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STATUTORY INSTRUMENTS

2017 No. 1115

INSOLVENCY, ENGLAND AND WALES

COMPANIES

INDIVIDUALS

**The Insolvency (England and Wales) and Insolvency (Scotland)
(Miscellaneous and Consequential Amendments) Rules 2017**

Made - - - - - *15th November 2017*

Laid before Parliament *16th November 2017*

Coming into force - - - *8th December 2017*

The Lord Chancellor has consulted the committee existing for the purposes of section 413 of the Insolvency Act 1986(a) (“the Act”).

The Lord Chancellor, with the concurrence of the Secretary of State and with the concurrence of the Chancellor of the High Court (nominated by the Lord Chief Justice under section 411(7) and 412(6) of the Act) in relation to those rules which affect court procedure, in exercise of the powers conferred by sections 411 and 412 of the Act(b), makes the Rules in Part 1.

The Secretary of State, in exercise of the powers conferred on him by Introductory Rule 5(1) of the Insolvency (England and Wales) Rules 2016(c) and sections 411 and 412 of, and paragraphs 27 of Schedule 8 and 30 of Schedule 9 to, the Act, makes the Rules in Part 2.

The Secretary of State, in exercise of the powers conferred by section 411 of the Act, makes the Rules in Part 3.

The Secretary of State, with the concurrence of the Lord Chancellor, in exercise of the powers conferred by section 14 of the Insolvency Act 2000(d) makes the Rules in Part 4.

(a) 1986 c. 45.

(b) Sections 411 and 412 confer on the Lord Chancellor the power to make rules in relation to insolvency in England and Wales with the concurrence of the Secretary of State and the Lord Chief Justice (in the case of rules that affect court procedure). Relevant amendments to sections 411 and 412 are made by regulations 2 and 3 of S.I. 2002/1037; paragraphs 185, 188 and 189 of Schedule 4 to the Constitutional Reform Act 2005 (c.4); paragraphs 1 and 8 of Schedule 20 to the Tribunals, Courts and Enforcement Act 2007 (c.15); paragraph 44 of Schedule 4 to S.I. 2007/2194; and paragraph 79 of Schedule 1 to S.I. 2009/1941.

(c) S.I. 2016/1024.

(d) 2000 c. 39.

The Secretary of State being designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to insolvency^(a) in exercise of the powers conferred upon him by that section, makes the Rules in Part 5.

Citation, commencement and extent

1.—(1) These Rules may be cited as the Insolvency (England and Wales) and Insolvency (Scotland) (Miscellaneous and Consequential Amendments) Rules 2017 and come into force on 8th December 2017.

(2) Parts 1-2 and 4-5 of these Rules extend to England and Wales only.

(3) Part 3 of these Rules extends to Scotland only.

PART 1

Amendments to the Insolvency (England and Wales) Rules 2016

2. The Insolvency (England and Wales) Rules 2016 are amended as follows.

Notice of members' meeting and attendance of officers

3. In rule 2.30(1) for “2.25(2)” substitute “2.25(3)”.

Advertising administrator's proposals and notices of extension of time for delivery of proposals (paragraph 49 of Schedule B1)

4. In rule 3.37(4) for “(1)(b)” substitute “(2)(b)”.

Moving from administration to dissolution (paragraph 84 of Schedule B1)

5. In rule 3.61(3) after “paragraph 84(5)(b)” insert “but excluding opted-out creditors”.

Information to creditors and contributories

6. In rule 6.15(1)(b), before “a report” insert “be accompanied by”.

The statutory demand (section 268)

7. After rule 10.1(9) insert—

“(10) When the statutory demand is to be served out of the jurisdiction, the time limits of 18 days and 21 days referred to in sub-paragraphs 10.1(1)(m) and (n) above must be amended as follows—

(a) for any reference to 18 days there must be substituted the number of days which is the appropriate number of days set out in the table accompanying the Practice Direction supplementing Section IV of CPR Part 6 plus 4 days; and

(b) for any reference to 21 days there must be substituted the number of days which is the appropriate number of days set out in the table accompanying the Practice Direction supplementing Section IV of CPR Part 6 plus 7 days.”

Proof of service of statutory demand

8. After rule 10.9(3) insert—

(a) 1972 c. 68. The Secretary of State was designated by S.I. 2001/3495.

“(4) The court may decline to file the petition if not satisfied that the creditor has discharged the obligation imposed by rule 10.2.”

General rule as to priority

9.—(1) Rule 10.149 is amended as follows.

(2) For sub-paragraph (d) substitute—

“(d) the fee payable under any order made under section 415 for the performance by the official receiver of the general duties of the official receiver and any repayable sum deposited under any such order as security for the fee;”

(3) Omit sub-paragraph (e).

Blank proxy

10. For rule 16.3(4) substitute—

“(4) When it is delivered, a blank proxy must not have inserted into it the name or description of any person as proxy-holder or as a nominee for the office-holder, or instructions as to how a person appointed as proxy-holder is to act.”

Establishment of committees

11.—(1) Rule 17.5 is amended as follows.

(2) In paragraph (1) after “decision procedure” insert “or convener of the deemed consent process”.

(3) For paragraph (5) substitute—

“(5) The committee is not established (and accordingly cannot act) until the office-holder has sent a notice of its membership in order to comply with paragraph (9) or (10).”

Group coordination proceedings (Section 2 of Chapter 5 of the EU Regulation)

12. In rule 21.12(2)(a) after “in this rule includes” insert “as the context requires”.

Schedule 2 (Transitional and savings provisions)

13.—(1) Schedule 2 is amended as follows.

(2) In paragraph 7(5) after “ceased to act” insert “, or an administrator has sent a progress report to creditors in support of a request for their consent to an extension of the administration,”.

(3) In paragraph 14(3) after “rescind” insert “, vary”, and for “14(2)(a)” substitute “14(2)”.

(4) In the title of paragraph 21 for “fee” substitute “fees and expenses”.

(5) For the introductory words to paragraph 21(1) substitute—

“(1) Rules 18.4(1)(e), 18.16(4) to (10), and 18.30 do not apply in a case where before 1st October 2015—”

(6) For the title of paragraph 22 substitute—

“Transitional provision for companies entering administration before 6th April 2010 and moving to voluntary liquidation between 6th April 2010 and 8th December 2017 inclusive of those dates”

(7) For paragraph 22 substitute—

“**22.** Where—

(a) Inserted by S.I. 2017/702.

- (a) a company goes into administration before 6th April 2010; and
- (b) the company goes into voluntary liquidation under paragraph 83 of Schedule B1 between 6th April 2010 and 8th December 2017 inclusive of those dates;

the 1986 Rules as amended by the Insolvency (Amendment) Rules 2010() apply to the extent necessary to give effect to section 104A of the Act notwithstanding that by virtue of paragraph 1(6)(a) or (b) of Schedule 4 to the Insolvency (Amendment) Rules 2010 those amendments to the Insolvency Rules 1986 would otherwise not apply.”

Schedule 4 (Service of documents)

14. In Schedule 4 for paragraph 6(3) substitute—

“(3) Where the court has directed that service be effected in a particular manner, the certificate must be accompanied by a sealed copy of the order directing such manner of service.”

PART 2

Amendments to the Insolvency Regulations 1994

15. The Insolvency Regulations 1994(a) are amended as follows.

Provision of accounts by liquidator and audit of accounts

16.—(1) Regulation 14 is amended as follows.

(2) In paragraph (2) for “the holding of the final general meeting of creditors” substitute “sending the final account to creditors”.

(3) For paragraph (3) substitute—

“(3) In the case of a winding up by the court, where an account has been sent pursuant to section 146(3)(a), the liquidator shall, within 14 days of sending the account, send to the Secretary of State an account of his receipts and payments as liquidator which are not covered by any previous account so sent by him, or if no such account has been sent an account of his receipts and payments in respect of the whole period of his office.”

Provision of accounts by trustee and audit of accounts

17.—(1) Regulation 28 is amended as follows.

(2) In paragraph (2) for “the holding of the final general meeting of creditors” substitute “sending the final report to creditors”.

(3) For paragraph (3) substitute—

“(3) Where a report has been sent pursuant to section 331(2A)(a), the trustee shall, within 14 days of sending the report, send to the Secretary of State an account of his receipts and payments as trustee which are not covered by any previous account so sent by him, or if no such account has been sent, an account of his receipts and payments in respect of the whole period of his office.”

(a) S.I. 1994/2507 as amended by S.I. 2017/369.

PART 3

Amendment to the Insolvency (Scotland) Rules 1986

18. The Insolvency (Scotland) Rules 1986(a) are amended as follows.

Rule 7.20E(2) Group coordination proceedings (Section 2 of Chapter 5 of the EU Regulation)

19. In rule 7.20E(2) for “Scotland” substitute “England and Wales”.

PART 4

Amendment to the Cross-Border Insolvency Regulations 2006

20. The Cross-Border Insolvency Regulations 2006(b) are amended as follows.

21. In Schedule 2 paragraph 1 sub-paragraph 1 in the definition of “the Rules”, for “Insolvency Rules 1986” substitute “Insolvency (England and Wales) Rules 2016”.

PART 5

Amendments under section 2(2) of the European Communities Act 1972

The Insolvency (England and Wales) Rules 2016

22. The Insolvency (England and Wales) Rules 2016 are amended as follows.

References to “EU Regulation”

23. For “EC Regulation” substitute “EU Regulation” in the following provisions—

- (1) rule 1.1(1) and (2);
- (2) rule 1.2(2) in the definitions of “centre of main interests”;
- (3) the title of rule 1.7;
- (4) rule 1.7(a)(ii);
- (5) rule 1.28(1);
- (6) rule 1.36(1);
- (7) rule 3.13(1)(h) and (i);
- (8) rule 10.31(1)(e)(i) (in both places where it occurs) and (ii);
- (9) rule 10.41(2)(d)(i) (in both places where it occurs) and (ii);
- (10) rule 21.4(2); and
- (11) the entry for rule 21.2 in the table in paragraph 6 sub-paragraph (3) of Schedule 4.

24. In rule 1.2(2) in the definition of “temporary administrator” for “Article 38 of the EC Regulation” substitute “Article 52 of the EU Regulation”.

(a) S.I. 1986/1915 as amended by S.I. 1987/1921, S.I. 1999/1820, S.I. 2002/2709, S.I. 2003/2108, S.I. 2003/2109, S.I. 2003/2111, S.I. 2006/734, S.I. 2007/2537, S.I. 2008/662, S.I. 2009/662, S.I. 2010/688, S.I. 2012/2404, S.S.I. 2008/393 and S.S.I. 2014/114.

(b) S.I. 2006/1030 as amended by S.I. 2017/702.

25. For “Article 5 of the EC Regulation” substitute “Article 8 of the EU Regulation” in the following provisions—

- (1) rule 10.123(5); and
- (2) rule 14.16(3).

26. In rule 7.33(1)(g) for “Article 29 of the EC Regulation” substitute “Article 37 of the EU Regulation”.

27. In rule 10.8(1)(g) for “Article 2(h) of the EC Regulation” substitute “Article 2(10) of the EU Regulation”.

28. In rule 21.3(1) for “Article 37 of the EC Regulation” substitute “Article 51 of the EU Regulation”.

29. In rule 21.6(2) for “Article 40 of the EC Regulation” substitute “Article 54 of the EU Regulation”.

References to “non-EU proceedings”

30. For “non-EC proceedings” substitute “non-EU proceedings” in the following provisions—

- (1) the introductory words to rule 1.7;
- (2) rule 1.7(a)(iii);
- (3) the entry for Type of proceedings in the table in rule 2.3(1);
- (4) rule 2.14(2A)(a);
- (5) rule 2.38(2)(d);
- (6) rule 3.3(2)(h);
- (7) rule 3.6(3)(f);
- (8) rule 3.16(2)(k);
- (9) rule 3.17(1)(k);
- (10) rule 3.21(1)(i);
- (11) rule 3.23(1)(i);
- (12) rule 3.24(1)(h);
- (13) rule 3.25(2)(i);
- (14) rule 3.35(1)(m);
- (15) rule 7.5(1)(n);
- (16) rule 7.6(8);
- (17) rule 7.20(1)(g);
- (18) rule 7.26(1)(n);
- (19) rule 7.28(6);
- (20) rule 7.32(1)(h);
- (21) rule 7.35(1)(e)(ii);
- (22) the entry for Type of proceedings in the table in rule 8.3;
- (23) rule 8.24(2)(c); and
- (24) rule 10.51(e)(ii).

(a) Inserted by S.I. 2017/702.

The European Grouping of Territorial Cooperation Regulations 2007

31. The European Grouping of Territorial Cooperation Regulations 2007(a) are amended as follows.

32. In Schedule 1 paragraph 9 for “rule 4.21 of the Insolvency Rules 1986” substitute “rule 7.22(1) of the Insolvency (England and Wales) Rules 2016”.

Signed, by the authority of the Lord Chancellor

13th November 2017

I concur, by the authority of the Lord Chief Justice

14th November 2017

I concur

15th November 2017

David Lidington
Secretary of State
Ministry of Justice

Geoffrey Vos
Chancellor of the High Court

Margot James
Secretary of State

Department for Business, Energy and Industrial Strategy

EXPLANATORY NOTE

(This note is not part of the Rules)

Part 1 of these Rules amends provisions in the Insolvency (England and Wales) Rules 2016 (“the 2016 Rules”), which came into force on 6 April 2017. The purpose of these amendments is to effect minor corrections and clarifications. Rule 7 has a more substantive effect in that it inserts a new provision reflecting the Practice Direction supplementing Section IV of CPR Part 6, for service of a statutory demand outside of the jurisdiction. Rule 8 enables the court to decline to file a bankruptcy petition if the creditor has not satisfied the requirement to bring the debtor’s attention to the statutory demand.

Part 2 of these Rules amends the Insolvency Regulations 1994 so that regulations 14 and 28, for compulsory winding-up and bankruptcy respectively, continue to function following the abolition of final meetings in those processes.

Part 3 of these Rules corrects an amendment made to the Insolvency (Scotland) Rules 1986 by the Insolvency Amendment (EU 2015/848) Regulations 2017.

Part 4 of these Rules makes an amendment to the Cross-Border Insolvency Regulations 2006 consequential on the 2016 Rules.

Part 5 of these Rules amends the 2016 Rules to reflect the recast EU Insolvency Regulation. Part 5 also makes an amendment to the European Grouping of Territorial Cooperation Regulations 2006 consequential on the 2016 Rules.

As these Rules largely correct and clarify the 2016 Rules, the free issue procedure has been applied.

A full impact assessment has not been produced for this instrument, as no impact on the private, voluntary or public sectors is foreseen. An Impact Assessment was published alongside the 2016 Rules, which can be accessed at www.legislation.gov.uk.

An Explanatory Memorandum has been prepared and is available alongside these Rules at www.legislation.gov.uk.

(a) S.I. 2007/1949.

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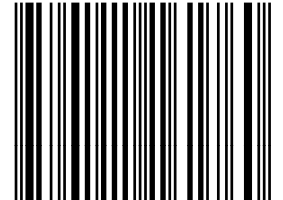
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