
STATUTORY INSTRUMENTS

2004 No. 353

The Insurers (Reorganisation and Winding Up) Regulations 2004

PART III

MODIFICATIONS OF THE LAW OF INSOLVENCY: NOTIFICATION AND PUBLICATION

Modifications of the law of insolvency

8. The general law of insolvency has effect in relation to UK insurers subject to the provisions of this Part.

Notification of relevant decision to the [F1FCA and, if the insurer is a PRA-authorised person, the PRA]

9.—(1) Where on or after [F23rd March 2004] the court makes a decision, order or appointment of any of the following kinds—

- (a) an administration order under paragraph 13 of Schedule B1 ^{M1}[F3, or paragraph 14 of Schedule B1 to the 1989 Order];
- (b) a winding up order under section 125 of the 1986 Act or Article 105 of the 1989 Order;
- (c) the appointment of a provisional liquidator under section 135(1) of the 1986 Act or Article 115(1) of the 1989 Order;
- (d) an interim order under paragraph 13(1)(d) of Schedule B1 [F4or paragraph 14(1)(d) of Schedule B1 to the 1989 Order];
- (e) a decision to reduce the value of one or more of the insurer's contracts, in accordance with section 377 of the 2000 Act,

it must immediately inform the [F1FCA and, if the insurer is a PRA-authorised person, the PRA], or cause the [F1FCA and, if the insurer is a PRA-authorised person, the PRA] to be informed of the decision, order or appointment which has been made.

(2) Where a decision with respect to the approval of a voluntary arrangement has effect, and the arrangement which is the subject of that decision is a qualifying arrangement, the supervisor must forthwith inform the [F1FCA and, if the insurer is a PRA-authorised person, the PRA] of the arrangement.

(3) Where a liquidator is appointed as mentioned in section 100 of the 1986 Act, paragraph 83 of Schedule B1[F5, paragraph 84 of Schedule B1 to the 1989 Order] or Article 86 of the 1989 Order (appointment of liquidator in a creditors' voluntary winding up), the liquidator must inform the [F1FCA and, if the insurer is a PRA-authorised person, the PRA] forthwith of his appointment.

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(4) Where in the case of a members' voluntary winding up, section 95 of the 1986 Act (effect of company's insolvency) or Article 81 of the 1989 Order applies, the liquidator must inform the ^{F1}FCA and, if the insurer is a PRA-authorized person, the PRA] forthwith that he is of that opinion.

^{F6}(6) Paragraphs (1), (2) and (3) do not require the FCA to be informed in any case where the FCA was represented at all hearings in connection with the application in relation to which the decision, order or appointment is made.

(6A) Paragraphs (1), (2) and (3) do not require the PRA to be informed in any case where the PRA was represented at all hearings in connection with the application in relation to which the decision, order or appointment is made.]

(7) For the purposes of paragraph (2), a “qualifying arrangement” means a voluntary arrangement which—

- (a) varies the rights of creditors as against the insurer and is intended to enable the insurer, and the whole or any part of its undertaking, to survive as a going concern; or
- (b) includes a realisation of some or all of the assets of the insurer and distribution of the proceeds to creditors, with a view to terminating the whole or any part of the business of that insurer.

(8) An administrator, supervisor or liquidator who fails without reasonable excuse to comply with paragraph (2), (3), or (4) (as the case may be) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Textual Amendments

- F1** Words in reg. 9 substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 88(c)**
- F2** Words in reg. 9(1) substituted (3.3.2004) by virtue of [The Insurers \(Reorganisation and Winding Up\) \(Amendment\) Regulations 2004 \(S.I. 2004/546\)](#), regs. 1, **2(2)**
- F3** Words in reg. 9(1)(a) added (6.4.2007) by [The Insurers \(Reorganisation and Winding Up\) \(Amendment\) Regulations 2007 \(S.I. 2007/851\)](#), regs. 1, **2(5)(a)**
- F4** Words in reg. 9(1)(d) added (6.4.2007) by [The Insurers \(Reorganisation and Winding Up\) \(Amendment\) Regulations 2007 \(S.I. 2007/851\)](#), regs. 1, **2(5)(b)**
- F5** Words in reg. 9(3) inserted (6.4.2007) by [The Insurers \(Reorganisation and Winding Up\) \(Amendment\) Regulations 2007 \(S.I. 2007/851\)](#), regs. 1, **2(6)**
- F6** Reg. 9(6)(6A) substituted for reg. 9(6) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 88(d)**

Modifications etc. (not altering text)

- C1** Reg. 9 modified (10.8.2005) by [The Insurers \(Reorganisation and Winding Up\) \(Lloyd's\) Regulations 2005 \(S.I. 2005/1998\)](#), regs. 1, **33** (with reg. 32)

Marginal Citations

- M1** Part II of the 1986 Act was applied to insurers by [S.I. 2002/1242](#), **article 3**, as amended by [S.I. 2003/2134](#) articles 2 and 4 and regulation 53 of these Regulations.

Notification of relevant decision to EEA regulators

^{F7}**10.**

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Textual Amendments

- F7** Reg. 10 omitted (31.12.2020) by virtue of [The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/38\)](#), regs. 1(3), 2(4); 2020 c. 1, Sch. 5 para. 1(1)

Publication of voluntary arrangement, administration order, winding up order or scheme of arrangement

^{F8}11.

Textual Amendments

- F8** Reg. 11 omitted (31.12.2020) by virtue of [The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/38\)](#), regs. 1(3), 2(5); 2020 c. 1, Sch. 5 para. 1(1)

Notification to creditors: winding up proceedings

12.—(1) When a relevant order or appointment is made, or a relevant decision is taken, in relation to a UK insurer on or after 20th April 2003, the appointed officer must as soon as is reasonably practicable—

- (a) notify all known creditors of that insurer in writing of—
 - (i) the matters mentioned in paragraph (4), and
 - (ii) the matters mentioned in paragraph (5); and
- (b) notify all known insurance creditors of that insurer in writing of the matters mentioned in paragraph 6,

in any case.

(2) The appointed officer may comply with the requirement in paragraph (1)(a)(i) and the requirement in paragraph (1)(a)(ii) by separate notifications.

(3) For the purposes of this regulation—

- (a) “relevant order” means—
 - (i) an administration order made under section 8 of the 1986 Act before 15th September 2003, or made on or after that date under paragraph 13 of Schedule B1 in the prescribed circumstances [^{F9}or under paragraph 14 of Schedule B1 to the 1989 Order in the prescribed circumstances],
 - (ii) a winding up order under section 125 of the 1986 Act (powers of the court on hearing a petition) or Article 105 of the 1989 Order (powers of High Court on hearing of petition),
 - (iii) the appointment of a liquidator in accordance with section 138 of the 1986 Act (appointment of a liquidator in Scotland), and
 - (iv) an order appointing a provisional liquidator in accordance with section 135 of that Act or Article 115 of the 1989 Order;
- (b) “relevant appointment” means the appointment of a liquidator as mentioned in section 100 of the 1986 Act or Article 86 of the 1989 Order (appointment of liquidator in a creditors' voluntary winding up); and

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- (c) “relevant decision” means a decision as a result of which a qualifying voluntary arrangement has effect.
- (4) The matters which must be notified to all known creditors in accordance with paragraph (1)(a)(i) are as follows—
 - (a) that a relevant order or appointment has been made, or a relevant decision taken, in relation to the UK insurer; and
 - (b) the date from which that order, appointment or decision has effect.
- (5) The matters which must be notified to all known creditors in accordance with paragraph (1)(a)(ii) are as follows—
 - (a) if applicable, the date by which a creditor must submit his claim in writing;
 - (b) the matters which must be stated in a creditor’s claim;
 - (c) details of any category of debt in relation to which a claim is not required;
 - (d) the person to whom any such claim or any observations on a claim must be submitted; and
 - (e) the consequences of any failure to submit a claim by any specified deadline.
- (6) The matters which must be notified to all known insurance creditors, in accordance with paragraph (1)(b), are as follows—
 - (a) the effect which the relevant order, appointment or decision will, or is likely, to have on the kind of contract of insurance under, or in connection with, which that creditor’s insurance claim against the insurer is founded; and
 - (b) the date from which any variation (resulting from the relevant order or relevant decision) to the risks covered by, or the sums recoverable under, that contract has effect.
- (7) ^{F10}... Where a creditor is notified in accordance with paragraph (1)(a)(ii), the notification must be headed with the words “Invitation to lodge a claim: time limits to be observed” ^{F10}...
- ^{F11}(8)
- (9) The obligation under paragraph (1)(a)(ii) may be discharged by sending a form of proof in accordance with ^{F12}... Rule 4.080 of the Insolvency Rules (Northern Ireland) [^{F13}in cases where those rules apply], provided that the form of proof complies with paragraph (7) or (8) (whichever is applicable).
- [^{F14}(10) The prescribed circumstances are where the administrator includes in the statement required under [^{F15}rule 3.3] of the Insolvency Rules or under Rule 2.003 of the Insolvency Rules (Northern Ireland) a statement to the effect that the objective set out in paragraph 3(1)(a) of Schedule B1 or in paragraph 4(1)(a) of Schedule B1 to the 1989 Order is not reasonably likely to be achieved.]
- (11) Where, after the appointment of an administrator, the administrator concludes that it is not reasonably practicable to achieve the objective specified in paragraph 3(1)(a) of Schedule B1 [^{F16}or in paragraph 4(1)(a) of Schedule B1 to the 1989 Order], he shall inform the court [^{F17}, the FCA and, if the insurer is a PRA-authorized person, the PRA] in writing of that conclusion and upon so doing the order by which he was appointed shall be a relevant order for the purposes of this regulation and the obligation under paragraph (1) shall apply as from the date on which he so informs the court [^{F17}, the FCA and, if the insurer is a PRA-authorized person, the PRA].
- (12) An appointed officer commits an offence if he fails without reasonable excuse to comply with an applicable requirement under this regulation, and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (13) For the purposes of this regulation—
 - (a) “appointed officer” means—

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- (i) in the case of a relevant order falling within paragraph (3)(a)(i) or a relevant appointment falling within paragraph (3)(b)(i), the administrator,
 - (ii) in the case of a relevant order falling within paragraph (3)(a)(ii) or (iii) or a relevant appointment falling within paragraph (3)(b)(ii), the liquidator,
 - (iii) in the case of a relevant order falling within paragraph (3)(a)(iv), the provisional liquidator, or
 - (iv) in the case of a relevant decision, the supervisor; and
- (b) a creditor is a “known” creditor if the appointed officer is aware, or should reasonably be aware of—
- (i) his identity,
 - (ii) his claim or potential claim, and
 - (iii) a recent address where he is likely to receive a communication.

(14) For the purposes of paragraph (3), and of regulations 13 and 14, a voluntary arrangement is a qualifying voluntary arrangement if its purposes include a realisation of some or all of the assets of the UK insurer to which the order relates and a distribution of the proceeds to creditors, with a view to terminating the whole or any part of the business of that insurer.

Textual Amendments

- F9** Words in reg. 12(3)(a)(i) added (6.4.2007) by [The Insurers \(Reorganisation and Winding Up\) \(Amendment\) Regulations 2007 \(S.I. 2007/851\)](#), regs. 1, **2(8)**
- F10** Words in reg. 12(7) omitted (31.12.2020) by virtue of [The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/38\)](#), regs. 1(3), **2(6)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F11** Reg. 12(8) omitted (31.12.2020) by virtue of [The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/38\)](#), regs. 1(3), **2(6)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F12** Words in reg. 12(9) omitted (23.4.2019) by virtue of [The Financial Services and Markets \(Insolvency\) \(Amendment of Miscellaneous Enactments\) Regulations 2019 \(S.I. 2019/755\)](#), regs. 1, **4(4)(a)(i)**
- F13** Words in reg. 12(9) substituted (23.4.2019) by [The Financial Services and Markets \(Insolvency\) \(Amendment of Miscellaneous Enactments\) Regulations 2019 \(S.I. 2019/755\)](#), regs. 1, **4(4)(a)(ii)**
- F14** Reg. 12(10) substituted (6.4.2007) by [The Insurers \(Reorganisation and Winding Up\) \(Amendment\) Regulations 2007 \(S.I. 2007/851\)](#), regs. 1, **2(9)**
- F15** Words in reg. 12(10) substituted (23.4.2019) by [The Financial Services and Markets \(Insolvency\) \(Amendment of Miscellaneous Enactments\) Regulations 2019 \(S.I. 2019/755\)](#), regs. 1, **4(4)(b)**
- F16** Words in reg. 12(11) inserted (6.4.2007) by [The Insurers \(Reorganisation and Winding Up\) \(Amendment\) Regulations 2007 \(S.I. 2007/851\)](#), regs. 1, **2(10)**
- F17** Words in reg. 12(11) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 88(f)**

Modifications etc. (not altering text)

- C2** Reg. 12 applied (with modifications) (10.8.2005) by [The Insurers \(Reorganisation and Winding Up\) \(Lloyd's\) Regulations 2005 \(S.I. 2005/1998\)](#), regs. 1, **36(1)-(7)** (with reg. 32) (as amended by S.I. 2018/208, regs. 1(3), 10(9) (with reg. 21); S.I. 2019/755, regs. 1, 6(3))

Submission of claims by EEA creditors

^{F18}**13.**

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Textual Amendments

- F18** Reg. 13 omitted (31.12.2020) by virtue of [The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/38\)](#), regs. 1(3), 2(7); 2020 c. 1, Sch. 5 para. 1(1)

Reports to creditors

14.—(1) This regulation applies where, on or after 20th April 2003—

- (a) a liquidator is appointed in accordance with section 100 of the 1986 Act or Article 86 of the 1989 Order (creditors' voluntary winding up: appointment of liquidator) or, on or after 15th September 2003, paragraph 83 of Schedule B1 [^{F19}or paragraph 84 of Schedule B1 to the 1989 Order] (moving from administration to creditors' voluntary liquidation);
- (b) a winding up order is made by the court;
- (c) a provisional liquidator is appointed; or
- (d) [^{F20}an administrator is appointed under paragraph 13 of Schedule B1][^{F21}or under paragraph 14 of Schedule B1 to the 1989 Order].

(2) The liquidator or provisional liquidator (as the case may be) must send to every known creditor a report once in every 12 months beginning with the date when his appointment has effect.

(3) The requirement in paragraph (2) does not apply where a liquidator or provisional liquidator is required by order of the court to send a report to creditors at intervals which are more frequent than those required by this regulation.

(4) This regulation is without prejudice to any requirement to send a report to creditors, imposed by the court on the liquidator or provisional liquidator, which is supplementary to the requirements of this regulation.

(5) A liquidator or provisional liquidator commits an offence if he fails without reasonable excuse to comply with an applicable requirement under this regulation, and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) For the purposes of this regulation—

- (a) “known creditor” means—
 - (i) a creditor who is known to the liquidator or provisional liquidator, and
 - (ii) in a case falling within paragraph (1)(b) or (c), a creditor who is specified in the insurer’s statement of affairs (within the meaning of section 131 of the 1986 Act or Article 111 of the 1989 Order); and
- (b) “report” means a written report setting out the position generally as regards the progress of the winding up or provisional liquidation (as the case may be).

Textual Amendments

- F19** Words in reg. 14(1)(a) inserted (6.4.2007) by [The Insurers \(Reorganisation and Winding Up\) \(Amendment\) Regulations 2007 \(S.I. 2007/851\)](#), regs. 1, 2(11)(a)
- F20** Words in reg. 14(1)(d) substituted (3.3.2004) by virtue of [The Insurers \(Reorganisation and Winding Up\) \(Amendment\) Regulations 2004 \(S.I. 2004/546\)](#), regs. 1, 2(3)
- F21** Words in reg. 14(1)(d) added (6.4.2007) by [The Insurers \(Reorganisation and Winding Up\) \(Amendment\) Regulations 2007 \(S.I. 2007/851\)](#), regs. 1, 2(11)(b)

Modifications etc. (not altering text)

- C3** Reg. 14 applied (with modifications) (10.8.2005) by [The Insurers \(Reorganisation and Winding Up\) \(Lloyd's\) Regulations 2005 \(S.I. 2005/1998\)](#), regs. 1, **38(1)-(4)** (with [reg. 32](#)) (as amended by [S.I. 2019/755](#), regs. 1, 6(5))

Service of notices and documents

15.—(1) This regulation applies to any notification, report or other document which is required to be sent to a creditor of a UK insurer by a provision of this Part (“a relevant notification”).

(2) A relevant notification may be sent to a creditor by either of the following methods—

- (a) posting it to the proper address of the creditor;
- (b) transmitting it electronically, in accordance with paragraph (4).

(3) For the purposes of paragraph (2)(a), the proper address of a creditor is any current address provided by that creditor as an address for service of a relevant notification or, if no such address is provided—

- (a) the last known address of that creditor (whether his residence or a place where he carries on business);
- (b) in the case of a body corporate, the address of its registered or principal office; or
- (c) in the case of an unincorporated association, the address of its principal office.

(4) A relevant notification may be transmitted electronically only if it is sent to—

- (a) an electronic address notified to the relevant officer by the creditor for this purpose; or
- (b) if no such address has been notified, an electronic address at which the relevant officer reasonably believes the creditor will receive the notification.

(5) Any requirement in this part to send a relevant notification to a creditor shall also be treated as satisfied if—

- (a) the creditor has agreed with—
 - (i) the UK insurer which is liable under the creditor’s claim, or
 - (ii) the relevant officer,

that information which is required to be sent to him (whether pursuant to a statutory or contractual obligation, or otherwise) may instead be accessed by him on a web site;

- (b) the agreement applies to the relevant notification in question;
- (c) the creditor is notified of—
 - (i) the publication of the relevant notification on a web site,
 - (ii) the address of that web site,
 - (iii) the place on that web site where the relevant notification may be accessed, and how it may be accessed; and

(d) the relevant notification is published on that web site throughout a period of at least one month beginning with the date on which the creditor is notified in accordance with sub-paragraph (c):

(6) Where, in a case in which paragraph (5) is relied on for compliance with a requirement of regulation 12 or 14—

- (a) a relevant notification is published for a part, but not all, of the period mentioned in paragraph (5)(d); but

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(b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the relevant officer to prevent or avoid, no offence is committed under regulation 12(10) or regulation 14(5) (as the case may be) by reason of that failure.

(7) In this regulation—

- (a) “electronic address” includes any number or address used for the purposes of receiving electronic communications;
- (b) “electronic communication” means an electronic communication within the meaning of the Electronic Communications Act 2000^{M2} the processing of which on receipt is intended to produce writing; and
- (c) “relevant officer” means (as the case may be) an administrator, liquidator, provisional liquidator or supervisor who is required to send a relevant notification to a creditor by a provision of this Part.

Modifications etc. (not altering text)

C4 Reg. 15 applied (with modifications) (10.8.2005) by [The Insurers \(Reorganisation and Winding Up\) \(Lloyd's\) Regulations 2005 \(S.I. 2005/1998\)](#), regs. 1, **39(1)-(3)** (with reg. 32)

Marginal Citations

M2 2000 c. 7.

Disclosure of confidential information received from an EEA regulator

^{F22}**16.**

Textual Amendments

F22 Reg. 16 omitted (31.12.2020) by virtue of [The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/38\)](#), regs. 1(3), **2(8)**; 2020 c. 1, Sch. 5 para. 1(1)

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Changes and effects yet to be applied to :

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)