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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”), the Bankruptcy (Scotland) Regulations 1985 (“the 1985 Regulations”), and the Insolvency (Scotland) Rules 1986 (S.I. 1986/1921) (“the 1986 Rules”) in the light of Council Regulation (EC) No. 1346/2000 of 29th May 2000 on insolvency proceedings, O.J. No. L 160, 30.06.00. p.1 (“the EC Regulation”) which came 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](http://www.insolvency.gov.uk).

The main amendments to the 1985 Act and the 1985 Regulations are—

- to provide for sequestration proceedings to be brought in the case of the estates of living and dead debtors and certain other estates listed in section 6 of the 1985 Act by a temporary administrator (within the meaning of Article 38 of the EC Regulation) and by 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 (Regulation 5 of these Regulations);
- to provide that a petition for the sequestration of a debtor must, so far as is within the petitioner’s knowledge, state a) whether the debtor has his centre of main interests or an establishment in the United Kingdom; or b) whether the debtor has his centre of main interests or an establishment in a member State other than the United Kingdom (Regulation 7 of these Regulations);
- to make provision with regard to voting at creditors’ meetings and proving for dividends in sequestration proceedings where the EC Regulation applies (Regulation 13 of these Regulations);
- to provide procedures for the conversion of a protected trust deed into a sequestration on the application of a liquidator appointed in another EU member State (“a member State liquidator”) in main proceedings (“member State liquidator” and “main proceedings” are defined by new definitions by reference to the EC Regulation which are inserted into section 73 (interpretation) of the 1985 Act) (Regulation 16 of these Regulations);
- to provide that for the purposes of the 1985 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 a debtor is to be deemed to be a creditor in the sum due to creditors in proceedings in relation to which he holds office (Regulation 17 of these Regulations); and
- to substitute for Form 5 in the Schedule to the 1985 Regulations a new Form 5 which is the same as the substituted form except that a) it stipulates that a creditor making a claim must detail any other proceedings in which the claim has or is being submitted in respect of the same debt or part debt and the amount so claimed; and b) in the case of a member State liquidator he must specify and vouch the underlying claims in respect of which he is claiming as a creditor (Regulation 21 of these Regulations);

The main amendments to the 1986 Rules are—

- to provide procedures for the conversion of company voluntary arrangements and arrangements and administration into winding up for companies on the application of

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a liquidator appointed in another EU member State (“a member State liquidator”) in main proceedings (“member State liquidator” and “main proceedings” are defined by new definitions by reference to the EC Regulation which are inserted into the 1986 Rules);

- to note particular rules in the 1986 Rules to which the right of a member State liquidator to participate in proceedings on the same basis as a creditor is relevant, for example, entitlement to vote under Rules 2.9B (administration) and 4.15 (winding up);
- to provide, under the 1986 Rules, for giving notice of insolvency proceedings, and to give notice of various steps taken in such proceedings, to member State liquidators;
- to provide a procedure allowing a liquidator of a company being wound up voluntarily under Part IV of the Insolvency Act 1986 to apply to the court (using a newly prescribed form) for the confirmation of the proceedings, such confirmation being a pre-requisite for recognition of a voluntary winding up in other member States under the EC Regulation; and
- to make provision with regard to voting at creditors' meetings and proving for dividends in insolvency proceedings where the EC Regulation applies.

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**Changes and effects yet to be applied to :**

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