EXPLANATORY MEMORANDUM TO

THE INSOLVENCY (AMENDMENT) REGULATIONS 2011

2011 NO. 2203

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) Regulations 2011 (the "Regulations") makes amendments to the Insolvency Regulations 1994 (S.I 1994/2507) (the "principal Regulations").

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

3.1. The commencement date for this instrument is 1 October 2011.

4. Legislative Context

4.1. The power to make the Regulations is contained within Rule 12.1 of the Insolvency Rules 1986 and section 411 of, and paragraph 27 of Schedule 8 to, the Insolvency Act 1986. These powers are exercised by the Secretary of State by statutory instrument. A statutory instrument made under these provisions is laid before each House of Parliament.

4.2. The Regulations make provision for the administration of the Insolvency Services Account (ISA) and how and when monies are paid into and out of it by liquidators and trustees in bankruptcy, including matters concerning the keeping of financial records.

4.3. Article 5 revokes Paragraph 1 of the Schedule to the Insolvency (Amendment) Regulations 2004.

4.4. The Schedule to the Regulations amends Articles 5, 7, 8, 9, 10 and 17 of the principal Regulations.

5. Territorial Extent and Application

5.1. This instrument applies to England and Wales only.

6. European Convention on Human Rights

6.1. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background to the instrument

7.1. The rate at which voluntary liquidators use the ISA has seen a marked decline since 2004 when use of the ISA in relation to voluntary winding-ups became optional. This reduction in use of the ISA is due to a combination of factors, such as voluntary liquidator preference, and comparative interest rates and account charges.

7.2. The decline in use has called into question whether the ISA should remain available for use in voluntary liquidations as the administrative effort involved in maintaining such accounts becomes disproportionate relative to their use by insolvency practitioners. It is also apparent that liquidators place accounts for short periods in order to take advantage of favourable interest rates or charges or a combination of the two. Where this has the effect of avoiding payment of the quarterly charge it makes provision of the service uneconomic and in order to ameliorate this effect it is necessary to legislate to remove the option to use the ISA.

- ***Consolidation***

7.3. The principal regulations have been amended by nine earlier statutory instruments. In the explanatory memorandum to the Insolvency (Amendment) Regulations 2009 (2009/482) the Service stated that it intended to produce a consolidated version of the fees order as part of its current project to consolidate all insolvency secondary legislation. However, the Service was then unable to consolidate the S.I.s relating to fees, as expected, in the consolidation project. In view of an ongoing cost cutting programme, The Service has not been able to allocate resources to consolidate in this financial year but intends to review this in its annual fees review for 2011/2012.

8. Consultation Outcome

8.1. A consultation letter was issued to insolvency practitioners on 1 October 2010 and the deadline for responses was 17th December 2010. A summary of the responses was published on 1 June 2011.

8.2. The responses largely confirm the anecdotal evidence that the ISA is useful to a minority of insolvency practitioners mostly in terms of the relative economy in issuing dividends and in the convenience of the unclaimed dividends account which enables liquidators to effectively close cases earlier than would otherwise be the case. Those practitioners who felt the ISA should be retained expressed the view that it was

convenient and provided a uniform approach to the administration of voluntary liquidations.

8.3. The responses also tend to confirm the trend towards short-term use of the ISA, particularly for the issuing of dividends, where the use of the ISA has not been replaced altogether by commercial facilities, as is shown by the decline in its use generally. This means that in many cases an account may only be opened for a period which does not incur the quarterly charge and the only fees payable will be for issue of cheques to creditors. As outlined above, this pattern of use makes its continuation for voluntary liquidations unsustainable.

9. Guidance

9.1. Guidance will be issued to stakeholders via notice to insolvency practitioners and to all other interested parties via The Insolvency Service website.

10. Impact

10.1. An impact assessment has been produced for this instrument and will be available on The Insolvency Service website.

11. Regulating small business

11.1. The evidence from responses to the consultation is that small firms will not be disproportionately affected.

12. Monitoring and Review

12.1. The Insolvency Service monitors the efficient working of the insolvency framework and evaluates legislative changes to the insolvency legislation. In view of the fact that these regulations make only minor changes of an administrative nature no specific monitoring of these changes will be undertaken.

13. Contact

13.1. Stephen Parcej at The Insolvency Service (Tel: 0207 291 6761 or e-mail: Stephen.parcej@insolvency.gsi.gov.uk) can answer any queries regarding the Regulations.