

EXPLANATORY MEMORANDUM TO

THE INSOLVENCY (ENGLAND AND WALES) (AMENDMENT) RULES 2017

2017 No. 366

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy & Industrial Strategy in conjunction with the Insolvency Service and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Rules amend provisions in the Insolvency (England and Wales) Rules 2016 (“the 2016 Rules”), which come into force on 6 April 2017. The purpose of these amendments is to effect minor corrections and clarifications.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is the first amending instrument to the 2016 Rules on which the Committee reported on 8 December 2016. The majority of the Committee’s concerns have been dealt with either through this instrument or via correction slip. This instrument makes amendments in relation to introductory rule 3(3), the application of Chapter 20 of Part 10 and rule 10.158.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The 2016 Rules provide the procedural framework for the Insolvency Act 1986 (“the Act”). They prescribe matters required by the Act and set out the procedural rules to be followed in the conduct of insolvency proceedings.
- 4.2 The 2016 Rules do three things. They consolidate the Insolvency Rules 1986 with the 28 amending instruments made since the 1986 Rules came into force. They restructure the Rules and update the language including gender neutral drafting. Finally they modernise those Rules to take account of the changes made to the Act by the Deregulation Act 2015 (“DA”) and the Small Business, Enterprise and Employment Act 2015 (“SBEE”); in particular amendments enabling modern methods of communication and decision making to be used in place of paper communications and physical meetings.

5. Extent and Territorial Application

- 5.1 The extent of the instrument is England and Wales.

5.2 The territorial application of this instrument is 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

What is being done and why

- 7.1 The purpose of this instrument is to make minor corrections and clarifications to the 2016 Rules. In particular:
- 7.2 Rule 4 provides alternative wording for the definitions for “attendance” and “attends” to improve clarity.
- 7.3 Rule 5 clarifies that notices in the 2016 Rules are not sent to creditors who have opted out of receiving correspondence under rule 1.38 of those rules, unless those rules require that they must.
- 7.4 Rules 6, 10, 11, 19, 20, 21, 22, 25, 37(b) and (c), 46 and 47(a) correct cross-referencing errors.
- 7.5 Rule 7 clarifies by when creditors must receive notice of a requisitioned physical meeting of creditors in company voluntary arrangement proceedings.
- 7.6 Rule 8(1) clarifies that rule 2.38 of the 2016 Rules will apply to reports both of the members’ meeting and the creditors’ decision where there is a requirement for both.
- 7.7 Rule 8(2) ensures that all activity relating to voting in the creditors’ decision in consideration of a company voluntary arrangement proposal is recorded.
- 7.8 Rule 8(3) clarifies the date by which the report of the outcome of the decision on the proposal must be filed with the court.
- 7.9 Rule 9 changes the wording of rule 2.40(4) of the 2016 Rules so that it accords with the language of the Act.
- 7.10 Rule 12(1) clarifies that the report filed with the court when an administrator is to be appointed outside of court business hours must state that two days have elapsed since notice was given to relevant floating charge holders, rather than the date that notice of that was filed in court.
- 7.11 Rule 12(2) clarifies that under those circumstances, where a floating charge holder gives consent to the appointment of an administrator that consent must be in writing.
- 7.12 Rules 12(3) and 12(4) correct an error where the requirement to have a statement of the reasons for the appointer of an administrator to consider that the proceedings are main, secondary, territorial, or non-EC proceedings, was in the wrong place.
- 7.13 Rules 13, 23, 34, 35, 42(2), 43, 47(b), 52, 53, 54 and 55 make minor changes to clarify the language used within the 2016 Rules.
- 7.14 Rule 14 clarifies that the five business days referred to in the notice of appointment of an administrator of a company runs from the date that the notice under paragraph 26 of Schedule B1 of the Act was delivered, rather than the date that a copy of that notice was filed in court.

- 7.15 Rule 15 amends rule 3.29(2)(b)(ii) of the 2016 Rules so that the person nominated by the administrator must deliver a Statement of Affairs within 11 days of receiving notice that they must do so, rather than by a specified date.
- 7.16 Rule 16 inserts a requirement for an administrator's revised proposals to be delivered to the registrar of companies.
- 7.17 Rule 17 inserts additional wording into rule 4.1(1) of the 2016 rules to confirm that Chapter 1 of Part 4 does not apply to receivers appointed under section 51 of the Insolvency Act 1986, which are those appointed in Scottish receiverships.
- 7.18 Rule 18 clarifies that where the court removes an members' voluntary liquidator, it may order that a company meeting be convened to appoint a new liquidator, rather than a meeting of the company's creditors.
- 7.19 Rule 24 clarifies the date that the liquidator's appointment takes effect for cases where the creditors appoint a different liquidator to that chosen by the company.
- 7.20 Rules 26, 28, 39, and 41 correct formatting errors.
- 7.21 Rule 27 ensures that all activity relating to voting in the creditors' decision in consideration of an individual voluntary arrangement proposal is recorded
- 7.22 Rule 29 inserts a new rule, which allows the correct fee to be charged when a trustee agrees an income payments agreement with a bankrupt.
- 7.23 Rule 30 adds an additional paragraph to rule 10.137of the 2016 Rules, which ensures that the adjudicator cannot be held liable for costs arising under an application to annul a bankruptcy order.
- 7.24 Rule 31 clarifies that the expenses referred to in 10.149(a)(i) of the 2016 Rules include those incurred in the conduct of legal proceedings which the official receiver or trustee has the power to bring, rather than the bankrupt.
- 7.25 Rule 32 clarifies the application of Chapter 20 of Part 10 of the 2016 Rules, which is to proceedings arising out of criminal bankruptcy orders.
- 7.26 Rule 33 applies rule 10.67 of the 2016 Rules to proceedings arising out of criminal bankruptcy orders, which sets out how a new trustee may be appointed by the creditors where one has been removed under section 298 of the Insolvency Act 1986.
- 7.27 Rule 36 adds a provision to clarify that where creditors request a physical meeting, the convener must consider whether the thresholds under the stated section of the Insolvency Act 1986 have been met by reference to the value of their vote, were they to be entitled to vote at such a meeting.
- 7.28 Rule 37(a) removes an exception for a statement in a notice of a decision procedure about the latest date of delivery of a proof in voluntary arrangements, which is not required.
- 7.29 Rule 38 clarifies that where there is a meeting of creditors held to consider the initial decision on the appointment of a liquidator in a creditors' voluntary liquidation, then it must be chaired by the convener, which will be one of the company's directors.
- 7.30 Rule 40 clarifies that the person completing a blank proxy form must state whether the completed form is to be considered as a specific or continuing proxy.

- 7.31 Rule 42(1) clarifies that a progress report need not be sent after a draft final report has been sent to members in a members' voluntary liquidation under rule 5.9(1) of the 2016 Rules.
- 7.32 Rule 44 makes an exception from the requirement to seek a decision on the basis of remuneration from creditors where an administrator has made a statement under paragraph 52(1)(b) of Schedule B1 of the Insolvency Act 1986 that there is no likelihood of a distribution to unsecured creditors.
- 7.33 Rule 45 ensures that savings provisions are in place for voluntary liquidations commenced before 6 April 2010 to ensure that annual meetings may continue.
- 7.34 Rule 47 omits a saving which is not required for meetings which are not final meetings under sections 94, 106, 146, or 331 of the Act (prior to commencement of the sections of the Small Business, Enterprise and Employment Act 2015 which make amendments to it).
- 7.35 Rule 48 clarifies under which circumstances in administration proceedings there is a continuing requirement to send a final progress report to the registrar of companies and to those who received notice of the appointment of the administrator.
- 7.36 Rule 49 provides a saving for administration, liquidation, and bankruptcy cases, whereby if the progress reporting cycle has changed prior to commencement of the 2016 Rules, then that cycle will continue after commencement of those Rules.
- 7.37 Rule 50 amends the service requirements of a "notice of intention to appoint an administrator" to ensure that deemed date of service may occur on the same day as service.
- 7.38 Rule 51 provides extra clarity with regard to the start and end of a period which is stated in months.

8. Consultation outcome

- 8.1 No formal consultation has been carried out. However the corrections and clarifications have been brought to our attention by stakeholders as they prepare for commencement of the 2016 Rules.

9. Guidance

- 9.1 The Insolvency Service will ensure that stakeholders' attention is drawn to this instrument once it is published.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment was published alongside the 2016 Rules, which can be accessed at www.legislation.gov.uk.

11. Regulating small business

- 11.1 The legislation is deregulatory and applies to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The 2016 Rules, which this instrument amends, will be reviewed within five years of coming in to force.

13. Contact

- 13.1 Simon Whiting at the Insolvency Service Telephone: 020 7637 6246 or email: simon.whiting@insolvency.gsi.gov.uk can answer any queries regarding the instrument.