

EXPLANATORY MEMORANDUM TO
THE INSOLVENCY (SCOTLAND) AMENDMENT RULES 2010

2010 No. 688 (S. 2)

1. This explanatory memorandum has been prepared by the Department for Business, Innovation & Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The Insolvency (Scotland) Amendment Rules 2010 insert new provisions and amend existing provisions within the Insolvency (Scotland) Rules 1986 (S.I. 1986/1915). These changes will modernise and improve the processes for the administration of the insolvency procedures of company voluntary arrangement (“CVA”) and administration, to provide savings which are expected to result in better returns for creditors.

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

- 3.1 None

4. **Legislative Context**

- 4.1 The power to make the Insolvency (Scotland) Amendment Rules 2010 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. The Insolvency (Scotland) Rules 1986 set out the detailed procedure for the conduct of those insolvency proceedings in Scotland governed by the Insolvency Act 1986. The Insolvency (Scotland) Amendment Rules 2010 relates only to those areas of the former instrument reserved to the UK Parliament under the Scotland Act 1998. The Accountant in Bankruptcy, who holds policy responsibility for devolved Scottish insolvency procedures, has been informed of these amending Rules.

5. **Territorial Extent and Application**

- 5.1 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

- *What is being done and why*

7.1 The changes in this instrument have been prepared following consultation with a wide range of insolvency stakeholders. The main changes are summarised below:

7.1.1 The policy aim is to modernise the reserved areas of the Insolvency (Scotland) Rules 1986 to better meet the needs of users of insolvency law. This is being achieved by amending those Rules to better reflect modern business practice in the way insolvencies may be administered and by removing unnecessary financial and administrative burdens.

7.1.2 These changes will allow insolvencies to be administered more efficiently thereby taking costs out of the process, savings which are expected to result in better returns for creditors. The changes in this instrument have been prepared following consultation with a wide range of insolvency stakeholders. The main changes are summarised below:

7.1.3 Electronic Communication

These amendments will make it explicit that communications passing between administrators or CVA supervisors and those involved in the insolvency process may be by electronic means, provided there is consent between the sender and the recipient that communication may be effected in that way. There will be no compulsion on creditors and others to communicate or deal by electronic means as a consequence of these amendments.

7.1.4 Authentication

To further facilitate electronic delivery of documents within administrations and CVAs, new authentication provisions are provided, to replace the existing requirement that all insolvency documents must be physically signed. Where e-delivery of insolvency documents is made (with the consent of the recipient), the document will not need to be signed provided that it is authenticated to the satisfaction of the recipient to confirm the identity of the sender.

7.1.5 Flexible Meetings

Changes are being made to allow meetings that are required to be held within administrations and CVAs to be held other than at a physical venue. It will be a matter for the convener to decide how attendees may attend the meeting and this might be by some form of telephonic or other electronic means. Over time it is hoped that this greater convenience will make it easier for creditors and others to engage in the insolvency process. Creditors who might wish to continue attending meetings in person will have that right.

7.1.6 Write-out of previously applied rules

In order to better facilitate non-physical meetings of administration creditors' committees, the committee rules are being written out in full (along with the non-physical meetings provisions) in Part 2 of the Insolvency (Scotland) Rules 1986, replacing the previous drafting of applying, with modifications, the committee rules from Part 3 (receivership), which in turn applied (with modifications) the committee rules from Part 4 (liquidation). There are several other instances where, for reasons of clarity, rules are being written out in their revised form rather than this instrument amending an existing applied provision.

7.1.7 Websites

Administrators and CVA supervisors are being provided with the option of publishing documents and reports on a website as an alternative to sending such information to creditors by post or e-mail. This provides scope for significant cost savings, especially in large administrations where there can be thousands of creditors to whom bulky documents may need to be sent. Creditors will have the right to request a hard copy of any document which is published in this way, at no cost to themselves.

7.1.8 Pre-appointment Administration Expenses

For the first time an express legislative mechanism is being introduced to enable administrators and other insolvency practitioners to seek recovery of unpaid pre-appointment costs as an expense of the administration. Such costs will need to have been incurred in advising the company in relation to the decision to put the company into administration and will only be payable if they are approved by the creditors committee, a resolution of creditors, or the court. To ensure creditors are provided with the information they need to form a view as to whether pre-appointment costs should be approved, provision is made for details of that work to be disclosed within the administrator's proposals, including an explanation as to why the pre-appointment work was necessary.

7.1.9 Standard Content for insolvency advertisements

New provisions concerning the content of notices of insolvency events in administrations and CVAs that are advertised in the Edinburgh Gazette and by other means are being introduced to

require certain basic details to be provided in every notice. This more consistent approach will ensure that users, such as credit reference agencies and financial institutions, will always have the information that they need.

7.1.10 Victims of Violence

Provision is being made to provide greater protection to creditors whose details may be included in a statement of affairs, by making it explicit that the court may consider limiting disclosure of their address or whereabouts in circumstances where it is satisfied that such disclosure might reasonably be expected to lead to violence against that person.

- ***Consolidation***

7.2 The Insolvency (Scotland) Amendment Rules 2010 amend the Insolvency (Scotland) Rules 1986. The latter instrument contains matters that are reserved to the UK Parliament and matters that are devolved to the Scottish Parliament. Any consolidation would therefore be problematic and none is planned at this time.

8. Consultation outcome

8.1 The amendments being made by this instrument have been informed by an extensive consultation exercise the Insolvency Service has undertaken with representatives of the insolvency profession, creditor groups and the voluntary sector.

9. Guidance

9.1 The Insolvency Service has provided regular updates on its website as the modernisation project has progressed.

9.2 Officials at the Insolvency Service have also spoken to various groups of stakeholders over the past few years to inform users of insolvency law about the forthcoming changes.

9.3 An article will be placed in the March edition of the Insolvency Service publication sent to all insolvency practitioners, 'Dear IP', regarding the changes.

10. Impact

10.1 Although the financial impact on business, charities and voluntary bodies may be limited in economic terms, the benefits that will flow as a result of modernised procedures for CVAs and administrations may be significant. The marketplace as a whole will benefit from the better returns to creditors that are expected and the opportunities that will come for creditors to engage more easily within these insolvency processes as remote attendance at creditors meetings becomes possible.

10.2 The impact on the public sector is negligible.

10.3 A separate Impact Assessment has not been prepared for this instrument but one has been prepared for the Insolvency (Amendment) Rules 2010 (amending the Insolvency Rules 1986, 1986/1925), which covers the whole of the Insolvency Service project to modernise insolvency secondary legislation (including the reserved Scottish procedures). As it flows from the same overarching project, that Impact Assessment contains data relating to the estimated impact of the changes, particularly those relating to electronic communications, that are included within the Insolvency (Scotland) Amendment Rules 2010.

10.4 The key impact will be the improvement in returns to creditors. By introducing changes which will permit the use of modern business practices, such as e-delivery of documents within administration and CVAs proceedings, those insolvency processes will be more modern, flexible, transparent and better able to meet the needs of users of the legislation and will encourage creditor participation in insolvency proceedings.

10.5 The move to facilitate electronic means of communication and delivery of insolvency notices and the opportunity for participants to attend meetings remotely in administrations and CVAs will bring environmental benefits.

11. Regulating small business

11.1 These proposals will bring no additional costs to small businesses or the voluntary sector as creditors. So far as the benefits of the proposals are concerned, small business will benefit from any increase in payment to the creditors in proportion to the amount that they are owed.

11.2 They would also have the benefit, which cannot be expressed in money terms, of choosing whether they wish to receive information electronically and so free themselves, should they wish, of unwanted paperwork arising from administrations or CVAs of which they are a creditor.

12. Monitoring & review

12.1 The success of these modernisation amendments will be the extent to which the amendments deliver more effective, efficient and transparent insolvency rules for administrations and CVAs and whether the resulting cost savings benefit creditors in the way envisaged. The extent to which that is achieved will be formally evaluated.

13. Contact

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