
STATUTORY RULES OF NORTHERN IRELAND

2002 No. 261

The Insolvency (Amendment) Rules (Northern Ireland) 2002

Citation and commencement

1. These Rules may be cited as the Insolvency (Amendment) Rules (Northern Ireland) 2002 and shall come into operation on 5th September 2002.

Interpretation

2. In these Rules, references to “the principal Rules” are references to the Insolvency Rules (Northern Ireland) 1991(1) and a rule, Schedule or form referred to by number means the Rule, Schedule or form so numbered in the principal Rules.

Amendments to the Insolvency Rules (Northern Ireland) 1991

3.—(1) The principal Rules are amended as provided in these Rules.

(2) Anything done before 5th September 2002 under or for the purposes of any provision of the principal Rules is not invalidated by the amendment of that provision by these Rules, but it has effect as if done under or for the purposes of the provision as amended.

Amendments to the Insolvency Rules (Northern Ireland) 1991 in relation to the Introductory Provisions

4. In Rule 0.2 (interpretation) insert – after the definition of “business day” –

““Centre of main interests” has the same meaning as in the EC Regulation;”;

after the definition of “the court” –

““Establishment” has the meaning given by Article 2(h) of the EC Regulation;”;

after the definition of “the Judge” –

““Main proceedings” means proceedings opened in accordance with Article 3(1) of the EC Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Regulation, and

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

(b) in relation to another member State, set out in Annex A to the EC Regulation under the heading relating to that member State;”;

after the definition of “Master” –

““Member State liquidator” means a person falling within the definition of liquidator in Article 2(b) of the EC Regulation appointed in proceedings to which it applies in a member State other than the United Kingdom.;”;

after the definition of “sealed” –

““Secondary proceedings” means proceedings opened in accordance with Articles 3(2) and 3(3) of the EC Regulation and falling within the definition of winding-up proceedings in Article 2(c) of the EC Regulation, and

- (a) in relation to Northern Ireland, set out in Annex B to the EC Regulation under the heading “United Kingdom”, and
- (b) in relation to another member State, set out in Annex B to the EC Regulation under the heading relating to that member State;”;

after the definition of “Taxing Master” –

““Temporary administrator” means a temporary administrator referred to by Article 38 of the EC Regulation;”;

““Territorial proceedings” means proceedings opened in accordance with Articles 3(2) and 3(4) of the EC Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Regulation, and

- (a) in relation to Northern Ireland, set out in Annex A to the EC Regulation under the heading “United Kingdom”, and
- (b) in relation to another member State, set out in Annex A to the EC Regulation under the heading relating to that member State.”.

[E.R. 10(7)]

Amendments to the Insolvency Rules (Northern Ireland) 1991 in relation to Company Voluntary Arrangements

5.—(1) In Rule 1.01(2)(d) (scope of this Part; interpretation) for “5 and 6” substitute –
“5, 6, 7 and 8”.

(2) In Rule 1.03(2) (contents of proposal) –

- (a) at the end of sub-paragraph (o) omit “and”; and
- (b) in sub-paragraph (p) after “in relation to the company” insert –
“; and
(q) whether the EC Regulation(2) will apply and, if so, whether the proceedings will be main proceedings, secondary proceedings or territorial proceedings”.

(3) In Rule 1.24(2)(c) (report of meetings) –

- (a) at the end of sub-paragraph (c) omit “and”; and
- (b) after sub-paragraph (c) insert –
“(ca) state whether, in the opinion of the supervisor, (i) the EC Regulation applies to the voluntary arrangement and (ii) if so, whether the proceedings are main proceedings, secondary proceedings or territorial proceedings; and”.

(4) After Rule 1.30 (false representations, etc) insert –

“CHAPTER 7

EC REGULATION – CONVERSION OF VOLUNTARY ARRANGEMENT INTO WINDING UP

Application for conversion into winding up

1.31.—(1) Where a member State liquidator proposes to apply to the court for the conversion under Article 37 of the EC Regulation (conversion of earlier proceedings) of a voluntary arrangement into a winding up, an affidavit complying with Rule 1.32 must be prepared and sworn, and filed in court in support of the application.

(2) An application under this Rule shall be by originating application.

(3) The application and the affidavit required under this Rule shall be served upon –

- (a) the company; and
- (b) the supervisor.

Contents of affidavit

1.32.—(1) The affidavit shall state –

- (a) that main proceedings have been opened in relation to the company in a member State other than the United Kingdom;
- (b) the deponent’s belief that the conversion of the voluntary arrangement into a winding up would prove to be in the interests of the creditors in the main proceedings;
- (c) the deponent’s opinion as to whether the company ought to enter voluntary winding up or be wound up by the court; and
- (d) all other matters that, in the opinion of the member State liquidator, would assist the court –
 - (i) in deciding whether to make such an order, and
 - (ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable.

(2) An affidavit under this Rule shall be sworn by, or on behalf of, the member State liquidator.

Power of court

1.33.—(1) On hearing the application for conversion into winding up the court may make such order as it thinks fit.

(2) If the court makes an order for conversion into winding up the order may contain all such consequential provisions as the court deems necessary or desirable.

(3) Without prejudice to the generality of paragraph (1), an order under that paragraph may provide that the company be wound up as if a resolution for voluntary winding up under Article 70 were passed on the day on which the order is made.

(4) Where the court makes an order for conversion into winding up under paragraph (1), any expenses properly incurred as expenses of the administration of the voluntary arrangement in question shall be a first charge on the company’s assets.

CHAPTER 8

EC REGULATION – MEMBER STATE LIQUIDATOR

Interpretation of creditor and notice to member State liquidator

1.34.—(1) This Rule applies where a member State liquidator has been appointed in relation to the company.

(2) Where the supervisor is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court, the registrar or the official receiver, the supervisor shall give notice or provide copies, as appropriate, to the member State liquidator.

(3) Paragraph (2) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to cooperate and communicate information)".

[E.R. 4]

Amendments to the Insolvency Rules (Northern Ireland) 1991 in relation to Administration

6.—(1) In Rule 2.03(1) (contents of affidavit) –

(a) at the end of sub-paragraph (a) omit “and”; and

(b) in sub-paragraph (b) after “administration order” insert –

“; and

(c) whether, in the opinion of the deponent, (i) the EC Regulation will apply and (ii) if so, whether the proceedings will be main proceedings, secondary proceedings or territorial proceedings”.

(2) In Rule 2.06(2) (persons served with petition) after sub-paragraph (b) insert –

“(ba) if a member State liquidator has been appointed in main proceedings in relation to the company, on him;”.

(3) In Rule 2.10(1) (appearances at hearing) –

(a) at the end of sub-paragraph (f) omit “and”; and

(b) after sub-paragraph (f) insert –

“(fa) if a member State liquidator has been appointed in main proceedings in relation to the company, he;”.

(4) In Rule 2.19(1) (statement to be annexed to proposals) –

(a) at the end of sub-paragraph (f) omit “and”; and

(b) after sub-paragraph (f) insert –

“(fa) whether (i) the EC Regulation applies and (ii) if so, whether the proceedings are main proceedings, secondary proceedings or territorial proceedings; and”.

(5) In Rule 2.25 (entitlement to vote) –

(a) in paragraph (1)(a) for “he claims to be due to him from the company” substitute –

“(i) he claims to be due to him from the company, or

(ii) in relation to a member State liquidator, is claimed to be due to creditors in proceedings in relation to which he holds office”;

(b) after paragraph (6) insert –

“(7) No vote shall be cast by virtue of a claim more than once on any resolution put to the meeting.

- (8) Where –
- (a) a creditor is entitled to vote under this Rule,
 - (b) has lodged his claim in one or more sets of other proceedings, and
 - (c) votes (either in person or by proxy) on a resolution put to the meeting,
- only the creditor’s vote shall be counted.
- (9) Where –
- (a) a creditor has lodged his claim in more than one set of other proceedings, and
 - (b) more than one member State liquidator seeks to vote by virtue of that claim,
- the entitlement to vote by virtue of that claim is exercisable by the member State liquidator in main proceedings, whether or not the creditor has lodged his claim in the main proceedings.
- (10) For the purposes of paragraph (7), the claim of a creditor and of any member State liquidator in relation to the same debt are a single claim.
- (11) For the purposes of paragraphs (8) and (9), “other proceedings” means main proceedings, secondary proceedings or territorial proceedings in another member State.”.
- (6) After Rule 2.34(5) (conduct of meetings) insert –
- “(5A) Paragraph (5) does not apply where the laws of a member State and not the laws of Northern Ireland apply in relation to the conduct of the meeting.
- (5B) Where paragraph (5A) applies, subject as above, the meeting shall be summoned and conducted in accordance with the constitution of the company and the laws of the member State referred to in that paragraph shall apply to the conduct of the meeting.”.
- (7) After Rule 2.57(3) (resignation of administrator) insert –
- “(4) Where the administrator gives notice under paragraph (3), he must also give notice to a member State liquidator, if such a person has been appointed in relation to the company.”.
- (8) After Rule 2.62 (preservation of VAT Bad Debt relief certificate) insert –

“CHAPTER 7

EC REGULATION – CONVERSION OF ADMINISTRATION INTO WINDING UP

Application for conversion into winding up

2.63.—(1) Where a member State liquidator proposes to apply to the court for the conversion under Article 37 of the EC Regulation (conversion of earlier proceedings) of an administration into a winding up, an affidavit complying with Rule 2.64 must be prepared and sworn, and filed in court in support of the application.

- (2) An application under this Rule shall be by originating application.
- (3) The application and the affidavit required under this Rule shall be served upon –
 - (a) the company; and
 - (b) the administrator.

Contents of affidavit

- 2.64.**—(1) The affidavit shall state –
- (a) that main proceedings have been opened in relation to the company in a member State other than the United Kingdom;

- (b) the deponent's belief that the conversion of the administration into a winding up would prove to be in the interests of the creditors in the main proceedings;
 - (c) the deponent's opinion as to whether the company ought to enter voluntary winding up or be wound up by the court; and
 - (d) all other matters that, in the opinion of the member State liquidator, would assist the court –
 - (i) in deciding whether to make such an order, and
 - (ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable.
- (2) An affidavit under this Rule shall be sworn by, or on behalf of, the member State liquidator.

Power of court

- 2.65.**—(1) On hearing the application for conversion into winding up the court may make such order as it thinks fit.
- (2) If the court makes an order for conversion into winding up the order may contain all such consequential provisions as the court deems necessary or desirable.
- (3) Without prejudice to the generality of paragraph (1), an order under that paragraph may provide that the company be wound up as if a resolution for voluntary winding up under Article 70 were passed on the day on which the order is made.

CHAPTER 8

EC REGULATION – MEMBER STATE LIQUIDATOR

Interpretation of creditor and notice to member State liquidator

- 2.66.**—(1) This Rule applies where a member State liquidator has been appointed in relation to the company.
- (2) For the purposes of the Rules referred to in paragraph (3) the member State liquidator is deemed to be a creditor.
- (3) The Rules referred to in paragraph (2) are Rules 2.21(1) (notice of creditors' meeting), 2.22(4) (creditors' meeting), 2.24 (requisitioning of creditors' meeting), 2.25 (entitlement to vote), 2.26 (admission and rejection of claims), 2.27 (secured creditors), 2.28 (holders of negotiable instruments), 2.29 (retention of title creditors), 2.30 (hire-purchase, conditional sale and chattel leasing agreements), 2.33 (notice of result of creditors' meeting), 2.35(2) (creditors' committee), 2.42(1)(b) and (c) (termination of membership of creditors' committee), 2.44(3) (vacancies in creditors' committee), 2.53(3) (administrator's remuneration – recourse to court) and 2.54 (challenge to administrator's remuneration).
- (4) Paragraphs (2) and (3) are without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditor's rights).
- (5) Where the administrator is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court, the registrar or the official receiver, the administrator shall give notice or provide copies, as the case may be, to the member State liquidator.
- (6) Paragraph (5) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to cooperate and communicate information)."

[E.R. 5]

Amendments to the Insolvency Rules (Northern Ireland) 1991 in relation to Companies Winding up

- 7.—(1) In Rule 4.007 (documents delivered with petition filed in court) –
- (a) at the end of paragraph (4)(e) omit “and”, and
 - (b) after paragraph (4)(e) insert –
 - “(ea) if a member State liquidator has been appointed in main proceedings in relation to the company, one copy to be sent to him;
- and”.
- (2) After Rule 4.010(3) (persons entitled to receive winding up petition) insert –
- “(3A) If to the petitioner’s knowledge, there is a member State liquidator appointed in main proceedings in relation to the company, a copy of the petition shall be sent by him to that person.
- This does not apply if the petitioner referred to in this paragraph is a member State liquidator.”.
- (3) After Rule 4.019(2) (substitution of petitioner) insert –
- “(2A) Where a member State liquidator has been appointed in main proceedings in relation to the company, without prejudice to paragraph (2), the court may, on such terms as it thinks just, substitute the member State liquidator as petitioner, where he is desirous of prosecuting the petition.”.
- (4) After Rule 4.024(5) (petition by contributory) insert –
- “(6) Where a member State liquidator has been appointed in main proceedings in relation to the company, the petitioner shall send a copy of the petition to him.”.
- (5) For Rule 4.027(1) (application for appointment of provisional liquidator) substitute –
- “(1) An application to the court for the appointment of a provisional liquidator under Article 115 may be made by –
- (a) the petitioner;
 - (b) a creditor of the company;
 - (c) a contributory;
 - (d) the company;
 - (e) the Department of Enterprise, Trade and Investment
 - (f) a temporary administrator;
 - (g) a member State liquidator appointed in main proceedings; or
 - (h) any person who under any enactment would be entitled to present a petition for the winding up of the company.”.

(6) In Rule 4.073 (entitlement to vote at creditors' meeting) –

 - (a) in paragraph (1)(a) for “claimed to be due to him from the company” substitute –
 - “(i) claimed to be due to him from the company, or
 - (ii) in relation to a member State liquidator, is claimed to be due to creditors in proceedings in relation to which he holds office”, and
 - (b) after paragraph (6) insert –
 - “(7) No vote shall be cast by virtue of a debt more than once on any resolution put to the meeting.
 - (8) Where –

- (a) a creditor is entitled to vote under this Rule and Rule 4.076 (admission of proof),
 - (b) has lodged his claim in one or more sets of other proceedings, and
 - (c) votes (either in person or by proxy) on a resolution put to the meeting, only the creditor's vote shall be counted.
- (9) Where –
- (a) a creditor has lodged his claim in more than one set of other proceedings, and
 - (b) more than one member State liquidator seeks to vote by virtue of that claim,
- the entitlement to vote by virtue of that claim is exercisable by the member State liquidator in main proceedings, whether or not the creditor has lodged his claim in the main proceedings.
- (10) For the purposes of paragraphs (8) and (9), “other proceedings” means main proceedings, secondary proceedings or territorial proceedings in another member State.”.
- (7) In Rule 4.081(1) (contents of proof) –
- (a) at the end of sub-paragraph (g) omit “and”; and
 - (b) after sub-paragraph (g) insert –
 - “(ga) details of any reservation of title in respect of goods to which the debt refers; and”.
- (8) After Rule 4.102(2) (surrender of security for non-disclosure) insert –
- “(3) Nothing in this Rule or the following two Rules may affect the rights in rem of creditors or third parties protected under Article 5 of the EC Regulation (third parties' rights in rem).”.
- (9) After Rule 4.240 (leave to act as director – third excepted case) insert –

“CHAPTER 23

EC REGULATION – MEMBER STATE LIQUIDATOR

Interpretation of creditor and notice to member State liquidator

4.241.—(1) This Rule applies where a member State liquidator has been appointed in relation to the company.

(2) For the purposes of the Rules referred to in paragraph (3) the member State liquidator is deemed to be a creditor.

(3) The Rules referred to in paragraph (2) are Rules 4.047(1) (official receiver's report), 4.049(1) (report on statement of affairs), 4.050(2) (report where no statement of affairs), 4.051(2) (general rule on reporting), 4.052(2) (winding up stayed), 4.053 (information to creditors), 4.055(2) (notice of meetings), 4.056(2) (notice of creditors' meeting –CVL), 4.061 (power to call meetings), 4.064(1) and (2) (requisitioned meetings), 4.064(4), 4.073 (entitlement to vote (creditors)), 4.074 (chairman's discretion to allow vote –CVL), 4.076 (admission and rejection of proof (creditors' meeting)), 4.079 (meaning of “prove”), 4.080 (supply of forms), 4.081 (contents of proof), 4.082 (particulars of creditor's claim), 4.083 (claim established by affidavit), 4.084 (cost of proving), 4.085 (inspection of proofs), 4.088 (admission and rejection of proofs for dividend), 4.089(1) and (2) (appeal against decision in relation to proof), 4.089(3), 4.090 (withdrawal or variation of proof), 4.091(1) (expunging of proof), 4.092 (estimate of quantum), 4.093 (negotiable instruments, etc.), 4.094 (secured creditors), 4.095 (discounts), 4.096 (mutual credit and set-off), 4.097 (debt in foreign currency), 4.098 (payment of a periodical nature), 4.099 (interest), 4.100 (debt payable at future time), 4.108 (power to fill vacancy in office of liquidator), 4.109(5)

(appointment by court), 4.110(4) (appointment by court), 4.120(1) (meeting of creditors to remove liquidator), 4.121(1) (meeting of creditors to remove liquidator), 4.122 (regulation of meetings), 4.131(1) (release of official receiver), 4.132(1) (final meeting), 4.133(1) (final meeting), 4.138(1) (challenge to liquidator's remuneration), 4.160(1) (liquidation committee), 4.160(3) (eligibility for liquidation committee), 4.171(3) (vacancy on liquidation committee), 4.184(1) (liquidation committee), 4.189 (notice of dividend) and 4.222(2) (notice of public examination hearing).

(4) Paragraphs (2) and (3) are without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditor's rights).

(5) Where the liquidator is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court, the registrar or the official receiver, the liquidator shall give notice or provide copies, as the case may be, to the member State liquidator.

(6) Paragraph (5) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to cooperate and communicate information)."

[E.R. 6]

Amendments to the Insolvency Rules (Northern Ireland) 1991 in relation to Individual Voluntary Arrangements

8.—(1) After Rule 5.04(2)(p) (contents of proposal) insert –

“(q) whether the EC Regulation will apply and, if so, whether the proceedings will be main proceedings, secondary proceedings or territorial proceedings.”.

(2) In Rule 5.25(2) (report of creditors' meeting) –

(a) at the end of sub-paragraph (c) omit “and”; and

(b) after sub-paragraph (c) insert –

“(ca) whether, in the opinion of the supervisor, (i) the EC Regulation applies to the voluntary arrangement and (ii) if so, whether the proceedings are main proceedings, secondary proceedings or territorial proceedings; and”.

(3) After Rule 5.33 (false representations, etc.) insert –

“SECTION E: EC REGULATION – CONVERSION OF VOLUNTARY ARRANGEMENT INTO BANKRUPTCY

Application for conversion into bankruptcy

5.34.—(1) Where a member State liquidator proposes to apply to the court for the conversion under Article 37 of the EC Regulation (conversion of earlier proceedings) of a voluntary arrangement into bankruptcy, an affidavit complying with Rule 5.35 must be prepared and sworn, and filed in court in support of the application.

(2) An application under this Rule shall be by originating application.

(3) The application and the affidavit required under this Rule shall be served upon –

(a) the debtor; and

(b) the supervisor.

Contents of affidavit

5.35.—(1) The affidavit shall state –

- (a) that main proceedings have been opened in relation to the debtor in a member State other than the United Kingdom;
 - (b) the deponent's belief that the conversion of the voluntary arrangement into a bankruptcy would prove to be in the interests of the creditors in the main proceedings; and
 - (c) all other matters that, in the opinion of the member State liquidator, would assist the court –
 - (i) in deciding whether to make an order under Rule 5.36, and
 - (ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable.
- (2) An affidavit under this Rule shall be sworn by, or on behalf of, the member State liquidator.

Power of court

5.36.—(1) On hearing the application for conversion into bankruptcy the court may make such order as it thinks fit.

(2) If the court makes an order for conversion into bankruptcy the order may contain all such consequential provisions as the court deems necessary or desirable.

(3) Where the court makes an order for conversion into bankruptcy under paragraph (1), any expenses properly incurred as expenses of the administration of the voluntary arrangement in question shall be a first charge on the bankrupt's estate.

SECTION F: EC REGULATION – MEMBER STATE LIQUIDATOR

Interpretation of creditor and notice to member State liquidator

5.37.—(1) This Rule applies where a member State liquidator has been appointed in relation to the debtor.

(2) Where the supervisor is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court or the official receiver, the supervisor shall give notice or provide copies, as appropriate, to the member State liquidator.

(3) Paragraph (2) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to co-operate and communicate information)."

[E.R. 7]

Amendments to the Insolvency Rules (Northern Ireland) 1991 in relation to Bankruptcy

9.—(1) After Rule 6.007(1)(e) (identification of debtor) insert –

“(f) whether the debtor has his centre of main interests or an establishment in another member State.”

(2) After Rule 6.013(4) (service of petition) insert –

“(5) If to the petitioner's knowledge, there is a member State liquidator appointed in main proceedings in relation to the bankrupt, a copy of the petition shall be sent by him to the member State liquidator.”

(3) In Rule 6.027(2)(c) (substitution of petitioner) after “owed to him by the debtor” insert –

“(or in the case of the member State liquidator, owed to creditors in proceedings in relation to which he holds office)”.

- (4) For Rule 6.049(1) (application for appointment of interim receiver) substitute –
- “(1) An application to the court for the appointment of an interim receiver under Article 259 may be made by –
- (a) a creditor;
 - (b) the debtor;
 - (c) an insolvency practitioner appointed under Article 247(2);
 - (d) a temporary administrator; or
 - (e) a member State liquidator appointed in main proceedings.”.

(5) In Rule 6.090 (entitlement to vote at creditors' meeting) –

(a) in paragraph (1)(a) for “claimed to be due to him from the bankrupt” substitute –

“(i) claimed to be due to him from the bankrupt, or

(ii) in relation to a member State liquidator, is claimed to be due to creditors in proceedings in relation to which he holds office”, and

(b) after paragraph (6) insert –

“(7) No vote shall be cast by virtue of a debt more than once on any resolution put to the meeting.

(8) Where –

 - (a) a creditor is entitled to vote under this Rule and Rule 6.091 (admission of proof),
 - (b) has lodged his claim in one or more sets of other proceedings, and
 - (c) votes (either in person or by proxy) on a resolution put to the meeting, only the creditor’s vote shall be counted.

(9) Where –

 - (a) a creditor has lodged his claim in more than one set of other proceedings, and
 - (b) more than one member State liquidator seeks to vote by virtue of that claim,

the entitlement to vote by virtue of that claim is exercisable by the member State liquidator in main proceedings, whether or not the creditor has lodged his claim in the main proceedings.

(10) For the purposes of paragraphs (8) and (9), “other proceedings” means main proceedings, secondary proceedings or territorial proceedings in another member State.”.

(6) In Rule 6.096(1) (contents of proof) –

(a) at the end of sub-paragraph (g) omit “and”; and

(b) after sub-paragraph (g) insert –

“(ga) details of any reservation of title in respect of goods to which the debt refers; and”.

(7) After Rule 6.113(2) (surrender of security for non-disclosure) insert –

“(3) Nothing in this Rule or the following two Rules may affect the rights in rem of creditors or third parties protected under Article 5 of the EC Regulation (third parties' rights in rem).”.

(8) After Rule 6.195(4) (power of court to order sale) insert –

“(5) Nothing in this Rule or the following Rule may affect the rights in rem of creditors or third parties protected under Article 5 of the EC Regulation (third parties' rights in rem).”.

(9) After Rule 6.230 (bankrupt leaving Northern Ireland) insert –

“CHAPTER 26

EC REGULATION – MEMBER STATE LIQUIDATOR

Interpretation of creditor and notice to member State liquidator

6.231.—(1) This Rule applies where a member State liquidator has been appointed in relation to the bankrupt.

(2) For the purposes of the Rules referred to in paragraph (3) a member State liquidator is deemed to be a creditor.

(3) The Rules referred to in paragraph (2) are Rules 6.071(1) (duty of official receiver), 6.073(1) (report of official receiver), 6.074(2) (report of official receiver), 6.077(2) (creditors' meeting), 6.079 (power to call creditors' meeting), 6.081 (requisitioned meetings), 6.090 (entitlement to vote), 6.091 (admission and rejection of proof), 6.094 (meaning of “prove”), 6.095 (supply of forms), 6.096 (contents of proof), 6.097 (claim established by affidavit), 6.098 (cost of proving), 6.099 (inspection of proofs), 6.101 (admission and rejection of proofs for dividend), 6.102(1) and (2) (appeal against decision on proof), 6.102(3), 6.103 (withdrawal or variation of proofs), 6.104(1) (expunging of proof), 6.105 (negotiable instruments, etc.), 6.106 (secured creditors), 6.107 (discounts), 6.108 (debts in foreign currency), 6.109 (payments of a periodical nature), 6.110 (interest), 6.111 (debt payable at future time), 6.123(1) and (2) (resignation of trustee), 6.133(1) (release of official receiver), 6.134(1) (final meeting), 6.139(1) (challenge to remuneration), 6.147(2) (creditors' committee), 6.157(3) (vacancy on creditors' committee), 6.169(3) (request for public examination), 6.209(1) (notice of annulment) and 6.215(3) (application by bankrupt for discharge).

(4) Paragraphs (2) and (3) are without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditor’s rights).

(5) Where the trustee is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court or the official receiver, the trustee shall give notice or provide copies, as the case may be, to the member State liquidator.

(6) Paragraph (5) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to co-operate and communicate information).

Interpretation of creditor and notice to member State liquidator appointed in main proceedings

6.232.—(1) This Rule applies, in addition to Rule 6.231, where a member State liquidator has been appointed in main proceedings in relation to the bankrupt.

(2) For the purposes of the Rules referred to in paragraph (3) the member State liquidator is deemed to be a creditor.

(3) The Rules referred to in paragraph (2) are Rules 6.017(3) (hearing of petition), 6.020(1) (notice of intention to appear), 6.025(4) (extension of time), 6.027(2) (substitution of petitioner), 6.028(1) (change of carriage of petition) and 6.216(5) (report of official receiver).

(4) Paragraphs (2) and (3) are without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditor’s rights).”.

[E.R. 8]

Amendment to Insolvency Rules in relation to Part 7 (court procedure and practice) and Part 8 (proxies and company representation)

10.—(1) After Chapter 9 of Part 7 (court procedure and practice – general) insert –

“CHAPTER 10

EC REGULATION – CREDITORS' VOLUNTARY WINDING UP – CONFIRMATION BY THE COURT

Application for confirmation

7.56.—(1) Where a company has passed a resolution for voluntary winding up, and no declaration under Article 75 has been made, the liquidator may apply to the court for an order confirming the creditors' voluntary winding up for the purposes of the EC Regulation.

(2) The application shall be in writing and verified by affidavit by the liquidator (using [FORM 7.17]) and shall state –

- (a) the name of the applicant,
- (b) the name of the company and its registered number,
- (c) the date on which the resolution for voluntary winding up was passed,
- (d) that the application is accompanied by all of the documents required under paragraph (3) which are true copies of the documents required, and
- (e) that the EC Regulation will apply to the company and whether the proceedings will be main proceedings, territorial proceedings or secondary proceedings.

(3) The liquidator shall file in court two copies of the application, together with one copy of the following –

- (a) a copy of the resolution for voluntary winding up referred to by Article 70(2),
- (b) evidence of his appointment as liquidator of the company, and
- (c) a copy of the statement of affairs required under Article 85.

(4) It shall not be necessary to serve the application on, or give notice of it to, any person.

(5) On an application under this Rule the court may confirm the creditors' voluntary winding up.

(6) If the court confirms the creditor's voluntary winding up –

- (a) it may do so without a hearing,
- (b) it shall affix its seal to the application.

(7) A member of the court staff may deal with an application under this Rule.

Notice to member State liquidator and creditors in member States

7.57. Where the court has confirmed the creditors' voluntary winding up, the liquidator shall forthwith give notice –

- (a) if there is a member State liquidator in relation to the company, to the member State liquidator;
- (b) in accordance with Article 40 of the EC Regulation (duty to inform creditors).

CHAPTER 11

EC REGULATION – MEMBER STATE LIQUIDATOR

Interpretation of creditor

7.58.—(1) This Rule applies where a member State liquidator has been appointed in relation to a person subject to insolvency proceedings.

(2) For the purposes of the Rules referred to in paragraph (3) a member State liquidator appointed in main proceedings is deemed to be a creditor.

(3) The Rules referred to in paragraph (2) are Rules 7.27(1) (right to inspect court file) and 7.47(1) (right of attendance).

(4) Paragraphs (2) and (3) are without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditor's rights)."

(2) After Rule 8.7 (company representation) insert –

“Interpretation of creditor

8.8.—(1) This Rule applies where a member State liquidator has been appointed in relation to a person subject to insolvency proceedings.

(2) For the purposes of Rule 8.5(1) (right of inspection of proxies) a member State liquidator appointed in main proceedings is deemed to be a creditor.

(3) Paragraph (2) is without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditor's rights)."

[E.R. 9]

Amendments to the Insolvency Rules (Northern Ireland) 1991 in relation to Parts 11 and 12

11.—(1) After Rule 11.01(2) (preliminary) insert –

“(3) For the purposes of this Part, a member State liquidator appointed in relation to an insolvent is deemed to be a creditor.”

(2) In Rule 11.02(1) (notice of intended dividend) after “his intention to do so” substitute –

“(a) to all creditors whose addresses are known to him and who have not proved their debts, and

(b) where a member State liquidator has been appointed in relation to the insolvent, to that person.”

(3) After Rule 11.03(2) (final admission/rejection of proofs) insert –

“(3) In the declaration of a dividend no payment shall be made more than once by virtue of the same debt.

(4) Subject to Rule 11.11, where –

(a) a creditor has proved, and

(b) a member State liquidator has proved in relation to the same debt,

payment shall only be made to the creditor”.

(4) In Rule 11.06(1) (notice of declaration) after “notice of the dividend to” substitute –

“(a) all creditors who have proved their debts, and

(b) where a member State liquidator has been appointed in relation to the insolvent, to that person.”

(5) After Rule 12.13(4) (service outside the jurisdiction) insert –

“(5) Leave of the court is not required to serve anything referred to in this Rule on a member State liquidator.”

(6) After Rule 12.19(3) (right to have list of creditors) insert –

“(3A) For the purpose of this Rule a member State liquidator appointed in main proceedings in relation to a person is deemed to be a creditor.”

[E.R. 10(1)-(6)]

Amendment of index to Schedule 2

12. Insert in the index to forms in Schedule 2 to the principal Rules –

“7.17 Application, affidavit and order confirming creditors' voluntary winding up”.

[E.R. 11]

New form

13. Add the form contained in Part 1 of the Schedule to these Rules to Schedule 2 of the principal Rules as Form 7.17.

[E.R. 12]

Amended forms

14. The forms contained in Part 2 of the Schedule to these Rules are substituted for the forms identically numbered in Schedule 2 to the principal Rules.

[E.R. 13]

Dated 27th July 2002

Irvine of Lairg, C.

The Department of Enterprise, Trade and Investment hereby concurs with the foregoing Rules.
Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 5th August 2002.

L.S.

Michael J. Bohill
Senior Officer of the
Department of Enterprise, Trade and Investment