EXPLANATORY MEMORANDUM TO

THE INSOLVENCY (AMENDMENT) (No 2) RULES 2010

2010 No. 734

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.

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

2. Purpose of the instrument

2.1 The Insolvency (Amendment) (No 2) Rules 2010 make small corrective and clarificatory amendments to , and an additional transitional provision for, the Insolvency (Amendment) Rules 2010 (which itself amends existing provisions within the Insolvency Rules 1986 (S.I. 1986/1925) ("the 1986 Rules")).

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

3.1 This amending instrument corrects a number of errors in the Insolvency (Amendment) Rules 2010.

3.2 In four places in those Rules – Rule 3, paragraph 502 of Schedule 1, paragraph 2(1)(b) of Schedule 4 and paragraph 3(2)(a) of Schedule 5 – each reference to a paragraph in Schedule 1 from 529 onwards is numbered one less than it should be. These references are corrected in Rules 3, 6, 11 and 12 of the Insolvency (Amendment) (No 2) Rules 2010.

3.3 The opportunity has been taken, in Rules 7 and 10, to make two corrections of non-legislative effect relating to numbering: in the numbering of the sub-paragraphs in paragraph 529 of Schedule 1 to the Insolvency (Amendment) Rules 2010; and in the reference to paragraph 559 (incorrectly shown as 558) in the heading to Schedule 2 to those Rules. Such amendments would not normally be made by statutory instrument: but in this case, it was thought helpful to users for all identified errors in the Insolvency (Amendment) Rules 2010 to be corrected before those Rules came into force, so that any published or privately maintained mark-up of those Rules would show them as it was intended that they should have been made.

3.4 Four other errors in the Insolvency (Amendment) Rules 2010 are corrected, by Rules 4, 5, 8 and 9 of the Insolvency (Amendment) (No. 2) Rules 2010. In Rules 4 and 5, the correction is to the wording of amended text to be inserted into the Insolvency Rules 1986. Usual legislative practice would have been to amend those Rules directly, not to amend the amending

instrument (the Insolvency (Amendment) Rules 2010). In this case, however, the corrections to the amendments come into force at the same time as the amendments themselves, so the ultimate legislative effect is the same: and it was thought helpful to users to show where the errors were in the Insolvency (Amendment) Rules 2010 so that any mark-up would keep the Insolvency (Amendment) Rules 2010 consistent with the Insolvency Rules 1986.

3.5 Rule 13 provides an additional transitional provision for the Insolvency (Amendment) Rules 2010.

3.6 The intention remains to consolidate the Insolvency Rules 1986 and all its amending instruments into a new set of Insolvency Rules to come into force on 6 April 2011.

4. Legislative Context

4.1 This instrument amends the Insolvency (Amendment) Rules 2010 which instrument amends the 1986 Rules. The 1986 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.

4.2 These amendments are to come into force at the same time as the Insolvency (Amendment) Rules 2010, alongside changes which have been made to the Insolvency Act 1986 by the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (SI 2010/18) , which also has an implementation date of 6 April 2010. They follow changes made to the regime for advertising and publicising insolvency events on 6th April 2009 by the Legislative Reform (Insolvency) (Advertising Requirements) Order 2009 (SI 2009/864) and the Insolvency (Amendment) Rules 2009 (SI 2009/642).

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

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 to make small corrective and clarificatory amendments to, and an additional transitional provision for, the Insolvency (Amendment) Rules 2010 which instrument was made on 3rd March 2010 and will come into

force on the same day as the Insolvency (Amendment)(No 2) Rules 2010.

- ***Consolidation***

7.2 Work is underway to consolidate the Rules, with a new set of Rules planned to come into force on 6th April 2011.

8. Consultation outcome

8.1 The amendments being made by this instrument have been informed by stakeholder feedback since the Insolvency (Amendment) Rules 2010 were made on 3rd March 2010.

9. Guidance

9.1 The Insolvency Service has provided regular updates on their website as the Rules modernisation project has progressed. These have included bulletins about measures being considered and draft versions of the proposed amendments have also been made available for comment and to help users prepare for the impending changes

9.2 Officials at the Insolvency Service have also spoken to various groups of stakeholders over the past couple of years to inform users of insolvency law about the forthcoming changes. They also held their own stakeholder event in October 2009 specifically intended to take key stakeholders through the main changes.

9.3 It is proposed that further guidance to stakeholders will be published prior to the implementation date.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies from this instrument, which makes limited revisions to the Insolvency (Amendment) Rules 2010.

10.2 There is no impact on the public sector from this instrument.

10.3 An Impact Assessment has not been prepared for this instrument.

10.4 An Impact Assessment has been prepared for the Insolvency (Amendment) Rules 2010, which are revised by this instrument. . That Impact Assessment estimates that financial savings from the Insolvency (Amendment) Rules 2010 will amount to £22.4m a year (with a further £7.8m a year resulting from the related Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010.

11. Regulating small business

11.1 The provisions within this instrument will bring no additional costs to small businesses or the voluntary sector.

12 Monitoring & Review

12.1 The success of these amendments will be the extent to which the amendments deliver more effective, and accurate insolvency legislation. The extent to which that is achieved will be formally evaluated.

13. Contact

Neil.Ogilvie at The Insolvency Service Tel: 020 7637 6307 or email: Neil.Ogilvie@insolvency.gsi.gov.uk can answer any queries regarding the modernisation amendments provided within this instrument.