

**EXPLANATORY MEMORANDUM TO THE JOINT COMMITTEE ON
STATUTORY INSTRUMENTS**

THE INSOLVENCY (AMENDMENT) RULES (NORTHERN IRELAND) 2008

SR 2008 No. 118

1. This explanatory memorandum has been prepared by the Department of Enterprise, Trade and Investment (as the Department with lead responsibility for insolvency matters in Northern Ireland) on behalf of the Ministry of Justice (Northern Ireland Court Service) and is laid before Parliament by Command of Her Majesty.
 - 1.1 This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Description**
 - 2.1 These Rules amend the Insolvency Rules (Northern Ireland) 1991 (S.R. 1991 No. 364) which lay down detailed procedural rules governing the administration of company and individual insolvencies.
 - 2.2 The amendments provide for:
 - the proceeds of legal actions or dispute resolution procedures taking place in the course of a liquidation to be treated as available for payment of the general expenses of that liquidation;
 - expenses associated with such actions or procedures to count as one of those expenses; and
 - an obligation to be placed on liquidators intending to pay litigation expenses out of company property subject to a floating charge to either seek the agreement of those with claims against that property, or, in certain circumstances to seek approval from the court (a floating charge is form of security over company property taken by a lender).
 - 2.3 These Rules substitute a new version of Rule 4.238 which:
 - creates an exception to the bar on the re-use of the name of a company in insolvent liquidation which exists under Article 180 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)); and
 - provides that, subject to certain conditions, the notice which must be given to the original company's creditors and published in the Belfast Gazette may be given and published prior to the original company going into liquidation.
 - 2.4 These Rules abolish the requirement for the court to send copies of Bankruptcy orders it has made to the Clerk of the Crown.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.

4. Legislative Background

- 4.1 Following the judgement of the House of Lords re Leyland Daf in March 2004, whereby it was held that property subject to a floating charge was not available to fund the general expenses of a winding up, provision has been included in section 1282 of the Companies Act 2006 to partially reverse this decision by inserting new section 176ZA into the Insolvency Act 1986 and new Article 150ZA into the Insolvency (Northern Ireland) Order 1989.
- 4.2 These amendments to the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989 give liquidators the right to claim expenses out of property subject to a floating charge if a company does not have enough unsecured assets to cover their expenses.
- 4.3 The Rules provide for this right to be subject, in the case of litigation expenses, to authorisation or approval from the holders of debentures secured by, or holders of, the floating charge and by any preferential creditors entitled to be paid in priority to them or from the Court.
- 4.4 Rules are also being made in England and Wales placing liquidators under a similar requirement in the case of litigation expenses.
- 4.5 The new version of Rule 4.238 replicates rules already applying in England and Wales, (S.I. 2007/1974). These rules were made with the object of reversing a decision of the Court of Appeal in First Independent Factors and Finance Limited v Churchill to the effect that notice to creditors of intention to re-use of the name of a company in insolvent liquidation did not make the re-use of such a name legal if the notice was given in circumstances where a director of the original company was already a director of the company intending to reuse the name.
- 4.6 Removal of the requirement for the Clerk of the Crown to receive Bankruptcy Orders recognises that no practical reason exists for such a requirement.

5. Territorial Extent and Application

- 5.1 This instrument applies to Northern Ireland but replicates provision being made concurrently in England and Wales as well as some already in place.

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 The rules are in conformity with rules to be applied in England and Wales mentioned at paragraph 4.4 above; and rules already in force in England and Wales mentioned in paragraph 4.5 above. Policy is that insolvency legislation in Northern Ireland should be kept in line with that applying in England and Wales. Consultation was carried out in respect of the primary legislation to which the rules relate. No adverse responses were received.

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.
- 8.2 This instrument has no impact on the public sector.

9. Contact

- 9.1 Jack Reid at the Department of Enterprise, Trade and Investment Tel: 028 9054 8543 or e-mail: jack.reid@detini.gov.uk can answer any queries regarding the instrument.