EXPLANATORY MEMORANDUM TO

THE INSOLVENCY (AMENDMENT) RULES 2013

2013 No. 2135

1. This Explanatory Memorandum has been prepared by the Department for Business, Innovation and Skills and has been laid before Parliament by Command of Her Majesty.

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

2. Purpose of the Instrument

The purpose of this instrument is:-
To make amendments to the Insolvency Rules in order that the Rules reflect the repeal of early discharge from bankruptcy provisions made by section 73 and Part 3 of Schedule 21 of the Enterprise and Regulatory Reform Act 2013, which will be brought into force on 1 October 2013.

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

None.

4. Legislative Context

4.1 These Rules make amendments to the Insolvency Rules 1986 (S.I. 1986/1925) and the Insolvency (Amendment) Rules 2003 (S.I. 2003/1730), required as a consequence of the repeal of s.279(2) Insolvency Act 1986 (c. 45) (bankrupt discharged early if official receiver files with the court a notice stating that investigation of the conduct and affairs of the bankrupt is unnecessary or concluded). This repeal is made by s.73 of and Part 3 of Schedule 21 to the Enterprise and Regulatory Reform Act 2013 (c. 24). Under s.279(2) Insolvency Act 1986 a bankrupt could be discharged in a period of less than one year ("early discharge").

4.2 Amendments to the Insolvency Rules 1986 were made by the Insolvency (Amendment) Rules 2003 to include a chapter relating to early discharge and to provide for early discharge to be noted on the individual insolvency register.

4.3 These rules remove the provisions in the respective rules relating to "early discharge".

5. Territorial Extent and Application

The amendments made under this instrument extends to England and Wales only.

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

7.1 Early discharge from bankruptcy currently allows a bankrupt to be discharged in less than one year if the Official Receiver files a notice with the court stating that an investigation of the conduct and affairs of the bankrupt is unnecessary or concluded.

7.2 It was hoped that early discharge would help promote rehabilitation and reduce the stigma attached to bankruptcy. Evaluation showed however that this provision did not help bankrupts get better credit or have other advantages but involved extra costs. It had introduced considerable financial and administrative burdens into the bankruptcy case administration process. It costs business time and money in dealing with the early discharge notices.

7.3 The ERR Act therefore provided for it to be repealed. For any bankruptcy orders made on or after the 1 October 2013, a bankrupt will be automatically discharged after 12 months providing they are not subject to any restrictions or their discharge has not been suspended. Having a single automatic discharge period will also provide transparency and clarity in the bankruptcy regime.

8. Consultation

There has been a full public consultation on this measure and the measure is supported by stakeholders, including bankrupts and creditors.

9. Guidance

9.1 The changes will be communicated by the instrument being placed on the Insolvency Service website, as the change has already been communicated to stakeholders on the ERR Act receiving Royal Assent in April 2013.

9.2 There will be no detailed announcement of this change, dissemination would be via the instrument being placed on the Insolvency Service website and guidance updated consequentially to this as part of general updates.

10. Impact

A Regulatory Impact Assessment has been prepared for this instrument. We have found that, by repealing early discharge, we will save businesses £0.6 million a year.

11. Regulating Small Business

The legislation does not apply to small business.

12. Monitoring and Review

There is no vires to insert a review clause into this order, and therefore one has not been included. Any monitoring or review of this order would be part of any overall evaluation into the Enterprise and Regulatory Reform Act 2013.

13. Contact

Muhunthan Vaithianathar at The Insolvency Service (Tel: 020 7637 6515 or email: Muhunthan.vaithianathar@insolvency.gsi.gov.uk) can answer any queries regarding this instrument.