

**EXPLANATORY MEMORANDUM TO
THE INSOLVENCY (AMENDMENT) RULES 2012**

2012 No. 469

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and 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 The Insolvency (Amendment) Rules 2012 amend existing provisions within the Insolvency Rules 1986 (S.I. 1986/1925) (“the 1986 Rules”). These changes will have the effect of excluding debts in relation to the Social Fund from being scheduled in a Debt Relief Order (DRO) or provable in bankruptcy proceedings, as contained in the Insolvency Act 1986.

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

- 3.1 None.

4. **Legislative Context**

- 4.1 This instrument amends the 1986 Rules. The 1986 Rules set out the detailed procedure for the conduct of all company and individual insolvency proceedings in England and Wales under the Insolvency Act 1986.

5. **Territorial Extent and Application**

- 5.1 This instrument applies to England and Wales.

- 5.2 The transitional provisions are set out in Rule 2.

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 In the case of Secretary of State for Work and Pensions (Appellant) v Payne and another (Respondents) [2011] the Supreme Court decided

that the Secretary of State could not recover overpayments and Social Fund loans from ongoing benefits following the making of a DRO. The Supreme Court also found that in this respect there was no reason to distinguish between bankruptcy and the DRO regime.

- 7.2 The Social Fund provides financial assistance to some of the most needy individuals in society who are in financial distress. Amounts recovered from debtors are returned to the fund and used to loan to other needy individuals. The Supreme Court ruling came about following a challenge to the Secretary of State recouping Social Fund loans and overpayments of benefits by deduction from current benefit payments during the “moratorium” period after the making of a DRO. The Supreme Court found that such actions were a remedy in respect of a debt which may not be exercised during the moratorium, according to Section 251G(2) of the Insolvency Act 1986. The court found that such debts were similarly irrecoverable in bankruptcy cases.
- 7.3 In order to protect the Social Fund from bad debts in relation to bankruptcy and DROs, the amendments made by this SI exclude Social Fund loans as qualifying debts in a DRO and provable debts in bankruptcy proceedings.

8. Consultation

- 8.1 There has been no public consultation. The instrument makes changes to the law in light of an adverse Supreme Court judgment.

9. Guidance

- 9.1 The Insolvency Service already has in place guidance for approved intermediaries who are instrumental in dealing with a debtor’s application for a DRO and that guidance will be amended for the revised treatment of Social Fund debts resulting from this instrument. Revised information on the treatment of Social Fund debts in both bankruptcy and DROs will be placed on the Insolvency Service website.

10. Impact

- 10.1 There is no expected impact on business as Social Fund loans are only given to individuals. The majority of individuals affected by this change will be those subject to a DRO rather than those in bankruptcy as Social Fund loans are most often made to individuals in receipt of benefits and the entry criteria for a DRO is more suited to those on benefits than the more expensive option of bankruptcy.
- 10.2 Users of the Social Fund will benefit the most from the change as it is expected to lead to increased recovery of Social Fund loans which will add to the amount of fund available to loan to other individuals in financial distress.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & Review

12.1 These changes will be subject to review and evaluation as part of the wider evaluation of the DRO regime. The Insolvency Service is planning to report its evaluation findings in 2013.

13. Contact

Dean Beale at The Insolvency Service (Tel: 020 7291 6744 or email: Dean.Beale@insolvency.gsi.gov.uk) can answer any queries regarding this instrument.