EXPLANATORY MEMORANDUM TO

THE INSOLVENCY (AMENDMENT) RULES 2006

2006 No. 1272

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Insolvency Rules 1986 (S.I. 1986/1925) are made under powers in the Insolvency Act 1986 and set out the detailed procedure for the conduct of all company and individual insolvency proceedings in England and Wales under that Act. This instrument makes further changes to those Rules.

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

3.1 As a result of amendments to section 411 made by the Constitutional Reform Act 2005, where the rules made under that section affect court procedure, it is a requirement that the Lord Chief Justice concur in the making of the instrument. The rule which is being amended by this instrument does not affect court procedure, and the Legal Adviser to the Lord Chief Justice has confirmed that this is the case. The instrument does not, therefore, recite the need for the concurrence of the Lord Chief Justice and, accordingly, he has not signed the instrument.

4. Legislative background

4.1 The power to make the Insolvency (Amendment) Rules 2006 is contained in section 411 of the Insolvency Act 1986. A statutory instrument made under that section is subject to annulment in pursuance of a resolution of either House of Parliament. The power is exercised by the Lord Chancellor, with the concurrence of the Secretary of State, after consulting the committee constituted under section 413 of the Insolvency Act 1986.

4.2 This instrument amends the Insolvency Rules 1986 (S.I. 1986/1925). The Insolvency 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. The Rules were last amended substantially in the Insolvency (Amendment) Rules 2005 (S.I. 2005/527).

5. Extent

5.1 This instrument applies to England and Wales.

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

7.1 Rule 13.12 of SI 1986/1925 is being amended by this instrument to provide that any liability in tort constitutes a debt provable by a creditor in liquidation or administration proceedings where all elements of a cause of action, except the manifestation of actionable damage, exist at the date the company goes into liquidation or enters administration.

7.2 The change amends the present legal position in which a difference that exists between the provisions relating to liquidation and administration proceedings, and the related provisions in other corporate insolvency procedures, as a result of the decision of Sir David Richards in *the Matter of T&N Ltd* [2005] EWHC 2870, to ensure that creditors will not receive disparate returns from the procedures because of different rules regarding the provability of such claims.

7.3 The transitional provisions apply the amended rule to companies entering administration or going into liquidation on or after the commencement date. It will not however apply to any company which goes into liquidation after the commencement date which entered administration on or after 15 September 2003, other than on a petition presented before that date, because rule 13.12 only applies to companies which entered administration under the provisions of Schedule B1 to the Insolvency Act 1986 which came into force on 15 September 2003.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument, as it has no impact on business, charities or voluntary bodies.

9. Contact

9.1 Stephen Leinster at The Insolvency Service Tel 020 7291 6747 or e-mail: stephen.leinster@insolvency.gsi.gov.uk can answer any queries regarding the instrument.