EXPLANATORY MEMORANDUM TO

THE COMPANIES (TRADING DISCLOSURES) (INSOLVENCY) REGULATIONS 2008

2008 No. 1897

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.

2. Description

2.1 The Companies (Trading Disclosures) (Insolvency) Regulations 2008 implement Article 1.5 of Directive 2003/58/EC of the European Parliament and of the Council (the First Company Law Amendment Directive) amending the Council Directive 68/151/EEC (the First Company Law Directive), as regards disclosure requirements in the event that a company is being wound up.

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

3.1 None

4. Legislative Background

4.1 The First Company Law Directive was originally adopted in 1968. Article 4 specifies the minimum information that companies must include in their business letters and order forms. This information includes, where appropriate, the fact that the company is being wound up.

4.2 The Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989 require, as appropriate, a statement that a company is in administrative receivership or receivership, that a moratorium is in force for a company, that a company is in administration or that the company is being would up to be included in invoices, orders for goods, and business letters. (All these procedures are types of "winding up" in EU law.)

4.2 The First Company Law Directive assumes the use of paper documents. The First Company Law Amendment Directive updates the First Company Law Directive by providing that the information requirements for letters and order forms apply equally to electronic letters and order forms and extending the requirements to companies' websites.

4.3 Regulation 7 of the Companies (Registrar, Languages and Trading Disclosures) Regulations 2006, SI 2006/3429, amended the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989 so as to implement the First Company Law Amendment Directive in respect of the required statement that a company is being wound up. The Regulations the subject of this Memorandum complete that implementation so as to cover the other procedures under United Kingdom law which are a type of "winding up" in EU law.

4.4 The Regulations also include orders for services among the documents to which must include the required statement, as provided by the Directive, and omit the limitation that the statement is required only when the company's name appears on or in the document, which is not permitted by the Directive.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Gareth Thomas, Parliamentary Under Secretary of State with responsibility for World Trade Policy and Consumer and Competition Policy, has made the following statement regarding human rights:

> In my view the provisions of the draft Companies (Reduction of Share Capital) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 The policy is that, as required by First Company Law Amendment Directive (2003/58/EC), the requirements in the Insolvency Act for appropriate statements apply to websites and to invoices, orders for goods or services, business letters and order forms whether in hard copy, electronic or any other form and irrespective of whether they mention the name of the company or not..

8. Impact

8.1 An Impact Assessment has not been prepared for these Regulations as the amendments are minor and technical. The impact will be negligible, and it will only affect companies that are being wound up. A Regulatory Impact Assessment was provided for the First Company Law Amendment Directive, Part 35 of the Companies Act 2006 and the Companies (Registrar, Languages and Trading Disclosures) Regulations) 2006.

9. Contact

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