EXPLANATORY MEMORANDUM TO

[The Payment and Electronic Money Institution Insolvency Rules (Northern Ireland) 2026

S.R. 2026 No. 11

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department for the Economy to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under Article 359(1C) of the Insolvency (Northern Ireland) Order 1989 and is subject to the negative resolution procedure.

2. Purpose

2.1. The instrument introduces the rules for the special administration procedure established in the Payment and Electronic Money Institution Insolvency Regulations 2021 (“the principal Regulations”), as amended by the Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023. The 2023 Regulations extend the regime to Northern Ireland.

3. Background

3.1. These Rules set out the procedure for the Payment and Electronic Money Institution Special Administration process established in the principal Regulations.

3.2. The principal Regulations created a new special administration regime for payment and electronic money institutions, in order to facilitate a faster and more efficient return of funds to customers in the event of insolvency. Under the regulations, administrators are required to pursue the following special administration objectives:

3.3. Objective 1 is to ensure the return of relevant funds as soon as is reasonably practicable;

3.4. Objective 2 is to ensure timely engagement with payment system operators, the Payment Systems Regulator and the Bank of England, HM Treasury and the Financial Conduct Authority "the FCA"); and

3.5. Objective 3 is to either rescue the institution as a going concern, or wind it up in the best interests of the creditors.

3.6. The main features of the Payment and Electronic Money Institution Special Administration process are that: (a) the payment or electronic money institution enters the procedure by court order; (b) the order appoints an administrator; and (c) the administrator is to pursue the special administration objectives (with the exception of Objective 1 in certain cases), in accordance with the statement of proposals approved by the meeting of creditors and customers or, in certain circumstances, the FCA.

3.7. In other respects, the procedure is similar to administration under Schedule B1 of the Insolvency (Northern Ireland) Order 1989, subject to modifications and the inclusion of certain liquidation provisions of that Order (see regulation 37A and Schedules 1A and 2A of the Regulations).

3.8. The Rules are comprised of thirteen parts and one schedule. These parts are as follows: Introductory Provisions; Application for Special Administration Order; Process of Special Administration; Expenses of the Special Administration; Relevant Funds Claims; Objective 1; Distributions to Creditors; The Administrator; End of Special Administration; Court Procedure and Practice; Prohibited Names; Provisions of General Effect; General Interpretation and Application. The schedule is titled Punishment of Offences.

3.9. Bespoke rules have been introduced specifically to facilitate the achievement of the unique objectives of the special administration procedures set out in the Regulations. The most significant of these rules are set out below.

3.10. Customer voting procedure and the establishment of creditors' committee are set out in part 3 of the Rules:

3.11. The statement of proposals drawn up by the administrator sets out the priority to be given to the three objectives set out in the Regulations. The statement of proposals must be approved by the meeting of creditors and customers (or, in certain circumstances, the FCA). The Rules set out how such approval is to be achieved.

3.12. Creditors must be given notice of the meeting of creditors and then, in order to be able to vote at the meeting, must give the administrator details of their claim and have that claim accepted for voting purposes (whether wholly or in part).

3.13. In general, a creditor's vote is calculated according to the amount of their claim as at the date the institution went into special administration, making adjustments for any amounts already repaid and any adjustment by way of set-off.

3.14. The Rules set out that under the Regulations, customers are to be notified of meetings in the same way as creditors. A customer must submit their claim for relevant funds to the administrator, prior to the meeting, in the same time frame in which a creditor would have to submit their claim.

3.15. The Rules also provide that the chair of a meeting of creditors and customers, or customers only, has the power to admit or reject a relevant funds claim in whole or in part; the value of a customer's vote will be calculated according to the value of the customer's relevant funds claim; the creditors and the customers will vote separately to approve the statement of proposals. The statement must be approved by both groups; and a customer who is also a creditor has the right to vote in both groups.

3.16. The meeting of creditors and customers will also be able to appoint a creditors' committee. In order to ensure that this committee is a reasonable reflection of the interest of creditors and customers, the administrator will be required to determine the appropriate make-up of the committee and set

out the maximum number of members to be elected by each class of voter in a manner that achieves that make-up.

3.17. Provisions relating to failure-related costs and costs of the realisation of relevant funds are set out in part 4 of the Rules.

3.18. Under the Regulations, failure-related costs that have been incurred as a consequence of a failure by the institution to safeguard relevant funds are to be paid out of the institution's assets. The Rules set out that the payment of these costs is placed in the second highest priority in the expenses 'waterfall'. This is to avoid customers being primarily responsible for such costs. Where the institution's assets are insufficient to satisfy such liabilities, however, the remaining costs are to be paid out of the asset pool.

3.19. In the application of paragraph 100 of Schedule B1 of the Insolvency (Northern Ireland) Order 1989, the costs of the administrator in pursuing Special Administration Objective 1 (ensuring the return of relevant funds as soon as is reasonably practicable), shall be borne by the customers. The Rules provide that the administrator shall propose in the distribution plan the amount that they are to retain from relevant funds to pay the expenses of the administration in pursuing Special Administration Objective 1.This should include the administrator's remuneration.

3.20. Return of relevant funds provisions are set out in parts 5 and 6 of the Rules:

3.21. If the administrator decides to set a soft bar date (a deadline by which claims need to be submitted) or, with the approval of the Court, a hard bar date (the final deadline), the Rules set out how relevant funds claims are to be made and the process leading up to the distribution following a soft bar date and hard bar date. The decision as to what can be distributed, and at what stage, will be left to the administrator's discretion (which is then subject to approval by the creditors' committee and the Court), but the Rules set out the process by which this is to be achieved.

3.22. The Rules include details as to:

A. the notice that the administrator is required to give to customers when setting a soft or hard bar date;

B. the approval of a distribution plan (after a soft bar date) by the creditors' committee. This enables the administrator to set out a plan for distribution including timelines, customers to whom distributions are to be made, plans for disputed claims and plans for expenses of the administration. Court approval will then need to be sought for the distribution plan;

C. the process by which the administrator notifies late soft bar date claimants (i.e. those who have not submitted their claim before the soft bar date);

D. the treatment of a claimant who makes a claim after the soft bar date. The Rules provide that where the claim was made after the soft bar date but before the distribution, the administrator must, so far as is reasonably practicable, include the late relevant funds claim in the distribution. Where the late claim was made after the distribution, the administrator must, so far

as is reasonably practicable, include this late claim within a subsequent distribution; and

E. the process by which the administrator sets a “final deadline” (hard bar date) for the submission of relevant fund claims.

3.23. The above applies only where the administrator sets a bar date. In appropriate circumstances, the administrator may make a distribution of relevant funds before setting a bar date for more complicated claims. The Rules provide details as to what a relevant funds claim must contain.

3.24. The Rules provide for an appeals process for claimants that are dissatisfied with the administrator’s decision with respect to their relevant funds claim. They are able to apply to the court for the administrator’s decision to be reversed or varied. Further, the administrator or, where the administrator declines to interfere in the matter, a creditor or customer can apply to the court to exclude or reduce a relevant funds claim if they consider that the relevant funds claim has been improperly admitted or ought to be reduced.

3.25. Provisions regarding distributions to customers who are also creditors, due to having shortfall claims, are set out in part 7 of the Rules:

3.26. Where the administrator is aware that a customer has a shortfall claim, the customer does not need to submit a separate proof in their capacity as a creditor. Rather, the administrator will treat the record of the shortfall claim as if it were a proof submitted by the customer in respect of their shortfall claim.

4. Consultation

4.1. In December 2020, HM Treasury published a consultation document, "Insolvency Changes for Payment and Electronic Money Institutions" on the overall special administration regime. Most responses were favourable. The Department for the Economy has conducted an informal consultation with the Enforcement of Judgments Office, Companies House and Criminal Law branch. Although there is no legal requirement to do so in this case, the Department has also written to the Insolvency Rules Committee. Insolvency practitioners have also been informed.

5. Equality Impact

5.1. An Equality Impact Assessment has not been prepared for this instrument. It is considered that it fully complies with section 75 of the Northern Ireland Act 1998.

6. Regulatory Impact

6.1. An Impact Assessment has not been prepared for this instrument because no or no significant impact on business, charities, social enterprise or voluntary bodies is foreseen.

7. Financial Implications

7.1. There is no cost to the public purse.

8. Section 24 of the Northern Ireland Act 1998

8.1. The provisions of this rule are considered to be compliant with section 24 of the Northern Ireland Act 1998, including that they are compatible with

the Convention Rights as defined in the Human Rights Act 1998 and with Article 2(1) of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement (rights of individuals).

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. The amendment is in line with S.I. 2021/1178 applying in England and Wales and with S.I. 2022/1239 applying in Scotland.

11. Additional Information

11.1. Not applicable.