authorised Institutions are formerly authorised banks, as defined by Section 422 of the Insolvency Act 1986. Financial institutions are now authorised under FSMA 2000 (Financial Services and Markets Act). This Order covers institutions which accepted deposits in accordance with authorisations under the Banking Acts 1979 or 1987, but which do not have permission to accept deposits under FSMA 2000. This is a largely transitional arrangement as over time such institutions will cease to exist and the Order could be revoked. Under the Order, the FSA can participate in the administration process, i.e. apply for an administration order, consent to the making of an order, attend meetings of creditors, make representations, etc. There is no change in regulatory responsibilities from the 1989 Order with regards to the FSA.

8. Impact

A Regulatory Impact Assessment identifying the costs of the insolvency provisions of the Enterprise Act 2002 to business and the exchequer was published at the time the Act received Royal Assent in November 2002. It is available from www.dti.gov.uk/enterpriseact/rias.htm. The RIA encompasses the areas covered by this Order and so it is not necessary to complete a separate assessment.

9. Contact

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