

<p><b>Title:</b> The Payment and Electronic Money Institution Insolvency (England and Wales) (Amendment) Rules 2022</p> <p><b>SI (Statutory Instrument) No:</b> 847</p> <p><b>Other departments or agencies:</b> None</p> <p><b>Contact for enquiries:</b> <a href="mailto:Lucinda.greenslade@hmtreasury.gov.uk">Lucinda.greenslade@hmtreasury.gov.uk</a></p>	<p><b>De minimis assessment</b></p> <p><b>Date:</b> 20/07/2022</p> <p><b>Type of regulation:</b> Domestic</p> <p><b>Date measure comes into force:</b> 10/08/2022</p>
<p><b>Cost of Preferred (or more likely) Option</b></p> <p>Approx. £960</p>	<p><b>Equivalent Annual Net Direct Cost to Business per year</b> (EANDCB in 2019 prices) Zero</p>

<p><b>1. What is the problem under consideration? Why is government intervention necessary?</b></p> <p>The government has introduced a new special administration regime for payment and electronic money institutions (PIs/EMIs). The regime was introduced in order to be able to more effectively manage the failure of these firms and mitigate harms to consumers.</p> <p>To create a fully functioning Special Administration Regime (SAR), the government introduced two separate pieces of legislation, the Payment and Electronic Money Institution Insolvency Regulations 2021 (the Regulations)<sup>1</sup> and the Payment and Electronic Money Institution Insolvency (England and Wales) Rules 2021 (the Rules).<sup>2</sup> Minor technical drafting amendments are needed to correct drafting errors and provide clarity in the Rules via legislation.</p>
<p><b>2. What are the policy objectives and the intended effects?</b></p> <p>The Rules set out the detailed procedure and process for the Regulations and a de minimis Impact Assessment was completed which outlined the impacts and also policy objectives.<sup>3</sup></p> <p>The Rules were made in October 2021. The Joint Committee on Statutory Instruments (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.<sup>4</sup> This includes the defective drafting of two rules, 22(7) and 27(7), which are minor grammatical errors where a phrase needs to be moved to the end of a paragraph. The minor amendments also include the deletion of rule 291(1), which relates to remote attendance at meetings and venues. This rule is being deleted as the provision on these matters had already been made by section 246A of the Insolvency Act 1986, therefore this change removes a duplication.</p> <p>This SI makes amendments to correct these minor deficiencies and to correct further minor drafting errors which have been identified whilst reviewing the Rules. An explanatory memorandum will be published alongside this SI, detailing the changes the SI makes.</p>

<sup>1</sup> <https://www.legislation.gov.uk/ukdsi/2021/9780348222814/contents>

<sup>2</sup> <https://www.legislation.gov.uk/uksi/2021/1178/contents/made>

<sup>3</sup> [https://www.legislation.gov.uk/uksi/2021/1178/pdfs/uksiod\\_20211178\\_en.pdf](https://www.legislation.gov.uk/uksi/2021/1178/pdfs/uksiod_20211178_en.pdf)

<sup>4</sup> <https://publications.parliament.uk/pa/jt5802/jtselect/jtstatin/148/report.html#heading-0>

### **3. What policy options have been considered, including any alternatives to regulation?**

#### **Please justify preferred option**

This is largely a technical exercise to remove minor drafting errors in the legislation and prevent confusion.

This SI does not introduce new policies, make significant policy changes or impose significant additional requirements on businesses therefore no other policy options have been considered.

If the government were to not make changes to the Rules, and so not make this piece of legislation, it may cause confusion for firms in understanding the Rules as currently the Rules contains drafting errors.

### **4. Please justify why the net impacts (i.e., net costs or benefits) to business will be less than £5 million a year.**

To do this, please set out the following:

- What will businesses have to do differently?

The SI does not introduce any substantial changes for businesses, it mainly makes minor technical corrections to the rules that would govern the administration of PIs/EMIs in the case of a firm failure. One minor policy change has been made under the deletion of rule 291 (1), whereby a provision was made for remote attendance at, and the venue of, meetings held under the Rules. This will increase the notice period an administrator must give of the venue from five business days to fourteen, but this will not impact businesses prior to them entering a special administration.

- How many businesses will this impact per year?

Insofar as there is any impact on PIs/EMIs, this will only impact businesses once they have entered insolvency. Although there are approximately 1,200 authorised PIs/EMIs, the number of insolvencies varies significantly based on market conditions and firm specific issues.

- What is the direct cost/benefit per business per year?

There is a one-off limited direct cost to insolvency practitioners (IPs), as administrators of a PI/EMI, of familiarising themselves with the amendments, however these are nugatory as the this does not alter the policy of the Rules 2021 and only makes minor drafting amendments to ensure coherence in the legislation. FCA guidelines for the familiarisation costs<sup>5</sup> of the amendment would be £96 [two compliance staff to read ~ 3 pages of legal text [1 hour each] at a cost of £48 per hour].<sup>6</sup> This would be a one-off cost.

The provisions of this SI will not impose any significant additional requirements or administrative burdens on business over and above the changes made by the Rules. The impact assessment on the Rules laid out the minor costs to businesses.<sup>7</sup>

These provisions will only be used when a PI/EMI goes into insolvency or special administration. Although there are approximately 1,200 authorised PIs/EMIs, the number of insolvencies varies significantly based on market conditions and firm specific issues. If each insolvency resulted in a different IP being appointed, then it would be possible for multiple IPs to be affected.

<sup>5</sup> <https://www.fca.org.uk/publication/corporate/how-analyse-costs-benefits-policies.pdf>

<sup>6</sup> Estimate taken from the Rules impact assessment

[https://www.legislation.gov.uk/ukxi/2021/1178/pdfs/uksiod\\_20211178\\_en.pdf](https://www.legislation.gov.uk/ukxi/2021/1178/pdfs/uksiod_20211178_en.pdf)

<sup>7</sup> [https://www.legislation.gov.uk/ukxi/2021/1178/pdfs/uksiod\\_20211178\\_en.pdf](https://www.legislation.gov.uk/ukxi/2021/1178/pdfs/uksiod_20211178_en.pdf)

However, there are only a limited number of IPs capable of resolving complex financial services firms such as these. Even in a year with a significant number of insolvencies, the number of IPs needing to familiarise themselves with these Rules is likely to be fewer than 10, as laid out in the de minimis impact assessment for the Rules.

Therefore, the estimated cost would be, at most, £960 as the total one-off familiarisation costs for that year.

**5. Please confirm whether your measure could be subject to call-in by BRE (Better Regulation Executive) under the following criteria. If yes, please provide a justification of why a full impact assessment is not appropriate:**

**a) Significant distributional impacts (such as significant transfers between different businesses or sectors)**

None

**b) Disproportionate burdens on small businesses**

This SI itself does not change or create disproportionate burdens on small businesses that haven't been considered as part of the Rules 2021.

**c) Significant gross effects despite small net impacts**

None

**d) Significant wider social, environmental, financial, or economic impacts**

None

**e) Significant novel or contentious elements**

None

Sign-off for de minimis assessment: SCS

***I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.***

**SCS of Resilience and Resolution**

Signed: ***Mario Pisani***

Date: 22/06/2022

**SCS of Better Regulation Unit**

Signed: ***Linda Timson***

Date: 23/06/2022

Sign-off for de minimis assessment: Minister

***I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.***

Signed: ***Richard Fuller, Economic Secretary to the Treasury***

Date: 14/07/2022