

**2010 No. 3023**

**FINANCIAL SERVICES AND MARKETS**

**The Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2010**

<i>Made</i>	- - - -	<i>18th December 2010</i>
<i>Laid before Parliament</i>		<i>21st December 2010</i>
<i>Coming into force</i>	- -	<i>1st February 2011</i>

The Treasury, in exercise of the powers conferred on them by sections 360, 426(1) and 428(3) of the Financial Services and Markets Act 2000(a), with the consent of the Secretary of State, make the following Order:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2010 and comes into force on 1st February 2011.

(2) In this Order—

“the 1986 Act” means the Insolvency Act 1986(b);

“Schedule B1” means Schedule B1 to the 1986 Act(c).

**Application and modification of Part 2 of the 1986 Act in relation to insurers**

2.—(1) Part 2 of the 1986 Act (administration), other than paragraph 14 of Schedule B1 (power of holder of floating charge to appoint administrator) and paragraph 22 of Schedule B1 (power of company or directors to appoint administrator), applies in relation to insurers with the modifications specified in the Schedule to this Order.

(2) Accordingly paragraph 9(2) of Schedule B1 does not preclude the making of an administration order in relation to an insurer.

**Application and modification of the Insolvency Rules 1986 in relation to insurers**

3. The Insolvency Rules 1986(d), so far as they give effect to Part 2 of the 1986 Act, have effect in relation to insurers with the following modifications—

(a) in Rule 2.12(1) (the hearing) after sub-paragraph (a) insert—

“(aa) the Financial Services Authority;

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(a) 2000 c.8.

(b) 1986 c. 45.

(c) Schedule B1 to the Insolvency Act 1986 was inserted by section 248 of, and Schedule 16 to, the Enterprise Act 2002 (c. 40).

(d) S.I. 1986/1925. Rule 2.12 was substituted by S.I. 2003/1730. There are other amending instruments, but none is relevant.

(ab) the scheme manager of the Financial Services Compensation Scheme;”.

#### **Application and modification of the Insolvency (Scotland) Rules 1986 in relation to insurers**

**4.** The Insolvency (Scotland) Rules 1986(a), so far as they give effect to Part 2 of the 1986 Act, have effect in relation to insurers with the following modifications—

(a) in Rule 2.3(1) (service of petition) after subparagraph (a) insert—

“(aa) the Financial Services Authority;”

(ab) the scheme manager of the Financial Services Compensation Scheme;”.

#### **Revocation**

**5.** The following are revoked—

(a) the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002(b);

(b) articles 2 to 8 of the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) (Amendment) Order 2003(c);

(c) regulation 52 of the Insurers (Reorganisation and Winding Up) Regulations 2004(d).

#### **Saving**

**6.** Nothing in articles 2 to 5 applies in relation to any case where the appointment of an administrator takes effect before the coming into force of this Order.

*Michael Fabricant*

*Jeremy Wright*

16th December 2010

Two of the Lords Commissioners of Her Majesty’s Treasury

I consent

*Edward Davey*

Minister for Employment Relations and Consumer and Postal Affairs

18th December 2010

Department for Business, Innovation and Skills

## **SCHEDULE**

Article 2

### **Modifications of Part 2 of the Insolvency Act 1986 in relation to insurers**

**1.—**(1) In paragraph 3 of Schedule B1 (purpose of administration)—

(a) at the beginning of sub-paragraph (1) insert “Subject to sub-paragraph (1A)”;

(b) after sub-paragraph (1) insert—

“(1A) The administrator of an insurer which effects or carries out contracts of insurance shall, at the request of the scheme manager of the Financial Services Compensation Scheme, provide any assistance identified by the scheme manager as being necessary—

(a) to enable the scheme manager to administer the compensation scheme in relation to contracts of insurance, and

(b) to enable the scheme manager to secure continuity of insurance in relation to contracts of long-term insurance.

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(a) S.I. 1986/1915 (S.139). Rule 2.3 was substituted by S.I. 2003/2111 (S.9)..

(b) S.I. 2002/1242.

(c) S.I. 2003/2134.

(d) S.I. 2004/353.

(1B) For the purposes of this Schedule—

- (a) “compensation scheme” has the same meaning as in section 213 of the Financial Services and Markets Act 2000;
- (b) “contracts of insurance” and “contracts of long-term insurance” have the same meaning as in article 3 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a);
- (c) “scheme manager” means the body corporate established by the Financial Services Authority under section 212 of the Financial Services and Markets Act 2000.”.

(2) In sub-paragraph (2), for “sub-paragraph (4),” substitute “sub-paragraphs (1A) and (4) and to paragraph 3A”.

2.—(1) After paragraph 3 of Schedule B1, insert—

“**3A.**—(1) This paragraph applies in relation to the administration of an insurer which effects or carries out contracts of long-term insurance.

(2) Unless the court orders otherwise, the administrator must carry on the insurer’s business so far as that business consists of carrying out the insurer’s contracts of long-term insurance (“the long-term insurance business”) with a view to the business being transferred as a going concern to a person who may lawfully carry out those contracts.

(3) In carrying on the long-term insurance business, the administrator—

- (a) may agree to the variation of any contracts of insurance in existence when the administration order is made; but
- (b) must not effect any new contracts of insurance without the approval of the Financial Services Authority.

(4) If the administrator is satisfied that the interests of the creditors in respect of liabilities of the insurer attributable to contracts of long-term insurance effected by it require the appointment of a special manager, the administrator may apply to the court.

(5) On such an application, the court may appoint a special manager to act during such time, and to have such powers (including powers of a receiver or manager) as the court may direct.

(6) Section 177(5) of this Act (duties of special manager) applies to a special manager appointed under sub-paragraph (5) as it applies to a special manager appointed under section 177.

(7) If the court thinks fit, it may reduce the value of one or more of the contracts of long-term insurance effected by the insurer.

(8) Any reduction is to be on such terms and subject to such conditions (if any) as the court thinks fit.

(9) The court may, on the application of an official, appoint an independent actuary to investigate the insurer’s long-term insurance business and to report to the official—

- (a) on the desirability or otherwise of the insurer’s long-term insurance business being continued; and
- (b) on any reduction in the contracts of long-term insurance effected by the insurer that may be necessary for successful continuation of the insurer’s long-term insurance business.

(10) “Official” means—

- (a) the administrator;
- (b) a special manager appointed under sub-paragraph (5); or
- (c) the Financial Services Authority.”.

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(a) S.I. 2001/544, to which there are amendments not relevant to this Order.

**3.** In paragraph 49(4) of Schedule B1 (administrator’s proposals), omit “and” at the end of paragraph (b) and at the end of paragraph (c) add—

“(d) to the Financial Services Authority, and

(e) to the scheme manager of the Financial Services Compensation Scheme.”.

**4.** In paragraph 53(2) of Schedule B1 (business and result of initial creditors’ meeting), omit “and” at the end of paragraph (b) and at the end of paragraph (c), add—

“(d) the Financial Services Authority, and

(e) to the scheme manager of the Financial Services Compensation Scheme.”.

**5.** In paragraph 54(2)(b) of Schedule B1 (revision of administrator’s proposals), after “creditor” insert “, to the Financial Services Authority and to the scheme manager of the Financial Services Compensation Scheme.”.

**6.** In paragraph 76(1) of Schedule B1 (automatic end of administration), for “one year” substitute “30 months”.

**7.** In paragraph 76(2)(b) of Schedule B1 for “six” substitute “twelve”.

**8.** In paragraph 79(1) of Schedule B1 (court ending administration on application of administrator), after the first reference to “company” insert “or the Financial Services Authority”.

**9.** In paragraph 91(1) of Schedule B1 (supplying vacancy in office of administrator)—

(a) at the end of sub-paragraph (d), omit “or”;

(b) at the end of sub-paragraph (e), insert “or”;

(c) after sub-paragraph (e), insert

“(f) the Financial Services Authority”.

**10.—(1)** The powers of the administrator specified in Schedule 1 to the 1986 Act (powers of administrator or administrative receiver) include the power to make—

(a) any payments due to a creditor; or

(b) any payments on account of any sum which may become due to a creditor.

(2) Any payments to a creditor made pursuant to sub-paragraph (1) must not exceed, in aggregate, the amount which the administrator reasonably considers that the creditor would be entitled to receive on a distribution of the insurer’s assets in a winding up.

(3) The powers conferred by sub-paragraph (1) may be exercised until an initial creditors’ meeting but may only be exercised thereafter—

(a) if the following conditions are met—

(i) the administrator has laid before that meeting or any subsequent creditors’ meeting (“the relevant meeting”) a statement containing the information mentioned in sub-paragraph (4); and

(ii) the powers are exercised with the consent of a majority in number representing three-fourths in value of the creditors present and voting either in person or by proxy at the relevant meeting; or

(b) with the consent of the court.

(4) The information referred to in sub-paragraph (3)(a)(i) is an estimate of the aggregate amount of—

(a) the insurer’s assets and liabilities (whether actual, contingent or prospective); and

(b) all payments which the administrator proposes to make to creditors pursuant to sub-paragraph (1);

including any assumptions which the administrator has made in calculating that estimate.

(5) In this paragraph, “initial creditors’ meeting” has the meaning given by paragraph 51(1) of Schedule B1.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order consolidates the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002 (S.I. 2002/1242) and its amending instruments, applying Part 2 of the Insolvency Act 1986 in relation to insurers, and makes further modifications to Schedule B1 to that Act.

Article 2 enables administration orders to be made in relation to insurers, applying Part 2 of the Insolvency Act 1986 to insurers with the modifications set out in the Schedule.

Article 3 makes minor modifications to the Insolvency Rules 1986, ensuring that the Financial Services Authority and the Financial Services Compensation Scheme have a right to be represented at the hearing of an administration application in relation to an insurer.

Article 4 makes the same modifications in relation to the Insolvency (Scotland) Rules 1986.

Article 5 revokes the orders which previously applied Part 2 of the Insolvency Act 1986 to insurers.

An Impact Assessment of the effect that this Order will have on the costs of business is available on HM Treasury's website ([hm-treasury.gov.uk](http://hm-treasury.gov.uk)) and is annexed to the Explanatory Memorandum which is available alongside this Order on the [legislation.gov.uk](http://legislation.gov.uk) website.