

EXPLANATORY MEMORANDUM TO
THE INSOLVENCY (SCOTLAND) AMENDMENT RULES 2006

2006 No.734 (S.6)

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

The Insolvency (Scotland) Amendment Rules 2006 amends the Insolvency (Scotland) Rules 1986 (SI 1986/1915) to make certain insolvency rule changes in relation to matters of reserved insolvency law in Scotland. These amendments follow changes that were made to equivalent insolvency provisions in England and Wales with effect from 1 April 2005 by the Insolvency (Amendment) Rules 2005 (SI 2005/527).

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

None.

4. Legislative background

4.1 The power to make The Insolvency (Scotland) Amendment Rules 2006 is contained within section 411 of the Insolvency Act 1986. Those powers are exercised by the Secretary of State. A statutory instrument made under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

4.2 This statutory instrument relates only to those insolvency procedures that are reserved to the Westminster Parliament under The Scotland Act 1998.

4.3 Rule 2.39 of SI 1986/1915 is being replaced in relation to administration proceedings covered by this instrument to provide that in prescribed circumstances an administrator may take advantage of a simplified procedure for the approval of his remuneration and outlays. Specifically, where the administrator has issued a statement that there will be no distribution to unsecured creditors and it subsequently falls to creditors to approve his remuneration and outlays, it is only the preferential and secured creditors from whom the administrator must seek approval. It also removes the need for legal expenses to be taxed in every case.

4.4 As a result of changes made to the law on administration by the Enterprise Act 2002(c.40), a company can move between liquidation and administration. This instrument amends rules 2.57 and 2.58 of SI 1986/1915 to require creditors, where the administration has been preceded by a liquidation, to fix their claim as at the date of the liquidation. This brings the law on administration in Scotland into line with its equivalent in England and Wales and will thereby remove the possibility of the claim of an overseas creditor differing between the two sets of insolvency proceedings for reason of exchange rate fluctuations in the intervening period.

4.5 Several minor amendments to SI 1986/1915 are made to recognise that winding-up through administration is a winding-up proceeding as defined by the EC Regulation on Insolvency Proceedings 2000 (EC/1346/2000).

4.6 The amendment to rule 4.6 removes a provision that allows the company, a contributory or a creditor to apply to the court for the removal of a provisional liquidator appointed by the court on a petition that the company be wound up in the public interest. The effect of this will be that a provisional liquidator appointed by the court may only be removed on an application by either the provisional liquidator or the Secretary of State.

4.7 Rule 7.34 makes provision for when the Secretary of State can require information from an administrator and the circumstances in which an administrator can dispose of company records.

4.8 This instrument introduces a new rule 7.35 into SI 1986/1915 to provide that an administrator or supervisor of a company voluntary arrangement can be required to provide a statement to creditors on the amount of time spent on administering the insolvency. This is intended to provide greater transparency for creditors in terms of the costs charged by insolvency office-holders.

4.9 Additionally, minor clarificatory amendments are being made to several insolvency forms that are prescribed by SI 1986/1915 insofar as they apply to reserved matters.

5. Extent

This instrument applies to Scotland.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

The statutory instrument seeks to bring certain provisions relating to those insolvency procedures that are reserved to Westminster under The Scotland Act 1998, into line with their equivalents in England and Wales which were amended by SI 2005/527.

8. Impact

A regulatory impact assessment has not been prepared for this instrument as it has no impact upon business, charities or the voluntary sector.

9. Contact

Stephen Leinster at The Insolvency Service tel: 020 7291 6747 or email: stephen.leinster@insolvency.gsi.gov.uk can answer any queries regarding this instrument.