

2002 No. 1242

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000
(Administration Orders Relating to Insurers) Order 2002**

<i>Made - - - - -</i>	<i>2nd May 2002</i>
<i>Laid before Parliament</i>	<i>3rd May 2002</i>
<i>Coming into force - -</i>	<i>31st May 2002</i>

The Treasury, in exercise of the powers conferred on them by sections 355(2), 360, 426 and 428(3) of the Financial Services and Markets Act 2000(a), with the consent of the Secretary of State (for the purposes of articles 3 to 5 and the Schedule), hereby 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 2002 and comes into force on 31st May 2002.

(2) In this Order—

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

“section 23 meeting” means a meeting held under section 23 of the 1986 Act.

Meaning of insurer in section 360 of the Financial Services and Markets Act 2000

2. In article 2 of the Financial Services and Markets Act 2000 (Insolvency) (Definition of “Insurer”) Order 2001(c), omit the words “except section 360 (administration orders in relation to insurers),”.

Modification of Part II of the 1986 Act in relation to insurers

3. Part II of the 1986 Act (administration orders) applies in relation to insurers with the modifications specified in the Schedule to this Order, and accordingly section 8(5)(a)(d) of that Act does not preclude the making of an administration order in relation to an insurer.

Modification of the Insolvency Rules 1986 in relation to insurers

4. The Insolvency Rules 1986(e), so far as they give effect to Part II of the 1986 Act, have effect in relation to insurers with the modification that in Rule 2.9(1) of those Rules (the hearing) there is inserted after sub-paragraph (a) the following sub-paragraph—

“(aa) the Financial Services Authority;”.

(a) 2000 c. 8.

(b) 1986 c. 45.

(c) S.I. 2001/2634.

(d) Section 8(5) was added by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649), article 304.

(e) S.I. 1986/1925. Rule 2.9 was amended by the Insolvency (Amendment) Rules 1987 (S.I. 1987/1919).

Mutual credit and set-off

5. Where an insurer, in relation to which an administration order has been made, subsequently goes into liquidation, sums due from the insurer to another party are not to be included in the account of mutual dealings rendered under rule 4.90 of the Insolvency Rules 1986 (mutual credit and set-off) if, at the time they became due, a petition had been presented to the court under section 9 of the 1986 Act (application for an administration order) in relation to the insurer.

Anne McGuire

Nick Ainger

2nd May 2002

Two of the Lords Commissioners of Her Majesty's Treasury

I consent

Patricia Hewitt

Secretary of State

2nd May 2002

Department of Trade and Industry

SCHEDULE

Article 3

MODIFICATIONS OF PART II OF THE INSOLVENCY ACT 1986 IN RELATION TO INSURERS

1. In subsection (3) of section 13 (appointment of administrator)(a), at the end of paragraph (c) add—“or
(d) by the Financial Services Authority”.
2. In subsection (1) of section 18 (discharge or variation of administration order), after “company” insert “or the Financial Services Authority”.
3. In subsection (1)(a) of section 23 (statement of proposals), after “registrar of companies” insert “, the Financial Services Authority”.
4. In subsection (4) of section 24 (consideration of proposals by creditors’ meeting), after “registrar of companies” insert “, the Financial Services Authority”.
5. In subsection (2)(a) of section 25 (approval of substantial revisions), after “addresses)” insert “and the Financial Services Authority”.
- 6.—(1) The powers of the administrator referred to 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 a section 23 meeting but may only be exercised thereafter—
 - (a) if the following conditions are met—
 - (i) the administrator has laid before the section 23 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) 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.

(a) Sections 13, 23 and 25 were amended, in relation to companies which are authorised institutions or former authorised institutions under the Banking Act 1987, by the Banks (Administration Proceedings) Order 1989 (S.I. 1989/1276) as amended by S.I. 1998/1129, Sch. 1 and S.I. 2001/3649.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies, in relation to insurers, Part II of the Insolvency Act 1986 with various modifications set out in the Schedule. Article 2 provides that the definition of “insurer” for these purposes is to be that contained in article 2 of the Financial Services and Markets Act 2000 (Insolvency) (Definition of “Insurer”) Order 2001 (S.I. 2001/2634). Article 3 enables administration orders to be made in relation to such insurers. Article 5 provides that insolvency rules relating to mutual credit and set-off do not apply to sums due from an insurer to another party where, at the time the sums became due, an application for an administration order had been made in relation to the insurer.

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