EXPLANATORY MEMORANDUM TO

THE INSOLVENCY (ENGLAND AND WALES) RULES 2016 (CONSEQUENTIAL AMENDMENTS AND SAVINGS) RULES 2017

2017 No. 369

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Insolvency (England and Wales) Rules 2016 ("**the 2016 Rules**") provide the procedural framework for the Insolvency Act 1986 **("the Act").** They prescribe matters required by the Act and set out the procedural rules to be followed in the conduct of insolvency proceedings.

2.2 This instrument makes consequential amendments and savings provisions to government legislation that make reference to, either by citing or modifying the Insolvency Rules 1986 ("**the 1986 Rules**"). Insolvency reforms have been affected by the replacement of the 1986 Rules with the 2016 Rules and by amendments made to the Act by the Deregulation Act 2015 ("**DA**") and the Small Business, Enterprise and Employment Act 2015 ("**SBEEA**").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The instrument makes consequential amendments and savings provisions to legislation that refers to the 1986 Rules, which are superseded by the Insolvency Rules (England and Wales) 2016 (S.I. 2016/1024) laid before Parliament on 25 October 2016. These rules enter into force on 6th April 2016 and repeal the 1986 Rules.

4.2 The 2016 Rules have three purposes: to consolidate the 1986 Rules and the 28 amending instruments; to restructure and update the language; and to modernise and to give effect to policy changes made to the Act by the DA and the SBEEA. The reason for making consequential amendments to other government legislation that refers to the Act and 1986 Rules is to ensure that the legislation is updated to reflect the reforms made to consolidate and modernise insolvency legislation.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of the instrument is England and Wales.

6. European Convention on Human Rights

6.1 Margot James, the Minister for Small Business, Consumers and Corporate Responsibility, has made the following statement regarding Human Rights:

"In my view the provisions of the Insolvency (England and Wales) Rules 2016 (Consequential Amendments and Savings) Rules 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The 2016 Rules amendments serve three main purposes:

- to consolidate the 1986 Rules and 28 amending instruments. This will result in a single instrument which will better meet the needs of users, including the judiciary, insolvency office-holders, creditors and public officials
- to update the 1986 Rules introducing modernised language and a re-drafting to make them simpler and easier to understand.
- give effect to policy changes, some of which result from amendments made to the Act by the DA and the SBEEA. These changes result from deregulatory initiatives. Those relating to the SBEEA stem from the Red Tape Challenge and many of these were put forward by a range of stakeholders.

7.2 The insolvency reforms deliver a number of policy measures to improve the efficacy and efficiency of the insolvency regime. Some of these measures involve significant changes to the way in which insolvency proceedings are conducted. The removal of the requirement to hold creditor meetings except in certain circumstances, the streamlining of creditor decision making processes, use of electronic communication and websites, and the ability of creditors to opt not to receive certain notices, will modernise and reduce the costs of administrating an insolvency. The policy impetus for all these measures was to remove unnecessary regulatory burdens to reduce the cost of administering insolvency proceedings. Reducing costs will benefit creditors in the form of improved dividend returns.

7.3 For further details on the reforms, see the explanatory notes accompanying the 2016 Rules, the DA and SBEEA.

Consolidation

7.4 Not relevant.

8. Consultation outcome

8.1 The insolvency reforms have been informed by extensive consultation and engagement with a range of parties affected by insolvency. Such parties include: the insolvency profession, creditor representatives, insolvency regulators and public bodies.

8.2 In July 2015 the draft insolvency rules were submitted to the IRC for the purpose of the Lord Chancellor's statutory consultation pursuant to section 413 of the Act. The draft was also published online. The IRC confirmed on 5 October 2016 that it had considered the draft instrument and was satisfied with its content.

8.3 BIS carried out extensive consultations before bringing forward the insolvency reforms in the DA and SBEEA, including the following public consultations: the 'insolvency red tape challenge' and the 'transparency and trust paper'.

9. Guidance

9.1 Not relevant.

10. Impact

10.1 The impact on business, charities or voluntary bodies relates to their capacity as creditors in insolvency proceedings and is deregulatory. The efficiency savings delivered by the 2016 Rules will result in lower costs in dealing with the administration of an insolvency. This in turn should lead to better returns to creditors.

10.2 The impact on the public sector relates to their role as a creditor in insolvency proceedings. In such cases, the public body should also benefit from the same better returns as other creditors.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation is deregulatory and applies to activities that are undertaken by small businesses.

11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken has been to work with industry Regulators, the insolvency trade body and insolvency practitioners to assist them in preparing for the commencement of the new rules and mitigating the burdens of adopting the new processes. An online question and answer facility has been hosted by government to further assist those affected by the new rules, which include many small practices involved in undertaking insolvency work. Generally, the 2016 Rules, which these rules make the necessary consequential amendments in respect of deliver wide ranging deregulatory and cost-savings measures which will benefit all those affected by insolvency, including small businesses.

12. Monitoring & review

12.1 The 2016 Rules will be reviewed within 5 years after they come into force on 6 April 2017. Should it be decided that the legislation is no longer fit for purpose following this review the legislation will be amended accordingly.

13. Contact

13.1 Helen Jeffery at the Insolvency Service Telephone: 020 7291 6783 or email: Helen.jeffery@insolvency.gsi.gov.uk can answer any queries regarding the instrument.