

**EXPLANATORY MEMORANDUM TO**  
**THE INSOLVENCY (SCOTLAND) AMENDMENT RULES 2008**

**2008 No. 662 (S.4)**

1. This explanatory memorandum has been prepared by the Department of Business Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

**2. Description**

The Insolvency (Scotland) Amendment Rules 2008 amends the Insolvency (Scotland) Rules 1986 (SI 1986/1915) to make certain insolvency rule changes in relation to matters of reserved insolvency law in Scotland.

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

None.

**4. Legislative background**

4.1 The power to make The Insolvency (Scotland) Amendment Rules 2008 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 (S.I. 1986/1915). The Insolvency (Scotland) Rules set out the detailed procedure for the conduct of those insolvency proceedings in Scotland governed by the Insolvency Act 1986. Insolvency (Scotland) Amendment Rules 2008 relate only to administration, a procedure that is reserved to the UK Parliament under The Scotland Act 1998.

4.3 The existing priority of expenses in a Scottish administration is situated in Chapter 9, 'Distributions to Creditors' at Rule 2.41 and applies the priority used in liquidation by reference to Rule 4.67. As Rule 2.41 is situated in the chapter on distributions and therefore applicable to those cases where a distribution takes place, it is largely irrelevant, as if there is a distribution to any class of creditor, all expenses have to be paid in full. A priority of expenses is only an issue where there are insufficient funds to ensure all expenses are paid. No such priority currently exists for such cases in Scotland.

4.4 In England & Wales, in the Insolvency Rules 1986 (SI 1986/1925) as amended, the priority expenses in an administration sits in its own chapter, Chapter 9 'Expenses of the Administration', immediately preceding the chapter on distributions to creditors and the problem detailed in paragraph 4.3 does not occur. The change made by the Insolvency (Scotland) Amendment Rules 2008 will replicate this structure for Scotland. This will enable the priority of expenses in an administration to apply to all Scottish administrations.

4.5 Rule 2.41 of SI 1986/1915 is amended to disapply the current, incomplete, route to the priority of expenses at Rule 4.67.

## **5. Extent**

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**

The statutory instrument seeks to bring certain provisions relating to the priority of payment of expenses in an administration in Scotland in line with their equivalents in England and Wales. Administration is reserved to the UK Parliament under The Scotland Act 1998.

## **8. Impact**

A regulatory impact assessment has not been prepared for this instrument, as it has no impact upon business, charities or the voluntary sector.

## **9. Contact**

Stephen Leinster at The Insolvency Service tel: 020 7291 6747 or email: [stephen.leinster@insolvency.gsi.gov.uk](mailto:stephen.leinster@insolvency.gsi.gov.uk) can answer any queries regarding this instrument.