

EXPLANATORY MEMORANDUM TO
THE INSOLVENCY (SCOTLAND) AMENDMENT (No. 2) RULES 2009

2009 No. 2375 (S.11)

1. This explanatory memorandum has been prepared by the Department for Business, Innovation & Skills 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 Companies House in Scotland moved premises in May 2009. Twenty-one forms prescribed by the Insolvency (Scotland) Rules 1986 (S.I. 1986/1915) (as amended) include their old postal address. The Insolvency (Scotland) Amendment (No. 2) Rules 2009 amends these forms to include the new address. Form 4.31 (Scot) is also amended to update the address of the Accountant in Bankruptcy.
- 2.2 Form 2.30B (Scot), inserted into the Insolvency (Scotland) Rules 1986 by S.I. 2003/2111, did not include the form number on the face of the form. The form is being re-prescribed to include this form reference. The only other change to the content of the form is to correct the Companies House address.

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. 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 (No. 2) Rules 2009 relate only to those areas 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.

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 registrar of companies receives prescribed information that administrators and liquidators are under a duty, imposed by the Insolvency (Scotland) Rules 1986, to send to her.

- *Consolidation*

7.2 The Insolvency (Scotland) Amendment (No. 2) 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 As the change is purely to correct information that is now out of date, no consultation has been entered into.

9. Guidance

9.1 An article was placed in the Insolvency Service publication 'Dear IP', informing practitioners of those forms where the Companies House address was no longer current and that the forms would be updated by the Insolvency (Scotland) Amendment (No.2) Rules 2009. An article will be placed in a future edition of this publication, informing practitioners of the 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 Insolvency Service monitors the efficient working of the insolvency framework for those insolvency procedures reserved to the UK Parliament under the Scotland Act 1998. The Insolvency (Scotland) Amendment (No.2) Rules 2009 makes only administrative amendments to the Insolvency (Scotland) Rules 1986 and will not require specific monitoring outside of this.

13. Contact

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