

EXPLANATORY MEMORANDUM TO
THE SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015
(CONSEQUENTIAL AMENDMENTS, SAVINGS AND TRANSITIONAL
PROVISIONS) REGULATIONS 2019

2019 No. 1058

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 amends financial services legislation in consequence of provisions in the Small Business, Enterprise and Employment Act 2015 (“SBEEA”) which amend the Insolvency Act 1986 and which came into force in Scotland on 6th April 2019 and also makes a minor amendment to the Insolvent Partnerships Order 1994 (which extend to England and Wales).
- 2.2 This instrument also contains transitional provisions and savings for certain insolvency regimes that apply the 1986 Act, so that it continues to have effect as if the SBEEA reforms had not been enacted.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The extent and territorial application of a provision of these Regulations depends on the extent of the enactment being amended. Regulation 3 extends to England and Wales in the case of insolvency proceedings relating to individuals and in the case of such proceedings in relation to companies and partnerships relates to companies and partnerships which the courts in England and Wales have jurisdiction to wind up. Regulation 4 applies in relation to an insurer which the courts of Scotland have jurisdiction to wind up. Regulations 5 and 10 extend to England, Wales and Scotland but regulation 5 amends a provision which concerns only parties in Scotland. Regulations 6 and 11 extend to the whole of the United Kingdom. Regulations 7, 8 and 12 extend to England, Wales and Scotland but make amendments which only apply in relation to administration proceedings in Scotland. Regulations 13 to 16 generally apply to proceedings in Scotland.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 These Regulations amend various provisions in secondary legislation to take account of insolvency law reforms enacted in sections 122 to 126 of, and Schedule 9 to SBEEA. The Regulations make amendments, savings and transitional provisions in consequence of these reforms, which introduce new procedures for creditors' decisions and which allow creditors to opt out of receiving creditors' notices. The amendments are made under sections 159(1), (2) and (9) and 161(2) of SBEEA.
- 6.2 The amendments are made to ensure that the legislation concerned has effect in a way that is compatible with the insolvency law reforms made by SBEEA. The SBEEA reforms operate by reference to the Insolvency (England and Wales) Rules 2016, which came into force on 6th April 2017 and (in Scotland) by reference to the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018 and the Insolvency (Scotland) (Receivership and Winding-up) Rules 2018, which together superseded the Insolvency (Scotland) Rules 1986 ("the 1986 Scotland Rules"), and came into force on 6th April 2019. (Of the two new sets of Rules the former covers reserved matters and the latter covers devolved and mixed competence matters.) The Regulations include transitional provisions and also savings provisions applying the 1986 Scotland Rules to certain types of insolvency proceedings in the energy, financial services and postal services sectors.

7. Policy background

What is being done and why?

- 7.1 Following the commencement of the modernised insolvency rules for England and Wales (SI 2016/1024 as amended) on 6 April 2017, a similar exercise was undertaken to modernise and consolidate the rules for Scotland. The new Scottish Rules implement reforms to the Insolvency Act 1986 made by SBEEA in Scotland and came into force on 6th April 2019 at the same time as the commencement of the SBEEA reforms in relation to Scotland. The policy impetus for these measures was to remove unnecessary regulatory burdens to reduce the cost of administering insolvency proceedings.
- 7.2 Consequential amendments to other government legislation that refers to the Insolvency (Scotland) 1986 Rules are necessary in order to fully and consistently implement the measures in the SBEEA in Scotland to mirror changes already implemented in England and Wales.
- 7.3 The instrument also takes the opportunity to make minor amendments to Schedule 7 of the Insolvent Partnerships Order 1994. The amendments ensure that the appropriate subsections of Schedule 7 are referenced.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Not applicable

10. Consultation outcome

10.1 The Department for Business, Innovation and Skills carried out a consultation with stakeholders in its 'Transparency and Trust paper' before bringing forward the insolvency reforms in the SBEEA. 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.

11. Guidance

The Department does not propose to issue any guidance in relation to this instrument

12. Impact

12.1 There is no impact on business, charities or voluntary bodies.

12.2 There is no impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument as no impact on the private or voluntary sectors is foreseen.

13. Regulating small business

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

14. Monitoring & review

14.1 The Department of Business, Energy and Industrial Strategy does not currently plan to undertake a review of the measures introduced in this instrument, as this instrument makes no substantive changes to the existing primary legislation.

15. Contact

15.1 Maya Patel at the Insolvency Service Telephone: 0207 596 6121 or email: Maya.Patel@insolvency.gov.uk can be contacted with any queries regarding the instrument.

15.2 Dean Beale, Director of Strategy and Change at the Insolvency Service can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kelly Tolhurst MP at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.