

D R A F T S T A T U T O R Y I N S T R U M E N T S

2019 No. 0000

EXITING THE EUROPEAN UNION

INSOLVENCY

**The Insolvency (Amendment) (EU Exit) (No. 2) Regulations
2019**

Made - - - - - *****

Coming into force in accordance with regulation 1(2)

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018(a).

In accordance with paragraph 1(1) of Schedule 7 to that Act a draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Insolvency (Amendment) (EU Exit) (No. 2) Regulations 2019.

(2) These Regulations come into force on exit day.

Amendments to the Insolvency (Amendment) (EU Exit) Regulations 2019

2. The Insolvency (Amendment) (EU Exit) Regulations 2019(b) are amended in accordance with the Schedule.

Date *Name*
Minister for Small Business, Consumers and Corporate Responsibility
Department for Business, Energy and Industrial Strategy

(a) 2018 c. 16.
(b) S.I. 2019/146.

SCHEDULE

Regulation 2

Amendments to the Insolvency (Amendment) (EU Exit) Regulations 2019

1. The Insolvency (Amendment) (EU Exit) Regulations 2019 are amended as follows.
2. In regulation 3—
 - (a) omit paragraph (a); and
 - (b) in paragraph (b) for “that Act” substitute “the Insolvency Act 1986”.
3. In Part 1 of the Schedule (amendment of retained direct EU legislation), for paragraph 7 substitute “Omit Articles 6 to 83”.
4. In Part 7 of the Schedule (amendments to the Insolvency Act 1986 applying to Scotland only) omit paragraphs 134, 135, 136 and 138.
5. Omit Part 8 of the Schedule (amendments to the Insolvency (Scotland) Rules 1986).
6. After paragraph 137 of the Schedule, insert the following new Parts:

“PART 8A

Amendments to the Insolvency (Scotland) (Receivership and Winding up) Rules 2018

137A. The Insolvency (Scotland) (Receivership and Winding up) Rules 2018(a) are amended as follows.

137B.—(1) In rule 1.2(1)—

- (a) omit the following definitions—
 - (i) “local creditor”,
 - (ii) “main proceedings”,
 - (iii) “member State liquidator”,
 - (iv) “non-EU proceedings”,
 - (v) “secondary proceedings”,
 - (vi) “temporary administrator”,
 - (vii) “territorial proceedings”;
- (b) in the note in square brackets which explains the definition of “EU Regulation” omit the words after “section 436”;
- (c) insert in the appropriate places—

““COMI proceedings” means insolvency proceedings in Scotland to which the EU Regulation applies where the centre of the debtor’s main interests is in the United Kingdom;”,

““establishment” has the same meaning as in Article 2(10) of the EU Regulation;”,

”,

““establishment proceedings” means insolvency proceedings in Scotland to which the EU Regulation applies where the debtor has an establishment in the United Kingdom;”.

137C.—(1) Rule 1.8 is amended as follows.

(a) S.S.I. 2018/347.

(2) For the heading substitute “Reasons for stating whether proceedings are or will be COMI proceedings, establishment proceedings etc.”.

(3) In the opening words, for “main, secondary or territorial or non-EU proceedings” substitute “COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply” and after “must include” insert “as applicable”.

(4) After paragraph (b) insert—

“(ba) the place where there is an establishment within the jurisdiction; or”.

(5) In paragraph (c) for “non-EU proceedings” substitute “proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply”.

137D. In rule 1.17 omit paragraph (2)(i).

137E. In rule 5.4—

- (a) after paragraph (1)(f) insert “or”;
- (b) omit paragraph (1)(g);
- (c) omit paragraph (1)(h).

137F. In rule 7.16 omit paragraph (3)(k).

137G. In rule 7.28 in paragraph (3)(a) omit “including any costs referred to in Article 30 and 59 of the EU Regulation”.

137H. In rule 7.31 omit paragraph (14).

137I. In rule 8.11 in the table in paragraph (1) omit the entry for “main proceedings in another Member State”.

137J. Omit rule 8.30.

137K. In rule 8.31—

- (a) in paragraph (5) omit the words from “; and for this purpose” to the end; and
- (b) in paragraph (7) in the opening words omit “or member State liquidator”.

137L. Omit rules 11.1 to 11.3.

137M. In rule 11.4 for paragraph (3)(e) substitute—

“(e) a statement whether the proceedings will be COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply and the reasons for so stating.”.

137N. Omit rules 11.6 to 11.17.

PART 8B

Amendments to the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018

137O. The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018(a) are amended as follows.

137P. In rule 1.2(1)—

- (a) omit the following definitions—

- (i) “local creditor”,
 - (ii) “main proceedings”,
 - (iii) “member State liquidator”,
 - (iv) “non-EU proceedings”,
 - (v) “secondary proceedings”,
 - (vi) “territorial proceedings”;
- (b) insert in the appropriate places—
- ““COMI proceedings” means insolvency proceedings in Scotland to which the EU Regulation applies where the centre of the debtor’s main interests is in the United Kingdom;”,
- ““establishment” has the same meaning as in Article 2(10) of the EU Regulation;”,
- ““establishment proceedings” means insolvency proceedings in Scotland to which the EU Regulation applies where the debtor has an establishment in the United Kingdom;”.

137Q.—(1) Rule 1.8 is amended as follows.

(2) For the heading substitute “Reasons for stating whether proceedings are or will be COMI proceedings, establishment proceedings etc.”.

(3) In the opening words for “main, secondary, territorial or non-EU proceedings” substitute “COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply”.

(4) In paragraph (b) omit the word “or”.

(5) After paragraph (b) insert—

“(ba) the place where there is an establishment within the jurisdiction, or”; and

(6) In paragraph (c) for “non-EU proceedings” substitute “proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply”.

137R. In rule 1.17 omit paragraph (1)(i).

137S. In rule 2.3 in the table in paragraph (1), in the second column of the entry for “Type of insolvency proceedings”, for “whether the insolvency proceedings will be main, secondary, territorial or non-EU insolvency proceedings with reasons;” substitute—

“whether the proceedings will be COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply with reasons;”.

137T. In rule 2.13 in paragraph (5) for “main, secondary, territorial or non-EU proceedings” substitute “COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply”.

137U. In rule 2.24 in paragraph (3) for “main, secondary, territorial or non-EU proceedings” substitute “COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply”.

137V. In rule 2.37 in paragraph (2) in sub-paragraph (d) for “main, secondary, territorial or non-EU proceedings” substitute “COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply”.

137W. In rule 3.6 omit paragraph (c).

137X. In rule 3.8 in paragraph (b) omit “(including the United Kingdom)” and “other than the United Kingdom”.

137Y. In rule 3.10 omit paragraph (g).

137Z. In rule 3.11 in paragraph (1)—

- (a) in sub-paragraph (g) after “EU Regulation” insert “as it has effect in the law of the United Kingdom”; and
- (b) in sub-paragraph (h) for “main, secondary or territorial proceedings” substitute “COMI proceedings or establishment proceedings”.

137ZA. In rule 3.16 in paragraph (2) in sub-paragraph (k) for “main, secondary, territorial or non-EU proceedings” substitute “COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply”.

137ZB. In rule 3.17 in paragraph (1) in sub-paragraph (k) for “main, secondary, territorial or non-EU proceedings” substitute “COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply”.

137ZC. In rule 3.21 in paragraph (1) in sub-paragraph (k) for “main, secondary, territorial or non-EU proceedings” substitute “COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply”.

137ZD. In rule 3.23 in paragraph (1) in sub-paragraph (i) for “main, secondary, territorial or non-EU proceedings” substitute “COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply”.

137ZE. In rule 3.24 in paragraph (1) in sub-paragraph (h) for “main, secondary, territorial or non-EU proceedings” substitute “COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply”.

137ZF. In rule 3.25 in paragraph (2) in sub-paragraph (i) for “main, secondary, territorial or non-EU proceedings” substitute “COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply”.

137ZG. In rule 3.35 in paragraph (1) in sub-paragraph (m) for “main, secondary, territorial or non-EU proceedings” substitute “COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply”.

137ZH. In rule 3.51 in paragraph (2) in sub-paragraph (g) omit “costs referred to in Articles 30 or 59 of the EU Regulation and”.

137ZI. In rule 3.63 in paragraph (4) omit sub-paragraph (d).

137ZJ. In rule 3.68 in paragraph (2) omit sub-paragraph (g).

137ZK. In rule 3.105 in paragraph (3) omit sub-paragraph (k).

137ZL. In rule 3.117 omit paragraph (11).

137ZM. In rule 5.11 in the table in paragraph (1) omit the entry for “main proceedings in another member State”.

137ZN. Omit rule 5.27.

137ZO. In rule 5.28—

- (a) in paragraph (7) omit the words from “and for this purpose” to the end; and

(b) in paragraph (9) in the opening words omit “or member State liquidator”.

137ZP. Omit Part 7 (the EU Regulation).”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make various amendments to the Insolvency (Amendment) (EU Exit) Regulations 2019 (“the principal Regulations”). The principal Regulations (which, with limited exceptions, come into force on exit day) address deficiencies in retained EU law that will arise from the absence of mutual application of the EU Regulation on insolvency proceedings (Regulation (EU) 2015/848) (“the EUIR”).

The amendments are set out in the Schedule to these Regulations. Paragraph 3 of the Schedule amends the principal Regulations additionally to repeal Article 25 of the EUIR, which came into force on 26th June 2019. The amendments to the Insolvency Act 1986 made by the Small Business, Enterprise and Employment Act 2015 were commenced for Scotland on 6th April 2019. As a result, there are no longer different versions of certain sections of the 1986 Act in force in relation to Scotland and England and Wales and the amendments made by paragraphs 2 and 4 of the Schedule reflect this. Paragraph 5 of the Schedule omits from the principal Regulations the amendments to the Insolvency (Scotland) Rules 1986, following the revocation of those Rules and their re-enactment in the Insolvency (Scotland) (Receivership and Winding up) Rules 2018 and the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018. Paragraph 6 inserts into the principal Regulations a new Part 8A, which amends the Insolvency (Scotland) (Receivership and Winding up) Rules 2018, and a new Part 8B which amends the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018.

In accordance with Government Better Regulation principles, a proportionate analysis of costs and benefits has been completed. This analysis had found that the overall impact on business is likely to be less than £5 million per year. An Explanatory Memorandum is also available with these Regulations on www.legislation.gov.uk. Copies have been placed in the Libraries of both Houses of Parliament.

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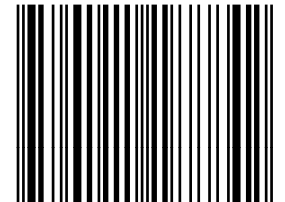
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