

EXPLANATORY MEMORANDUM TO
THE FRIENDLY SOCIETIES ACT 1992 (MODIFICATION OF PART 2)
(NORTHERN IRELAND) ORDER 2017

2017 No. 906

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order amends the Friendly Societies Act 1992 (c. 40) ("the 1992 Act") in consequence of certain provisions of the Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2) ("the 2016 Act") which amend the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19) ("the 1989 Order"). The relevant provisions are sections 14 to 20 of the 2016 Act (authorisation and regulation of insolvency practitioners: amendments to existing regime), which came into force on 1st April 2016.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The 1992 Act makes further provision for friendly societies, including provision for winding up. This instrument concerns the application of companies winding up legislation to incorporated friendly societies, which is provided for in Part 2 of the Act (particularly section 23 and Schedule 10).
- 4.2 Part 3 of Schedule 10 to the 1992 Act provides for the modified application of the 1989 Order. Sections 14 to 20 of the 2016 Act amend the 1989 Order to reform the legislative regime for the qualification, authorisation and governance of insolvency practitioners in Northern Ireland.
- 4.3 Section 102 of the 1992 Act provides for the assimilation of the law relating to friendly societies to the law relating to the winding up of companies. It empowers HM Treasury, if it appears to be expedient, by order to modify provisions of the Act, including so much of Part 2 as relates to winding up, as the Treasury think appropriate for the purpose of such assimilation.
- 4.4 This instrument assimilates the law relating to friendly societies to the law relating to the winding up of companies in Northern Ireland as modified by sections 14 to 20 of the 2016 Act.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is Northern Ireland.

6. European Convention on Human Rights

- 6.1 The Economic Secretary to HM Treasury has made the following statement regarding Human Rights:

“In my view the provisions of The Friendly Societies Act 1992 (Modification of Part 2) (Northern Ireland) Order 2017 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 HM Treasury has a considerable volume of legislation which governs the insolvency of financial sector firms. In the case of friendly societies, the 1992 Act applies corporate winding up legislation with modifications.
- 7.2 The 2016 Act makes a number of reforms of general corporate and individual insolvency law in Northern Ireland. In Northern Ireland companies winding up legislation is contained in the 1989 Order. The 1992 Act needs to be amended to reflect amendments of that Order.
- 7.3 This instrument takes account of provisions in the 2016 Act which modify the regime in the 1989 Order relating to the qualification, authorisation and governance of insolvency practitioners in Northern Ireland.
- 7.4 The provision in the 2016 Act separating the authorisation of insolvency practitioners for personal and corporate insolvency is intended to reduce costs for applicants wishing to specialise in one of these fields. As a consequence of the reform, this instrument provides that a person must be authorised to act as an insolvency practitioner in relation to companies in order to be qualified to act as an insolvency practitioner in relation to an incorporated friendly society.
- 7.5 Provision taking account of equivalent reforms in England and Wales and Scotland has been made in the Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 which came into force on 7 April 2017. Those Regulations take account of the insolvency practitioner reforms in Northern Ireland so far as they affect other kinds of financial institution. A separate instrument is required for friendly societies because the power exercisable for that purpose (section 102 of the 1992 Act) is subject to the negative resolution procedure.

Consolidation

- 7.6 Not relevant.

8. Consultation outcome

- 8.1 The Department for Business, Innovation and Skills (BIS) carried out extensive consultations before bringing forward the insolvency practitioner reforms in the Deregulation Act 2015.

8.2 Those reforms, among many others, were explored in a series of public consultations: the ‘insolvency red tape challenge’¹; ‘transparency and trust paper’²; and ‘strengthening the regulatory regime for insolvency practitioners’³.

8.3 The provision about insolvency practitioners in the 2016 Act mirror the equivalent provisions in the Deregulation Act 2015. HM Treasury has drafted this instrument in close consultation with the Insolvency Service in Northern Ireland.

9. Guidance

9.1 Not relevant.

10. Impact

10.1 This instrument ensures that the benefits of the general insolvency reforms enacted in the 2016 Act are extended to the insolvency of friendly societies in Northern Ireland.

10.2 BIS considered the impact of partial authorisation for insolvency practitioners as part of the changes brought in by the Deregulation Act 2015.

10.3 The assessment covered the whole economy and noted the deregulatory nature of the change for business and that it did not impose any additional costs. Therefore, the government has not prepared another impact assessment specifically covering the friendly societies in Northern Ireland. The reforms do not require HM Treasury to make extensive changes to the way in which corporate insolvency law is applied to financial institutions and for special insolvency regimes.

10.4 This instrument has no impact on the public, charities or, voluntary sectors.

11. Regulating small business

11.1 This instrument applies to friendly societies, which may be small businesses.

11.2 No specific action is proposed to apply these regulations differently to small businesses because it is the interest of small businesses for these deregulatory measures to be applied equally.

12. Monitoring & review

12.1 This instrument does not provide for the review of the amendments it makes.

12.2 HM Treasury has no formal plans to review the wider legislation on modified insolvency regimes for financial sector firms, but is likely to review it if there is a compelling case for doing so. Such a review would include a review of the effect of the relevant amendments made by this instrument.

13. Contact

13.1 Laura Mountford at HM Treasury Telephone: 02072706358 or email: Laura.Mountford1@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/244904/rtc-consultation.pdf

² <https://www.gov.uk/government/consultations/company-ownership-transparency-and-trustdiscussion-paper>

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/280880/Strengthening_the_regulatory_regime_and_fee_structure_for_insolvency_practitioners.pdf