EXPLANATORY MEMORANDUM TO

THE INSOLVENCY (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 647

1. Introduction

1.1 This explanatory memorandum has been prepared by the Insolvency Service and is laid before Parliament by Command of Her Majesty.

1.2 This instrument is required to ensure that the United Kingdom (UK) has a functioning legal framework that reflects the Withdrawal Agreement reached between the UK and the European Union (EU). It will come into force on the Implementation Period Completion Date (IP Completion Date).

2. Purpose of the instrument

The Regulations make amendments to the Insolvency (Amendment) (EU Exit) Regulations 2019 to implement the Withdrawal Agreement that has been agreed with the EU. They amend the transitional and savings provisions contained in those regulations.

2.1 The Regulations give effect to Article 67(3)(c) of the Withdrawal Agreement. This provides that the EU Insolvency Regulation ((EU) 2015/848) (the "EUIR") will continue to apply in respect of main proceedings opened before the IP Completion Date.

Explanations

What did any relevant EU law do before exit day?

2.2 The EUIR deals with cross-border jurisdiction, cooperation, recognition, and enforcement of insolvency proceedings in the EU. Insolvency proceedings to which the Regulation applies may only be opened in the member state where the centre of main interests of the debtor is located or in which an establishment is located.

Why is it being changed?

2.3 On the UK's exit from the EU, insolvency proceedings commenced in the UK will no longer enjoy automatic recognition in EU member states. As the EUIR relies heavily on reciprocity between EU member states in order to operate effectively, it is not possible to continue the current system unilaterally.

2.4 The amendments made by the Insolvency (Amendment) (EU Exit) Regulations 2019 were therefore needed to repeal the majority of the EUIR from UK law, and to revoke previous amendments made to insolvency legislation to facilitate the implementation of the EUIR.

2.5 The Insolvency (Amendment) (EU Exit) Regulations 2019 included transitional and savings provisions to deal with cases in which main insolvency proceedings under the EU Insolvency Regulation were opened before exit day, and to provide for there not being a withdrawal agreement with the EU.

2.6 This included a power for the court to apply any appropriate law or make any decision it saw fit to ensure the applicant, or another person, was not prejudiced by virtue of the UK no longer being treated as an EU member state. The amendments made by these Regulations are required to correct a potential conflict between those transitional provisions and the Withdrawal Agreement that came into force on 1 February 2020.

What will it now do?

2.7 The current instrument revokes the transitional and savings provision in the Insolvency (Amendment) (EU Exit) Regulations 2019 and in doing so it applies Article 67(3)(c) of the Withdrawal Agreement.

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 the 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 covers the United Kingdom.

4.2 The territorial application of this instrument varies between provisions.

4.3 Insolvency law is not devolved as regards Wales.

4.4 Insolvency law is a partially devolved policy area in Scotland where personal insolvency is devolved, but corporate insolvency proceedings, such as administration, and Company Voluntary Arrangements are reserved. There is shared competence between Westminster and the Scottish Government for winding up, with the 'legal effect' being reserved and the 'process' being devolved.

4.5 Insolvency law is fully devolved to Northern Ireland.

4.6 Amendments, repeals and revocations made by the instrument have the same extent as the enactments which are so amended, repealed or revoked.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The Insolvency (Amendment) (EU Exit) Regulations 2019 made amendments to the retained EUIR to deal with deficiencies in retained law relating to cross-border insolvencies. Those Regulations retained provisions that are beneficial to the UK and removed those which no longer operate effectively. The Regulations included transitional and savings provisions in the event that a withdrawal agreement was not

reached with the EU. As an agreement is now in place these need to be revoked to avoid a potential conflict with that agreement.

7. Policy background

What is being done and why?

7.1 This instrument is required to ensure that the UK has a properly functioning legal framework for insolvency proceedings, and will come into force at the end of the Implementation Period. These regulations will amend provisions in the Insolvency (Amendment) (EU Exit) Regulations 2019 so that they function correctly after the IP Completion Date and are consistent with the Withdrawal Agreement.

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

8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union. It is being made under section 8B(1) of the European Union (Withdrawal) Act 2018 and removes a power given to the courts that could be in conflict with the Withdrawal Agreement.

9. Consolidation

9.1 N/A

10. Consultation outcome

10.1 As there has been no change to policy from the Insolvency (Amendment) (EU Exit) Regulations 2019, further informal consultation has not been carried out.

11. Guidance

11.1 The Insolvency Service issues regular bulletins to interested parties; these will be used to raise awareness of the new provisions and procedural changes at the time of laying.

12. Impact

12.1 The impact on business is estimated to be less than £5m per year. There is no impact on charities or voluntary bodies.

12.2 There is no significant impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because analysis has found that the overall impact on business is likely to be less than £5m per year.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by Insolvency Practitioner small businesses.

13.2 However, the EUIR and our existing insolvency legislation does not distinguish between large and small businesses or large and small Insolvency Practitioner firms, hence that is also the case with these repeals and amendments.

14. Monitoring & review

14.1 The approach to monitoring the effects of this legislation will be to monitor the impact of the changes introduced by this instrument on an ongoing basis using information collected from regular engagement with affected stakeholder groups.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Andrew Shore, Assistant Director of Policy at the Insolvency Service (Tel: 020 7637 6587, or e-mail: Policy.Unit@insolvency.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Angela Crossley, Director of Strategy and Change, at the Insolvency Service can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Callanan at the Department for Business, Energy & Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.