

EXPLANATORY MEMORANDUM TO

THE BANKRUPTCY (FINANCIAL SERVICES AND MARKETS ACT 2000) RULES 2001 AND THE INSURERS (WINDING UP) RULES 2001 (AMENDMENT) RULES 2019

2019 No. 754

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by the Department of Business, Energy and Industrial Strategy by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Rules make consequential amendments to the Bankruptcy (Financial Services and Markets Act 2000) Rules 2001 and the Insurers (Winding Up) Rules 2001.
- 2.2 This is in consequence of the revocation of the Insolvency Rules 1986 (S.I 1986/1925) (“**the 1986 Rules**”) and the coming into force on 6 April 2017 of the Insolvency (England and Wales) Rules 2016 (S.I 2016/1024) (“**the 2016 Rules**”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 These Rules amend secondary legislation for which HM Treasury is responsible to take account of the coming into force of the 2016 Rules on 6 April 2017 in England and Wales.
- 6.2 The 2016 Rules revoked the 1986 Rules. These Rules therefore amend the two HM Treasury instruments concerned to ensure they are compatible with the 2016 Rules.
- 6.3 The amendments are made under sections 411 and 412 of the Insolvency Act 1986:

- Section 411(1)(a) of the 1986 Act gives the Lord Chancellor the power to make company insolvency rules in relation to England and Wales with the concurrence of the Secretary of State.
- Section 412(1) of the Insolvency Act 1986 gives the Lord Chancellor the power to make individual insolvency rules in relation to England and Wales with the concurrence of the Secretary of State.

7. Policy background

What is being done and why?

- 7.1 General insolvency law (corporate and individual) has recently been subject to a number of reforms, which were designed to modernise and streamline the insolvency process.
- 7.2 Most notably, these are the reforms contained in the Deregulation Act 2015 (“the DA 2015”) and the Small Business, Enterprise and Employment Act 2015 (“the SBEEA 2015”). Further reform was introduced by the revocation of the 1986 Rules and their replacement with the 2016 Rules.
- 7.3 HM Treasury has a considerable volume of legislation which modifies general insolvency law in its application to financial services firms, including insurance companies and individuals who are authorised persons under the Financial Services and Markets Act 2000.
- 7.4 As a result, changes in general insolvency law can require changes to be made to HM Treasury’s modifications of general insolvency law. These Rules make changes which are necessary in consequence of the introduction of the 2016 Rules.
- 7.5 The principal changes introduced by the 2016 Rules were:
- to revoke the 1986 Rules and to replace them with equivalent provisions in the 2016 Rules;
 - to consolidate, restructure and modernise the 1986 Rules, for example by introducing simpler drafting and gender-neutral language; and
 - to give effect to the reforms made to the Insolvency Act 1986 by the DA 2015 and the SBEEA 2015
- 7.6 These Rules therefore amend two HM Treasury instruments to ensure they are compatible with the 2016 Rules.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 HM Treasury does not intend to consolidate the instruments being amended in these Rules at this time.

10. Consultation outcome

- 10.1 The Department for Business, Energy and Industrial Strategy (BEIS) carried out extensive consultation before bringing forward the insolvency reforms introduced by

the 2016 Rules. The parties consulted included insolvency practitioners, insolvency regulators, technical managers, lawyers from professional services firms and creditor organisations. This consultation included both informal consultation with such industry experts and a formal public consultation which ran between 26 September 2013 and 24 January 2014 (“Insolvency Rules 1986 – Modernisation of Rules Relating to Insolvency Law”¹). The consultation responses informed the refinement and revision of the 2016 Rules.

- 10.2 Owing to the extensive consultation conducted by BEIS, HM Treasury has not consulted separately on the amendments introduced in these Rules. The amendments introduced by these Rules are necessary amendments made in consequence of the introduction of the 2016 Rules and do not introduce any new policy changes

11. Guidance

- 11.1 No guidance is being issued on this instrument. The Insolvency Service has however engaged with relevant stakeholders in relation to the changes introduced by the 2016 Rules.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument. This is because BEIS undertook a full impact assessment in relation to the changes introduced by the 2016 Rules which covered the whole economy, including the familiarisation costs to business.² HM Treasury has therefore not produced a further separate impact assessment given the consequential nature of the amendments made by these Rules.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise the regulatory burden on small businesses.
- 13.3 This is because it would not be in the interests of small businesses if insolvency proceedings or activities conducted by an insolvency practitioner were governed by different legislation. In addition, the amendments made by these Rules are consequential in nature and follow from the changes made by the 2016 Rules, and do not introduce any new policy changes.

14. Monitoring & review

- 14.1 These Rules do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 John Glen MP has made the following statement:

“In my view, it is not appropriate to include a statutory review clause in the Bankruptcy (Financial Services and Markets Act 2000) Rules 2001 and the Insurers (Winding Up) Rules 2001 (Amendment) Rules 2019 because it would be disproportionate taking into account the economic impact of the regulatory provision contained in these Rules. Further, the 2016 Rules contain provision for their review

¹ <https://www.gov.uk/government/consultations/modernisation-of-the-rules-relating-to-insolvency-law>

² http://www.legislation.gov.uk/ukia/2016/206/pdfs/ukia_20160206_en.pdf

and if amends are made following that review, HM Treasury will consider whether further consequential amendment to its legislation is necessary.”

15. Contact

- 15.1 Theodore Read, policy advisor at HM Treasury, telephone: 0207 270 6460 or email: theodore.read@hmtreasury.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Kripali Manek, Deputy Director, Systems Stability and Analysis, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 John Glen MP, Economic Secretary to the Treasury, HM Treasury can confirm that this Explanatory Memorandum meets the required standard.