

EXPLANATORY MEMORANDUM TO
THE INSOLVENCY (SCOTLAND) AMENDMENT RULES 2009

2009 No. 662

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The Insolvency (Scotland) Amendment Rules 2009 provide the rules for giving effect to the introduction of a better targeted and more efficient advertising regime for the administration and company voluntary arrangement procedures in Scotland, mirroring similar amendment for England & Wales scheduled to commence 6 April 2009.

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

- 3.1 None.

4. **Legislative Context**

- 4.1 The power to make the Insolvency (Scotland) Amendment Rules 2009 is contained within section 411 of the Insolvency Act 1986. 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 This instrument amends the Insolvency (Scotland) Rules 1986 (S.I. 1986/1915). The Insolvency (Scotland) Rules 1986 set out the detailed procedure for the conduct of those insolvency proceedings in Scotland governed by the Insolvency Act 1986. The Insolvency (Scotland) Amendment Rules 2009 relate only to administration and company voluntary arrangements, both procedures that are reserved to the UK Parliament under The Scotland Act 1998. The Accountant in Bankruptcy, who holds policy responsibility for devolved Scottish insolvency procedures, has been informed of these amending Rules.
- 4.3 A review has been undertaken to modernise, simplify, clarify and consolidate the English equivalent of the Insolvency (Scotland) Rules 1986, the Insolvency Rules 1986. An amending instrument for England & Wales, also scheduled to commence on 6 April 2009, is, *inter alia*, instituting changes to insolvency advertising for all procedures in that jurisdiction, to enable

administrative savings. The Insolvency (Scotland) Amendment Rules 2009 replicate those advertising changes for the wholly reserved insolvency procedures of administration and company voluntary arrangements to ensure consistency for these procedures across Great Britain.

5. Territorial Extent and Application

5.1 This instrument applies to Scotland.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The statutory instrument will ensure that the Scottish administration and company voluntary arrangements will be aligned with their English and Welsh equivalents following changes made in the latter jurisdiction from 6 April 2009.

- *Consolidation*

7.2 The Insolvency (Scotland) Amendment Rules 2009 amend the Insolvency (Scotland) Rules 1986. The latter instrument contains matters that are reserved to the UK Parliament and matters that are devolved to the Scottish Parliament. Any consolidation would therefore be problematic and none is planned at this time.

8. Consultation outcome

8.1 Since 2005 stakeholders' views have been actively sought on initiatives to modernise and improve the Insolvency Rules 1986 that governs insolvency proceedings in England & Wales. This informal consultation process has generated a very high level of response. One of the modernisation initiatives identified has been the need to insolvency advertising, something that is expensive and not tailored to meet the circumstances of a particular insolvency case.

8.2 Further views were taken from key stakeholder groups in relation to the drafting of advertising amendments to the Rules and it became clear that the changes would extend to sections within the Insolvency Act, which would require amendment by Legislative Reform Order ("LRO"). A formal consultation was then undertaken from September 2007 in relation to a number of proposals for change to the Insolvency Act, including amendment of the statutory requirements in sections 95 and 98 (in England & Wales only) of the Act to advertise creditors meetings in voluntary liquidations. The response to the LRO consultation was in favour of changes which would modernise the legislation and reduce administrative costs leading to better returns for creditors. The Newspaper Society objected to the new discretion to advertise and could not be persuaded of the case for moving away from a requirement for mandatory newspaper advertising. The decision to proceed with the advertising

changes was taken in view of the support from other stakeholders who accepted that the existing requirements impose a financial burden which is borne by creditors and cannot be justified as a matter of routine in every insolvency case. Fuller particulars of the LRO consultation are also published on The Insolvency Service website. The identified changes to the advertising regime are being made in the Insolvency (Amendment) Rules 2009, also to commence on 6 April 2009.

8.3 There are far fewer administrations and company voluntary arrangements in Scotland than in England & Wales (provisional figures for 2008 show that there were 123 administrations and 4 company voluntary arrangements in Scotland compared to 4820 and 587, respectively, in England & Wales) and the effect of the Insolvency (Scotland) Amendment Rules 2009 will be relatively small. However, in order to avoid a discrepancy between administrations and company voluntary arrangements in Scotland and their English & Welsh counterparts, a similar change is needed for Scotland.

9. Guidance

9.1 The Insolvency Service has prepared guidance for stakeholders and the public on the new advertising provisions. Full details of the proposed advertising changes were given by the Insolvency Service in a presentation at a annual conference for Scottish insolvency professionals in November 2008. A copy of the draft instrument has been sent to the major representative body for Scottish insolvency professionals. The draft instrument will also be published on The Insolvency Service website during March 2009. Insolvency office-holders will be provided with a March 2009 edition of the Insolvency Service Dear IP publication which will also carry guidance for them on the advertising changes. This material will build upon previous information published about the general nature of the planned advertising changes.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation will have a negligible effect on small business.

12. Monitoring & review

12.1 The success criteria for the advertising amendments are seen primarily as the provision of a workable, more flexible and better targeted advertising regime to be used by administrators and supervisors of company voluntary arrangements to meet the needs for publicity in those cases. The Insolvency Service will review and evaluate the success of the implementation of the amendments contained within this instrument and will consider any necessary further revisions.

13. Contact

Steven Chown at the Insolvency Service Tel: 020 7637 6501 or email: steven.chown@insolvency.gsi.gov.uk can answer any queries regarding the instrument.