

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS (INSOLVENCY) (AMENDMENT OF
MISCELLANEOUS ENACTMENTS) REGULATIONS 2019

2019 No. 755

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations make consequential amendments to various financial services instruments in consequence of:

- in England and Wales, the revocation of the Insolvency Rules 1986 (S.I. 1986/1925) (“the 1986 Rules”) and the coming into force on 6 April 2017 of the Insolvency (England and Wales) Rules 2016 (S.I. 2016/1024) (“the 2016 Rules”); and
- in Scotland, the revocation of the Insolvency (Scotland) Rules 1986 (S.I. 1986/1915) (“the 1986 Scotland Rules”) and the coming into force on 6 April 2019 of the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018 (S.I. 2018/1082) and the Insolvency (Scotland) (Receivership and Winding up) Rules 2018 (S.I. 2018 347) (together “the 2018 Rules”).

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 territorial extent of this instrument is the whole of the United Kingdom, except regulation 8 which extends to England, Wales, and Scotland.

4.2 The territorial application of this instrument is the whole of the United Kingdom, except regulation 8 which applies in England, Wales, and 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 secondary legislation for which HM Treasury is responsible to take account of the coming into force of:
- in England and Wales, the 2016 Rules on 6 April 2017; and
 - in Scotland, the 2018 Rules on 6 April 2019.
- 6.2 The 2016 Rules and the 2018 Rules revoke and replace the 1986 Rules and the 1986 (Scotland) Rules. The HM Treasury legislation amended by these Regulations currently refers to these revoked Rules. These Regulations therefore amend this legislation to ensure it takes effect compatibly with the new Rules.

7. Policy background

What is being done and why?

- 7.1 General insolvency law (corporate and individual) has recently been subject to a number of reforms, which were designed to modernise and streamline the insolvency process.
- 7.2 Most notably, these are the reforms contained in the Deregulation Act 2015 (“the DA 2015”) and the Small Business, Enterprise and Employment Act 2015 (“the SBEEA 2015”). Further reform was introduced by the revocation of the 1986 Insolvency Rules and the 1986 Scotland Rules and their replacement with the new 2016 and 2018 Rules.
- 7.3 HM Treasury has a considerable volume of legislation which modifies general insolvency law in its application to financial services firms. As a result, changes in general insolvency law can require changes to be made to HM Treasury’s modifications of general insolvency law. These Regulations make such necessary changes as a consequence of the introduction of the new 2016 and 2018 Rules.
- 7.4 The principal changes introduced by the 2016 Rules and the 2018 Rules are:
- to revoke the Insolvency Rules 1986 and the Insolvency (Scotland) Rules 1986 and to replace them with equivalent provisions in the new 2016 and the 2018 Rules;
 - to consolidate, restructure and modernise the Insolvency Rules 1986 and the Insolvency (Scotland) Rules 1986, for example by introducing simpler drafting and gender-neutral language; and
 - to give effect to the reforms made to the Insolvency Act 1986 by the DA 2015 and the SBEEA 2015.
- 7.5 The HM Treasury legislation that is amended in these Regulations makes references to the 1986 Rules and the 1986 (Scotland) Rules, which have now been revoked. These Regulations therefore make the necessary amendments to ensure that this legislation refers instead to the equivalent provisions in the 2016 Rules and the 2018 Rules.

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 HM Treasury does not intend to consolidate the instruments being amended in these Regulations at this time.

10. Consultation outcome

- 10.1 The Department for Business, Enterprise, Innovation and Skills (BEIS) carried out extensive consultation before bringing forward the insolvency reforms introduced by the 2016 Rules. The parties consulted included insolvency practitioners, insolvency regulators, technical managers, lawyers from professional services firms and creditor organisations. This consultation included both informal consultation with such industry experts and a formal public consultation which ran between 26 September 2013 and 24 January 2014 (“Insolvency Rules 1986 – Modernisation of Rules Relating to Insolvency Law”¹). The consultation responses informed the refinement and revision of the 2016 Rules.
- 10.2 In respect of Scotland and the 2018 Rules, the Scottish Government consulted in 2015 and 2017 on the proposed modernisation of the Insolvency Act 1986 and the 1986 Scotland Rules. The rules themselves were developed following detailed discussion with an industry working group drawn from insolvency practitioners, lawyers and a regulator with expertise in the law and practice of all forms of Scottish corporate insolvency. The 2018 Rules are closely modelled on the 2016 Rules.
- 10.3 Owing to the extensive consultation conducted by BEIS, HM Treasury has not consulted separately on the amendments introduced in these Regulations. The amendments introduced by these Regulations are necessary amendments made in consequence of the introduction of the 2016 Rules and the 2018 Rules and do not introduce any new policy changes.

11. Guidance

- 11.1 No guidance is being issued on this instrument. The Insolvency Service has however engaged with relevant stakeholders in relation to the changes introduced by the 2016 Rules and the 2018 Rules.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument. This is because BEIS undertook a full impact assessment in relation to the changes introduced by the 2016 Rules which covered the whole economy, including the familiarisation costs to business.² HM Treasury has therefore not produced a further separate impact assessment given the consequential nature of the amendments made by these Regulations.
- 12.4 In respect of Scotland, BEIS’s assessment was that the 2018 Rules would result in efficiency savings but an impact assessment was not produced as the savings were anticipated to be less than £1m per year. The Scottish government also completed its

¹ <https://www.gov.uk/government/consultations/modernisation-of-the-rules-relating-to-insolvency-law>

² http://www.legislation.gov.uk/ukia/2016/206/pdfs/ukia_20160206_en.pdf

own Business and Regulatory Impact Assessment on the effects of the Insolvency (Scotland) (Receivership and Winding up) Rules 2018.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise the regulatory burden on small businesses.
- 13.3 This is because it would not be in the interests of small businesses if insolvency proceedings or activities conducted by an insolvency practitioner were governed by different legislation. In addition, the amendments made by these Regulations are consequential in nature and follow from the changes made by the 2016 and 2018 Rules, and do not introduce any new policy changes.

14. Monitoring & review

- 14.1 These Regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 John Glen MP has made the following statement:

“In my view, it is not appropriate to include a statutory review clause in the Financial Services and Markets (Insolvency) (Amendment of Miscellaneous Enactments) Regulations 2019 because it would be disproportionate taking into account the economic impact of the regulatory provision contained in these Regulations. Further, the 2016 Rules and the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018 contain provision for their review and if amends are made following that review, HM Treasury will consider whether further consequential amendment to its legislation is necessary.”

15. Contact

- 15.1 Theodore Read, policy advisor at HM Treasury, telephone: 0207 270 6460 or email: theodore.read@hmtreasury.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Kripali Manek, Deputy Director, Systems Stability and Analysis, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 John Glen MP, Economic Secretary to the Treasury, HM Treasury can confirm that this Explanatory Memorandum meets the required standard.