EXPLANATORY MEMORANDUM TO THE

THE INSURERS (REORGANISATION AND WINDING UP)(AMENDMENT) REGULATIONS 2007

2007 No. 851

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

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

2. Description

2.1 The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I.10)("the 2005 Order") substantially revised the administration regime for Northern Ireland companies. Regulation 2 of the 2007 Regulations amends the Insurers (Reorganisation and Winding Up) Regulations 2004, S.I. 2004/353 ("the 2004 Regulations") which implement the Insurance Reorganisation and Winding up Directive, 2001/17/EC merely to update the references to the new administration procedure. Regulation 3 amends the Insurers (Reorganisation and Winding Up)(Lloyds) Regulations 2005, S.I. 2005/1998 ("the Lloyd's Regulations") for the same purpose.

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

3.1 Together with the amendments made necessary by the changes to the administration regime in Northern Ireland, the 2007 Regulations also correct the references to notice referred to by the Seventh Report of the JCSI in the 2005/06 Session.

4. Legislative Background

4.1 The 2005 Order amends among other things the administration regime in Part III of the Insolvency (Northern Ireland) Order 1989, S.I. 1989/2405 (N.I.) ("the 1989 Order") which is the principle piece of insolvency law in Northern Ireland.

4.2 The 2005 Order inserts into the 1989 Order new Schedule B1 which contains the new administration regime. The Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers)(Northern Ireland) Order 2007, S.I. 2007/846 applies the new administration procedure to insurers.

4.3 Directive 2001/17/EC applies to insolvencies and reorganisation measures of insurance undertakings, including the administration procedure. The 2004 Regulations implement the Directive and the administration procedure falls within them. These Regulations update the references contained in the 2004 Regulations to be consistent with the new administration procedure.

4.4 The Regulations also update the references in the Lloyd's Regulations for the same purpose, as well as making corrections to the drafting of the Lloyd's Regulations which were reported by the JCSI in its Seventh Report of the Session 2005/06.

4.5 Both the 2004 Regulations and the Lloyd's Regulations are made under the power in section 2(2) of the European Communities Act 1972. These regulations also made under section 2(2) ensure that those regulations continue properly to implement the Directive.

5. Extent

5.1 This instrument applies to the UK.

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

7.1 The administration regime is a process through which a company in financial difficulties can benefit from a moratorium on legal action against it for a period during which it can seek to work through its financial difficulties under the control of the administrator who is an insolvency practitioner and is, or is deemed to be, an officer of the court. The changes made by the 2005 Order in Northern Ireland reflect those made to the administration regime in Great Britain by virtue of the Enterprise Act 2002. As noted above the regulations which implement the Insurance Reorganisation and Winding up Directive need to be amended to update references to the new administration procedure.

8. Impact

8.1 A separate Regulatory Impact Assessment has not been prepared for this instrument as it is consequential on the making of the 2005 Order in respect of which a Regulatory Impact Assessment (RIA) was prepared. The Regulatory Impact Assessment prepared by the Department of Enterprise, Trade and Investment in relation to the amendments made to the administration regime in Northern Ireland was placed in the libraries of each House of Parliament and is available at www.insolvencyservice.detini.gov.uk and from the Insolvency Service, Fermanagh House, Ormeau Avenue, Belfast BT2 8NG.

9. Contact

9.1 Darren Philp at the Her Majesty's Treasury Tel: 020-7270 5468 or e-mail: Darren.philp@hm.treasury.x.gsi.gov.uk can answer any queries regarding the instrument.