

EXPLANATORY MEMORANDUM TO
THE INSOLVENT COMPANIES (DISQUALIFICATION OF UNFIT
DIRECTORS) PROCEEDINGS (AMENDMENT) RULES 2007

2007 No. 1906

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 These Rules amend the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987 (SI 1987/2023) (“the principal Rules”). The principal Rules provide procedures for applications to court for disqualification orders against company directors made by the Secretary of State, Official Receiver or Office of Fair Trading under that Act. These Rules extend the scope of application of the principal Rules to all types of application to court that may be made under the Company Directors Disqualification Act 1986 (“CDDA”). The principal Rules currently only apply to applications for disqualification orders made under that Act.

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 Insolvent Companies (Disqualification of Unfit Directors) Proceedings (Amendment) Rules 2007 is contained in section 411 of the Insolvency Act 1986 which is applied to the CDDA by section 21(2) of that Act. In relation to this instrument, the power is exercised by the Lord Chancellor with the concurrence of the Secretary of State and the Lord Chief Justice, as this instrument contains rules which affect court procedure. (The Chancellor of the High Court, by virtue of a nomination having been made by the Lord Chief Justice, pursuant to section 411(7) of the Insolvency Act 1986, will concur in the making of these Rules). Section 413 requires the Lord Chancellor to consult the Insolvency Rules Committee prior to exercising the power under section 411. A statutory instrument made under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

4.2 This instrument amends the principal Rules, which provide rules that apply with respect to applications to court for a disqualification order by the Secretary of State or Official Receiver under sections 7 and 8, or by the Office of Fair Trading under section 9A, of the CDDA.

4.3 The principal Rules were last amended by The Insolvent Companies (Disqualification of Unfit Directors) Proceedings (Amendment) Rules 2003 (S.I. 2003/1367).

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

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 Rule 1(3) of the principal Rules applies the rules set out in those Rules to applications to court for disqualification orders under sections 6, 8 and 9A of the CDDA. Rule 2(1) of those Rules applies the Civil Procedure Rules (“CPR”) and any relevant practice direction (Practice Direction: Directors Disqualification Proceedings, 31 July 2006) to such applications.

7.2 In respect of other applications to court that may be made under the CDDA, that is to say, those under sections 7(2), 7(4), 8A and 17 (following a disqualification order under sections 6-9 of the CDDA), by virtue of section 21 of the CDDA the Insolvency Rules 1986 (S.I. 1986/1925) apply. To the extent that they are not inconsistent with those Rules, the CPR and any relevant Practice Directions apply.

7.3 Section 411 of the Insolvency Act 1986 was extended (by amendment to section 21(2) of the CDDA by paragraph 1 of Schedule 4 to the Insolvency Act 2000 (c.39)) to apply to sections of the CDDA other than those relating solely to disqualification orders. This raised a question as to whether the CPR (or any practice direction) was consistent with the Insolvency Rules. In particular, the question arose as to the applicability of the Practice Direction: Directors Disqualification Proceedings to applications under the CDDA other than those covered by the principal Rules i.e. applications for disqualification orders.

7.4. The amendments made by this instrument will put the matter beyond doubt that all applications to court under the CDDA are covered by the principal Rules and that the CPR and practice directions would thereby apply to all such applications.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument, as it has no impact on business, charities or voluntary bodies.

9. Contact

9.1 Tom Phillips at The Insolvency Service Tel 020 7637 6421 or e-mail: tom.phillips@insolvency.gsi.gov.uk can answer any queries regarding the instrument.