

**EXPLANATORY MEMORANDUM TO
THE BANKRUPTCY (FINANCIAL SERVICES AND MARKETS ACT 2000)
RULES (NORTHERN IRELAND) 2005**

2005 No. 398

1. This explanatory memorandum has been prepared by the Department of Enterprise, Trade and Investment (as the Department with lead responsibility for insolvency matters in Northern Ireland) on behalf of the Northern Ireland Court Service and is laid before Parliament by Command of Her Majesty

- 1.1 This memorandum contains information for the House of Lords Select Committee on the merits of Statutory Instruments.

2. **Description**

- 2.1 Under section 372(4)(a) of the Financial Services and Markets Act 2000 the Financial Services Authority can serve a demand on an individual for the purpose of establishing to the Authority's satisfaction if there is a reasonable prospect of the individual being able to pay a sum payable under an agreement when it falls due. The terms "individual" and "agreement" have specialised meanings and are defined in section 372.

- 2.2 If the demand is not complied with or set aside in accordance with the rules within three weeks, the individual is treated as appearing "to have no reasonable prospect of being able to pay a regulated activity debt" and the Financial Services Authority can present a petition under section 264 of the Insolvency Act 1986 or Article 238 of the Insolvency (Northern Ireland) Order 1989 to have a Bankruptcy Order made against him.

- 2.3 The rules make provision as to the form and content of a demand, the information it is to contain, requirements as to service, and applications to set a demand aside.

- 2.4 The rules are in parity with the Bankruptcy (Financial Services and Markets Act 2000) Rules 2001 (SI 2001/3634).

- 2.5 The rules operate by modifying those rules in the Insolvency Rules (Northern Ireland) 1991 which make provision with regard to statutory demands as a prelude to bankruptcy.

3. **Matters of special interest to the House of Lords Select Committee on the Merits of Statutory Instruments**

- 3.1 None

4. Legislative Background

4.1 The Financial Services and Markets Act 2000 applies on a UK wide basis so that the Financial Services Authority has the right to serve a demand on an individual as defined in section 372 of that Act who is located in Northern Ireland. It is therefore essential that rules to govern the form and content of such a demand, requirement as to service and applications to set aside demands exist for Northern Ireland as they do for the rest of the UK.

5. Extent

5.1 This instrument applies to Northern Ireland only.

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 Under both the GB Insolvency Rules 1986 (SI 1986/1925) which apply in Great Britain and the Insolvency Rules (Northern Ireland) 1991 (S.R. 1991 No. 364) rules exist prescribing the form and content of the statutory demand which in the majority of cases must be served on someone before they can be made bankrupt. For example the demand must state the sum the person owes and must be signed by the creditor. It must state the time limit for complying with the demand and must inform the debtor of his right to apply to the court to have the demand set aside. Other rules prescribe requirements as to service of the statutory demand, and deal with procedure for application to have a statutory demand set aside.

7.2 In the case of Great Britain those rules in the Insolvency Rules 1986 applying to statutory demands are modified to suit the specific case of a demand served by the Financial Services Authority under section 372(4(a) of the Financial Services and Markets Act 2000.

7.3 The rules under consideration will likewise modify the Insolvency Rules (Northern Ireland) 1991 thereby prescribing the form and content of a Financial Services Authority demand and ensuring that appropriate provision exists as to service, proof of service, any application to set a statutory demand aside, and procedure for the hearing of a resulting bankruptcy petition.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 As the rules deal only with a specific action which can be taken by the Financial Services Authority against members subject to its control any impact on the public sector is negligible.

9. Contact

9.1 Jack Reid of the Insolvency Service, Department of Enterprise, Trade and Investment Tel: 028 90548543 or email: jack.reid@detini.gov.uk can answer any queries regarding the instrument.