EXPLANATORY MEMORANDUM TO

THE INSOLVENT PARTNERSHIPS (AMENDMENT) ORDER 2006

2006 No. 622

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 provisions of the Insolvency Act 1986 (c.45) which relate to the insolvency of companies and individuals are applied to partnerships by the Insolvent Partnerships Order 1994 ("the 1994 Order"). That instrument was updated by the Insolvent Partnerships (Amendment) Order 2005 (S.I. 2005/1516)("the 2005 Order") to take account of changes made to the 1986 Act by the Enterprise Act 2002 (c.40). This instrument corrects certain errors that were contained in the 2005 Order.

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

3.1 This Statutory Instrument has been made in consequence of defects in SI 2005/1516 and is being issued free of charge to all known recipients of that Statutory Instrument.

4. Legislative background

4.1 The power to make the Insolvent Partnerships (Amendment) Order 2006 is contained in section 420 of the Insolvency Act 1986. Those powers are exercised by the Lord Chancellor with the concurrence of the Secretary of State. A statutory instrument made under those sections is subject to annulment in pursuance of a resolution of either house of Parliament.

4.2 The Insolvent Partnerships Order 1994 applies to partnerships, with necessary modifications, the provisions of the Insolvency Act 1986 relating to the insolvency of companies and individuals. The 1994 Order was modified twice in 2002 to take account of changes to the Insolvency Act as a result of the EC Insolvency Regulation and the Insolvency Act 2000. The 2005 Order was made to amend the 1994 Order to take account of changes to the Insolvency Act 1986 made by the Enterprise Act 2002 (c.40). This instrument amends certain provisions of the 1994 Order which were made by the 2005 Order.

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 This Order corrects certain amendments made by the 2005 Order which was introduced following the package of reforms to corporate insolvency law introduced by Part 10 of the Enterprise Act 2002 that aim to encourage the rescue of viable companies that get into financial difficulty.

7.2 Forms 1A and 1B were copied from the forms that were prescribed by the Insolvency Rules 2003 (S.I. 2003/1730) for use by companies in administration. Due to an error in transcription there was a failure to replace "company" with "partnership" at one point on Form 1A. Additionally, in Form 1B the word "Insolvent" was typed rather than "Insolvency" Act and there was a failure to change a reference to a decision of the "directors" to "members of the partnership". This amendment is made by Article 10 of this Order which replaces the forms so numbered that were inserted by the 2005 Order.

7.3 When modifying paragraph 14(2) of Schedule B1 in the 2005 Order the fourth of a list of conditions was deleted, but there was a failure to move the necessary "or" which appeared at the end of the third condition in the original text to the end of the second condition in the modified paragraph. Thus the list in the modified text appeared to be a set of cumulative conditions, rather than a list of different conditions. This amendment is made by Article 5(2)(a) of this Order.

7.4 When modifying paragraph 15 of Schedule B1 the text was modified to apply to agricultural charges. However, the provision on priorities of charges was left the same as it stands in Schedule B1, namely priority by creation or by agreement. There was a failure to realise that under the Agricultural Charges Act 1928 the rule on priority of agricultural charges is by reference to the date of registration. This, unfortunately, created an unintended difference to the priority rule. This point is now corrected by Article 5(2)(b) of this Order.

7.5 In the 1994 Order the winding up provisions of the Insolvency Act are applied both in the cases of a creditor's and member's petition for winding up a partnership, and in each case apply, both where the petition is against the partnership alone and where there are concurrent petitions against the members (i.e. there are four different sets of modifications to the Insolvency Act in order to create the winding up regime for insolvent partnerships). The Enterprise Act 2002 introduced the concept of the "prescribed part" by the insertion of section 176A into the Act. The amendments made in the 2005 Order had the effect of disapplying the provision regarding the prescribed part in relation to the insolvency of the corporate members. This was not intended. Rather it was intended that the provisions relating to the prescribed part should have been disapplied in relation to the winding up of the partnership as a whole. This is corrected in this instrument by removing the reference to section 176A which was inserted in Articles 8(5)(a) and Article 10(3)(a) of the 1994 Order by the

2005 Order and inserting instead the reference to section 176A in the relevant modifications of the Insolvency Act which apply to the partnership itself, namely in Schedules 3, 4, 5 and 6 of the 1994 Order. These amendments are made by Articles 3, 4, 6, 7, 8, and 9 of this Order.

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 Tom Phillips at The Insolvency Service Tel 020 7637 6421 or e-mail: tom.phillips@insolvency.gsi.gov.uk can answer any queries regarding the instrument.