

**EXPLANATORY MEMORANDUM FOR  
THE ENTERPRISE ACT (INSOLVENCY) ORDER 2004 No.2312**

**Laying Authority and Purpose**

This explanatory memorandum is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

**Department Responsible**

Department of Trade and Industry

**Description**

The Enterprise Act (Insolvency) Order 2004 makes consequential amendments to correct errors that were introduced by Schedule 17 to the Enterprise Act 2002 and the Enterprise Act 2002 (Insolvency) Order 2003 to Schedule A1 to the Insolvency Act 1986 and the Financial Markets and Insolvency Regulations 1996, respectively.

**Matters of special interest to the Joint Committee on Statutory Instruments**

The erroneous amendment made by paragraph 37(4) of Schedule 17 should have been corrected when drafting the Enterprise Act (Insolvency) Order 2003 (S.I. 2003/2096) where further consequential amendments were made as a result of the provisions of the Enterprise Act 2002. Unfortunately this error was not spotted until after that instrument had been made.

Paragraph 62(e) of the Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096) inserted a new paragraph 5A into the Financial Markets and Insolvency Regulations 1996 and referred to an appointment of an administrator under paragraph 44 rather than paragraph 14 of Schedule B1 to the Insolvency Act 1986. This amendment substitutes paragraph 14 for paragraph 44.

The Department is of the view that these two corrections come within the procedure set out in paragraphs 3.4.111 – 3.4.12 of HMSO's Statutory Instrument Practice 2003 for defective instruments. It is for the reasons set out above that the Department proposes to issue this instrument free of charge.

**Legislative background**

**First Amendment**

Paragraph 37(4) of Schedule 17 to the Enterprise Act 2002 amended paragraph 40(7) of Schedule A1 to the Insolvency Act 1986. The amendment included the insertion of a new sub-paragraph (a) which was intended to deal with cases where the company had entered administration by way of the new routes introduced by the Enterprise Act 2002. The amendment that was made was incorrect and conflicted with paragraph 4(1) of Schedule A1 which provides that a company is excluded from being eligible for a CVA moratorium if it is in administration.

This amendment inserts a new sub-paragraph (a) to clarify that the provision applies to companies that go into administration following a CVA where the administration application had been made or a notice of intention to appoint had been filed before the CVA moratorium came into force.

## **Second Amendment**

Paragraph 62(e) of the Enterprise Act 2002 (Insolvency) Order 2003 inserted a new paragraph 5A into the Financial Markets and Insolvency Regulations 1996 and referred to an appointment of an administrator under paragraph 44 rather than paragraph 14 of Schedule B1 to the Insolvency Act 1986.

### **Extent**

The statutory instrument applies to Great Britain.

### **European Convention on Human Rights**

In the Minister's view the provisions of the Enterprise Act (Insolvency) Order 2004 are compatible with the European Convention on Human Rights.

### **Policy background**

The Order follows on from the package of reforms to corporate insolvency law introduced by Part 10 of the Enterprise Act 2002 which aim to encourage the rescue of viable companies that get into financial difficulties.

### **Impact**

A regulatory impact assessment identifying the costs of the insolvency provisions of the Enterprise Act 2002 to business and the exchequer was published at the time the Act received Royal Assent in November 2002. It is available from [www.dti.gov.uk/enterpriseact/rias.htm](http://www.dti.gov.uk/enterpriseact/rias.htm). The RIA encompasses the areas covered by this Order and so it is not necessary to complete a separate assessment.

### **Contact**

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