

**EXPLANATORY MEMORANDUM TO  
THE INSOLVENCY (AMENDMENT) REGULATIONS 2008**

**2008 No. 670**

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform 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 Regulations 1994 (S.I. 1994/2507) as amended (“the principal Order”) make provision, amongst other things, for the disposal of funds held by a liquidator upon the dissolution of a company. Regulation 18 currently provides for payments to be made into the Insolvency Services Account of unclaimed and undistributed assets of a company or dividends or held by the company on trust in respect of dividends or other sums due to any person as a member or former member of the company. Where the liquidator acts in a compulsory winding up, the payment into the Insolvency Services Account of such funds is mandatory; in a voluntary winding up it is discretionary. The Insolvency (Amendment) Regulations 2008 makes similar non-mandatory provision for unclaimed dividends to be payable into the Insolvency Services Account upon the dissolution of a company in an administration or administrative receivership.

2.2 Regulation 18 is also amended so as to limit payments into the Insolvency Services Account, in both voluntary and compulsory winding ups, to unclaimed dividends or other funds held on trust by the company for other persons immediately before its dissolution and to exclude undistributed assets or dividends. This is so as to reflect the provisions of section 654 of the Companies Act 1985 (c.40) (now section 1012 of the Companies Act 2006 (c.46)) which provides that when a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property, but not including property held by the company on trust for any other person) are deemed to be *bona vacantia* and payable to the Crown.

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

There are no matters of special interest to the Joint Committee on Statutory Instruments.

**4. Legislative Background**

The regulations are made pursuant to Rule 12.1 of the Insolvency Rules 1986 and section 411 of, and paragraph 27 of Schedule 8 to, the Insolvency Act 1986. They are exercised by the Secretary of State.

## **5. Extent**

This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

No statement is required because the Order, although required to be laid after being made, is not subject to any further parliamentary proceedings and does not amend primary legislation.

## **7. Policy background**

7.1 The new financial regime implemented on 1 April 2004 for the Insolvency Service and provided for by the coming into force of the Enterprise Act 2002, included a new fee regime that was intended to be simpler, fairer and more transparent and to match income to costs in line with the Treasury Fees and Charges Guide. There is a requirement under the Treasury Fees and Charges Guide to review fee levels annually.

7.2 During the initial consultation on the Insolvency Rules modernisation project in early 2006 members of the insolvency profession raised the issue of whether the Insolvency Service could do something to remedy the problem of what to do with unclaimed dividends in administrations and administrative receiverships.

7.3 Insolvency practitioners have provided the Insolvency Service with details of cases in which large numbers of employees had not cashed the cheques issued to them in respect of payments due to them and who have been unable to be traced by the respective office holder. The office holder often has no control over what the recipient of the payment does with the remittance, if anything at all. It is the monies that are left in the hands of the office holders on dissolution that are causing problems.

7.4 The Insolvency Service was persuaded that the problem could be resolved by an amendment to the Insolvency Regulations 1994 which extended the scope of those regulations so as to allow administrators and administrative receivers to pay such monies into the Insolvency Services Account (ISA), provisions which correspond to those provided for liquidators in both voluntary and compulsory winding ups pursuant to Regulation 18 of the 1994 regulations. The new provisions are not mandatory, merely permissive.

7.5 Regulation 18 has itself also been reviewed and amended so as to ensure that it is consistent with the provision made for administrators and administrative receivers; that is, so as to ensure that payments into the Insolvency Services Account in both voluntary and compulsory winding ups are limited to monies in the hands of any former liquidator at the date of the dissolution of the company representing unclaimed dividends or held by the company in trust in respect of dividends or other sums due to any person as a member of former member of the company; that is to say, so as not to include

monies which represent *bona vacantia* and which should be paid to the Crown. This amendment ensures consistency between the provisions for administrators, administrative receivers and liquidators making payments of unclaimed dividends or other money into the Insolvency Services Account. It remains mandatory for companies which have been compulsorily wound up and permissive for voluntary winding ups. Provision is also made in all cases for information concerning the dividend or other sum to accompany any payment in.

## **8. Impact**

No Regulatory Impact Assessment has been prepared for this Order.

## **9. Contact**

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