EXPLANATORY MEMORANDUM TO

THE INSOLVENCY PRACTITIONERS (RECOGNISED PROFESSIONAL BODIES) (REVOCATION OF RECOGNITION) ORDER 2016

2016 No. 403

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 Under the Insolvency Act 1986 the Secretary of State can by Order designate organisations as recognised professional bodies. These recognised professional bodies are responsible for the regulation of insolvency practitioners. An organisation's status as a recognised professional body can be revoked by Order, pursuant to section 391N of the Insolvency Act 1986. This instrument revokes the Law Society's designation as a recognised professional body.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Order states both the commencement date and the date from which the Order takes effect; they are both 15th April 2016. This is consistent with the requirement in section 391N(4)(a) of the Insolvency Act 1986, which requires that the Order must state the date from which it takes effect.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative 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 A person can act as an insolvency practitioner if authorised to do so by virtue of membership of a professional body recognised under section 391 of the Insolvency Act 1986. The Secretary of State has power to make an order under section 391 to designate a suitable organisation as a recognised professional body ("**RPB**").

4.2 The Insolvency Practitioners (Recognised Professional Bodies) Order 1986 (S.I.1984/1764) was made under these powers and lists the Law Society as an RPB. Section 391 of the IA 1986 was substituted by section 137(1) of the Small Business, Enterprise and Employment Act 2015 ("2015 Act"). Section 137(2) of the Act provides that an Order made before the amendments introduced by the 2015 Act continues in force.

4.3 Section 140 of the 2015 Act introduced section 391N into the Insolvency Act 1986; this allows an RPB to request the Secretary of State to remove its RPB status. The

Secretary of State can make the revocation by Order if satisfied that it is appropriate in all the circumstances of the case to revoke the body's recognition as a result of such a request. If the Secretary of State makes a revocation order he must also publish a notice specifying the date from which the order takes effect and the reasons for making the order in accordance with section 391N(3) of the Insolvency Act 1986.

4.4 The Law Society wrote to the Secretary of State on 22 January 2016 and asked that the Secretary of State proceed with the request to revoke its RPB status. The notice required by section 391N(3) is published on the gov.uk website and is available at https://www.gov.uk/government/news/law-society-application-to-cease-as-a-recognised-professional-body-for-insolvency-practitioners. It is also available in hard copy from The Insolvency Service, 4 Abbey Orchard Street, London SW1P 2HT.

5. Extent and Territorial Application

5.1 The extent of this instrument is all of the United Kingdom.

5.2 The territorial application of this instrument is all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 The Law Society is designated as an RPB by the Insolvency Practitioners (Recognised Professional Bodies) Order 1986. It is responsible for the regulation of solicitors that are insolvency practitioners.

7.2 The Solicitors Regulation Authority carries out regulatory functions on behalf of The Law Society and decided in 2015 that it was no longer viable for it to be so designated because of the small number of practitioners it authorises. The Solicitors Regulation Authority believes that the public interest would be best served by the remaining five RPBs regulating Insolvency Practitioners as they have more specialist expertise to carry out the function. Accordingly it has asked the Secretary of State to revoke the Law Society's designation under the Order.

7.3 The Secretary of State can revoke the designation on the request of the Law Society of under section 391N of the Insolvency Act 1986 if he is satisfied that this revocation is appropriate in all the circumstances. The Secretary of State is satisfied that this test is met and a notice stating the reasons has been published in accordance with the statutory requirements.

7.4 The Order has effect from 15th April 2016. The Insolvency Practitioners (Recognised Professional Bodies) Order 1986 will remain in force after that date as it continues to designate RPBs other than the Law Society.

Consolidation

7.5 There are no plans to consolidate the Insolvency Practitioners (Recognised Professional Bodies) Order 1986 (S.I.1984/1764).

8. Consultation outcome

8.1 The Department for Business, Innovation and Skills has not carried out a consultation. The Solicitors Regulation Authority consulted publicly and prepared a response on 17 March 2015 which was published. There was opposition to the proposals by members however the Solicitors Regulation Authority came to the decision that it was appropriate to continue with the process of removal of these regulatory functions.

9. Guidance

9.1 There is no relevant guidance.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 There is no intention to monitor or review this legislation. The Law Society is able to apply for recognition as a RPB if its wishes to do so in the future.

13. Contact

13.1 Georgina Maskell at the Insolvency Service Telephone: 0207 291 6760 or email: Georgina.maskell@insolvency.gsi.gov.uk can answer any queries regarding the instrument.