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Mr Gordon Lindhurst
Convener
Economy, Energy and Fair Work Committee
The Scottish Parliament
Edinburgh
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28 November 2018

Dear Gordon,

Insolvency (Scotland) (Receivership and Winding up) Rules 2018

The Insolvency (Scotland) (Receivership and Winding up) Rules 2018 (S.S.I. 2018/347) were laid before the Scottish Parliament on 14 November and will be considered by the Economy, Energy and Fair Work Committee. This is a negative instrument which is substantial in both size and detail. I would, therefore, like to provide the Committee with some background information on what has led to this point.

The Scottish corporate insolvency regime is underpinned by the Insolvency Act 1986 (“the Act”), with much of the procedural details set out in secondary legislation, currently principally in the Insolvency (Scotland) Rules 1986 (“the 1986 Rules”).

Prior to the drafting of these Rules, work was undertaken to amend the Act with the purpose of modernising devolved aspects of corporate insolvency in Scotland in line with amendments made in England and Wales as well as reserved aspects of corporate insolvency in Scotland. This was achieved through the Public Service Reform (Insolvency) (Scotland) Order 2016 which was passed by the Economy, Energy and Tourism Committee and the Public Service Reform (Corporate Insolvency and Bankruptcy) (Scotland) Order 2017 which were supported by the Economy, Jobs and Fair Work Committee and approved by the Parliament.

Subsequent to this, the Scotland Act 1998 (Insolvency Functions) Order 2017 was laid in the Parliament. This Order conferred mutual functions on Scottish Ministers and a Minister of the Crown, in or as regards to Scotland, so that both have the power to bring forward as appropriate winding up rules or regulations for Scotland. This was necessary as the law on winding up in Scotland is a mixed area of competence and it was considered more practical to have a single instrument which included the partly reserved matter of company winding-up in its entirety rather than have this material spread across two statutory instruments.

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The Scotland Act Order was also supported by the Committee and approved by the Parliament, and at Westminster. In accordance with this order, both Scottish and UK Ministers have provided written consent to the provisions made for areas that span competence.

The aforementioned Orders have provided the appropriate platform for laying these draft Rules. The draft rules aim to consolidate and modernise the existing 1986 Rules. As such, save as they adopt the changes above, the large majority of the provisions do not change the law or introduce new policy that would impact on the insolvency mechanisms for companies registered in Scotland, but seek to re-state the law to create a set of rules which are easier to apply in practice. The Policy Note accompanying this instrument sets out more detail of the relevant changes. The culmination of this work has been the development of a complete set of revised insolvency rules incorporated in this draft instrument, together with the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018 (S.I. 2018/1082) made by UK Ministers and laid in the UK Parliament in October.

The intention is for both sets of Rules to commence on 6 April 2019 and arrangements are being made with UK officials for a commencement order for the appropriate provisions of the Small Business, Enterprise and Employment Act 2015 to be laid, and for consequential provisions where necessary. This main modernising provisions included in the Public Service Reform Orders mentioned will commence at the same time.

The drafting of these Rules has been taken forward in close collaboration with the UK Insolvency Service and an industry working group consisting of insolvency professionals, the legal profession, the Chartered Institute of Credit Management and Companies House. The content has been considered at 13 working group meetings and the commitment of all of these organisations has been most welcome and greatly appreciated. The Policy Note accompanying this instrument sets out the detailed background. We are continuing to work with the relevant stakeholders on the implementation of the changes.

Both my officials and I would, of course, be happy to speak to the Committee regarding any aspect of this process or the detail contained within the instrument.



JAMIE HEPBURN

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