

**EXPLANATORY MEMORANDUM TO THE
INSOLVENCY (AMENDMENT) RULES 2005**

2005 No. 527

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Insolvency Rules 1986 (S.I. 1986/1925) are made under powers in the Insolvency Act 1986 and set out the detailed procedure for the conduct of all company and individual insolvency proceedings in England and Wales under that Act. This instrument makes further changes to those Rules.

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

None.

4. Legislative background

4.1 The power to make the Insolvency (Amendment) Rules 2005 is contained in sections 411 and 412 of the Insolvency Act 1986. A statutory instrument made under those sections is subject to annulment in pursuance of a resolution of either House of Parliament. The power is exercised by the Lord Chancellor, with the concurrence of the Secretary of State, after consulting the committee constituted under section 413 of the Insolvency Act 1986.

4.2 The SI further amends the Insolvency Rules 1986 (S.I. 1986/1925). The Insolvency 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. The Rules were last amended substantially in the Insolvency (Amendment) Rules 2004 (S.I. 2004/584) to take account of changes to the Insolvency Act 1986 by the Enterprise Act 2002.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State for Employment Relations, Consumers and Postal Services has made the following statement regarding Human rights.

6.2 In my view the provisions of the Insolvency (Amendment) Rules 2005 are compatible with the Convention rights.

7. Policy background

7.1 The insolvency regime in England and Wales is set out in the Insolvency Act 1986 and given practical application through numerous pieces of secondary legislation – the main one being the Insolvency Rules 1986. The insolvency regime was modernised by the Enterprise Act 2002 which encouraged individuals who have gone bankrupt as a result of misfortune to start again, whilst imposing a more stringent regime on reckless and culpable bankrupts. In addition the Act introduced measures aimed at producing business rescue, encouraging an enterprise culture and where failure is inevitable, increasing the amount of money returned to creditors.

7.2 The changes made in this SI are technical in nature and are aimed at further improving insolvency legislation in order to address concerns raised by insolvency practitioners, the Courts and other users of the legislation.

7.3 The amendments have been subject to the consideration of the Insolvency Rules Committee, and in so far as three of the most important changes are concerned, have also been the subject of prior consultation and discussion.

7.4 The rules dealing with set-off in liquidation and administration proceedings have been completely re-cast in order to make them as easily understood and comprehensive as possible. The amended rules have been considered by representatives of the insolvency and legal profession whose comments have been reflected in the drafting.

7.5 A new rule has been introduced to set out the procedure to be followed by the Official Receiver or trustee in bankruptcy when applying to the Court for an order under Section 371 of the Insolvency Act 1986 to redirect a bankrupt's post. This addresses concerns expressed by insolvency practitioners and others, that the provision was falling into disuse following procedural difficulties identified in European and domestic cases. The response to a consultation exercise undertaken clearly supported the retention of Section 371 and the introduction of a rule to encourage greater usage of the procedure. Details of the consultation and a summary of the responses received are available on The Insolvency Service's website at www.insolvency.gov.uk/information/con-doc-register.

7.6 In order to address concerns expressed by the Court of Appeal in *Woodley v Woodley* (No.2) [1994] 1 W.L.R 1167 and in response to views expressed following a consultation exercise, the position of a bankrupt's spouse owed a lump sum and costs under an order made under family proceedings before the date of the bankruptcy order has been changed: such debts will now be provable in the bankruptcy proceedings where currently they are non-provable. This change will strike a fairer and more appropriate balance between the debts owed to a spouse and the debts owed to other creditors and will prevent situations arising in future whereby a person could go bankrupt in order to prevent their former spouse from getting payment. Details of the consultation and a summary of the responses received are available on The Insolvency Service's website at www.insolvency.gov.uk/information/con-doc-register.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

9.1 Steve Quick at the Department of Trade and Industry, Insolvency Service. Tel: 020 7291 6747 or e-mail. Steve.Quick@insolvency.gsi.gov.uk can answer any queries regarding the instrument.