

SCHEDULE

PART 8

Northern Ireland

Amendments to the Insolvency Rules (Northern Ireland) 1991

121.—(1) The Insolvency Rules (Northern Ireland) 1991(1) are amended as follows.

(2) In Rule 0.2(2)—

(a) for the definition of “main proceedings” substitute—

““main proceedings” means proceedings opened in accordance with Article 3(1) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of that Regulation and—

(a) in relation to Northern Ireland, are set out in Annex A to that Regulation under the heading “United Kingdom”; and

(b) in relation to another member State, are set out under the heading relating to that member State.”;

(b) in the definition of “member State liquidator” for “a person falling within the definition of liquidator in Article 2(b) of the EC Regulation” substitute “a person falling within the definition of “insolvency practitioner” in Article 2(5) of the EU Regulation”;

(c) for the definition of “secondary proceedings” substitute the following—

““secondary proceedings” means proceedings opened in accordance with Article 3(2) and (3) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of that Regulation and which—

(a) in relation to Northern Ireland are set out in Annex A to that Regulation under the heading “United Kingdom”; and

(b) in relation to another member State are set out under the heading relating to that member State”;

(d) for the definition of “territorial proceedings” substitute—

““territorial proceedings” means proceedings opened in accordance with Article 3(2) and (4) of the EU Regulation and falling within definition of insolvency proceedings in Article 2(4) of that Regulation and which—

(a) in relation to Northern Ireland, are set out in Annex A to that Regulation under the heading “United Kingdom”; and

(b) in relation to another member State, are set out under the heading relating to that member State”.

Rule 1.09 (Summoning of meetings under Article 16)

122.—(1) Rule 1.09 is amended as follows.

(2) After paragraph (1) insert—

“(1A) The nominee shall examine whether there is jurisdiction to open the proceedings and shall specify in the nominee’s comments on the proposal required by paragraphs (2)

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(c) and (3)(c) whether the proceedings will be main, secondary, territorial or non-EU proceedings with the reasons for so stating.”

Rule 1.31 (application for conversion into winding up)

123. In Rule 1.31—

- (a) in paragraph (1) for “Article 37 of the EC Regulation (conversion of earlier proceedings)” substitute “Article 51 of the EU Regulation” and after the words “of a voluntary arrangement into a winding up” insert the words “or of a winding up into a voluntary arrangement; and
- (b) in paragraph (3) at the beginning of sub-paragraph (b) insert “In the case of an application for the conversion of a voluntary arrangement into a winding up, on”.

Rule 1.32 (contents of affidavit)

124. In Rule 1.32—

- (a) for paragraph (1)(b) substitute “the deponent’s belief that the conversion of a voluntary arrangement into a winding up or of a winding up into a voluntary arrangement would be most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings.”; and
- (b) In paragraph (1)
 - (i) at the beginning of sub-paragraph (c) insert, “In the case of an application for the conversion of a voluntary arrangement into a winding up”; and
 - (ii) for sub-paragraph (d)(i) substitute, “in deciding whether to make the order applied for, and”.

Rule 1.33 (power of court)

125. In Rule 2.133—

- (a) in paragraph (1) after “into” insert “a voluntary arrangement or”;
- (b) in paragraph (2) after “into” insert “a voluntary arrangement or”; and
- (c) in paragraph (3), after “paragraph” in the second place where it occurs, insert “for conversion into winding up”.

Interpretation of creditor and notice to member State liquidator

126. In Rule 1.34—

- (a) for the heading substitute “Proceedings in another member State: duty to give notice”;
- (b) in paragraph (1)(a) after “liquidator” insert “, provisional liquidator, interim receiver”;
- (c) in paragraph (2) for “the member State liquidator” substitute—
 - “(a) any member State liquidator; or
 - (b) where the supervisor, administrator, liquidator, provisional liquidator, interim receiver or trustee knows that an application has been made to commence insolvency proceedings in another member State but a member State liquidator has not yet been appointed to the court to which that application has been made.”; and
- (d) in paragraph (3)—
 - (i) after “liquidator” insert “, provisional liquidator, interim receiver”;

(ii) for “Article 31” substitute “Article 41 of the EU Regulation”.

Documents submitted to the court to obtain moratorium

127. Rule 1.39(2) is amended by inserting after subparagraph (b)—

“(c) a statement from the nominee whether the proceedings will be main, secondary, territorial or non-EC proceedings with the reasons for so stating.”.

Rule 2.068 (expenses of the Administration)

128. In paragraph (1)(f) of Rule 2.068 after “(including any” insert “costs referred to in Articles 30 or 59 of the EU Regulations and”.

Rules 2.131 (application for conversion into winding-up)

129. In Rule 2.131—

(a) in paragraph (1) for “Article 37 of the EC Regulation (conversion of earlier proceedings)” substitute “Article 51 of the EU Regulation” and after the words “of an administration into a winding up” insert the words “or of a winding up into an administration”;

(b) in paragraph (3) at the beginning of sub-paragraph (b) insert “In the case of an application for the conversion of an administration into a winding up, on”.

Rule 2.132 (contents of affidavit)

130. In Rule 2.132—

(a) for paragraph (1)(b) substitute “the deponent’s belief that the conversion of the administration into a winding up or of a winding up into an administration would be most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings.”; and

(b) In paragraph (1)—

(i) at the beginning of sub-paragraph (c) insert, “In the case of an application for the conversion of an administration into a winding up”; and

(ii) for sub-paragraph (d)(i) substitute, “in deciding whether to make an administration or winding up order, as the case may be”.

Rule 2.133 (power of court)

131. In Rule 2.133—

(a) in paragraph (1) after “into” insert “administration or”;

(b) in paragraph (2) after “into” insert “administration or”; and

(c) in paragraph (3), after “paragraph” in the second place where it occurs, insert “for conversion into winding up”.

Interpretation of creditor and notice to member State liquidator

132. In Rule 2.134—

(a) in paragraph (1) after “liquidator” insert “, provisional liquidator, interim receiver”;

(b) in paragraph (5) for “the member State liquidator.” substitute—

“(a) any member State liquidator; or

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- (b) where the supervisor, administrator, liquidator, provisional liquidator, interim receiver or trustee knows that an application has been made to commence insolvency proceedings in another member State but a member State liquidator has not yet been appointed to the court to which that application has been made.”; and
- (c) in paragraph (6) for “Article 31” substitute “Article 41”.

133. After Rule 2.134 insert the following—

“Main proceedings in Northern Ireland: undertaking by office-holder in respect of assets in another member State (Article 36 of the EU Regulation)”

[Note: “local creditor” is defined in Article 2(11) of the EU Regulation.]

2.135.—(1) This Rule applies where an office-holder in main proceedings proposes to give an undertaking under Article 36 of the EU Regulation in respect of assets located in another member State.

(2) The following requirements apply in respect of the proposed undertaking.

(3) In addition to the requirements as to form and content set out in Article 36 the undertaking shall contain—

- (a) the heading “Proposed Undertaking under Article 36 of the EU Insolvency Regulation (2015/848)”;
- (b) identification details for the main proceedings;
- (c) identification and contact details for the office-holder; and
- (d) a description of the effect of the undertaking if approved.

(4) The proposed undertaking shall be delivered to all the local creditors in the member State concerned of whose address the office-holder is aware.

(5) Where the undertaking is rejected the office-holder shall inform all the creditors of the company of the rejection of the undertaking as soon as reasonably practicable.

(6) Where the undertaking is approved the office-holder shall as soon as reasonably practicable—

- (a) send a copy of the undertaking to all the creditors with a notice informing them of the approval of the undertaking and of its effect (so far as they have not already been given this information under paragraph (3)(d));
- (b) in the case of a bankruptcy file the undertaking on the court file or the bankruptcy file as the case may be;
- (c) where the insolvency proceedings relate to a registered company deliver a copy of the undertaking to the registrar of companies.

(7) The office-holder may advertise details of the undertaking in the other member State in such manner as the office-holder thinks fit.

Main proceedings in another member State: approval of undertaking offered by the member State liquidator to local creditors in the UK

2.136.—(1) This Rule applies where a member State liquidator proposes an undertaking under Article 36 and the secondary proceedings which the undertaking is intended to avoid would be insolvency proceedings to which these Rules apply.

(2) In an administration, a creditors' voluntary winding-up, a winding-up by the court, or a bankruptcy, where a decision is being sought by a meeting the convener shall advertise in the Belfast Gazette a notice of the procedure stating—

- (a) that a meeting of creditors or contributories is to take place;
- (b) the venue for the meeting;
- (c) the purpose of the meeting; and
- (d) the time and date by which, and place at which, those attending shall deliver proxies and proofs (if not already delivered) in order to be entitled to vote.

(3) The notice shall also state if the procedure results from a request of one or more creditors, the fact that it was so summoned and the section of the order under which it was summoned.

(4) The notice shall be advertised in the Belfast Gazette before or as soon as reasonably practicable after notice of the meeting is delivered in accordance with these Rules.

(5) Information to be advertised in the Belfast Gazette under this Rule may also be advertised in such other manner as the convener thinks fit.

(6) Rules 1.19, 1.20, 1.52 and 1.53 apply as if the decision to approve the undertaking were a decision to approve a CVA.

(7) Where the main proceedings relate to a registered company the member State liquidator shall deliver a copy of the approved undertaking to the registrar of companies.

(8) Where the main proceedings relate to an individual the member State liquidator shall advertise a notice of the undertaking in the Belfast gazette containing—

- (a) the fact that the undertaking was approved;
- (b) the date the undertaking was approved; and
- (c) a description of the effect of the undertaking.

Powers of an office-holder or member State liquidator in proceedings concerning members of a group of companies (Article 60 of the EC Regulation)

2.137. Where an office-holder or a member State liquidator makes an application in accordance with paragraph (1)(b) of Article 60 of the EU Regulation the application shall state with reasons why the applicant thinks the matters set out in (i) to (iv) apply.

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

2.138.—(1) An application to open group coordination proceedings shall be headed “Application under Article 61 of Regulation (EU) 2015/848 to open group coordination proceedings” and shall, in addition to the requirements in Article 61 contain—

- (a) identification and contact details for the office-holder making the application;
- (b) identification for the insolvency proceedings by virtue of which the office-holder is making the application;
- (c) identification details for the insolvency proceedings in respect of each company which is a member of the group;
- (d) contact details for the office-holders and member state liquidators appointed in those proceedings;
- (e) identification details for any insolvency proceedings in respect of a member of the group which are not to be subject to the coordination because of an objection to being included: and

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- (f) if relevant, a copy of any such agreement as is mentioned in Article 66 of the EC Regulation.
- (2) “Office-holder” in this Rule includes as the context requires a person holding office in insolvency proceedings in relation to the company in Scotland or Northern Ireland and a member State liquidator.

Group coordination order (Article 68 EU Regulation)

[Note: an order opening group coordination proceedings shall also contain the matters set out in Article 68(1)(a) to (c).]

- 2.139.**—(1) An order opening group coordination proceedings shall also contain—
- (a) identification details for the insolvency proceedings by virtue of which the office-holder is making the application;
 - (b) identification and contact details for the office-holder making the application;
 - (c) identification details for the insolvency proceedings which are subject to the coordination; and
 - (d) identification details for any insolvency proceedings for a member of the group which are not subject to the coordination because of an objection to being included.
- (2) The office-holder who made the application shall deliver a copy of the order to the coordinator and to any person who is, in respect of proceedings subject to the coordination—
- (a) an office-holder,
 - (b) a person holding office in insolvency proceedings in relation to the company in Scotland or England and Wales, and
 - (c) a member State liquidator.

Delivery of group coordination order to registrar of companies

2.140. An office-holder in respect of insolvency proceedings subject to coordination must deliver a copy of the group coordination order to the registrar of companies.

2.141.—(1) Where, under the second paragraph of Article 70(2) of the EU Regulation, an office-holder is required to give reasons for not following the coordinator’s recommendations or the group coordination plan those reasons shall be given as soon as reasonably practicable by a notice to all the creditors.

(2) The reasons may be given in the next progress report where doing so satisfies the requirement to give the reasons as soon as reasonably practicable.

Publication of opening of proceedings by a member State liquidator

- 2.142.**—(1) This Rule applies where—
- (a) a company subject to insolvency proceedings has an establishment in Northern Ireland; and
 - (b) a member State liquidator is required or authorised under Article 28 of the EU Regulation to publish a notice.
- (2) The notice shall be published in the Belfast Gazette.

Statement by office-holder that insolvency proceedings are open in another member State are closed etc

2.143. A statement by a member State liquidator under any of Articles 166, 167, 169 or paragraph 85 of Schedule B1 informing the registrar of companies that the insolvency proceedings in another member State are closed or that the member State liquidator consents to the dissolution must contain—

- (a) identification details for the company; and
- (b) identification details for the member State liquidator.”.

Rule 4.027 (Appointment of provisional liquidator)

134. In Rule 4.027(2) after sub-paragraph (e) insert—

- “(f) a statement whether the proceedings will be main, secondary, territorial or non-EU proceedings with the reasons for so stating.”.

Rule 4.228 (General Rule as to priority)

135. In Rule 4.228 (3)(m) after “(including any” insert “costs referred to in Articles 30 or 59 of the EU Regulation and”.

Rule 5.14 (Nominee’s report to the court)

136.—(1) Rule 5.14 is amended as follows.

(2) After paragraph (3) insert—

- “(3A) The nominee shall examine whether there is jurisdiction to open the proceedings and shall specify in the nominee’s report whether the proceedings will be main, secondary, territorial on non-EU proceedings with the reasons for so stating.”.

Chapter 13 of Part 5

137. In the heading to Chapter 13 of Part 5 for the words “EC Regulation” substitute the words “EU Regulation”.

Rule 5.61 (Application for conversion of voluntary arrangement into bankruptcy)

138. In Rule 5.61(2) in paragraph (1) for “Article 37 of the EC Regulation (conversion of earlier proceedings)” substitute “Article 51 of the EU Regulation” and after the words “of a voluntary arrangement into a bankruptcy” insert the words “or of a bankruptcy into a voluntary arrangement”.

Rule 5.62 (contents of affidavit)

139. In Rule 5.62 for paragraph (1)(b) substitute “the deponent’s belief that the conversion of the IVA into a bankruptcy or of the bankruptcy into an IVA would be most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings.”

Rule 6.049 (Application for the appointment of interim receiver)

140. In Rule 6.049—

(2) This and Rule 5.62 were substituted by paragraph 54 of the Schedule to [S.R. 2006/47](#).

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- (a) In paragraph (1)(e), after the words “main proceedings” insert the words “(including in accordance with Article 37 of the EU Regulation)”; and
- (b) In paragraph (2) after sub-paragraph (d) insert—
 - “(e) a statement whether the proceedings will be main, secondary, territorial or non-EU proceedings with the reasons for so stating.”.

Rule 6.222 (General Rule as to priority)

141. In Rule 6.222(1)(m) after “(including any” insert “insert costs referred to in Articles 30 or 59 of the EU Regulation and”.

Rule 7.56 (Application for confirmation)

142. In Rule 7.56(3) at the end of sub-paragraph (e) insert “and the reasons for so stating”.