

EXPLANATORY MEMORANDUM TO
THE INSOLVENT COMPANIES (REPORTS ON CONDUCT OF DIRECTORS)
(SCOTLAND) RULES 2016

2016 No. 185 (S. 1)

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Department for Business, Innovation and Skills in conjunction with the Insolvency Service and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Insolvent Companies (Reports on Conduct of Directors) (Scotland) Rules 2016 (the “Rules”) revoke and replace The Insolvent Companies (Reports on Conduct of Directors) (Scotland) Rules 1996. The Rules set out the means by which the office-holder of an insolvent company (i.e. an insolvency practitioner) must comply with his or her statutory duty to report to the Secretary of State on the conduct of directors.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 107 of the Small Business, Enterprise and Employment Act 2015 (“SBEEA”) revokes section 7(3) of the Company Directors Disqualification Act 1986 and replaces it with section 7A. The provisions concern the requirements for an office-holder to report on the conduct of directors of an insolvent company. The provision is to be commenced on 6th April 2016.
- 4.2 The extent of the changes to the reporting regime means that the supporting secondary legislation, The Insolvent Companies (Reports on Conduct of Directors) Rules 1996 and The Insolvent Companies (Reports on Conduct of Directors) (Scotland) Rules 1996 need to be revoked and replaced. The Insolvency Companies (Reports on Conduct of Directors) (England and Wales) Rules 2016 are being made alongside this instrument.

5. Extent and Territorial Application

- 5.1 This instrument extends to Scotland only.
- 5.2 The territorial application of this instrument is Scotland.

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

What is being done and why

- 7.1 Currently an office-holder of an insolvent company is required to report to the Secretary of State on the conduct of its directors within 6 months of insolvency. Reports where an office-holder alleges misconduct are reviewed and investigated by the Secretary of State and may lead to disqualification proceedings against the directors.
- 7.2 Section 107 SBEEA contains provisions that shorten the default period to 3 months, thus alerting the Secretary of State at an earlier stage to director misconduct.
- 7.3 To streamline the reporting process, the Insolvency Service is introducing an online system (“the portal”) for office-holders to submit their reports and provide new information that has come to their attention. Office-holders will also be able to apply for more time in which to report. When they submit their reports, applications or information the portal will provide office-holders with an acknowledgement of receipt.
- 7.4 The Rules include a criminal sanction for office holders who fail, without reasonable excuse, to send their report within the prescribed period. This sanction is similar to the sanction in The Insolvent Companies (Reports on Conduct of Directors) Rules 1996.
- 7.5 The Rules also require the Secretary of State to make arrangements for alternative means for the submissions to be made in the event of the portal being unavailable for 7 business days.

Consolidation

- 7.6 None.

8. Consultation outcome

- 8.1 As part of the Red Tape Challenge, a consultation was carried out by the Insolvency Service between 18 July and 10 October 2013, including on regulations affecting the reporting duties of insolvency practitioners on the conduct of directors.
- 8.2 The 12 bodies that responded comprised of firms and recognised professional bodies from the insolvency industry. There was widespread support for streamlining the reporting regime by replacing prescribed forms and moving to an electronic delivery process.

9. Guidance

- 9.1 The Insolvency Service will update the existing guidance on how to complete the return on www.gov.uk.

10. Impact

- 10.1 It is estimated that there will be net cost savings to business of £3.4 million per year as a result of streamlined reporting requirements and electronic delivery.

- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No particular negative effect on small firms is anticipated beyond moderate costs associated with office-holders familiarising themselves with the new regime. Guidance will be available to them on www.gov.uk to assist with their familiarisation.

12. Monitoring & review

- 12.1 This instrument provides that the Secretary of State will carry out a review of this instrument, set out the conclusions of the review and publish a report within the period of 5 years of the Rules coming into force.

13. Contact

- 13.1 Richard Mulligan at the Insolvency Service (Telephone: 020 7291 6718 or email: Richard.mulligan@insolvency.gsi.gov.uk) can answer any queries regarding the instrument.