

**EXPLANATORY MEMORANDUM TO**  
**THE INSOLVENCY ACT 1986 (PRESCRIBED PART) (AMENDMENT) ORDER**  
**2020**

**2020 No. 211**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy in conjunction with the Insolvency Service and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument amends article 3(2) of the Insolvency Act 1986 (Prescribed Part) Order 2003 (“the 2003 Order”). Article 3 applies when a company enters an insolvency process and prescribes the part of the company’s net assets (the “prescribed part”) that must, in certain circumstances, be distributed to the company’s unsecured creditors, up to a cap of £600,000 prescribed by Article 3(2). This instrument increases the cap to £800,000 in line with inflation since 2003.

**3. Matters of special interest to Parliament**

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

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is Great Britain.  
4.2 The territorial application of this instrument is Great Britain.

**5. European Convention on Human Rights**

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

**6. Legislative Context**

- 6.1 The Insolvency Act 1986 (“IA86”) specifies the order of priority in which amounts realised from the assets of companies that have gone into liquidation, administration or receivership, are distributed to the various categories of creditor. Unsecured creditors rank lowest in that order.

- 6.2 Section 176A IA86 was introduced by the Enterprise Act 2002, with effect from 15 September 2003. It requires a liquidator, administrator, or receiver to make a prescribed part of the company's property available for unsecured creditors.
- 6.3 Article 3(2) of the 2003 Order caps the prescribed part at £600,000. This instrument amends article 3(2) of the 2003 Order to remove the reference to £600,000 and replace it with a figure of £800,000.

## **7. Policy background**

### *What is being done and why?*

- 7.1 When a company goes into liquidation, administration or receivership any assets are realised and the proceeds distributed in the order set out in the IA86. The IA86 establishes different categories of creditors and their priority in the order of distribution of the funds. Unsecured creditors rank lowest in the order of priority and accordingly, if insufficient funds are realised to pay creditors in full, then unsecured creditors will receive a percentage of the sums due to them or potentially nothing at all.
- 7.2 The prescribed part is a ring-fenced proportion of the funds which would otherwise be distributed to a higher-ranking category of creditor (floating charge holders) and is instead distributed amongst unsecured creditors. This increases the possibility of unsecured creditors recovering some of the money they are owed.
- 7.3 The prescribed part has been capped at £600,000 since it was introduced in 2003. This instrument increases that cap to £800,000 thereby adjusting it in line with inflation. Unsecured creditors may therefore benefit from an increased amount being available for distribution to them under the prescribed part.
- 7.4 It is anticipated that, in insolvencies where the current cap on the prescribed part is reached, the new cap will often be reached. The new cap will result in an increased prescribed part where the company's net assets are above £2,985,000.
- 7.5 In such cases, one consequence of the increased cap is to reduce the amount that is available to floating charge holders. Therefore, this instrument also contains transitional provisions to ensure that the increase does not operate to reduce the amount that is available to that category of creditor in cases where their interest pre-dates the coming into force of the Order.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 No consolidation is required as a result of this amendment.

## **10. Consultation outcome**

- 10.1 Stakeholders were consulted on whether the prescribed part cap should remain the same, be increased or be removed as part of the Insolvency and Corporate Governance review which ran from 20th March to 11th June 2018.

- 10.2 93 responses to the consultation were received from a range of stakeholders, of which 38 responses addressed the question relating to the prescribed part. There was a mixed response with 11 of those who answered the question being of the view that there should be no cap on the prescribed part, 12 answering that the cap should remain at £600,000, and the remaining 15 respondents arguing that the cap should be increased.
- 10.3 Whilst removing the cap was a popular choice, many respondents noted that such an action could adversely impact future lending, particularly to distressed businesses. This was because floating charge holders would not be able to accurately assess the risk of not recovering all sums due to them and the likely recovery rate in the event of the insolvency of the borrower.
- 10.4 Based on the responses received, and taking into account concerns about the effect of removal of the cap, Government has concluded the most appropriate course of action is to increase the cap in a manner which reflects the increase in inflation since the prescribed part was introduced in 2003.
- 10.5 The Government response to the consultation summarising the responses received can be found here (at page 30):  
<https://www.gov.uk/government/consultations/insolvency-and-corporate-governance>
- 10.6 The Government has consulted with the Scottish Government to ensure that it is content with the increase in the cap.

## **11. Guidance**

- 11.1 This instrument varies the amount of an existing legislative cap but does not make any other substantive changes. As such, no guidance is to be published in respect of this amendment.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no significant impact on business has been identified. The amount redirected from floating charge holders to unsecured creditors is anticipated to be between £0 and £1,800,000 of which 24% are Government creditors. Lenders typically have recourse to multiple recovery mechanisms in insolvency such as fixed and floating charges, with the former being the main source of recovery. Consequently, the wider impact on cost and availability of secured credit is likely to be negligible.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that there will be no additional burden on small businesses.

## **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is to monitor the impact of the change introduced by this instrument on an ongoing basis but there is no intention to conduct

a non-statutory review. This is because the legislation acts to adjust an existing provision for payment of unsecured creditors in line with inflation, so that the beneficiaries receive the intended proportion of the net assets in an insolvency. It is estimated that fewer than 1% of administration and liquidation cases have a prescribed part fund which reaches the current cap, so further review would be disproportionate.

- 14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Paul Scully has made the following statement - a review would be disproportionate when taking into account the economic impact of this instrument (see section 12 above).

## **15. Contact**

- 15.1 Simon Whiting at the Insolvency Service Telephone: 029 2036 8747 / 020 7637 6576 or email: [Simon.Whiting@insolvency.gov.uk](mailto:Simon.Whiting@insolvency.gov.uk), can be contacted with any queries regarding the instrument.
- 15.2 Angela Crossley, Deputy Director at the Insolvency Service can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Callanan at the Department for Business Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.