

## EXPLANATORY MEMORANDUM TO

### THE INSOLVENCY (MISCELLANEOUS AMENDMENTS) REGULATIONS 2017

2017 No. 1119

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

#### 2. Purpose of the instrument

- 2.1 This instrument makes amendments to legislation that refers to the Insolvency Act 1986 (“**Act**”) or the Company Directors Disqualification Act 1986 (“**CDDA**”), in consequence of changes to these Acts made by the provisions of the Small Business, Enterprise and Employment Act 2015 (“**SBEEA**”), the Deregulation Act 2015 (“**DA**”) and The Enterprise and Regulatory Reform Act 2013 (“**ERRA**”).
- 2.2 This instrument also ensures that the insolvency regime for limited liability partnerships is brought into line with mainstream insolvency procedures, and with the recast EU Insolvency Regulation (848/2015).
- 2.3 These issues are non-controversial, and ensure that all recent insolvency changes are carried forward to other pieces of legislation.
- 2.4 This instrument also facilitates electronic filing of the prescribed form filed with Companies House when a liquidator is appointed in a voluntary winding up.

#### 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 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 These Regulations make consequential amendments to legislation that refers to the Act and CDDA as amended by provisions of SBEEA, ERRA and DA. The Regulations apply modifications to secondary legislation, which in turn apply modifications to primary legislation.
- 4.2 Schedule 1 makes consequential amendments to the regulations for The Limited Liability Partnerships Regulations 2001 (“**LLPR**”), which will ensure that they follow mainstream insolvency changes. LLPR is also aligned with the recast EU Insolvency Regulation by removing the saving for limited liability partnerships in the Insolvency Amendment (EU 2015/848) Regulations 2017. The EU Regulation is

directly applicable and has effect from 26 June 2017. It updates and modernises existing EU legislation on cross-border insolvency proceedings.

- 4.3 Schedule 1 also makes consequential amendments to LLPR, as it applies to Scotland, and to the Limited Liability Partnership (Scotland) Regulations 2001. These ensure that Scottish law follows the EU Insolvency Regulation, as closely as possible pending the anticipated redrafting of the Insolvency (Scotland) Rules 1986. The provisions in relation to Scotland have been agreed with the Scottish Government.
- 4.4 Schedule 1 also makes a minor change to Northern Irish insolvency legislation. The Northern Irish Department for the Economy has requested that this Department make the relevant change to Northern Irish insolvency legislation as it no longer has the necessary powers in relation to one consequential amendment which relates to changes made to the Act by the DA.
- 4.5 These Regulations also take the opportunity to tidy up some gaps following previous insolvency changes. To this end, Schedules 2 and 3 amend the Insolvent Partnerships Order 1994 (“**IPO**”) following amendments to the CDDA made by SBEEA, and the Administration of Insolvent Estates of Deceased Persons Order 1986 (“**AIEDPO**”) following amendments made to the Act, to introduce an Adjudicator in Bankruptcy. This legislation deals with the administration of insolvent partnerships and the insolvent estates of deceased debtors. IPO operates to apply provisions of the Act and the CDDA, and AIEDPO operates to apply provisions of the Act, as amended in the schedules to these Orders.
- 4.6 Schedule 4 amends the prescribed notice filed with Companies House when a liquidator is appointed in a voluntary winding up. This enables Companies House to facilitate electronic filing of the notice.
- 4.7 Schedule 5 amends references in The Cross-Border Insolvency Regulations 2006 and the Regulated Covered Bonds Regulations 2008 to reflect the EU Regulation on insolvency.

## **5. Extent and Territorial Application**

- 5.1 Schedule 1 extends and applies to England and Wales and, in relation to some provisions, to Scotland and Northern Ireland.
- 5.2 Schedules 2 to 4 extend and apply to England and Wales.
- 5.3 Schedule 5 extend and apply to England, Wales and 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 Insolvency Rules (England and Wales) 2016 came into force in April 2017 and completed a programme of insolvency reforms, which delivered a number of policy measures to improve the efficacy and efficiency of the insolvency regime. These Regulations will complete these reforms by making consequential amendments to ensure that limited liability partnerships are dealt with in line with mainstream

insolvency provisions, and to extend legislative amendments implementing the recast EU Insolvency Regulation (848/2015) to limited liability partnerships. The recast Regulation, which has effect from 26 June 2017, updates and modernises existing EU legislation on cross-border insolvency proceedings and is directly applicable in the UK. These reforms will bring certainty and consistency for the profession regarding limited liability partnerships.

- 7.2 To the same end, these Regulations make consequential amendments to LLPR, as it applies to Scotland, and to the Limited Liability Partnership (Scotland) Regulations 2001. These ensure that Scottish law follows the EU Insolvency Regulation, pending the anticipated redrafting of the Insolvency (Scotland) Rules 1986. The provisions in relation to Scotland have been agreed with the Scottish Government.
- 7.3 In addition, these Regulations will tidy up some gaps following previous insolvency amendments made by SBEEA, DA and ERRA. In particular IPO, governing insolvent partnerships, is updated to include amendments to the CDDA, which introduced a number of reforms to the director disqualification regime including: extending the matters of unfitness that must be considered when making a disqualification, increasing the limitation date for a disqualification application to 3 years and the ability to seek a compensation order against a disqualified director.
- 7.4 These Regulations also include a minor change to Northern Irish insolvency legislation in relation to limited liability partnerships. The Northern Irish Department for the Economy has requested this change, as it does not currently have the necessary powers.
- 7.5 These Regulations also make consequential amendments to further legislation to update some references to reflect the EU Regulation on insolvency.
- 7.6 These issues are non-controversial, and ensure that all recent insolvency changes are carried forward to other pieces of associated legislation. Stakeholders are supportive of this approach.
- 7.7 Finally, these Regulations also make amendments to facilitate electronic filing of the prescribed form filed with Companies House when a liquidator is appointed in a voluntary winding up. Insolvency Practitioners are keen for Companies House to digitally enable the form. 23,500 copies of this form were received in 2016-17, so electronic filing would significantly reduce the burden on practitioners.

#### *Consolidation*

- 7.8 Not applicable.

### **8. Consultation outcome**

- 8.1 The Department for Business, Innovation and Skills carried out an extensive consultation with stakeholders in its 'Transparency and Trust paper' before bringing forward the insolvency reforms in the SBEEA. Insolvency reforms have been informed by extensive consultation and engagement with a range of affected parties including: the insolvency profession, creditor representatives, insolvency regulators and public bodies. The Insolvency (England and Wales) Rules 2016 came into force in England and Wales on 6 April 2017 following extensive consultation and approval by the Insolvency Rules Committee.

**9. Guidance**

9.1 Not applicable.

**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 has not been prepared for this instrument.

**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 Not applicable.

**13. Contact**

13.1 Helen Jeffery at the Insolvency Service Telephone: 020 7291 6783 or email: [helen.jeffery@insolvency.gsi.gov.uk](mailto:helen.jeffery@insolvency.gsi.gov.uk) can answer any queries regarding the instrument.