
STATUTORY INSTRUMENTS

2018 No. 174

The Scotland Act 1998 (Insolvency Functions) Order 2018

Reserved functions shared by a Minister of the Crown and the Scottish Ministers

2.—(1) Subject to paragraph (2), the functions described in paragraph (3) are exercisable by the Scottish Ministers concurrently with a Minister of the Crown, so far as they are exercisable by the Minister of the Crown in or as regards Scotland.

(2) The Scottish Ministers may exercise a function under paragraph (1) only with the agreement of a Minister of the Crown.

(3) The functions are those conferred by—

- (a) section 411(1)(b) and (2) of the 1986 Act⁽¹⁾ (company insolvency rules) for the purpose of making rules which give effect to any provision about winding up in the Parts of the 1986 Act described in paragraph (4) or the EU Regulation;
- (b) section 411(1)(b) and (2) of the 1986 Act as applied by section 23, paragraph 69(1)(a) of Schedule 10 to the 1992 Act⁽²⁾ (insolvency rules and fees) for the purpose of making rules, in relation to incorporated friendly societies, which give effect to any provision about winding up in the Parts of the 1986 Act described in paragraph (5);
- (c) sections 14(2)(a), 16 and 17(1), (2) and (3) of the 2000 Act (insolvency and winding up) for the purpose of making provision by regulations about the winding up of—
 - (i) limited liability partnerships; and
 - (ii) oversea limited liability partnerships,

by applying or incorporating, with such modifications as appear appropriate, rules made under section 411(1)(b) and (2) of the 1986 Act which give effect to any provision about winding up in the Parts of the 1986 Act described in paragraph (5)⁽³⁾ or the EU Regulation.

(4) The Parts of the 1986 Act are—

- (a) Part 4 (winding up of companies registered under the Companies Acts);
- (b) Part 5 (winding up of unregistered companies);

(1) Section 411(1) was amended by [S.I. 2002/1037](#), regulation 3(1); [S.I. 2017/702](#), regulation 2 and the Schedule, Part 1, paragraph 24 and the Constitutional Reform Act 2005 (c.4), Schedule 4, Part 1, paragraph 188.

(2) Paragraph 69(1) of Schedule 10 provides that rules may be made under section 411 of the Insolvency Act 1986 (c.45) (“the 1986 Act”) for the purpose of giving effect, in relation to incorporated friendly societies, to the provisions of the applicable winding up legislation. A definition of “the applicable winding up legislation” is contained in section 23(3) of the Friendly Societies Act 1992 (c.40) (“the 1992 Act”) and means “the companies winding up legislation” (as defined in section 23(1) of that Act) and includes, so far as relevant to this Order, Parts 4, 6 and 7 of the 1986 Act, modified as described in section 23(2) of that Act (ie modified as set out in Parts 1 to 3 of Schedule 10 to that Act).

(3) Parts 4, 6 and 7 of the 1986 Act were applied to limited liability partnerships, with modifications, by [S.I. 2001/1090](#), regulation 5 and Schedules 3 and 4 (as amended by [S.I. 2004/355](#), [S.I. 2005/1989](#), [S.I. 2009/1941](#), [S.I. 2015/989](#) and [S.I. 2015/1641](#) and prospectively amended by [S.S.I. 2016/141](#)); for application to Scotland see in particular regulation 5(3) and Schedule 4, in relation to aspects of Parts 4, 6 and 7 of the 1986 Act reserved under Section C2 of Schedule 5 to the Scotland Act 1998 (c.45) (“the 1998 Act”); [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. 2006/735](#), [S.I. 2007/2537](#), [S.S.I. 2008/393](#), [S.I. 2008/662](#), [S.I. 2009/662](#), [S.I. 2010/688](#), [S.I. 2012/2404](#), [S.S.I. 2014/114](#), [S.I. 2015/575](#), [S.I. 2016/1034](#) and [S.I. 2017/702](#)) so far as relating to aspects of winding up reserved under Section C2 of Schedule 5 to the 1998 Act was applied to limited liability partnerships, with modifications by [S.I. 2001/1090](#), regulation 10 and Schedule 6, Part 2, paragraph 3 (as amended by [S.I. 2009/1804](#)).

- (c) Part 6 (miscellaneous provisions applying to companies which are insolvent or in liquidation); and
 - (d) Part 7 (interpretation for First Group of Parts), so far as it relates to Parts 4, 5 or 6.
- (5) The Parts of the 1986 Act are—
- (a) Part 4 (winding up of companies registered under the Companies Acts);
 - (b) Part 6 (miscellaneous provisions applying to companies which are insolvent or in liquidation); and
 - (c) Part 7 (interpretation for First Group of Parts), so far as it relates to Part 4 or Part 6.