

EXPLANATORY MEMORANDUM TO
THE INSOLVENCY (SCOTLAND) AMENDMENT ORDER 2006

2006 No. 735 (S. 7)

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Insolvency (Scotland) Amendment Order 2006 amends Forms 4.4(Scot) and Form 5(Scot) in the Insolvency (Scotland) Rules 1986 (SI 1986/1915). Those two statutory forms are the Statement of Affairs forms for windings up and receiverships in Scotland respectively. These changes are identical to changes that are in the process of being made to the Statement of Affairs form for Administrations in Scotland by the Insolvency (Scotland) Amendment Rules 2006.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative background

4.1 The power to make The Insolvency (Scotland) Amendment Order 2006 is contained within section 277 of the Enterprise Act 2002 (c.40). Those powers are exercised by the Secretary of State. A statutory instrument made under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

4.2 The Insolvency (Scotland) Amendment Order 2006 amends Forms 4.4(Scot) and Form 5(Scot) in The Insolvency (Scotland) Rules 1986 (SI 1986/1915) to clarify how funds that have been set aside by virtue of the operation of the “prescribed part” in section 176A of the Insolvency Act 1986(c.45) should be applied. This section was inserted into the Insolvency Act 1986 by section 252 of the Enterprise Act 2002.

5. Extent

5.1 The statutory instrument applies to 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

7.1 This Order clarifies certain amendments that were made to SI 1986/1915 following the package of reforms to corporate insolvency law introduced by Part 10 of the Enterprise Act 2002 that aim to encourage the rescue of viable companies that get into financial difficulty.

8. Impact

8.1 A regulatory impact assessment identifying the costs of the insolvency provisions of the Enterprise Act 2002 to business and the exchequer was published at the time the Act received Royal Assent in November 2002. It is available from www.dti.gov.uk/enterpriseact/rias.htm. The RIA encompasses the areas covered by this Order and so it is not necessary to complete a separate assessment.

9. Contact

9.1 Stephen Leinster at The Insolvency Service– tel: 020 7291 6747; or email: stephen.leinster@insolvency.gsi.gov.uk can answer any queries regarding this instrument.