EXPLANATORY MEMORANDUM TO

THE PAYMENT AND ELECTRONIC MONEY INSTITUTION INSOLVENCY (SCOTLAND) (AMENDMENT) RULES 2025

2025 No. 110

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of His Majesty.

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

2. Declaration

2.1 Emma Reynolds MP, Economic Secretary to the Treasury at HM Treasury, confirms that this Explanatory Memorandum meets the required standard.

2.2 Mario Pisani, Deputy Director in the Financial Stability Unit at HM Treasury confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Edward Henley at the Banking Assets and Resolution team at HM Treasury can be contacted with any queries regarding the instrument at edward.henley@hmtreasury.gov.uk

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument corrects minor drafting errors in the Payment and Electronic Money Institution Insolvency (Scotland) Rules 2022 ("the 2022 Rules"), including those identified by the JCSI in its Twenty-Sixth Report of Session 2022-23.

Main provisions of the instrument

4.2 This instrument corrects drafting and cross-referencing errors in the 2022 Rules, in particular, it amends the 2022 Rules to improve the structure which will provide clarity to readers. The instrument also makes some minor changes to the contents of notices requiring statement of affairs to be delivered by the administrator under rule 16 of the 2022 Rules.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is Scotland.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Scotland.

5. Policy Context

What is being done and why?

5.1 Payments across the UK have seen rapid change over recent years with people increasingly using card, mobile and electronic wallets to make transactions. These changes offer opportunities for businesses and consumers, with many making payments faster, cheaper and more secure. However, and as will always be the case with a rapidly changing technological landscape, they also present new challenges and risks.

5.2 The payment and electronic money institutions providing these services have diverse business models that range from small money remittance firms to non-bank current account providers targeting small and medium-sized enterprises (SMEs), the under-banked, and the digital generation. Consumers and businesses are increasingly using payment and electronic money institutions as their transactional banking provider to, among other things, access their salaries and savings as well as make payments.

5.3 There was evidence that the insolvency process which existed before the Payment and Electronic Money Institution Insolvency Regulations 2021 ("the 2021 Regulations") for payment and electronic money institutions was suboptimal with regards to consumers. Some administration cases involving payment and electronic money institutions took years to resolve in some cases, with customers left without access to their money for prolonged periods and receiving reduced monies after the cost of distribution.

5.4 To manage these risks, the 2021 Regulations established a new special administration regime for payment and electronic money institutions in England and Wales, and for companies in Scotland (the pSAR). This was followed by the Payment and Electronic Money Institution Insolvency (England and Wales) Rules 2021 ("the 2021 Rules") and the 2022 Rules, which established the Rules for the pSAR in England and Wales and Scotland respectively. The 2021 Rules and the 2022 Rules were introduced to facilitate the achievement of the objectives of the special administration procedures set out in the 2021 Regulations and the Banking Act 2009.

5.5 The 2022 Rules were considered by the JCSI in February 2023 and drafting defects were identified. This instrument makes amendments to remove these defects and to correct a number of other minor drafting errors which have been identified whilst reviewing the 2022 Rules. The instrument does not amend the policy intention of the 2022 Rules. Specifically, the instrument corrects these defects by correcting typographical errors and removing redundant wording.

5.6 The JCSI also identified issues in relation to the required contents of notices that informs individuals of obligations to provide a statement of affairs to an administrator. This instrument corrects these errors by inserting new requirements for the content of these notices to be delivered by the administrator to include details of the court, the name of the institution and name of the administrator.

What was the previous policy, how is this different?

5.7 This instrument does not amend the policy intention of the 2022 Rules.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument is made under sections 411(1A)(b), (2), (2C) and (3) of the Insolvency Act 1986, as applied and modified by regulation 37 of the 2021 Regulations.

6.2 This instrument amends the 2022 Rules which were made under the same powers. The 2021 Regulations were made under sections 233 and 234 of the Banking Act 2009 (as applied and modified by regulation 24A of, and paragraphs 2 and 3 of Schedule 2ZA to, the Electronic Money Regulations 2011 and regulation 23A of, and paragraphs 2 and 3 of Schedule 3A to, the Payment Services Regulations 2017).

6.3 The general provision made by rule 15(5) of the 2022 Rules regarding the content of notices required to be sent by the administrator is omitted by this instrument and this general provision is inserted in a more appropriate place in the instrument (Chapter 3 of Part 12, which already makes general provisions regarding the sending of notices by the administrator). As this general provision only applies to notices to be *sent* by the administrator, in order to give effect to the initial policy intention, additional requirements are inserted by this instrument in rule 16 in relation to the notice requiring statement of affairs to be *delivered* by the administrator, thereby correcting the deficiency identified by the JCSI.

6.4 Rule 22(1) of the 2022 Rules is amended by this instrument to reflect the fact that both the statement of affairs and the statement of concurrence must be a statutory declaration.

6.5 This instrument also corrects cross referencing and typographical errors in the 2022 Rules.

Why was this approach taken to change the law?

6.6 This is considered the most effective way of correcting the defects identified by the JCSI in the 2022 Rules.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Government consulted on introducing the special administration regime for payment and electronic money institutions in all parts of the United Kingdom prior to the introduction of the 2021 Regulations. The consultation response document was published on 26 April 2021.

8. Applicable Guidance

8.1 No guidance is being issued in relation to this instrument as it is making minor amendments to existing Rules.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because it makes minor amendments which do not change the overall effect of the 2022 Rules.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies, given that the instrument only comprises drafting amendments which do not affect the policy intention of the 2022 Rules.

9.3 The legislation does not impact small or micro businesses. None of the costs of complying with the 2022 Rules were estimated to be a significant burden on activities undertaken by small or micro businesses. The 2022 Rules are only applied in the rare event of an insolvency of a payment or electronic money firm, with there being no significant ongoing, one off or ad hoc costs. Under ordinary and well-established company insolvency, there is no distinction drawn in the treatment of small businesses and other businesses in the event of an insolvency. This instrument does not affect the impact of the 2022 Rules upon those entities.

9.4 There is no, or no significant, impact on the public sector given that the instrument only comprises drafting amendments which do not affect the policy intention of the 2022 Rules.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is, in respect of the regime as a whole, set out in section 24A of the Electronic Money Regulations 2011 and section 23A of the Payment Services Regulations 2017. These regulations place a requirement on HM Treasury to review the insolvency regulations which apply to authorised electronic money institutions, small electronic money institutions, authorised payment institutions and small payment institutions, respectively. The relevant insolvency regulations are the Payment and Electronic Money Institution Insolvency Regulations 2021. This review must be conducted within two years of the insolvency regime coming into force and must consider, in particular, how far the regulations are achieving the objectives specified in section 233(3) of the Banking Act 2009 (as applied and modified by Schedule 2ZA to the Electronic Money Regulations 2011 and Schedule 3A to the Payment Services Regulations 2017) and whether the regime should continue to have effect.

10.2 The instrument does not include a statutory review clause, and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Economic Secretary to the Treasury, Emma Reynolds, has made the following statement:

"It is not proportionate to include a review clause in this instrument because the estimated annual net direct cost to business is less than £5 million and there are no factors present which make it particularly desirable to include a review clause".

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument makes provision in response to the Joint Committee on Statutory Instruments' Twenty-Sixth Report of the 2022-23 Session. It seeks to address the concerns expressed about the drafting of Rules 16(3) and 22(1) of the 2022 Rules.

11.2 The Treasury considers that it is appropriate to apply the free issue procedure to this instrument.

12. European Convention on Human Rights

12.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

"In my view the provisions of The Payment And Electronic Money Institution Insolvency (Scotland) (Amendment) Rules 2025 are compatible with the Convention rights.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").