

2019 No. 38

EXITING THE EUROPEAN UNION

FINANCIAL SERVICES

**The Credit Institutions and Insurance Undertakings
Reorganisation and Winding Up (Amendment) (EU Exit)
Regulations 2019**

<i>Sift requirements satisfied</i>	<i>18th December 2018</i>
<i>Made - - - -</i>	<i>14th January 2019</i>
<i>Laid before Parliament</i>	<i>15th January 2019</i>
<i>Coming into force in accordance with regulation 1(2) and (3)</i>	

The Treasury are a government department(a) designated for the purpose of section 2(2) of the European Communities Act 1972(b) in relation to financial services.

The Treasury make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and sections 8(1) and 23(6) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(c).

The requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 (relating to the appropriate Parliamentary procedure for these regulations) have been satisfied.

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019.

(a) S.I. 2012/1759.

(b) 1972 c. 68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c. 7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51), regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1993 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183). Paragraph 1A was inserted into Schedule 2 by section 28 of the Legislative and Regulatory Reform Act 2006. The European Communities Act 1972 is repealed with effect from exit day by section 1 of the European Union (Withdrawal) Act 2018.

(c) 2018 c. 16.

- (2) This regulation and regulation 3(2)(b) come into force on [*date*].
- (3) The remaining provisions of these Regulations come into force on exit day.

PART 2

Amendment of secondary legislation

Amendment of the Insurers (Reorganisation and Winding Up) Regulations 2004

2.—(1) The Insurers (Reorganisation and Winding Up) Regulations 2004^(a) are amended as follows.

- (2) In regulation 2 (interpretation)—
 - (a) in paragraph (1) omit the following definitions—
 - (i) “branch”;
 - (ii) “directive reorganisation measure”;
 - (iii) “directive winding up proceedings”;
 - (iv) “EEA creditor”;
 - (v) “EEA insurer”;
 - (vi) “EEA regulator”;
 - (vii) “EEA State”;
 - (viii) “home state regulator”;
 - (ix) “official language”;
 - (x) “the Solvency 2 Directive”; and
 - (b) omit paragraph (2).
- (3) Omit Part 2 (insolvency measures and proceedings: jurisdiction in relation to insurers).
- (4) Omit regulation 10 (notification of relevant decision to EEA regulators).
- (5) Omit regulation 11 (publication of voluntary arrangement, administration order, winding up order or scheme of arrangement).
- (6) In regulation 12 (notification to creditors: winding-up proceedings)—
 - (a) in paragraph (7) omit “Subject to paragraph (8),” and the words from “, and that heading” to the end; and
 - (b) omit paragraph (8).
- (7) Omit regulation 13 (submission of claims by EEA creditors).
- (8) Omit regulation 16 (disclosure of confidential information received from an EEA regulator).
- (9) In regulation 17 (interpretation of Part 4), in paragraph (1)—
 - (a) in the definition of “composite insurer” omit “, in accordance with Article 73(2) of the Solvency 2 Directive”;
 - (b) in the definition of “general business assets” omit the words from “, in accordance with” to the end; and
 - (c) in the definition of “long term business assets” omit the words from “, in accordance with” to the end.
- (10) In the heading of Part 5 omit “: Recognition of EEA rights”.
- (11) In regulation 36 (interpretation of Part 5), in paragraph (1) omit sub-paragraph (c) (the definition of “relevant time”) and the word “and” which immediately precedes that sub-paragraph.

^(a) S.I. 2004/353.

(12) For regulation 37 (EEA rights: applicable law in the winding up of a UK insurer) substitute—

“Applicable law in the winding up of a UK insurer

37. The general law of insolvency of the United Kingdom is applicable in a relevant winding up, subject only to the provisions of regulations 43 and 44.”.

(13) Omit the following regulations—

- (a) regulation 38 (employment contracts and relationships);
- (b) regulation 39 (contracts in connection with immovable property);
- (c) regulation 40 (registrable rights);
- (d) regulation 41 (third parties’ rights in rem); and
- (e) regulation 42 (reservation of title agreements etc.).

(14) In regulation 43 (creditors’ rights to set off)—

- (a) in paragraph (1) for “applicable EEA law” substitute “law applicable to the affected insurer’s claim”; and
- (b) omit paragraph (2).

(15) In regulation 44 (regulated markets)—

- (a) in paragraph (1)—
 - (i) omit “Without prejudice to regulation 40,”;
 - (ii) for “a regulated market operating in an EEA State” substitute “UK regulated market”; and
- (b) for paragraph (3) substitute—

“(3) For the purposes of this regulation “UK regulated market” has the meaning given by point (13A) of Article 2(1) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.”.

(16) Omit the following regulations—

- (a) regulation 45 (detrimental acts pursuant to the law of an EEA State);
- (b) regulation 46 (protection of third party purchasers); and
- (c) regulation 47 (lawsuits pending).

(17) In regulation 48 (interpretation of Part 6), in paragraph (1)(b) (definition of third country insurer)—

- (a) in paragraph (i) after “contracts of insurance” insert “other than by virtue of regulation 8 or 11 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018(a)”; and
- (b) in paragraph (ii) omit “or an EEA State”.

(18) Omit regulation 50 (disclosure of confidential information: third country insurers).

Amendment of the Credit Institutions (Reorganisation and Winding up) Regulations 2004

3.—(1) The Credit Institutions (Reorganisation and Winding up) Regulations 2004(b) are amended as follows.

(2) In regulation 2 (interpretation)—

- (a) in paragraph (1)—

(a) S.I. 2018/1149.

(b) S.I. 2004/1045.

- (i) omit the following definitions—
 - (aa) “branch”;
 - (bb) “capital requirements directive”;
 - (cc) “directive reorganisation measure”;
 - (dd) “directive winding-up proceedings”;
 - (ee) “Disclosure Regulations”;
 - (ff) “EEA credit institution”;
 - (gg) “EEA creditor”;
 - (hh) “EEA regulator”;
 - (ii) “EEA State”;
 - (jj) “home state regulator”;
 - (kk) “official language”; and
 - (ll) “the reorganisation and winding up directive”.
- (ii) in the definition of “liquidator” omit “, except for the purposes of regulation 4.”;
- (iii) in the definition of “recovery and resolution directive” at the end insert “, as it had effect immediately before exit day”;
- (b) after paragraph (1) insert—

“(1A) In the definition of “capital requirements regulation” the reference to Regulation (EU) No. 575/2013 is to be treated as a reference to that EU Regulation as it had effect on the day on which the Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019 were made.”;
- (c) omit paragraph (2).
- (3) Omit Part 2 (insolvency measures and proceedings: jurisdiction in relation to credit institutions).
- (4) Omit regulation 10 (notification to EEA regulators).
- (5) Omit regulation 12 (publication of voluntary arrangement, administration order, winding-up order or scheme of arrangement).
- (6) Omit regulation 13 (honouring of certain obligations).
- (7) In regulation 14 (notification to creditors: winding-up proceedings), in paragraph (6) omit “, and that heading must be given in every official language”.
- (8) Omit regulation 15 (submission of claims by EEA creditors).
- (9) Omit regulation 18 (disclosure of confidential information received from an EEA regulator).
- (10) In the heading of Part 4 omit “: Recognition of EEA rights”.
- (11) In regulation 21 (interpretation of Part 4), in paragraph (1) omit sub-paragraph (c) (the definition of “relevant time”) and the word “and” which immediately precedes that sub-paragraph.
- (12) For regulation 22 (EEA rights: applicable law in the winding up of a UK credit institution) substitute—

“Applicable law in the winding up of a UK credit institution

22. The general law of insolvency of the United Kingdom is applicable in a relevant winding up, subject only to the provisions of regulations 28, 29, 34 and 35.”.

- (13) Omit the following regulations—
 - (a) regulation 23 (employment contracts and relationships);
 - (b) regulation 24 (contracts in connection with immovable property);
 - (c) regulation 25 (registrable rights);
 - (d) regulation 26 (third parties’ rights in rem); and

- (e) regulation 27 (reservation of title agreements etc.).
- (14) In regulation 29 (regulated markets)—
 - (a) in paragraph (1)—
 - (i) omit “Subject to regulation 33,”;
 - (ii) for “a regulated market operating in an EEA State” substitute “UK regulated market”; and
 - (b) for paragraph (2) substitute—

“(2) For the purposes of this regulation “UK regulated market” has the meaning given by point (13A) of Article 2(1) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.”.
- (15) Omit the following regulations—
 - (a) regulation 30 (detrimental acts pursuant to the law of an EEA State);
 - (b) regulation 31 (protection of third party purchasers);
 - (c) regulation 32 (lawsuits pending); and
 - (d) regulation 33 (lex rei sitae).
- (16) In regulation 34 (netting agreements) omit paragraph (2)(c).
- (17) In regulation 35 (repurchase agreements)—
 - (a) omit “Subject to regulation 33,”; and
 - (b) omit paragraph (2)(c).
- (18) In regulation 36 (interpretation of Part 5), in paragraph (1)(b)(ii) omit “or an EEA State”.
- (19) For regulation 37 (application of these Regulations to a third country credit institution), ignoring the heading, substitute—

“**37.** Regulation 9 applies where a third country credit institution is subject to a relevant measure, and is to be read for that purpose as if a reference to the institution or, in paragraph (6), to the credit institution included a reference to a third country credit institution.”.
- (20) Omit regulation 38 (disclosure of confidential information: third country credit institution).
- (21) In regulation 39 (interpretation of Part 6) omit paragraph (a).
- (22) Omit the following regulations—
 - (a) regulation 41 (application to EEA investment firms);
 - (b) regulation 43 (reorganisation measures and winding-up proceedings in respect of EEA investment firms effective in the United Kingdom).
- (23) In regulation 44 (interpretation of Part 7) omit paragraph (a).
- (24) Omit the following regulations—
 - (a) regulation 46 (application to EEA group companies);
 - (b) regulation 47 (reorganisation measures and winding-up proceedings in respect of EEA group companies effective in the United Kingdom).
- (25) In regulation 48 (interpretation of Part 8)—
 - (a) for the heading substitute “Members not established in the United Kingdom”; and
 - (b) for “an EEA State” substitute “the United Kingdom”.

Amendment of the Insurers (Reorganisation and Winding Up (Lloyd’s) Regulations 2005

4.—(1) The Insurers (Reorganisation and Winding Up) (Lloyd’s) Regulations 2005(a) are amended as follows.

- (2) In regulation 2 (interpretation), in paragraph (1)—
 - (a) in the definition of “the association of underwriters known as Lloyd’s” at the end insert “, as it had effect immediately before exit day”; and
 - (b) in the definition of “overseas insurance business” for “that is not or is not part of an EEA State” substitute “other than the United Kingdom”.
- (3) In regulation 10 (announcement of appointment of controller) omit paragraph (2).
- (4) Omit the following regulations—
 - (a) regulation 34 (notification of relevant decision to EEA Regulators);
 - (b) regulation 35 (application of certain publication requirements in the principal Regulations to members);
 - (c) regulation 36 (notification to creditors: winding up proceedings relating to members); and
 - (d) regulation 37 (submission of claims by EEA creditor).
- (5) In regulation 39 (service of notices and documents)—
 - (a) in paragraph (1) for “regulations 33 to 35” substitute “regulation 33”; and
 - (b) in paragraph (3) for “regulations 33 to 37 above” substitute “regulation 33”.
- (6) In regulation 45 (application of Part 5 of the principal Regulations), in paragraph (1) omit “: recognition of EEA rights”.
- (7) In regulation 46 (modification of provisions in Part 5 of the principal Regulations)—
 - (a) in paragraph (4), in the opening words (the reference to regulation 37 of the principal Regulations) omit “EEA rights.”; and
 - (b) omit paragraph (5).
- (8) In regulation 48 (non-EEA countries) for “the EEA” substitute “the United Kingdom”.

PART 3

Transitional and saving provisions

CHAPTER 1

EEA institutions subject on exit day to reorganisation or winding up in another EEA State

Interpretation

5.—(1) In this Chapter each of the following definitions has the meaning given in regulation 2(1) of the Credit Institutions (Reorganisation and Winding Up) Regulations 2004(b) (“the 2004 Regulations”)—

- (a) “branch”;
- (b) “capital requirements directive”;
- (c) “directive winding-up proceedings”;

(a) S.I. 2005/1998.

(b) S.I. 2004/1045, which is amended by regulation 3 of these Regulations subject to the transitional and saving provisions in this Part.

- (d) “EEA State”;
- (e) “recovery and resolution directive”(a);
- (f) “section 899 compromise or arrangement”; and
- (g) “stabilisation instrument”.

(2) The definitions of “branch” and “EEA State” have effect for the purposes of this Chapter despite being omitted by regulation 3(2)(a).

(3) The definition of “capital requirements directive” has effect for the purposes of this Chapter despite being omitted by regulation 3(2)(a), but is to be read for those purposes as if at the end there were inserted “, as it had effect immediately before exit day”.

(4) The definition of “directive winding-up proceedings”—

- (a) has effect for the purposes of this Chapter despite being omitted by regulation 3(2)(a);
- (b) despite regulation 3(2)(a)(i)(II) is to be construed by reference to the definition of “the reorganisation and winding up directive” given in regulation 2(1) of the 2004 Regulations, except that this definition is to be read as if at the end there were inserted “and as it had effect immediately before exit day”; and
- (c) despite regulation 3(2)(c) is to be construed in accordance with regulation 2(2)(b) of the 2004 Regulations.

(5) In this Chapter—

“capital requirements regulation” means Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012 as it had effect in EU law immediately before exit day;

“creditor”, in relation to a relevant institution, means any person who has a claim of any kind against the institution (whether or not the claim relates to a deposit);

“directive reorganisation measure” means a measure which is intended to preserve or restore the financial situation of a relevant institution and which could affect third parties’ pre-existing rights, including—

- (a) a measure involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims; and
- (b) a measure which applies resolution tools or exercises resolution powers for which provision is made in the recovery and resolution directive;

“EEA creditor” means a creditor who—

- (a) is located or payable in an EEA State; or
- (b) is treated by the law of the EEA State in which a directive reorganisation measure was adopted or imposed or directive winding up proceedings were opened as if they were located or payable in an EEA State;

“EEA credit institution”, except in regulation 6(3)(b), means an undertaking which—

- (a) is an EEA undertaking of the kind mentioned in Article 4(1)(1) and 4(1)(17) of the capital requirements regulation;
- (b) but is not any of the undertakings or kinds of undertaking referred to in Article 2(5)(2) to (22) of the capital requirements directive;

“EEA group company” means an EEA undertaking which is—

- (a) a financial institution within the meaning given by Article 4(1)(26) of the capital requirements regulation,
- (b) a parent undertaking within the meaning given by Article 4(1)(15)(a) of the capital requirements regulation, or

(a) The definition of “recovery and resolution directive” is amended by regulation 3(2)(a)(iii) of these Regulations.

- (c) any other firm within the scope of Article 1(1) of the recovery and resolution directive, which is not otherwise subject to the 2004 Regulations and with respect to which one or more of the resolution tools or resolution powers provided for in the recovery and resolution directive have been applied;

“EEA investment firm” means an EEA undertaking of the kind mentioned in Article 4(1)(2) and 4(1)(17) of the capital requirements regulation;

“relevant institution” means—

- (a) an EEA credit institution which has a branch in the United Kingdom;
- (b) an EEA group company; or
- (c) an EEA investment firm which has a branch in the United Kingdom; and

“UK creditor” means a creditor who—

- (a) is located or payable in the United Kingdom; or
- (b) is treated by the law of the EEA State under which a directive reorganisation measure was adopted or imposed or directive winding up proceedings were opened as if they were located or payable in the United Kingdom.

(6) In this Chapter a directive reorganisation measure is adopted or imposed at the time when it is treated as adopted or imposed by the law of the relevant EEA State, and for these purposes “relevant EEA State” means the EEA State under whose law the measure is adopted or imposed.

Saving for reorganisation or winding up started in another EEA State before exit day

6.—(1) This regulation applies where a relevant institution is, on exit day, subject to—

- (a) a directive reorganisation measure adopted or imposed under the law of the relevant EEA State before exit day (“relevant measure”); or
- (b) directive winding-up proceedings opened under the law of the relevant EEA State before exit day (“relevant proceedings”).

(2) Despite regulation 3(3), (22)(b) and (24)(b)—

- (a) Part 2 of the 2004 Regulations continues to have effect in relation to the relevant institution;
- (b) if that institution is an EEA investment firm, that Part has effect with the modification in regulation 43 of the 2004 Regulations; and
- (c) if that institution is an EEA group company, that Part has effect with the modification in regulation 47 of the 2004 Regulations.

(3) For the purposes of paragraph (2)—

- (a) regulation 2 of the 2004 Regulations has effect without the following amendments made by regulation 3(2)—
 - (i) the amendment of the definition of “liquidator”;
 - (ii) the omission of the definitions of “branch”, “capital requirements directive”, “directive winding up proceedings”, “EEA State” and “the reorganisation and winding up directive”;
 - (iii) the omission of regulation 2(2)(b); and
- (b) in Part 2 of the 2004 Regulations—
 - (i) “directive reorganisation measure” and “EEA credit institution” have the same meaning as they have in this Chapter; and
 - (ii) a reference to an EEA credit institution (as so modified) includes a reference to an EEA investment firm and an EEA group company.

(4) Part 4 of the 2004 Regulations has effect without the amendments made by regulation 3(10) to (17) in relation to rights specified in that Part which are exercisable in the EEA State under whose law the relevant measure was adopted or imposed or the relevant proceedings were opened.

(5) This regulation has effect subject to regulations 7 to 10.

Safeguards for the operation of certain financial markets

7.—(1) In this regulation—

“competent officer” and “qualifying agent” have the meaning given in regulation 5(6) of the 2004 Regulations;

“equivalent provision” means provision in the law of an EEA State which has an effect which is equivalent to the provision in regulation 5(1) and (2) of the 2004 Regulations;

“relevant enactments” means Part 7 of the Companies Act 1989(a), Part 3 of the Financial Markets and Insolvency (Settlement and Finality) Regulations 1999(b) and Part 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003(c) (“the 2003 Regulations”);

“reorganisation measure” means any measure taken under the law of insolvency of the United Kingdom which is equivalent to a directive reorganisation measure;

“winding up proceedings” means any proceedings commenced under the law of insolvency of the United Kingdom which are equivalent to directive winding-up proceedings;

“UK credit institution” has the meaning given in regulation 2(1) of the 2004 Regulations;

“UK group company” has the meaning given in regulation 44(b) of the 2004 Regulations; and

“UK investment firm” has the meaning given in regulation 39(b) of the 2004 Regulations.

(2) This regulation applies where, by virtue of regulation 6, Part 2 of the 2004 Regulations continues to have effect in relation to a relevant institution.

(3) A competent officer or a qualifying agent, in exercising functions of the kind mentioned in regulation 5(2) of the 2004 Regulations, may not take any action which would, in the case of a reorganisation measure or winding up proceedings—

- (a) be prohibited under or by virtue of any of the relevant enactments; or
- (b) interfere with or be inconsistent with any rights of a collateral taker under Part 4 of the 2003 Regulations which could be exercised in the case of such a measure or such proceedings.

(4) Paragraph (5) has effect where the court is to exercise powers under the general law of insolvency of the United Kingdom for the purposes of, or in connection with, the relevant measure or relevant proceedings.

(5) The court may not, in exercise of those powers, grant any relief, or modify any relief already granted, or provide any co-operation or co-ordination if and to the extent that such relief or modified relief or co-operation or co-ordination would, in the case of a reorganisation measure or winding up proceedings—

- (a) be prohibited under or by virtue of any of the relevant enactments; or
- (b) interfere with or be inconsistent with any rights of a collateral taker under Part 4 of the 2003 Regulations which could be exercised in the case of such a measure or such proceedings.

Conditions under which saving may be disapplied

8.—(1) The court may make an order declaring that there is no prohibition against the commencement of any proceedings under the law of insolvency of the United Kingdom in relation to the relevant institution or any branch of that institution.

(2) An application for an order under paragraph (1) may be made—

(a) 1989 c. 40.
(b) S.I. 1999/2979.
(c) S.I. 2003/3226.

- (a) by the Bank of England (“the Bank”) on the ground that one or more of the conditions specified in regulation 9(2) are met; or
- (b) by the Bank or by a UK creditor of the relevant institution on the ground that one or more of the conditions specified in regulation 9(2)(b) and (c) are met.

(3) In paragraph (1) the reference to the law of insolvency of the United Kingdom is to be construed in accordance with regulation 2(3) of the 2004 Regulations, and the reference to any proceedings under that law includes a reference to—

- (a) the bank insolvency procedure (provided by Part 2 of the Banking Act 2009);
- (b) the bank administration procedure (provided by Part 3 of that Act);
- (c) making a stabilisation instrument;
- (d) building society insolvency under Part 2 of that Act (as applied by section 90C of the Building Societies Act 1986^(a));
- (e) building society special administration under Part 3 of that Act (as applied by section 90C of the Building Societies Act 1986);
- (f) the administration of a building society under Part 2 of the Insolvency Act 1986 (as applied by section 90A of the Building Societies Act 1986^(b));
- (g) special administration, special administration (bank insolvency) or special administration (bank administration) under the Investment Bank Special Administration Regulations 2011^(c);
- (h) an application for a court order sanctioning a section 899 compromise or arrangement.

(4) In this regulation “the court” means a court having jurisdiction to wind up a company registered under the Companies Act 2006 in England and Wales or Scotland or Northern Ireland.

Grounds for making an order under regulation 8

9.—(1) In this regulation “relevant measure” does not include—

- (a) the application of a resolution tool within the meaning given by Article 2.1(19) of the recovery and resolution directive;
- (b) the exercise of a resolution power within the meaning given by Article 2.1(20) of the recovery and resolution directive;
- (c) any other measure to which Article 66 of the recovery and resolution directive applied immediately before exit day.

(2) The court may make an order under regulation 8 only if the court is satisfied that one or more of the following conditions are met—

- (a) that if an order is not made (on application by the Bank)—
 - (i) the relevant measure or relevant proceedings will have an adverse effect on financial stability in the United Kingdom;
 - (ii) the taking of action in relation to a branch of the relevant institution located in the United Kingdom is necessary to achieve one or more of the special resolution objectives (within the meaning given in section 4 of the Banking Act 2009);
- (b) that an order should be made (on application by the Bank or a UK creditor) because under the relevant measure or in the relevant proceedings UK creditors of the relevant institution would be materially prejudiced by the operation of the law of the EEA State under which the measure was adopted or imposed or the proceedings were opened—
 - (i) in relation to its treatment of the United Kingdom as a State which is outside the EEA; or

(a) 1986 c. 53. Section 90C was inserted by S.I. 2009/805.

(b) Section 90A was inserted by the Building Societies Act 1997 (c. 32).

(c) S.I. 2011/245.

- (ii) by reason of its different treatment of UK creditors by comparison with its treatment of EEA creditors who have similar rights;
 - (c) that having regard to the operation of the law of the EEA State under which the measure was adopted or imposed or the proceedings were opened, a refusal to make the order (on application by the Bank or a UK creditor) would be unlawful under section 6 of the Human Rights Act 1998^(a) (public authority not to act incompatibly with European Convention on Human Rights).
- (3) Where the court makes an order under regulation 8—
- (a) the court must state in the order which one or more of the conditions specified in paragraph (2) are met; and
 - (b) an officer of the court must serve a copy of the order on—
 - (i) the applicant for the order;
 - (ii) if the Bank is not the applicant, the Bank;
 - (iii) the Prudential Regulation Authority;
 - (iv) the Financial Conduct Authority;
 - (v) the relevant institution.

Effect of an order made under regulation 8

10.—(1) An order made in relation to the relevant institution under regulation 8 comes into force on the day on which it is made or on such later date as the court may specify.

(2) On the day on which the order comes into force, regulation 6 ceases to have effect in relation to the relevant institution.

- (3) On or at any time after the day on which the order comes into force—
- (a) the Bank or the Prudential Regulation Authority may, in relation to the relevant institution or any branch of that institution, commence such proceedings under the law of insolvency of the United Kingdom as it sees fit, having regard to the grounds on which the court is satisfied that the condition is met; and
 - (b) where, according to the court’s statement in the order, the condition met (or one of them) is one of the conditions specified in regulation 9(2)(b) and (c), a UK creditor of the relevant institution may commence such proceedings under the law of insolvency of the United Kingdom as that person is entitled to commence as a creditor of the institution.

CHAPTER 2

EEA insurers subject on exit day to reorganisation or winding up in another EEA State

Interpretation

11.—(1) In this Chapter each of the following definitions has the meaning given in regulation 2(1) of the Insurers (Reorganisation and Winding Up) Regulations 2004^(b) (“the 2004 Regulations”)—

- (a) “branch”;
- (b) “directive reorganisation measure”;
- (c) “directive winding-up proceedings”;
- (d) “EEA insurer”;
- (e) “EEA State”; and

^(a) 1998 c. 42.

^(b) S.I. 2004/353, which is amended by regulation 2 of these Regulations subject to the transitional and saving provisions in this Part.

(f) “section 899 compromise or arrangement”.

(2) The definitions of “branch”, “EEA insurer” and “EEA State” have effect for the purposes of this Chapter despite being omitted by regulation 2(2)(a).

(3) The definitions of “directive reorganisation measure” and “directive winding-up proceedings”—

- (a) have effect for the purposes of this Chapter despite being omitted by regulation 2(2)(a); and
- (b) despite regulation 2(2)(b) are to be construed in accordance with regulation 2(2) of the 2004 Regulations.

(4) In this Chapter—

“creditor”, in relation to a relevant EEA insurer, means any person who has a claim of any kind against the insurer (whether or not it is an insurance claim);

“EEA creditor” means a creditor who—

- (a) is located or payable in an EEA State; or
- (b) is treated by the law of the EEA State in which law a directive reorganisation measure was adopted or imposed or directive winding up proceedings were opened as if they were located or payable in an EEA State;

“relevant EEA insurer” means—

- (a) an EEA insurer which has a branch in the United Kingdom; or
- (b) a person who—
 - (i) by virtue of regulation 8 or 11 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018(a) is treated as having permission under the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance; and
 - (ii) has a branch in the United Kingdom;

“UK creditor” means a creditor who—

- (a) is located or payable in the United Kingdom; or
- (b) is treated by the law of the EEA State under which a directive reorganisation measure was adopted or imposed or directive winding up proceedings were opened as if they were located or payable in the United Kingdom.

Saving for reorganisation or winding up started in another EEA State before exit day

12.—(1) This regulation applies where a relevant EEA insurer is, on exit day, subject to—

- (a) a directive reorganisation measure adopted or imposed before exit day under the law of an EEA State other than the United Kingdom (“relevant measure”); or
- (b) directive winding-up proceedings opened before exit day under the law of an EEA State other than the United Kingdom (“relevant proceedings”).

(2) Despite regulation 2(3) Part 2 of the 2004 Regulations continues to have effect in relation to the relevant EEA insurer.

(3) For the purposes of paragraph (2) regulation 2 of the 2004 Regulations has effect without the following amendments made by regulation 2(2)—

- (a) the omission of the definitions of “branch”, “directive reorganisation measure”, “directive winding up proceedings” and “EEA State”;
- (b) the omission of regulation 2(2).

(a) S.I. 2018/1149.

(4) Part 5 of the 2004 Regulations has effect without the amendments made by regulation 2(10) to (16) in relation to rights specified in that Part which are exercisable in the EEA State under whose law the relevant measure was adopted or imposed or the relevant proceedings were opened.

(5) This regulation has effect subject to regulations 13 to 15.

Conditions under which saving may be disapplied

13.—(1) The court may make an order declaring that there is no prohibition against the commencement of any proceedings under the law of insolvency of the United Kingdom in relation to the relevant EEA insurer or any branch of that insurer.

(2) An application for an order under paragraph (1) may be made—

- (a) by the Bank of England (“the Bank”) on the ground that the condition specified in regulation 14(1)(a) is met; or
- (b) on the ground that one or more of the conditions specified in regulation 14(1)(b) and (c) are met—
 - (i) by the scheme manager (within the meaning given by section 212(1) of the Financial Services and Markets Act 2000(a));
 - (ii) by a UK creditor of the relevant EEA insurer.

(3) In paragraph (1)—

- (a) the reference to the law of insolvency of the United Kingdom is to be construed in accordance with regulation 2(3) of the 2004 Regulations; and
- (b) the reference to any proceedings under that law includes a reference to an application for a court order sanctioning a section 899 compromise or arrangement.

(4) In this regulation “the court” means a court having jurisdiction to wind up a company registered under the Companies Act 2006 in England and Wales or Scotland or Northern Ireland.

Grounds for making an order under regulation 13

14.—(1) The court may make an order under regulation 13 only if the court is satisfied that one or more of the following conditions are met—

- (a) that if an order is not made (on application by the Bank), the relevant measure or relevant proceedings will have an adverse effect on financial stability in the United Kingdom;
- (b) that an order should be made (on application by the scheme manager or a UK creditor) because under the relevant measure or in the relevant proceedings UK creditors of the relevant EEA insurer would be materially prejudiced by the operation of the law of the EEA State under which the measure was adopted or imposed or the proceedings were opened—
 - (i) in relation to its treatment of the United Kingdom as a State which is outside the EEA; or
 - (ii) by reason of its different treatment of UK creditors by comparison with its treatment of EEA creditors who have similar rights;
- (c) that having regard to the operation of the law of the EEA State under which the measure was adopted or imposed or the proceedings were opened, a refusal to make the order (on application by the scheme manager or a UK creditor) would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act incompatibly with European Convention on Human Rights).

(2) Where the court makes an order under regulation 13—

- (a) the court must state in the order which one or more of the conditions specified in paragraph (1) are met; and

(a) 2000 c. 8.

- (b) an officer of the court must serve a copy of the order on—
 - (i) the applicant for the order;
 - (ii) if the Bank is not the applicant, the Bank;
 - (iii) if the scheme manager is not the applicant, the scheme manager;
 - (iv) the Prudential Regulation Authority;
 - (v) the Financial Conduct Authority;
 - (vi) the relevant EEA insurer.

Effect of an order made under regulation 13

15.—(1) An order made in relation to the relevant EEA insurer under regulation 13 comes into force on the day on which it is made or on such later date as the court may specify.

(2) On the day on which the order comes into force, regulation 12 ceases to have effect in relation to the relevant EEA insurer.

(3) On or at any time after the day on which the order comes into force—

- (a) Where, according to the court’s statement in the order, the condition met (or one of them) is the condition specified in regulation 14(1)(a), the Bank or the Prudential Regulation Authority may, in relation to the relevant EEA insurer or any branch of that insurer, commence such proceedings under the law of insolvency of the United Kingdom as it sees fit, having regard to the grounds on which the court is satisfied that the condition is met; and
- (b) where, according to the court’s statement in the order, the condition met (or one of them) is one of the conditions specified in regulation 14(1)(b) and (c)—
 - (i) the scheme manager may, in relation to the relevant EEA insurer or any branch of that insurer, commence such proceedings under the law of insolvency of the United Kingdom as it sees fit, having regard to the grounds on which the court is satisfied that the condition is met; and
 - (ii) a UK creditor of the relevant EEA insurer may commence such proceedings under the law of insolvency of the United Kingdom as that person is entitled to commence as a creditor of the insurer.

Jeremy Quin
Rebecca Harris

14th January 2019

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 2(2) of the European Communities Act 1972 and sections 8(1) and 23(6) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Part 2 of these Regulations makes provision under the European Union (Withdrawal) Act 2018 to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union (in particular, deficiencies of the kinds mentioned in paragraphs (c), (d), (e) and (g) of section 8(2)). Part 2 amends—

- the Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353);
- the Credit Institutions (Reorganisation and Winding up) Regulations 2004 (S.I. 2004/1045); and
- the Insurers (Reorganisation and Winding Up) (Lloyd’s) Regulations 2005 (S.I. 2005/1998).

These instruments provide that no winding up proceedings or insolvency measures in respect of insurers or credit institutions authorised in the EEA (other than in the United Kingdom) may be undertaken in the UK except under permitted circumstances. They also provide for the recognition in the UK of winding up proceedings or insolvency measures in other EEA States, and for the notification to competent authorities in other EEA States of winding up proceedings or insolvency measures in the UK.

The amendments made by Part 2 of these Regulations remove the prohibition on UK proceedings or measures in respect of EEA insurers or credit institutions, and amend notification requirements and provision for UK recognition of proceedings or measures in EEA States.

Regulation 3(2)(b) is made under section 2(2) of the European Communities Act 1972 to ensure that references in the Credit Institutions (Reorganisation and Winding up) Regulations 2004 to Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms (“the capital requirements regulation”) are references to that EU Regulation as it had effect on the date on which these Regulations are made.

Part 3 of these Regulations make transitional and saving provisions in relation to—

- an EEA credit institution, EEA investment firm or EEA insurer which has a branch in the UK and is, on exit day, subject to winding up proceedings or insolvency measures in an EEA State; and
- an EEA group company which is, on exit day, subject to one or more of the resolution tools or resolution powers provided for in Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.

The saving provision made for such cases maintains the prohibition on UK proceedings or measures in respect of the institution, company or insurer concerned. The court is empowered, however, to make an order declaring on specified grounds that the prohibition does not apply. Where such an order is made, the saving provision ceases to have effect.

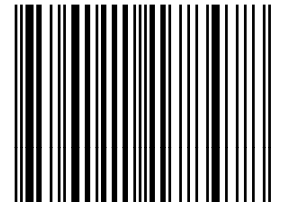
An impact assessment of the effect that this instrument, and other instruments made by HM Treasury under the European Union (Withdrawal) Act 2018 at or about the same time, will have on the costs of business, the voluntary sector and the public sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is published alongside this instrument at www.legislation.gov.uk.

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