EXPLANATORY MEMORANDUM TO

THE INSOLVENCY (AMENDMENT) RULES 2016

2016 No. 187

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills in conjunction with the Insolvency Service and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 The Insolvency (Amendment) Rules 2016 ("the Amendment Rules") insert new provisions in to and amend existing provisions in the Insolvency Rules 1986 ("the 1986 Rules") as a result of the new debtor bankruptcy application process being introduced in England and Wales from 6th April 2016. Currently debtors petition the court for their bankruptcy. Under the new process, debtors will apply to an Adjudicator who will consider the application and, if appropriate, make a bankruptcy order.

2.2 This instrument makes the necessary changes to the 1986 Rules, setting out detailed requirements for the new process. This includes the information to be submitted with the application, that the application is to be submitted by electronic means to the Adjudicator, what the Adjudicator is to have regard to in making a determination and the steps to be taken by the Adjudicator processing and on making that determination.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The 1986 Rules are being consolidated into a new comprehensive and modernised set of Rules ("the Modernised Rules") which are currently being considered by the Insolvency Rules Committee. It is hoped these will be made and laid later in the year. However, the Amendment Rules are being brought in ahead of the Modernised Rules because of the benefit that the new process will bring to debtors in that the new process will be cheaper for debtors and will free up court time to deal with other matters.

Other matters of interest to the House of Commons

3.2 This instrument applies only to England and Wales.

3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this instrument would not be within the devolved legislative competence of any of the Northern Ireland Assembly as a transferred matter, the Scottish Parliament or the National Assembly for Wales, if equivalent in relation to the relevant territory, were included in an Act of the relevant devolved legislature.

3.4 This instrument is subject to the negative procedure and has not been prayed against; therefore other matters of interest to the House of Commons do not arise at this stage.

4. Legislative Context

4.1 Section 71 of the Enterprise and Regulatory Reform Act 2013 ("ERRA") inserts new provisions into the Insolvency Act 1986 ("the Act") (sections 263H to 263O in Part 9 of the Act). These provisions set out the new process by which an individual applies for their own bankruptcy in England and Wales and makes provision for further information and processes to be prescribed by Rules.

4.2 Section 412 of the Act provides that the Lord Chancellor with the concurrence of the Secretary of State can make Rules for the purpose of giving effect to Part 9.

4.3 Chapter 3 of Rule 6 of the 1986 Rules sets out the procedure for making a bankruptcy petition. As a result of the new process, the Amendment Rules revoke Chapter 3 of Rule 6 and insert a new Chapter 3 setting out procedural requirements for the new process and prescribing the information required by sections 263J to 263M.

4.4 As a result of the amendments made to section 411 of the Act 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 concurs in the making of the instrument.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is as set out in Section 3 under "Other matters of interest to the House of Commons".

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

What is being done and why

7.1 Currently when a debtor wishes to apply for their own bankruptcy they present a petition to court. Under the new process the debtor will submit an online bankruptcy application to the Adjudicator (an office holder based in the Insolvency Service) which will take the courts out of the debtor petition process.

7.2 In response to technological advances in communication methods, the online bankruptcy application process will effect quicker, more cost effective and convenient methods of conducting the bankruptcy application process.

Consolidation

None.

8. Consultation outcome

8.1 The consultation paper 'Reform of the Process to Apply for Bankruptcy and Compulsory Winding Up' was published on 7th November 2011. The consultation document proposed the removal of the courts from the order-making process in debtor and creditor bankruptcy and company winding up applications in cases where the making of the order was not in dispute. The consultation closed on 31st January 2012 and the summary of consultation responses was published in September 2012.

8.2 The responses showed that 86% of respondents supported reform of the debtor bankruptcy petition process but there was little support for introducing an administrative regime to replace the court-based petition process for creditor petition bankruptcy or company winding up.

8.3 We have consulted with interested parties on the Amendment Rules to ensure that they will work in practice.

9. Guidance

9.1 Guidance on the new procedure will be published on www.gov.uk replacing the existing guidance on the debtor petition process for bankruptcy.

9.2 The Insolvency Service is also liaising with HM Courts and Tribunal Service (HMCTS) and the debt advice sector, including the Money Advice Service, the Money Advice Trust and Citizens Advice, to ensure that existing guidance is updated.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector will depend on the number of debtor petition bankruptcies that would have been processed by the courts. The current benefits are estimated to be around £7m per year.

10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum legislation.gov.uk website.

11. Regulating small business

11.1 The legislation applies to individuals applying for bankruptcy and does not impose new regulations on small businesses.

12. Monitoring & review

12.1 This instrument provides that the Secretary of State will carry out a review of this instrument, set out the conclusions of the review and publish a report within the period of five years of the Amendment Rules coming into force.

13. Contact

13.1 Sam Roberts at the Insolvency Service Telephone: 020 7291 6822 or email: sam.roberts@insolvency.gsi.gov.uk can answer any queries regarding the instrument.