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STATUTORY INSTRUMENTS

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**2003 No. 2109**

**The Insolvency (Scotland) Regulations 2003**

**PART I**  
**SEQUESTRATION**

**Interpretation**

**2.** In this Part of these Regulations “the Act” means the Bankruptcy (Scotland) Act 1985<sup>(1)</sup>; and “the 1985 Regulations” means the Bankruptcy (Scotland) Regulations 1985<sup>(2)</sup>.

**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;”;
- (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—

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(1) 1985 c. 66.  
(2) S.I. 1985/1925.

**“Petition for sequestration of estate: provision of information**

**6A.—**(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–

**“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–

#### **“Petition for conversion into sequestration**

**59A.**—(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.

#### **Contents of affidavit**

**59B.**—(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.

#### **Power of court**

**59C.**—(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–

### **“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.

### **Trustee’s duties concerning notices and copies of documents**

**60B.—(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 -

#### **“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(3);

“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;

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

“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.”.

#### **Amendment of Regulation 18 of the 1985 Regulations**

**20.** In regulation 18 of the 1985 Regulations<sup>(4)</sup> (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”.

#### **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.

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(4) Regulation 18 was inserted by [S.I. 1993/439](#), regulation 5.