

**EXPLANATORY MEMORANDUM TO**  
**THE PPP ADMINISTRATION ORDER RULES 2007**  
**2007 No. 3141**

**1.** This explanatory memorandum been prepared by the Department for Transport and is laid before Parliament by Command of her Majesty.

**2. Description**

2.1 The purpose of these Rules (“the PPP Rules”) is to provide rules of court procedure to underpin the special insolvency procedure applicable to “PPP companies” (companies which provide infrastructure services as part of the Public Private Partnership) under the Greater London Authority Act 1999 (“the 1999 Act”), known as “PPP administration”.

2.2 PPP administration exists to help ensure that London Underground Limited (LUL) can continue to provide a safe and reliable train service when a PPP company is, or is about to become, insolvent, pending the transfer of the PPP company’s undertaking to another company (or more than one company).

2.3 The statutory provisions regarding a PPP administration are provided by sections 220 to 224 and schedules 14 and 15 of the 1999 Act which are already in force. These provisions enable a PPP Administration to be put in place, but the PPP Rules provide greater detail on the process and procedure that would be adopted.

2.4 PPP administration is in many ways similar to the administration procedure which can apply to “normal” companies facing insolvency, and the PPP Rules are similar to the Insolvency Rules 1986 which provide rules of court procedure to underpin the “normal” administration procedure under the Insolvency Act 1986 (“the 1986 Act”).

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

None.

**4. Legislative Background**

4.1 These Rules are made under section 411 of the 1986 Act, as applied by section 220(5) of the 1999 Act. This is the first occasion on which this power as so applied has been used, although section 411 has been used several times to make Rules in relation to other insolvency procedures. Examples of other Rules made under section 411 include the Insolvency Rules 1986 (SI 1986/1925), the Energy Administration Rules 2005 (SI 2005/2483) and the Railway Administration Order Rules 2001 (SI 2001/3352).

4.2 These Rules are made to provide the detail of the court procedure which should apply in relation to a PPP administration. The PPP administration procedure is governed by section 220 and Schedule 14 of the 1999 Act, applying “old” Part 2 of the 1986 Act with modifications. “Old” Part 2 of the 1986 Act continues to be

relevant notwithstanding its repeal and replacement by section 248 of the Enterprise Act 2002, by virtue of section 249(1)(d) which provides that section 248 has no effect in respect of a PPP company. Section 249(1) effectively preserves “old” Part 2 for the purposes of its application to PPP administration and other special administration regimes.

4.3 The 1999 Act established the legislative framework for the Public Private Partnership agreements pursuant to which PPP companies provide infrastructure services to London Underground (a railway which belongs to a subsidiary of Transport for London for the purposes of section 210(5) of that Act). Chapter 7 of Part 4 of the 1999 Act (and associated Schedules) contain the relevant legislative provisions. Sections 220 to 224 and Schedules 14 and 15 of the 1999 Act contain provisions as to the insolvency of a PPP company.

4.4 Section 220 governs the meaning and effect of a PPP administration order. Section 220(2) sets out the purposes of a PPP administration order.

## **5. Territorial Extent and application**

5.1 This order applies to England and Wales.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

### The PPP

7.1 The Underground provides an essential service for London. 1,014 million passenger journeys were made during 2006-07, with around 3½ million every working day. The Underground serves 275 stations, with 253 owned by LUL. It has 253 route miles of track and over 500 trains. These assets, and the services of both LUL and the PPP companies, are essential to provide the train service that passengers depend on each day.

7.2 Repairs and improvements to LUL's infrastructure are now provided by private companies under PPP agreements. PPP agreements took effect from 2002 and 2003 to provide for the maintenance and enhancement of these assets by the private sector during the 30-year contract terms. Under the PPP three companies (one owned by Tube Lines and the other two by Metronet), lease these assets from LUL and are under obligation to maintain, enhance and replace them. LUL remains a public sector body that provides the services and operates the trains, stations and signals. LUL also has responsibility for safety. The PPP agreements provide that at the end of the contract term the assets are to be returned to LUL in an enhanced and well-maintained condition.

### Consultation

7.3 A public consultation on the draft PPP Rules was undertaken between 22 October 2004 and 21 January 2005. Eight responses were received from Capital

Transport Campaign, City of London Law Society, London Transport Users Committee, LUL, Metronet, Office of Rail Regulation and Tube Lines. A summary of the responses, and the outcomes, was published as part of the Department's second consultation exercise in 2006-07 and is still available at <http://www.dft.gov.uk/consultations/closed/consullondonunderground/>.

7.4 Following publication of the PPP Arbiter's review of Metronet's performance in November 2006 the Department accelerated the process of making the PPP Rules as much as possible. A second public consultation was undertaken between 21 December 2006 and 16 February 2007, particularly to notify those who had responded to the first exercise of the latest version of the PPP Rules and confirm that the Department had correctly interpreted the large number of technical issues raised. After considering the responses to the second consultation one minor change was made to PPP Rule 56 to enable the PPP Arbiter to inspect the court's file of proceedings.

7.5 Under sections 411 and 413 of the 1986 Act (Compulsory Insolvency Rules) the Insolvency Rules Committee (IRC) were consulted on the PPP Rules on 30 May 2007. A comprehensive briefing pack on the background and policy for the PPP Rules was provided to the IRC. The IRC provided around 70 comments and observations on the draft PPP Rules on 16 July which the Department then considered and accepted around 50. The IRC chairman confirmed on 30 July 2007 that he was content for the PPP Rules to be made.

### Insolvency

7.6 The most commonly used definition of insolvency is the inability of an individual or company to pay debts when they become due. The term insolvency is also used to describe the various formal proceedings that may apply to an individual or company. Insolvency law provides a system of dealing fairly with the assets of the insolvent and the claims of creditors. The law also deals with what happens to the individual or company following insolvency. Upon the onset of insolvency, the control of the company is taken from the directors and put into the hands of an insolvency practitioner (or in certain procedures, the Official Receiver).

7.7 Standard insolvency procedures can lead to the realisation of a company's assets and the closure of its business. Such an outcome with the PPP companies could mean parts of the Underground network could be closed and its assets be sold off for other purposes. Equally equipment essential for the continued maintenance of the Underground's assets could be sold.

### PPP Administration

7.8 In the event that one of the PPP companies becomes insolvent it is essential that no assets are removed and that they can continue their activities to maintain the safe operation of the Underground. Its business activities must also continue so that the contract obligations are met and train services continue to run.

7.9 The 1999 Act permits the courts to put an insolvent PPP company into 'PPP Administration'. Special insolvency procedures in sections 220 - 224 and Schedules

14 and 15 of the 1999 Act ensure that LUL can continue to provide train services while a PPP company is in financial difficulties.

7.10 The Mayor of London (or Transport for London as his agent) may petition the Court for the appointment of a special "PPP Administrator" instead of an ordinary administrator. If any other person petitions for the winding up of the PPP company the court is prevented from making a winding up order until notice has been served on the Mayor so that he has the opportunity to petition for the appointment of a PPP Administrator. Should the company wish to make a resolution for it to be wound up voluntarily, it must first seek the leave of the court, having previously served notice on the Mayor of their intentions. The PPP company may not be wound-up during a PPP Administration.

7.11 Once successfully petitioned a PPP administrator will be appointed by the courts and will manage the business of the PPP company until he can transfer its business as a going concern to another party. The policy objective of this is to ensure that the Underground services remain safe and operational. The PPP administrator would also protect the interests of the owners and creditors of the PPP company.

7.12 Though not critical for a PPP administration, the PPP Rules contain detailed provisions governing how relevant court procedures and associated matters should be conducted should a PPP company become insolvent. They cover a range of issues, including:

- Service of court petition;
- Statement of affairs and proposals to creditors;
- Meetings;
- Arrangement for the PPP Administrator;
- Proxies and representation;
- Forms to be used during the PPP administration.

7.13 Once the PPP administrator's work is complete regarding the assets essential to provide Underground services, normal insolvency rules would apply and any remaining assets could be transferred or sold to pay creditors.

7.14 These Rules only applies to the insolvency of PPP companies and do not apply to their individual shareholders.

## **8. Impact**

8.1 An Impact Assessment has not been prepared for these Rules as they have minimal impact on business and none on charities or voluntary bodies. The policy to have a special PPP administration procedure has already been established by the 1999 Act, and the PPP Rules simply provide detail as to how the procedure is to be applied to a PPP company.

## **9. Contact**

9.1 Lloyd Miles at the Department for Transport, telephone 020 7944 8821, e-mail [lloyd.miles@dft.gsi.gov.uk](mailto:lloyd.miles@dft.gsi.gov.uk), can answer any queries regarding this order.