EXPLANATORY MEMORANDUM TO

THE INSOLVENCY (AMENDMENT) RULES (NORTHERN IRELAND) 2009

2009 No. 404

1. This explanatory memorandum has been prepared by the Department of Enterprise, Trade and Investment (as the Department with lead responsibility for insolvency matters in Northern Ireland) on behalf of the Ministry of Justice (Northern Ireland Court Service) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Rules amend the Insolvency Rules (Northern Ireland) 1991 (S.R. 1991 No. 364) ("the principal Rules"), which lay down procedural rules governing the administration of company and individual insolvencies.

2.2 These amendments are consequent to the coming into force on 1 October 2009 of the Companies Act 2006 and update references to the Companies (Northern Ireland) Order 1986, which have been repealed and replaced. There is also one minor amendment to correct an error in a form.

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

3.1 None.

4. Legislative context

4.1 The Insolvency (Northern Ireland) Order 1989 empowers the Lord Chancellor to make procedural rules with the concurrence of the Department of Enterprise, Trade and Investment and, in relation to those rules that affect court procedure, the Lord Chief Justice. The Lord Chancellor must also consult the committee appointed by the Lord Chief Justice to keep rules under review and make recommendations to the Lord Chancellor as to any changes that may be desirable.

4.2 It should be noted that there are two versions of the principal Rules in operation and which have been amended by this instrument.

4.3 The principal Rules as amended by the Insolvency (Amendment) Rules (Northern Ireland) 2006 apply to all insolvency proceedings other than special administration regimes. This version is referred to as the "current principal Rules".

4.4 A special administration regime is one relating to the insolvency of either licence companies under the Transport Act 2000 (holders of a licence to provide air traffic services) or building societies under the Building Societies Act 1986 and in respect of which certain additional protections are prescribed.

4.5 In the case of special administration regimes, rule 5 of the 2006 Rules provides that the principal Rules will continue to apply without the amendments made by the 2006 Rules. This version is referred to as the "former principal Rules".

5. Territorial extent and application

5.1 This instrument applies solely to Northern Ireland but similar provision has been made to the Insolvency Rules 1986 (which apply in England and Wales) by the Insolvency (Amendment) (No.2) Rules 2009 (S.I. 2009/2472).

6. European Convention on Human Rights

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

7. Policy background

7.1 The instrument makes amendments to both the current and former principal Rules consequent on the coming into force on 1 October 2009 of the Companies Act 2006. The amendments replace existing references to the Companies (Northern Ireland) Order 1986 and provisions in that Order with new references to the 2006 Act and its new provisions.

7.2 Rules 4 to 17 amend the current principal Rules while rules 19 to 24 amend the former principal Rules.

7.3 Part 1 of the Schedule substitutes in Schedule 2 to the current principal Rules new form 5.2, which is needed because the previous form incorrectly stated that an interim order under Article 226 of the Insolvency (Northern Ireland) Order 1989 took effect on the day after the date on which the order was made.

7.4 Part 2 of the Schedule substitutes in Schedule 2 to the former principal Rules new form 2.01(SAR), which is needed because of the coming into operation of the Companies Act 2006.

7.5 The Department of Enterprise, Trade and Investment and the Ministry of Justice (Northern Ireland Court Service) are content that the short delay between the relevant provisions of the Companies Act 2006 and this instrument coming into operation will not have any adverse effect on insolvency practice and procedure in Northern Ireland given that the amendments are referential in nature. Section 17 of the Interpretation Act 1978 (repeals and re-enactments) also applies.

8. Consultation outcome

8.1 Due to the representative nature of the committee referred to at paragraph 4.1 (which includes representatives from the judiciary, the legal professions and the accountancy profession), no consultation was considered necessary. In addition, the rules are procedural in nature and solely for the purpose of making consequential amendments flowing from the Companies Act 2006 (which, itself, was widely consulted on by BERR).

9. Guidance

9.1 The instrument will be issued to the legal professions in Northern Ireland and published on the Northern Ireland Court Service website. An article will also be placed in a future edition of The Insolvency Service publication 'Dear IP', informing practitioners of the changes to the Rules.

10. Impact

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

10.2 This instrument has no impact on the public sector.

11. Regulating small business

11.1 The instrument applies in part to small business.

11.2 As the instrument makes no substantive amendment to insolvency practice and procedure in Northern Ireland, no special measures have been introduced to minimise the impact of the requirements on firms employing up to 20 people.

12. Monitoring and review

12.1 These rules will be kept under review by the Department of Enterprise, Trade and Investment and by the committee referred to a paragraph 4.1, which will make to the Lord Chancellor such recommendations for amendments as may be necessary.

13. Contact

13.1 Jack Reid at the Department of Enterprise, Trade and Investment (PH: 028 9054 8543 or e-mail: jack.reid@detini.gov.uk) can answer any queries regarding the instrument.