

EXPLANATORY MEMORANDUM TO

THE INSOLVENCY (ENGLAND AND WALES) AND INSOLVENCY (SCOTLAND) (MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS) RULES 2017

2017 No. 1115

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy & Industrial Strategy in conjunction with the Insolvency Service and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Rules amend provisions in the Insolvency (England and Wales) Rules 2016 (“the 2016 Rules”), and the Insolvency Regulations 1994 (“IR94”). The purpose of these amendments is to effect minor corrections and clarifications.
- 2.2 Rule 7 has a more substantive effect in that it inserts a new provision reflecting the Practice Direction supplementing Section IV of Part 6 of the Civil Procedure Rules 1998, for service of a statutory demand outside of the jurisdiction. Rule 8 enables the court to decline to file a bankruptcy petition if the creditor has not satisfied the requirement to bring the debtor’s attention to the statutory demand.
- 2.3 These Rules also correct an amendment made to the Insolvency (Scotland) Rules 1986 by the Insolvency Amendment (EU 2015/848) Regulations 2017, and amend references in relation to the 2016 Rules and the EU Regulation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is the third amending instrument to the 2016 Rules on which the Committee reported on 8 December 2016. The Committee’s concerns in that report have been dealt with through a previous amendment and a correction slip. These amendments are minor corrections and clarifications (other than for Rules 7 and 8 as noted above) and are unlikely to be of particular interest to the JCSI.
- 3.2 As these Rules largely correct and clarify the 2016 Rules, the free issue procedure has been applied, after consultation with the Statutory Instrument Registrar.

Other matters of interest to the House of Commons

- 3.3 As this instrument is subject to negative resolution 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 The 2016 Rules provide the procedural framework for the Insolvency Act 1986 (“the Act”). They prescribe matters required by the Act and set out the procedural rules to be followed in the conduct of insolvency proceedings.
- 4.2 The 2016 Rules do three things. They consolidate the Insolvency Rules 1986 (“IR86”) with the 28 amending instruments made since the 1986 Rules came into force. They restructure the Rules and update the language, including gender neutral drafting.
- 4.3 Finally they modernise those Rules to take account of the changes made to the Act by the Deregulation Act 2015 (“DA”) and the Small Business, Enterprise and Employment Act 2015 (“SBEEA”); in particular amendments enabling modern methods of communication and decision making to be used in place of paper communications and physical meetings.
- 4.4 The 2016 rules were amended by the Insolvency (Amendment) Rules 2017, which commenced on 6 April 2017, the same date as the 2016 rules. The 2016 rules were further amended by the Insolvency Amendment (EU 2015/848) Regulations 2017 (“IA(EU)R”), which commenced on 26 June 2017 and were necessary for implementation of Regulation (EU) No 2015/848 of the European Parliament and of the Council (“the EU Regulation”). The IA(EU)R also made amendments to the Cross-Border Insolvency Regulations 2006 (“CBIR”), which provide how the model law (as contained in Annex I of the report of the 30th session of the United Nations Commission on International Trade Law) on cross-border insolvency is applied.
- 4.5 The 2016 Rules do not apply to Scotland, where the framework for corporate insolvency proceedings is provided by the Insolvency (Scotland) Rules 1986.
- 4.6 The European Grouping of Territorial Cooperation Regulations 2007 (“EGTCR”) are made under powers contained in the European Communities Act 1972, and facilitate cross-border, transnational and/or inter-regional co-operation between regional and local authorities.
- 4.7 The IR94 provide for administrative processes in insolvency proceedings, in particular remuneration of and payments made by insolvency office-holders including the official receiver.

5. Extent and Territorial Application

- 5.1 The extent of Parts 1-2 and 4-5 of the instrument is to England and Wales, and the extent of Part 3 is to Scotland.
- 5.2 The territorial application of Parts 1-2 and 4-5 of the instrument is to England and Wales, and the territorial application of Part 3 is to 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 The purpose of this instrument is to make minor corrections and clarifications to the 2016 Rules and the IR94, and to make minor consequential amendments to other

insolvency secondary legislation to enable implementation of the EU Regulation. In particular:

- 7.2 Rules 3 and 4 correct cross-referencing errors.
- 7.3 Rule 5 clarifies that rule 3.61(3) of the 2016 rules does not require that a notice of a company in administration moving to dissolution should be sent to creditors who have opted out of receiving further correspondence.
- 7.4 Rules 6 and 10 correct grammatical errors and wording.
- 7.5 Rule 7 inserts a new provision reflecting the Practice Direction supplementing Section IV of Part 6 of the Civil Procedure Rules 1998, for service of a statutory demand outside of the jurisdiction.
- 7.6 Rule 8 restores rule 6.11(9) of the Insolvency Rules 1986. It allows the court to decline to file a creditor's bankruptcy petition if the creditor has not satisfied the requirement to bring the debtor's attention to the statutory demand.
- 7.7 Rule 9 is a correction to the order of payment of fees in bankruptcy proceedings, reflecting that payments made in respect of repayable sums deposited for fees payable under an order made under section 415 of the Act rank equally with payment of the fees themselves.
- 7.8 Rule 11(2) makes a correction to confirm that the decision to form a creditors' or liquidation committee may be made by use of the deemed consent process as well as by a decision procedure.
- 7.9 Rule 11(3) clarifies that a creditors' or liquidation committee is established at the point that the office-holder sends notice of its membership to the registrar, the court, or the official receiver, as appropriate, rather than the date that the notice is delivered to those persons.
- 7.10 Rule 12 amends rule 21.12(2) of the 2016 Rules, as inserted by IA(EU)R, to clarify the definition of "office holder" for the purpose of this rule.
- 7.11 Rule 13(2) makes an addition to a transitional provision to provide extra narrative to the existing reference to a change of reporting period under rule 2.47(3B) of the Insolvency Rules 1986. The fixed reporting periods introduced by the 2016 Rules do not cause reporting periods which changed under the provisions of the IR86 to be reset.
- 7.12 Rule 13(3) amends a transitional provision to clarify that where an application is made to court to vary an order made prior to commencement of the 2016 Rules, then that application will be made under those Rules. It also expands this transitional provision to cover instances where the court has made a bankruptcy or winding-up order, has dismissed a petition, or a petition has been withdrawn.
- 7.13 Rules 13(4) and 13(5) make changes to the transitional provision which prevents the provisions relating to estimates of insolvency practitioner fees and expenses which commenced on 1 October 2015 from applying to cases which commenced before that date. The amendments change the title of the paragraph to indicate that it applies to estimates of expenses as well as fees, and clarify that certain rules which contain the requirements for fees and expenses estimates will not apply to cases commencing prior to 1 October 2015.

- 7.14 Rules 13(6) and 13(7) make amendments to the transitional provision relating to cases where administration proceedings commenced prior to 6 April 2010 and which converted into creditors' voluntary liquidation proceedings under paragraph 83 of Schedule B1 to the Act. In those cases the liquidator must issue annual progress reports rather than hold annual creditors' meetings, and these amendments clarify that where the conversion occurs between 6 April 2010 and commencement of this instrument, the IR86 will apply to those progress reports.
- 7.15 Rule 14 makes an amendment to paragraph 6 of Schedule 4 to the 2016 Rules, which deals with service of documents. The effect of the amendment is that where the court has ordered that service of a document take place in a particular way, then the certificate of service must be accompanied by a sealed copy of the court's order.
- 7.16 Rules 16 and 17, in Part 2, make amendments to the IR94 consequential to provisions introduced by the SBEEA, specifically the abolition of final meetings in liquidation and bankruptcy cases. For further details on those provisions, see the explanatory notes accompanying the SBEEA.
- 7.17 Rule 19, in Part 3, makes a minor correction to a change made to the Insolvency (Scotland) Rules 1986 by the IA(EU)R.
- 7.18 Rule 21, in Part 4, amends the CBIR so that they refer to the 2016 rules rather than the IR86.
- 7.19 Rules 23 to 30, in Part 5, make further amendments to the 2016 Rules consequential to the implementation of the EU Regulation, correcting cross-references and enabling its application to insolvency proceedings.
- 7.20 Rule 32, also in Part 5, makes a similar amendment to the EGTCR.

8. Consultation outcome

- 8.1 No formal consultation has been carried out. However the corrections and clarifications have been brought to our attention by rules users following commencement of the 2016 Rules.

9. Guidance

- 9.1 The Insolvency Service will ensure that rules users' attention is drawn to this instrument once it is published.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment was published alongside the 2016 Rules, which can be accessed at www.legislation.gov.uk.

11. Regulating small business

- 11.1 The legislation is deregulatory and applies to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The 2016 Rules, which this instrument amends, will be reviewed within five years of coming in to force.

13. Contact

- 13.1 Simon Whiting at the Insolvency Service Telephone: 020 7637 6246 or email: simon.whiting@insolvency.gsi.gov.uk can answer any queries regarding the instrument.