EXPLANATORY MEMORANDUM TO

THE SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015 (CONSEQUENTIAL AMENDMENTS) (REPORTS ON CONDUCT OF DIRECTORS) (NORTHERN IRELAND) REGULATIONS 2016

2016 No. 356

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills in conjunction with the Insolvency Service, having consulted with the Department for Enterprise, Trade and Investment, and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes amendments to the Insolvent Companies (Reports on the Conduct of Directors) Rules (Northern Ireland) 2003 as a consequence of commencing schedule 8, paragraph 5 of the Small Business, Enterprise and Employment Act 2015 ("SBEEA"). That provision changes in Northern Ireland the obligations on an office-holder of an insolvent company (i.e. an insolvency practitioner or official receiver) regarding his or her statutory duty to report to the Northern Ireland Department of Enterprise, Trade and Investment ("the Department") on the conduct of directors.

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 Schedule 8, paragraph 5 of SBEEA revokes section 10(4) of the Company Directors Disqualification (Northern Ireland) Order 2002 and replaces it with section 10A. These provisions concern the requirements for an office-holder to report on the conduct of directors of an insolvent company. The provision is to be commenced on 6th April 2016.

4.2 The changes made to the reporting regime require consequential amendments to the supporting secondary legislation, the Insolvent Companies (Reports on the Conduct of Directors) Rules (Northern Ireland) 2003 ("the Rules").

4.3 Section 107 of SBEEA, which makes similar provisions with regard to England, Wales and Scotland, will also be commenced on 6th April 2016. Instruments making new secondary legislation for England & Wales (SI 2016/180) and Scotland (SI 2016/185 (S1)) were laid before Parliament on 22nd February 2016.

5. Extent and Territorial Application

5.1 This instrument extends to Northern Ireland only.

5.2 The territorial application of this instrument is Northern Ireland.

5.3 On 20th January 2015 the Northern Ireland Assembly agreed a Legislative Consent Motion (LCM) endorsing the extension to Northern Ireland of certain provisions in SBEEA, including measures relating to director disqualification.

5.4 Section 159 SBEEA gives a Minister of the Crown the power to amend enactments, including Northern Ireland legislation, in consequence of measures contained in SBEEA.

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

What is being done and why

7.1 Currently an office-holder of an insolvent company is required to report to the Department on the conduct of its directors within 6 months of insolvency. Reports where an office-holder alleges misconduct are reviewed and investigated by the Department and may lead to disqualification proceedings against the directors.

7.2 Reports are made on one of two forms, prescribed in schedules to the Rules, depending on whether the office-holder is reporting a person as fit to act as a director or unfit because of misconduct.

7.3 Schedule 8, paragraph 5 SBEEA contains provisions that shorten the default period for reporting to 3 months thus alerting the Department at an earlier stage to director misconduct. It also streamlines the reporting procedure, removing the need for an office-holder to submit different forms according to a director's conduct.

7.4 This instrument amends the Rules to reflect the new time limit for reporting, remove references to different forms and revoke the 2 prescribed forms, replacing them with a single form.

Consolidation

7.5 None.

8. Consultation outcome

8.1 As part of the Red Tape Challenge, a consultation was carried out by the Insolvency Service between 18th July and 10th October 2013, including on regulations affecting the reporting duties of insolvency practitioners on the conduct of directors. Consultation was on a UK-wide basis and not specific to Northern Ireland.

8.2 The 12 bodies that responded comprised of firms and recognised professional bodies from the insolvency industry. There was widespread support for streamlining the reporting regime by introducing a single form for reporting.

9. Guidance

9.1 The Insolvency Service of Northern Ireland will provide guidance on how to complete the Directors Conduct Report form in advance of the new legislation coming into effect. This guidance will be available on www.gov.uk.

10. Impact

10.1 The impact on business, charities or voluntary bodies is estimated to be net cost savings in Northern Ireland of £52,000 per year as a result of streamlined reporting requirements.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

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

11.2 No particular negative effect on small firms is anticipated beyond moderate costs associated with office-holders familiarising themselves with the new regime. Guidance will be available to them on www.gov.uk to assist with their familiarisation.

12. Monitoring & review

12.1 These Regulations make consequential amendments to secondary legislation that reflect changes to the Company Directors Disqualification (Northern Ireland) Order 2002 made by SBEE Act. These Regulations contain a review provision requiring a Minister of the Crown to review the provision by 6th April 2021.

13. Contact

13.1 Richard Mulligan at the Insolvency Service (Telephone: 020 7291 6718 or email: Richard.mulligan@insolvency.gsi.gov.uk) can answer any queries regarding the instrument.