

EXPLANATORY MEMORANDUM TO
THE PAYMENT AND ELECTRONIC MONEY INSTITUTION INSOLVENCY
(ENGLAND AND WALES) (AMENDMENT) RULES 2022

2022 No. 847

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Treasury 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 The instrument corrects drafting errors in the rules for the special administration procedure established in The Payment and Electronic Money Institution Insolvency (England and Wales) Rules 2021 ('the 2021 Rules').

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument addresses the issues in the 2021 Rules identified by the Joint Committee on Statutory Instruments (JCSI)'s Twenty-First report of the 2021-2022 session. In particular it seeks to address the concerns expressed about the drafting of rules 22(7), 27(7) and 291(1) of the 2021 Rules. Further issues drawn to the attention of HM Treasury by the JCSI have already been addressed through a correction slip.¹

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

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 The rules are being introduced under section 411(1A) (a), (2), (2C) and (3) of the Insolvency Act 1986, as applied and modified by regulation 37 of the Payment and Electronic Money Institution Insolvency Regulations 2021 ("the Regulations"). The rules amend the 2021 Rules which were made on 21 October 2021 under the same powers and the Regulations which were made on 17 June 2021 under sections 233 and 234 of the Banking Act 2009 (as applied and modified by regulation 24A of, and paragraphs 2 and 3 of Schedule 2ZA to, the Electronic Money Regulations 2011 and regulation 23A of, and paragraphs 2 and 3 of Schedule 3A to, the Payment Services Regulations 2017).

¹ [SI Correction Template \(legislation.gov.uk\)](https://www.legislation.gov.uk)

7. Policy background

What is being done and why?

- 7.1 The 2021 Rules set out the procedure for the Payment and Electronic Money Institution Special Administration process established in the Payment and Electronic Money Institution Insolvency Regulations 2021 (“the Regulations”).² Further details on the policy background to the 2021 Rules can be found in the [Explanatory Memorandum](#) for that instrument.
- 7.2 The 2021 Rules were made in October 2021. The JCSI reviewed the 2021 Rules and identified drafting defects in January 2021, this can be found in the [Twenty-First Report of Session 2021–22](#).
- 7.3 This SI makes amendments to remove these defects and to correct a small number of other minor drafting errors which have been identified whilst reviewing the 2021 Rules.
- 7.4 This SI also deletes Rule 291(1) of the 2021 Rules, although HM Treasury still considers this a minor, technical amendment. The rule makes provision for remote attendance at, and the venue of, meetings held under the 2021 Rules. However, provision on these matters was made by rules 63, 80 and 81 of the 2021 Rules and section 246A of the Insolvency Act 1986 (c. 45), as modified by the relevant row of the table in regulation 37 of the 2021 Regulations so rule 291(1) is being deleted to avoid duplication and ensure consistency.

8. European Union Withdrawal and Future Relationship

- 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 These are the first amendments being made to the 2021 Rules and therefore the legislation is not being consolidated.

10. Consultation outcome

- 10.1 HM Treasury previously consulted on the introduction of the 2021 Rules and Regulations. The consultation response document was [published](#) on 26 April 2021.
- 10.2 HM Treasury has conducted an informal consultation on the amendments to the 2021 Rules with the FCA and Insolvency Service. Further, as required by the Insolvency Act 1986, the amendments to the 2021 Rules have been put before and agreed with the Insolvency Rules Committee for scrutiny.

11. Guidance

- 11.1 No guidance is being issued on the instrument since it is making minor amendments to existing rules.

12. Impact

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

² <https://www.legislation.gov.uk/ukxi/2021/716/contents/made>

- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A de minimis Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

13. Regulating small business

- 13.1 These amendments do not impact small businesses.

14. Monitoring & review

- 14.1 Section 236 of the Banking Act 2009 applies in modified form in relation to electronic money and payment institutions under amendments made by the Payment Services and Electronic Money (Amendment) Regulations, S.I. 2020/1275. Therefore, HM Treasury is required to review the Regulations within two years of them coming into force. The review must consider how far the Regulations are achieving the objectives specified in section 233(3) and whether the Regulations should continue to have effect. This review specifically relates to the Regulations and not the 2021 Rules, but the two instruments are linked.
- 14.2 HM Treasury will ensure that arrangements for review are consistent with better regulation policy going forward.

15. Contact

- 15.1 Lucinda Greenslade at HM Treasury. email: Lucinda.greenslade@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Mario Pisani, Deputy Director for Resilience and Resolution, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Richard Fuller, the Economic Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.