

EXPLANATORY MEMORANDUM TO

THE DEREGULATION ACT 2015 (INSOLVENCY) (CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL AND SAVINGS PROVISIONS) ORDER 2015

2015 No. 1641

1. This explanatory memorandum has been prepared by the Department for Business Innovation and Skills 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 The Deregulation Act 2015 (Insolvency) (Consequential Amendments and Transitional and Savings Provisions) Order 2015 (“the Order”) makes amendments to certain secondary legislation in consequence of amendments made by the Deregulation Act 2015 (“the Act”) to the Insolvency Act 1986, the Deeds of Arrangement Act 1914 and the Company Directors Disqualification Act 1986 which will commence on 1st October 2015.

2.2 The Order saves some legislation and provides for transitional arrangements relating to individuals authorised to act as insolvency practitioners by the Secretary of State and individuals who have applied to the Secretary of State for authorisation to act as insolvency practitioners. It also includes transitional arrangements for existing deeds of arrangement to continue where the debtor’s estate had not been finally wound up by 1st October.

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

3.1 To avoid making numerous Orders commencing several provisions of the Act on 1st October 2015, the Cabinet Office is co-ordinating a single Order for commencement (the “Commencement Order”) , including the insolvency provisions to which this Order relates. The Commencement Order is not subject to any parliamentary procedure (see section 115(7) of the Act).

3.2 The Order, which makes amendments in consequence of the insolvency provisions of the Act, is subject to the Negative procedure (see section 112(4) of the Act). The Order will be made and laid before the Commencement Order is made.

4. Legislative Context

4.1 The Order is made in exercise of the powers conferred by section 112(1), (2) and (4) of the Deregulation Act 2015 which confers on the Secretary of State the power to make consequential, transitional or saving provision.

4.2 Schedules 1 and 2 to the Order amends secondary legislation in consequence of the commencement of section 17 of the Act and provisions in Part 6 of Schedule 6 to the Act. Section 17 of the Act provides for the partial authorisation of insolvency practitioners, so that they can be authorised to act solely in personal insolvencies or solely in corporate insolvencies as well as being fully authorised so that they can act in

both. Part 6 of Schedule 6 to the Act simplifies the regulatory regime for insolvency practitioners and provides that the Secretary of State (as the sole competent authority) will, after a transitional period, withdraw from the direct authorisation of insolvency practitioners. It also repeals a provision whereby the Secretary of State can recognise a body whose members can act as nominee or supervisor of a voluntary arrangement under the Insolvency Act 1986. Schedule 1 revokes rules regarding the Tribunal that considers challenges of decisions regarding the application for authorisation as an insolvency practitioner by competent authorities. Schedules 1 and 2 remove references to persons who are not insolvency practitioners but who are authorised to act in voluntary arrangements (of which there are none). Schedule 2 clarifies that a person is not qualified to act as an insolvency practitioner in relation to a Collective Investment in Transferable Securities scheme unless the person is qualified to act as an insolvency practitioner in relation to a company.

4.3 Schedule 1 to the Order contains amendments which are subject to savings. The amendments in Schedule 2 are not subject to these savings.

4.4 Schedule 3 to the Order amends secondary legislation in consequence of the commencement of Parts 1 and 4 of Schedule 6 to the Act. Paragraph 1 of Schedule 3 makes consequential amendment to a wide range of secondary legislation as a result of the revocation of the Deeds of Arrangement Act 1914. Paragraph 2 of Schedule 3 to the Order makes consequential amendment to the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987 to give effect to Part 4 of Schedule 6 to the Act so that a broader range of parties are required to provide information to the Secretary of State or the official receiver relating to the conduct of directors of insolvent companies.

5. Territorial Extent and Application

This instrument applies to England, Scotland and Wales only. The amendments have the same extent as the enactment amended or revoked.

6. European Convention on Human Rights

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

7. Policy background

Schedules 1 and 2

7.1 The objectives of the partial authorisation provisions in section 17 of the Act are to increase competition in the insolvency sector by reducing unnecessary barriers to entry. This is achieved by implementing a scheme of specialised authorisation so that insolvency practitioners can choose to specialise in either personal or corporate insolvency. Part 6 of Schedule 6 to the Act provides that the Secretary of State will, after a transitional period, withdraw from the direct authorisation of insolvency practitioners, and so in future only Recognised Professional Bodies will be able to authorise persons as insolvency practitioners. This will enable the Secretary of State to concentrate resources on the oversight role of the regulation of insolvency practitioners.

7.2 No body has been recognised by the Secretary of State to authorise members to act in a voluntary arrangement, and in view of the policy of partial authorisation introduced by section 17 of the act it would be incompatible to do so in the future.

Schedule 3

7.3 Paragraph 1 of Schedule 3 to the Order amends secondary legislation that refers to deeds of arrangement, a formal personal insolvency procedure that has been rarely used in recent years and has been superseded by individual voluntary arrangements (introduced in the Insolvency Act 1986). Individual voluntary arrangements have significant benefits over deeds of arrangement.

7.4 Paragraph 2 of Schedule 3 to the Order amends the Rules relating to proceedings for the disqualification of a director of an insolvent company. Part 4 of Schedule 6 to the Act broadened the range of parties that could be required to provide information to the Secretary of State or the official receiver about a person's conduct as a director of an insolvent company. The objective is to improve the efficiency of the investigative process and enable the Secretary of State or the official receiver to require information directly from the relevant party instead of making the request through the insolvency office-holder.

8. Consultation outcome

Targeted consultations on the provisions were undertaken in 2010, 2011 and 2014.

9. Guidance

The Insolvency Service (an executive agency of BIS) will inform insolvency practitioners authorised by the Secretary of State of the commencement date of the measures relating to the cessation of direct authorisation and details of the transitional arrangements by letter. Other people with an interest in the commencement date of all the insolvency measures will be notified by publication of articles in established Insolvency Service newsletters.

10. Impact

A separate full regulatory impact assessment has not been prepared for this consequential instrument because no impact on the private, public or voluntary sectors is foreseen separate to that already covered by the substantive provisions in the Act. Those that have been prepared and published in relation to the substantive provisions in the Act are available from the Insolvency Service, 4 Abbey Orchard Street, London SW1P 2HT or can be viewed at:

<http://www.legislation.gov.uk/ukia/2012/157>

<http://services.parliament.uk/bills/2014-15/deregulation/documents.html>

Those that have not already been published will be published within 6 months of the commencement of the Order.

11. Regulating small business

This consequential instrument does not place any additional burdens on small business.

12. Monitoring and review

No specific monitoring is required. The Order makes consequential, transitional and saving amendments only. The legislation amended by this instrument will be monitored and reviewed as appropriate within the relevant wider legislative schemes.

13. Contact

Mike Chapman at the Insolvency Service Tel: 020 7291 6765 email:
policy.unit@insolvency.gsi.gov.uk will be able to answer any queries regarding the Order.