

2002 No. 1309

INSOLVENCY, ENGLAND AND WALES

INDIVIDUALS

**The Administration of Insolvent Estates of Deceased
Persons (Amendment) Order 2002**

<i>Made</i> - - - - -	<i>9th May 2002</i>
<i>Laid before Parliament</i>	<i>10th May 2002</i>
<i>Coming into force</i> - -	<i>31st May 2002</i>

The Lord Chancellor, in exercise of the powers conferred upon him by section 421(1) and (2) of the Insolvency Act 1986(a), with the concurrence of the Secretary of State, hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Administration of Insolvent Estates of Deceased Persons (Amendment) Order 2002 and shall come into force on 31st May 2002.

(2) In this Order, references to “the 1986 Order” are references to the Administration of Insolvent Estates of Deceased Persons Order 1986(b).

Amendments to the Administration of Insolvent Estates of Deceased Persons Order 1986

2.—(1) The 1986 Order is amended as provided in this Order.

(2) Anything done before 31st May 2002 under or for the purposes of any provision of the 1986 Order is not invalidated by the amendment of that provision by this Order, but it has effect as if done under or for the purposes of the provision as amended.

Amendments to Schedules to the Administration of Insolvent Estates of Deceased Persons Order 1986

3.—(1) After paragraph 1(c) of Part II of Schedule 1 to the 1986 Order (who may present a bankruptcy petition) insert—

“(ca) at the end of paragraph 1(ba) there shall be added the words “in Form 1, with such variations as the case requires (if any), set out in Schedule 3 to the Administration of Insolvent Estates of Deceased Persons Order 1986”;

(cb) at the end of paragraph 1(bb) there shall be added the words “in Form 1, with such variations as the case requires (if any), set out in Schedule 3 to the Administration of Insolvent Estates of Deceased Persons Order 1986”.”.

(a) 1986 c. 45; section 421 of the Act was amended, and the definition of “EC Regulation” was inserted in section 436, by the Insolvency Act 1986 (Amendment) Regulations 2002, S.I. 2002/1037; section 421 was also amended by the Insolvency Act 2000 (c. 39), section 12(2); sections 1, 8, 117, 120, 124, 221, 225, 240, 247, 264, 265, 330, 387 and 388 were amended, and section 436A was inserted, by the Insolvency Act 1986 (Amendment) (No. 2) Regulations 2002, S.I. 2002/1240.

(b) S.I. 1986/1999.

(2) For paragraph 2(a) of Part II of Schedule 1 to the 1986 Order (modified version of section 266 of the Insolvency Act 1986) substitute—

“(a) for subsection (1) there shall be substituted the following:—

“(1) An insolvency administration petition shall—

- (a) if a liquidator (within the meaning of Article 2(b) of the EC Regulation^(a)) has been appointed in proceedings by virtue of Article 3(1) of the EC Regulation in relation to the deceased debtor, be served on him;
- (b) unless the court directs otherwise, be served on the personal representative; and
- (c) be served on such other persons as the court may direct.”; and”.

(3) For paragraph 25 of Part II of Schedule 1 to the 1986 Order (modified version of section 330 of the Insolvency Act 1986) substitute—

“**25.** Section 330 with the following modifications:—

- (a) in subsection (5) for the words “the bankrupt is entitled to the surplus” there shall be substituted the words “the surplus shall be paid to the personal representative unless the court otherwise orders”, and
- (b) after subsection (5) there shall be added:—

“(6) Subsection (5) is subject to Article 35 of the EC Regulation (surplus in secondary proceedings to be transferred to main proceedings).”.

(4) The forms contained in the Schedule to this Order are substituted for the forms identically numbered in Schedule 3 to the 1986 Order.

7th May 2002

Irvine of Lairg, C.

I concur,

9th May 2002

Patricia Hewitt,
Secretary of State for Trade and Industry

(a) Council Regulation (EC) 1346/2000, OJ No. L160, 30.06.00 p.1.

SCHEDULE

AMENDED FORMS

Article 3(4)

The Administration of Insolvent Estates of Deceased Persons Order 1986

Form 1

**Creditor's Petition for Insolvency Administration Order
(Title)**

(a) Insert full names(s) and address(es) of petitioner(s) I/We (a) _____

petition the court that an order be made for the administration of the insolvent estate in bankruptcy of the late

(b) Insert full name, and former occupation of deceased debtor (b) _____

(c) Insert in full any other name(s) by which the deceased debtor was known [also known as (c) _____]

(d) Insert any address(es) at which the deceased debtor has resided at or after the time the petition debt was incurred [and lately residing at (d) _____

(e) Insert trading name (adding "with another or others" if this was so), business address(es) and nature of business(es) carried on by the deceased debtor at or after the time the petition debt was incurred. [and lately carrying on business as (e) _____
_____]

(f) Insert date of death [who died on (f) _____

and say as follows:-

(g) Delete as applicable 1. (g) [The deceased debtor's centre of main interests was] [The deceased debtor had an establishment] at _____

OR

The deceased debtor carried on business as an insurance undertaking; a credit institution; an investment undertaking providing services involving the holding of funds or securities for third parties; or a collective investment undertaking as referred to in Article 1.2 of the EC Regulation

OR

The deceased debtor's centre of main interests was not within a member State

2. The deceased debtor for the greater part of six months immediately preceding the date of death (j) [resided at] [carried on business at] _____

(j) Or as the case may be following the terms of Rule 6.9 within the district of this court (j)

Under the EC Regulation:

(i) The centre of main interests should correspond to the place where the debtor conducts the administration of his interests on a regular basis.

(ii) Establishment is defined as "any place of operations where the debtor carries out a non-transitory economic activity with human means and goods".

(k) Please give the amount of the debt(s), what they relate to and when they were incurred.

Please show separately the amount or rate of any interest or other charge not previously notified to the deceased debtor and the reasons why you are claiming it

(l) State date payable or "immediately" if this is so

3. The estate of the deceased debtor is justly and truly indebted to me [us] in the aggregate sum of £(k) _____

4. The above-mentioned debt is for a liquidated sum payable (l) _____ and the estate of the deceased debtor is according to my/our information and belief insufficient to pay his debts.

5. I/We do not, nor does any person on my/our behalf, hold any security on the deceased debtor's estate, or any part thereof, for the payment of the above-mentioned sum

OR

I/We hold security for the payment of (g) [part of] the above-mentioned sum. I/We will give up such security for the benefit of all the creditors in the event of an insolvency administration order being made.

OR

I/We hold security for the payment of part of the above-mentioned sum and I/we estimate the value of such security to be £ _____ This petition is not made in respect of the secured part of my/our debt.

(m) Insert date will proved

6. The will of the deceased debtor was on (m) _____

(n) Insert full names and addresses of parties proving will

proved by (n) _____

(o) Insert date letters of administration granted
(p) Insert full names and addresses of parties letters of administration granted to

OR

The letters of administration of his estate were on (o) _____

granted to (p) _____

Endorsement

This petition having been presented to the court on _____
it is ordered that the petition shall be heard as follows:-

Date _____

Time _____ hours

Place _____

and you, (q) _____

(q) Insert full names and
addresses of parties given
notice

are to take notice that if you intend to oppose the petition you must not later than 7
days before the date fixed for the hearing:

- (i) file in court a notice specifying the grounds on which you object to the
making of an insolvency administration order; and
- (ii) send a copy of the notice to the petitioner or his solicitor.

(r) Only to be completed where
the petitioning creditor is
represented by a solicitor

The solicitor to the petitioning creditor is: - (r)

Name _____

Address _____

Telephone Number _____

Reference _____

Petition for Insolvency Administration Order by Supervisor of Voluntary Arrangement or Person Bound by it (Title)

(a) Insert full names(s) and address(es) of petitioner(s) I/We (a) _____

petition the court that an order be made for the administration of the insolvent estate in bankruptcy of the late

(b) Insert full name, and former occupation of deceased debtor (b) _____

(c) Insert in full any other name(s) by which the deceased debtor was known [also known as (c) _____]

(d) Insert any address(es) at which the deceased debtor has resided at or after the time the petition debt was incurred [and lately residing at (d) _____]

(e) Insert trading name (adding "with another or others" if this was so), business address(es) and nature of business(es) carried on by the deceased debtor at or after the time the petition debt was incurred. [and lately carrying on business as (e) _____]

and say as follows:-

1. (f) [The deceased debtor's centre of main interests was][The deceased debtor had an establishment] at _____ (f) Delete as applicable

OR

The deceased debtor carried on business as an insurance undertaking; a credit institution; an investment undertaking providing services involving the holding of funds or securities for third parties; or a collective investment undertaking as referred to in Article 1.2 of the EC Regulation

OR

The deceased debtor's centre of main interests was not within a member State

2. The deceased debtor for the greater part of six months immediately preceding the date of death (f) [resided at] [carried on business at] _____

(g) Or as the case may be following the terms of Rule 6.9 _____

within the district of this court (g)

Under the EC Regulation:

(i) The centre of main interests should correspond to the place where the debtor conducts the administration of his interests on a regular basis.

(ii) Establishment is defined as "any place of operations where the debtor carries out a non-transitory economic activity with human means and goods".

(h) Insert date the deceased entered into voluntary arrangement 3. On (h) _____ a voluntary arrangement proposed by the deceased debtor was approved by his creditors and I am (f) [a person who is for the time being bound by the said voluntary arrangement and (j) _____ is the supervisor] [(j) _____ the supervisor of the said voluntary arrangement].

(j) Insert name of supervisor

(k) Insert date of death 4. The deceased debtor died on (k) _____

(l) Insert date will proved 5. The will of the deceased debtor was on (l) _____

(m) Insert full names and addresses of parties proving will proved by (m) _____

OR

(n) Insert date letters of administration granted The letters of administration of his estate were on (n) _____

(o) Insert full names and addresses of parties letters of administration granted to granted to (o) _____

6. The estate of the deceased debtor is according to my/our information and belief insufficient to pay his debts.

Endorsement

This petition having been presented to the court on _____
it is ordered that the petition shall be heard as follows:-

Date _____

Time _____ hours

Place _____

(p) Insert full names and
addresses of parties given
notice

and you (p) _____

are to take notice that if you intend to oppose the petition you must not later than 7
days before the date fixed for the hearing:

- (i) file in court a notice specifying the grounds on which you object to the
making of an insolvency administration order; and
- (ii) send a copy of the notice to the petitioner or his solicitor.

(q) Only to be completed where
the petitioning creditor is
represented by a solicitor

The solicitor to the petitioning creditor is: - (q)

Name _____

Address _____

Telephone Number _____

Reference _____

**Insolvency Administration Order
(Title)**

(a) Insert full name of petitioner Upon the petition of (a) _____

(b) Insert date of petition dated (b) _____

(c) Insert court number of petition and numbered (c) _____

and upon hearing _____

and upon reading the evidence _____

(d) Insert full name of deceased debtor It is ordered that the estate of (d) _____

(e) Insert residential address of deceased debtor at date of death formerly of (e) _____

(f) Terms of any order as to payment of costs of application who died insolvent, be administered in bankruptcy and that the costs of this application be (f)

(g) Delete as applicable And the Court being satisfied that the EC Regulation (g) does/does not apply (g)

(h) Insert whether main, secondary or territorial proceedings and it is ordered that these proceedings are (h)

_____ proceedings as defined in Article 3 of the EC Regulation

The Administration of Insolvent Estates of Deceased Persons Order 1986

Form 5

**Insolvency Administration Order on Transfer of Proceedings
(Title)**

(a) Insert full name of deceased debtor Proceedings for the administration of the estate of the late (a) _____

(b) Insert name of court in which proceedings commenced having been commenced in _____

(c) Insert date (b) _____ court

on (c) _____

And whereas the Court did on (c) _____ transfer such proceedings to this Court.

It is ordered that the estate of (a) _____ who died insolvent, be administered in bankruptcy.

(d) Delete as applicable And the Court being satisfied that the EC Regulation (d) does/does not apply

(e) Insert whether main, secondary or territorial (d) and it is ordered that these proceedings are (e) _____ proceedings as defined in Article 3 of the EC Regulation

**Petition by Personal Representative for Insolvency
Administration Order
(Title)**

(a) Insert full names(s) and address(es) of petitioner(s) I/We (a) _____

petition the court that an order be made for the administration of the insolvent estate in
bankruptcy of the late
(b) _____

(b) Insert full name, and former occupation of deceased debtor _____

(c) Insert in full any other name(s) by which the deceased debtor was known [also known as (c) _____]

(d) Insert any address(es) at which the deceased debtor has resided at or after the time the petition debt was incurred [and lately residing at (d) _____]

(e) Insert trading name (adding "with another or others" if this was so), business address(es) and nature of business(es) carried on by the deceased debtor at or after the time the petition debt was incurred. [and lately carrying on business as (e) _____]

(f) Insert date of death who died on (f) _____
and say as follows:-

(g) Delete as applicable 1. (g) I am/We are the personal representative(s) of the deceased debtor and

(h) Insert date will proved his will was on (h) _____

(j) Insert full names and addresses of parties proving will proved by (j) _____
OR

The letters of administration of his estate were on (k) _____

(k) Insert date letters of administration granted granted to (l) _____
(l) Insert full names and addresses of parties letters of administration granted to _____

2. (g) [The deceased debtor's centre of main interests was][The deceased debtor had an establishment] at _____

OR

Under the EC Regulation:

(i) The centre of main interests should correspond to the place where the debtor conducts the administration of his interests on a regular basis.

(ii) Establishment is defined as "any place of operations where the debtor carries out a non-transitory economic activity with human means and goods".

The deceased debtor carried on business as an insurance undertaking; a credit institution; an investment undertaking providing services involving the holding of funds or securities for third parties; or a collective investment undertaking as referred to in Article 1.2 of the EC Regulation

OR

The deceased debtor's centre of main interests was not within a member State

3. The deceased debtor for the greater part of six months immediately preceding the date of death (g) [resided at] [carried on business at]

(m) Or as the case may be following the terms of Rule 6.9

within the district of this court (m)

4. The estate of the deceased debtor is according to my/our information and belief insufficient to pay his debts

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Administration of Insolvent Estates of Deceased Persons Order 1986 (S.I. 1986/1999) (“the 1986 Order”) in the light of Council Regulation (EC) No. 1346/2000 of 29th May 2000 on insolvency proceedings (“the EC Regulation”) which comes into force on 31st May 2002.

The EC Regulation aims to provide for the efficient and effective functioning of cross-border insolvency proceedings in the European Union. Information concerning the EC Regulation is provided in Guidance Notes issued by the Insolvency Service which may be found, together with the text of the EC Regulation, on the Insolvency Service website, the address of which is www.insolvency.gov.uk.

The amendments made by this Order are—

- to specify which form a liquidator (within the meaning of Article 2(b) of the EC Regulation) appointed in proceedings by virtue of Article 3(1) of the EC Regulation or a temporary administrator (within the meaning of Article 38 of the EC Regulation) must use to petition for an insolvency administration order (“temporary administrator” and “main proceedings” are defined in the EC Regulation);
- to require that, where such a liquidator has been appointed, a petition will need to be served on him;
- to provide expressly that modified section 330 of the Insolvency Act 1986 is subject to Article 35 of the EC Regulation;
- to substitute the forms in the 1986 Order with forms which require consideration of whether the EC Regulation applies to the proceedings in question.

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INDIVIDUALS

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