
STATUTORY INSTRUMENTS

2003 No. 2109

The Insolvency (Scotland) Regulations 2003

Citation and commencement

1. These Regulations may be cited as the Insolvency (Scotland) Regulations 2003 and shall come into force on 8th September 2003.

PART I

SEQUESTRATION

Interpretation

2. In this Part of these Regulations “the Act” means the Bankruptcy (Scotland) Act 1985 ^{M1}; and “the 1985 Regulations” means the Bankruptcy (Scotland) Regulations 1985 ^{M2}.

Marginal Citations

M1 1985 c. 66.

M2 S.I. 1985/1925.

Amendments to the Bankruptcy (Scotland) Act 1985

3. The Act is amended as provided for in regulations 5 to 19 of these Regulations.

Amendments to the Bankruptcy (Scotland) Regulations 1985

4. The 1985 Regulations are amended as provided for in regulations 20 and 21 of these Regulations.

Amendment of section 5 of the Act

5.—(1) After section 5(2)(b) of the Act (sequestration of the estate of living debtor) insert—

“(ba) a temporary administrator;

(bb) a member State liquidator appointed in main proceedings;” and

(2) After section 5(3)(b) of the Act (sequestration of the estate of deceased debtor) insert—

“(ba) a temporary administrator;

(bb) a member State liquidator appointed in main proceedings;”.

Amendment of section 6 of the Act

6.—(1) In section 6 of the Act (sequestration of other estates), after each of subsections (3)(a), (4)(a) and (6)(a) insert—

- “(aa) a temporary administrator;
- (ab) a member State liquidator appointed in main proceedings;”.
- (2) In section 6(5) of the Act for “subsection (4)(b)” substitute “ subsection (4)(aa) to (b) ”.

Application of EC Regulation to petitions for sequestration of debtor

7. After section 6 of the Act insert–

“6A Petition for sequestration of estate: provision of information

(1) A petitioner for sequestration of a debtor’s estate shall, insofar as it is within the petitioner’s knowledge, state in the petition–

- (a) whether or not the debtor’s centre of main interests is situated–
 - (i) in the United Kingdom; or
 - (ii) in another member State; and
- (b) whether or not the debtor possesses an establishment–
 - (i) in the United Kingdom; or
 - (ii) in any other member State.

(2) If, to the petitioner’s knowledge, there is a member State liquidator appointed in main proceedings in relation to the debtor, the petitioner shall, as soon as reasonably practicable, send a copy of the petition to that member State liquidator.”.

Amendment of section 7 of the Act

- 8.—(1) In section 7(1) of the Act (meaning of apparent insolvency), after paragraph (b) insert–
- “(ba) he becomes subject to main proceedings in a member State other than the United Kingdom;”.
- (2) In section 7(2) of the Act–
- (a) the word “or” immediately following sub-paragraph (a) is repealed; and
 - (b) at the end of sub-paragraph (b) after “due” there is inserted “; or
 - (c) subsection (1)(ba), when main proceedings have ended”.

Amendment of section 8 of the Act

9.—(1) For section 8(1)(a) of the Act (time limits for presentation of petition for sequestration of debtor’s estate) substitute–

- “(a) at any time by–
 - (i) the debtor;
 - (ii) a trustee acting under a trust deed;
 - (iii) a temporary administrator; or
 - (iv) a member State liquidator appointed in main proceedings;”.

(2) For section 8(3)(a) of the Act (time limits for presentation of petition for sequestration of deceased debtor’s estate) substitute–

- “(a) at any time by–
 - (i) an executor;
 - (ii) a person entitled to be appointed as executor of the estate;

- (iii) a trustee acting under a trust deed;
- (iv) a temporary administrator; or
- (v) a member State liquidator appointed in main proceedings;”.

Amendment of section 9 of the Act

- 10.** After section 9(5) of the Act (jurisdiction) insert—
“(6) This section is subject to Article 3 of the EC Regulation.”.

Amendment of section 31 of the Act

- 11.** In section 31(8) of the Act after “subsection (1) above” insert “, subject to section 31A of this Act, ” .

Modified definition of “estate”

- 12.** After section 31 of the Act insert—

“31A Proceedings under EC Regulation: modified definition of “estate”

31A. In the application of this Act to insolvency proceedings under the EC Regulation, a reference to “estate” is a reference to estate which may be dealt with in those proceedings.”.

Amendment of section 50 of the Act

- 13.** In section 50 of the Act (entitlement to vote and draw dividend)—
- (a) the existing text is renumbered as subsection (1); and
 - (b) after that subsection (1) (as so renumbered) insert—
 - “(2) No vote shall be cast by virtue of a debt more than once on any resolution put to a meeting of creditors.
 - (3) Where a creditor—
 - (a) is entitled to vote under this section;
 - (b) has lodged his claim in one or more sets of other proceedings; and
 - (c) votes (either in person or by proxy) on a resolution put to the meeting,only the creditor’s vote shall be counted.
 - (4) Where—
 - (a) a creditor has lodged his claim in more than one set of other proceedings; and
 - (b) more than one member State liquidator seeks to vote by virtue of that claim,the entitlement to vote by virtue of that claim is exercisable by the member State liquidator in main proceedings, whether or not the creditor has lodged his claim in the main proceedings.
 - (5) For the purposes of subsections (3) and (4) above, “other proceedings” means main proceedings, secondary proceedings or territorial proceedings in a member State other than the United Kingdom.”.

Amendment of section 51 of the Act

- 14.** After section 51(5) of the Act (order of priority in distribution) insert—

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

Amendment of section 52 of the Act

15. In section 52 of the Act, after subsection (9) insert–

“(10) In the declaration of and payment of a dividend, no payments shall be made more than once by virtue of the same debt.

(11) Any dividend paid in respect of a claim should be paid to the creditor.”.

Conversion of trust deed into sequestration

16. After section 59 of the Act insert–

“59A Petition for conversion into sequestration

(1) Where a member State liquidator proposes to petition the court for the conversion under Article 37 of the EC Regulation (conversion of earlier proceedings) of a protected trust deed into sequestration, an affidavit complying with section 59B of this Act must be prepared and sworn, and lodged in court in support of the petition.

(2) The petition and the affidavit required under subsection (1) above shall be served upon–

- (a) the debtor;
- (b) the trustee;
- (c) such other person as may be prescribed.

59B Contents of affidavit

(1) The affidavit shall–

- (a) state that main proceedings have been opened in relation to the debtor in a member State other than the United Kingdom;
- (b) state that the member State liquidator believes that the conversion of the trust deed into a sequestration would prove to be in the interests of the creditors in the main proceedings;
- (c) contain such other information the member State liquidator considers will be of assistance to the court–
 - (i) in deciding whether to make an order under section 59C; and
 - (ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable; and
- (d) contain any other matters as may be prescribed.

(2) An affidavit under this section shall be sworn by, or on behalf of, the member State liquidator.

59C Power of court

(1) On hearing the petition for conversion of a trust deed into a sequestration the court may make such order as it thinks fit.

(2) If the court makes an order for conversion into sequestration the order may contain all such consequential provisions as the court deems necessary or desirable.

(3) Where the court makes an order for conversion into sequestration under sub-section (1) above, any expenses properly incurred as expenses of the administration of the trust deed in question shall be a first charge on the debtor's estate.”.

Insertion into the Act of new sections 60A and 60B

17. After section 60 of the Act insert–

“60A Member State liquidator deemed creditor

60A. For the purposes of this Act, and without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditors' rights) a member State liquidator appointed in relation to the debtor is deemed to be a creditor in the sum due to creditors in proceedings in relation to which he holds office.

60B Trustee's duties concerning notices and copies of documents

(1) This section applies where a member State liquidator has been appointed in relation to the debtor.

(2) Where an interim or a permanent trustee is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court or the Accountant in Bankruptcy, the trustee shall give notice or provide copies, as appropriate, to the member State liquidator.

(3) Subsection (2) above is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to co-operate and communicate information).”.

Modification of regulation making powers

18. After section 72 of the Act, insert -

“72ZA Modification of regulation making powers

72ZA. Any power in any provision of this Act to make regulations may, insofar as that provision relates to a matter to which the EC Regulation applies, be exercised for the purpose of making provision in consequence of the EC Regulation.”.

Amendment of section 73 of the Act

19. In section 73(1) (interpretation) of the Act insert the following definitions in alphabetical order:–

““centre of main interests” has the same meaning as in the EC Regulation;

“creditor” includes a member State liquidator deemed to be a creditor under section 60A of this Act;

“the EC Regulation” means Council Regulation (EC) No. 1346/2000 of 29th May 2000 on insolvency proceedings ^{M3};

“establishment” has the meaning given by Article 2(h) of the EC Regulation;

“main proceedings” means proceedings opened in accordance with Article 3(1) of the EC Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Regulation and–

(a) in relation to England and Wales and Scotland, set out in Annex A to the EC Regulation under the heading “United Kingdom”; and

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(b) in relation to another member State, set out in Annex A to the EC Regulation under the heading relating to that member State;

“member State liquidator” means a person falling within the definition of liquidator in Article 2(b) of the EC Regulation appointed in proceedings to which it applies in a member State other than the United Kingdom;

“secondary proceedings” means proceedings opened in accordance with Articles 3(2) and 3(3) of the EC Regulation and falling within the definition of winding-up proceedings in Article 2(c) of the EC Regulation, and–

(a) in relation to England and Wales and Scotland, set out in Annex B to the EC Regulation under the heading “United Kingdom”; and

(b) in relation to another member State, set out in Annex B to the EC Regulation under the heading relating to that member State;

“temporary administrator” means a temporary administrator referred to by Article 38 of the EC Regulation; and

“territorial proceedings” means proceedings opened in accordance with Articles 3(2) and 3(4) of the EC Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Regulation, and–

(a) in relation to England and Wales and Scotland, set out in Annex A to the EC Regulation under the heading “United Kingdom”; and

(b) in relation to another member State, set out in Annex A to the EC Regulation under the heading relating to that member State.”.

Marginal Citations

M3 Council Regulation (EC) 1346/2000, O.J. No. L 160, 30.06.00, p.1.

Amendment of Regulation 18 of the 1985 Regulations

20. In regulation 18 of the 1985 Regulations ^{M4} (information to be sent by trustee acting under trust deed to creditors known to him)–

(a) the word “and” immediately following paragraph (a) is omitted; and

(b) after paragraph (b) insert– “; and

(c) a statement whether, in the opinion of the trustee–

(i) the EC Regulation applies to the trust deed; and

(ii) if so, whether the proceedings are main proceedings, secondary proceedings or territorial proceedings”.

Marginal Citations

M4 Regulation 18 was inserted by S.I. 1993/439, regulation 5.

Amendment of the Schedule to the 1985 Regulations (New form)

21. For Form 5 in the Schedule to the 1985 Regulations, substitute the form (Form 5) contained in Schedule 1 to these Regulations.

[^{F1}][^{F2}]**PART II**

COMPANIES

Textual Amendments

- F1** Pt. II revoked in part (S.) (6.4.2019) by [The Insolvency \(Scotland\) \(Company Voluntary Arrangements and Administration\) Rules 2018 \(S.I. 2018/1082\)](#), rule 1, **Sch. 1 Table**
- F2** Pt. II revoked in part (S.) (6.4.2019) by [The Insolvency \(Scotland\) \(Receivership and Winding up\) Rules 2018 \(S.S.I. 2018/347\)](#), rule 1, **sch. 1 para. 1**

Interpretation of Part II

22. In this Part of these Regulations, references to “the principal Rules” are references to the Insolvency (Scotland) Rules 1986 ^{M5} and a Rule referred to by number alone means the Rule so numbered in the principal Rules.

Marginal Citations

- M5** [S.I. 1986/1915](#), amended by [S.I. 1987/1921](#) and [S.I. 2002/2709](#).

Amendments to the principal Rules

23.—(1) The principal Rules are amended as provided in this Part of these Regulations.

(2) Anything done before 8th September 2003 under or for the purposes of any provision of the principal Rules is not invalidated by the amendment of that provision by these Regulations, but it has effect as if done under or for the purposes of the provision as amended.

Amendments to the principal Rules in relation to Introductory Provisions

24.—(1) Rule 0.2 (interpretation) is amended as follows.

(2) The following expressions are inserted in paragraph (1) in the appropriate alphabetical order:—

“centre of main interests” has the same meaning as in the EC Regulation;

“EC Regulation” means Council Regulation [\(EC\) No. 1346/2000](#) of 29th May 2000 on insolvency proceedings;

“establishment” has the meaning given by Article 2(h) of the EC Regulation;

“main proceedings” means proceedings opened in accordance with Article 3(1) of the EC Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Regulation, and

(a) in relation to England and Wales and Scotland set out in Annex A to the EC Regulation under the heading “United Kingdom”; and

(b) in relation to another member State, set out in Annex A to the EC Regulation under the heading relating to that member State;

“member State liquidator” means a person falling within the definition of liquidator in Article 2(b) of the EC Regulation appointed in proceedings to which it applies in a member State other than the United Kingdom;

“secondary proceedings” means proceedings opened in accordance with Articles 3(2) and 3(3) of the EC Regulation and falling within the definition of winding-up proceedings in Article 2(c) of the EC Regulation, and

- (a) in relation to England and Wales and Scotland, set out in Annex B to the EC Regulation under the heading “United Kingdom”; and
- (b) in relation to another member State, set out in Annex B to the EC Regulation under the heading relating to that member State;

“territorial proceedings” means proceedings opened in accordance with Articles 3(2) and 3(4) of the EC Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Regulation, and

- (a) in relation to England and Wales and Scotland, set out in Annex A to the EC Regulation under the heading “United Kingdom”; and
- (b) in relation to another member State, set out in Annex A to the EC Regulation under the heading relating to that member State.

Amendments to principal Rules in relation to Company Voluntary Arrangements

25.—(1) In Rule 1.1(2)(d) (scope of this Part; interpretation) ^{M6} for “5 and 6” substitute— “ 5, 6, and 8 ”.

(2) In Rule 1.3(2) (contents of proposal) ^{M7}, at the end of sub-paragraph (o), for “; and.” substitute—
(p) whether the EC Regulation will apply and, if so, whether the proceedings will be main proceedings or territorial proceedings.”.

(3) In Rule 1.17(2) (report of meetings)—

- (a) at the end of sub-paragraph (c) omit “and”; and
- (b) after sub-paragraph (c) insert—

“(ca) state whether, in the opinion of the supervisor—

- (i) the EC Regulation applies to the voluntary arrangement; and
- (ii) if so, whether the proceedings are main proceedings or territorial proceedings; and”.

(4) After Rule 1.45 (implementation of the arrangement) ^{M8} insert—

“CHAPTER 8

EC REGULATION - CONVERSION OF VOLUNTARY ARRANGEMENT INTO WINDING UP

Application for conversion into winding up

1.46.—(1) Where a member State liquidator proposes to apply to the court for the conversion under Article 37 of the EC Regulation (conversion of earlier proceedings) of a voluntary arrangement into a winding up, an affidavit complying with Rule 1.47 must be prepared and sworn, and lodged in court in support of the application.

- (2) The application and the affidavit required under this Rule shall be served upon—
 - (a) the company; and
 - (b) the supervisor.

Contents of affidavit

1.47.—(1) The affidavit shall state—

- (a) that main proceedings have been opened in relation to the company in a member State other than the United Kingdom;
- (b) the deponent’s belief that the conversion of the voluntary arrangement into a winding up would prove to be in the interests of the creditors in the main proceedings;
- (c) the deponent’s opinion as to whether the company ought to enter voluntary winding up or be wound up by the court; and
- (d) all other matters that, in the opinion of the member State liquidator, would assist the court—
 - (i) in deciding whether to make such an order, and
 - (ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable.

(2) An affidavit under this Rule shall be sworn by, or on behalf of, the member State liquidator.

Power of court

1.48.—(1) On hearing the application for conversion into winding up, the court may make such order as it thinks fit.

(2) If the court makes an order for conversion into winding up, the order may contain all such consequential provisions as the court deems necessary or desirable.

(3) Without prejudice to the generality of paragraph (1), an order under that paragraph may provide that the company be wound up as if a resolution for voluntary winding up under section 84 were passed on the day on which the order is made.

(4) Where the court makes an order for conversion into winding up under paragraph (1), any expenses properly incurred as expenses of the administration of the voluntary arrangement in question shall be a first charge on the company’s assets.

CHAPTER 9

EC REGULATION - MEMBER STATE LIQUIDATOR

Notice to member State liquidator

1.49.—(1) This Rule applies where a member State liquidator has been appointed in relation to the company.

(2) Where the supervisor is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court or the registrar of companies, the supervisor shall give notice or provide a copy, as appropriate, to the member State liquidator.

(3) Paragraph (2) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to co operate and communicate information).”.

Marginal Citations

- M6** Rule 1.1(2)(d) was substituted by [S.I. 2002/2709](#).
M7 Rule 1.3(2)(o) was substituted by [S.I. 2002/2709](#).
M8 Rule 1.45 was inserted by [S.I. 2002/2709](#).

Amendments to the principal Rules in relation to Administration

26.—(1) In Rule 2.7(1) (statement to be annexed to proposals)—

(a) at the end of sub-paragraph (f) ^{M9} omit “and”; and

(b) after sub-paragraph (f) insert—

“(fa) whether—

(i) the EC Regulation applies; and

(ii) if so, whether the proceedings are main proceedings or territorial proceedings; and”.

(2) After Rule 2.9 (general) insert—

“Applicable law

2.9A.—(1) Rule 2.9 does not apply where the laws of a member State (and not the law of Scotland) apply in relation to the conduct of the meeting.

(2) Where this Rule applies, subject as above, the meeting shall be summoned and conducted in accordance with the constitution of the company and the laws of the member State referred to in paragraph (1) above shall apply to the conduct of the meeting.

Entitlement to vote

2.9B.—(1) No vote shall be cast by virtue of a claim more than once on any resolution put to the meeting.

(2) Where—

(a) a creditor is entitled to vote under this Rule,

(b) has lodged his claim in one or more sets of other proceedings; and

(c) votes (either in person or by proxy) on a resolution put to the meeting,

only the creditor’s vote shall be counted.

(3) Where—

(a) a creditor has lodged his claim in more than one set of other proceedings, and

(b) more than one member State liquidator seeks to vote by virtue of that claim,

the entitlement to vote by virtue of that claim is exercisable by the member State liquidator in main proceedings, whether or not the creditor has lodged his claim in the main proceedings.

(4) For the purposes of paragraph (1), the claim of a creditor and of any member State liquidator in relation to the same debt are a single claim.

(5) For the purposes of paragraphs (2) and (3), “other proceedings mean main proceedings or territorial proceedings in another member State.”.

(3) In Rule 2.18 (resignation from office), after paragraph (3) insert—

“(4) Where the administrator gives notice under paragraph (3), he must also give notice to a member State liquidator, if such a person has been appointed in relation to the company.”.

(4) After Rule 2.21 (VAT Bad Debt relief—application of provisions in Part 3 (Receivers)) insert—

“CHAPTER 7

EC REGULATION - CONVERSION OF ADMINISTRATION INTO WINDING UP

Application for conversion into winding up

2.22.—(1) Where a member State liquidator proposes to apply to the court for the conversion under Article 37 of the EC Regulation (conversion of earlier proceedings) of an administration into a winding up, an affidavit complying with Rule 2.23 must be prepared and sworn, and lodged in court in support of the application.

- (2) The application and the affidavit required under this Rule shall be served upon—
- (a) the company; and
 - (b) the administrator.

Contents of affidavit

2.23.—(1) The affidavit shall state—

- (a) that main proceedings have been opened in relation to the company in a member State other than the United Kingdom;
- (b) the deponent’s belief that the conversion of the administration into a winding up would prove to be in the interests of the creditors in the main proceedings;
- (c) the deponent’s opinion as to whether the company ought to enter voluntary winding up or be wound up by the court; and
- (d) all other matters that, in the opinion of the member State liquidator, would assist the court—
 - (i) in deciding whether to make such an order, and
 - (ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable.

(2) An affidavit under this Rule shall be sworn by, or on behalf of, the member State liquidator.

Power of court

2.24.—(1) On hearing the application for conversion into winding up, the court may make such order as it thinks fit.

(2) If the court makes an order for conversion into winding up, the order may contain all such consequential provisions as the court deems necessary or desirable.

(3) Without prejudice to the generality of paragraph (1), an order under that paragraph may provide that the company be wound up as if a resolution for voluntary winding up under section 84 were passed on the day on which the order is made.

CHAPTER 8

EC REGULATION - MEMBER STATE LIQUIDATOR

Interpretation of creditor and notice to member State liquidator

2.25.—(1) This Rule applies where a member State liquidator has been appointed in relation to the company.

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(2) For the purposes of the Rules referred to in paragraph (3) the member State liquidator is deemed to be a creditor.

(3) The Rules referred to in paragraph (2) are—

- (a) Rule 2.10(1);
- (b) Rule 2.11;
- (c) Rule 2.12; and
- (d) Rule 2.14.

(4) For the purposes of the application by Rule 2.15 of Rule 3.4 with regard to a creditors' committee in an administration, the member State liquidator is deemed to be a creditor.

(5) For the purposes of the application by Rule 2.9 of Rule 7.9(3) insofar as—

- (a) Rule 7.9(3) applies Rules 4.15 and 4.16; and
- (b) by virtue of its application by Rule 7.9(3), Rule 4.16 applies section 49 of the Bankruptcy Act,

the member State liquidator is deemed to be a creditor.

(6) For the purposes of the application by Rule 2.15 of Chapter 3 of Part 3 and the application by Rule 3.6 of Rules 4.50(b) and 4.52(3), the member State liquidator is deemed to be a creditor.

(7) For the purposes of the application by Rule 2.16 of Rule 4.34(3), the member State liquidator is deemed to be a creditor.

(8) Paragraphs (2) to (7) are without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditors' rights).

(9) Where the administrator is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court or the registrar of companies, the administrator shall give notice or provide copies, as the case may be, to the member State liquidator.

(10) Paragraph (9) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to co operate and communicate information).”.

Marginal Citations

M9 Sub-paragraph (f) was substituted by [S.I. 1987/1921](#).

Amendments to the principal Rules in relation to Companies Winding up

27.—(1) In Rule 4.15 (submission of claims)—

(a) for paragraph (5) substitute—

“(5) Votes are calculated according to the amount of—

- (a) a creditor’s debt as at the date of the commencement of the winding up within the meaning of section 129, deducting any amount paid in respect of that debt after that date; or
- (b) in relation to a member State liquidator, the debt claimed to be due to creditors in proceedings in relation to which he holds office.”; and

(b) after paragraph (5) insert—

“(5A) No vote shall be cast by virtue of a debt more than once on any resolution put to the meeting.

(5B) Where a creditor—

- (a) is entitled to vote under this Rule (as read with Rule 7.9);
 - (b) has lodged his claim in one or more sets of other proceedings; and
 - (c) votes (either in person or by proxy) on a resolution put to the meeting,
- only the creditor's vote shall be counted.

(5C) Where—

- (a) a creditor has lodged his claim in more than one set of other proceedings; and
 - (b) more than one member State liquidator seeks to vote by virtue of that claim,
- the entitlement to vote by virtue of that claim is exercisable by the member State liquidator in main proceedings, whether or not the creditor has lodged his claim in the main proceedings.

(5D) For the purposes of paragraphs (5B) and (5C), “other proceedings” means main proceedings, secondary proceedings or territorial proceedings in another member State.”.

(2) In Rule 4.68 (application of the Bankruptcy Act)—

- (a) in paragraph (2), delete “and” at the end of sub-paragraph (b); and
- (b) at the end of paragraph (2)(c) insert—
 - (d) for subsection (11) substitute—

(“ Subject to any notification by the person entitled to a dividend given to the liquidator that he wishes the dividend to be paid to another person, or that he has assigned his entitlement to another person, where both a creditor and a member State liquidator have had a claim accepted in relation to the same debt, payment shall only be made to the creditor.”.

(3) After Rule 4.82 (leave to act as director – third excepted case) insert—

“CHAPTER 14

EC REGULATION - MEMBER STATE LIQUIDATOR

Interpretation of creditor and notice to member State liquidator

4.83.—(1) This Rule applies where a member State liquidator has been appointed in relation to the company.

(2) For the purposes of the provisions referred to in paragraph (3) the member State liquidator is deemed to be a creditor.

(3) The provisions referred to in paragraph (2) are—

- (a) Rules 4.10(1) (report to creditors and contributories), 4.10(3) (summary of statement of affairs), 4.13 (other meetings of creditors), 4.15 (submission of claims), 4.17 (claims in foreign currency), 4.18(4) (appointment of liquidator by court), 4.23(2) and (4) (summoning of meeting for removal of liquidator), 4.31 (final meeting), 4.35 (creditors' claim that remuneration is excessive), 4.41(1), (2) and (3) (membership of liquidation committee), 4.52(3) (vacancy (creditor members)), 4.62(1) (membership of committee), 4.74 (notice of order for public examination), 7.3 (notice of meeting) (insofar as it applies to a notice of meeting of creditors under section 138(3) or (4) for the purposes of rule 4.12 and to a meeting requisitioned under rule 7.6 insofar as it applies in a winding up by the court), 7.6(2) (meetings requisitioned) (insofar as it applies in a winding up by the court) and 7.9 (entitlement to vote (creditors)) (insofar as it applies in a winding up by the court); and
- (b) sections 48(5), (6) and (8) and 49 of the Bankruptcy Act as applied by Rule 4.16 and section 52(3) of that Act as applied by rule 4.68(1).

(4) Paragraphs (2) and (3) are without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditors' rights).

(5) Where the liquidator is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court or the registrar of companies, the liquidator shall give notice or provide copies, as the case may be, to the member State liquidator.

(6) Paragraph (5) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to co operate and communicate information).

CHAPTER 15

EC REGULATION - CREDITORS' VOLUNTARY WINDING UP - CONFIRMATION BY THE COURT

Application for confirmation

4.84.—(1) Where a company has passed a resolution for voluntary winding up, and no declaration under section 89 has been made, the liquidator may apply to the court for an order confirming the creditors' voluntary winding up for the purposes of the EC Regulation.

(2) The application shall be in writing in the form required by Rule 7.30 and Schedule 5 and verified by affidavit by the liquidator (using the same form) and shall state—

- (a) the name of the applicant;
- (b) the name of the company and its registered number;
- (c) the date on which the resolution for voluntary winding up was passed;
- (d) that the application is accompanied by all of the documents required under paragraph (3) which are true copies of the documents required; and
- (e) that the EC Regulation will apply to the company and whether the proceedings will be main proceedings, territorial proceedings or secondary proceedings.

(3) The liquidator shall lodge in court two copies of the application, together with one copy of the following:—

- (a) the resolution for voluntary winding up referred to by section 84(3);
- (b) evidence of his appointment as liquidator of the company; and
- (c) the statement of affairs required under section 99.

(4) It shall not be necessary to serve the application on, or give notice of it to, any person.

(5) On an application under this Rule the court may confirm the creditors' voluntary winding up.

(6) If the court confirms the creditor's voluntary winding up it may do so without a hearing.

(7) This Rule applies in relation to a UK insurer (within the meaning of the Insurers (Reorganisation and Winding Up) Regulations 2003 ^{M10}) with the modification specified in paragraph (8) below.

(8) For the purposes of paragraph (7), this Rule has effect as if there were substituted for paragraph (1) above—

“(1) Where a UK Insurer (within the meaning of the Insurers (Reorganisation and Winding Up) Regulations 2003) has passed a resolution for voluntary winding up, and no declaration under section 89 has been made, the liquidator may apply to court for an order confirming the creditors' voluntary winding up for the purposes of Articles 9 and 27 of Directive 2001/17/EC of the European Parliament and of the Council of 19th March 2001 on the reorganisation and winding up of insurance undertakings ^{M11}”.

Notice to member State liquidator and creditors in member States

4.85. Where the court has confirmed the creditors' voluntary winding up, the liquidator shall forthwith give notice—

- (a) if there is a member State liquidator in relation to the company, to the member State liquidator;
- (b) in accordance with Article 40 of the EC Regulation (duty to inform creditors).”.

Marginal Citations

M10 S.I. 2003/1102.

M11 O.J. No. L 110, 20.4.2001, p.28.

Amendment to the principal Rules in relation to Part 7 (provisions of general application)

28.—(1) After Rule 7.20 (representation of corporations) insert—

“Interpretation of creditor

7.20A.—(1) This Rule applies where a member State liquidator has been appointed in relation to a person subject to insolvency proceedings.

(2) For the purposes of the Rule 7.18(1) (right of inspection of proxies) a member State liquidator appointed in main proceedings is deemed to be a creditor.

(3) Paragraph (2) is without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditors' rights).”.

(2) After rule 7.26(2) (right to have list of creditors) insert—

“(2A) For the purpose of this Rule a member State liquidator appointed in main proceedings in relation to a person is deemed to be a creditor.”.

Forms

29.—(1) The form 4.7 (Scot) (Statement of Claim by Creditor) contained in Part I of Schedule 2 to these Regulations shall be substituted for the form bearing that number in Schedule 5 to the principal Rules (Forms).

(2) The form contained in Part II of Schedule 2 to these Regulations shall be added to Schedule 5 to the principal Rules as Form 4.30 (Scot).]]

Department of Trade and Industry

NIGEL GRIFFITHS
Parliamentary Under-Secretary of State for
Small Business and Enterprise,

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Insolvency (Scotland) Regulations 2003. Any changes that have already been made by the team appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to :

- Pt. 1 revoked by [S.I. 2016/1034 Sch. 2 Pt. 2](#)
- Sch. 1 revoked by [S.I. 2016/1034 Sch. 2 Pt. 2](#)