

EXPLANATORY MEMORANDUM TO
THE COMPANIES (UNFAIR PREJUDICE APPLICATIONS) PROCEEDINGS
RULES 2009

2009 No. 2469

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.

2. Purpose of the instrument

2.1 These Rules (“the new Rules”) replace the existing Companies (Unfair Prejudice Applications) Proceedings Rules 1986 (SI 1986/2000) (“the 1986 Rules”) to make changes consequent on the Companies Act 2006, the final parts of which are being commenced on 1 October 2009.

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

3.1 None.

4. Legislative Context

4.1 The Companies Acts provide that a member of a company can petition the court on the grounds that the company is being run in a way that is unfairly prejudicial to the members as a whole or some part of them. And they apply rule-making powers in the Insolvency Act 1986 to enable rules to be made supplementing the Civil Procedure Rules for unfair prejudice petitions. This was in Part XVII of the Companies Act 1985, which has been replaced – without significant change – by Part 30 of the Companies Act 2006.

4.2 The new Rules will bring the references into line with the Companies Act 2006, including removing the requirement for the petitioner to state the objects of the company. They also take account of changes in the Civil Procedure Rules since 1986.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales, as do the rules that it will replace.

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 There is no policy change. The old Rules include references to provisions of the Companies Act 1985 that have been repealed, and to the objects of the company, a requirement of company law that will no longer exist from the final commencement of the Companies Act 2006 on 1 October 2009. The new Rules correspond to the Companies Act 2006.

7.2 This instrument also brings the Rules into line with developments in the Civil Procedure Rules. For example, they apply directly to County Courts as well as to the High Court, and the presumption is now that hearings will be in open court rather than in chambers. The new Rules also provide support for alternative dispute resolution mechanisms.

8. Consultation outcome

8.1 As required by the Insolvency Act, the Insolvency Rules Committee have been consulted. They suggested various improvements to a draft text, all of which were accepted. As the new Rules make consequential and procedural changes only, we decided that there was no justification for public consultation.

9. Guidance

9.1 The purpose of these Rules is to provide guidance for members of a company who want to petition the Court. We do not propose to publish guidance on them.

10. Impact

10.1 The impact on anyone who petitions the court on grounds of unfair prejudice will be to make the process marginally clearer and easier to understand.

10.2 In the public sector, the courts that deal with unfair prejudice petitions may find they are presented in a clearer form.

10.3 As these Rules make consequential changes to procedural rules, no Impact Assessment has been prepared.

11. Regulating small business

11.1 The legislation applies to court procedures, with which a small business might exceptionally become involved.

11.2 No special provision has been made for small businesses.

12. Monitoring & review

12.1 This instrument will be reviewed from 2011, as part of the Companies Act 2006 evaluation.

13. Contact

Richard Grafen at the Department for Business, Innovation and Skills (tel: 020 7215 5323) or email: richard.grafen@berr.gsi.gov.uk can answer any queries regarding the instrument.