
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 347

**The Insolvency (Scotland) (Receivership
and Winding up) Rules 2018**

PART 11

THE EU REGULATION

[Note: a document required by the Act or these Rules must also contain the standard contents required as set out in Part 1.]

Interpretation of this Part

11.1. In this Part—

“winding up proceedings” means winding up proceedings listed in the United Kingdom entry in Annex A to the EU Regulation;

“conversion into winding up proceedings” refers to an order under Article 51 of the EU Regulation (conversion of secondary insolvency proceedings) that winding up proceedings of one kind are converted into winding up proceedings of another kind.

Conversion into other winding up proceedings: application

11.2.—(1) This rule applies where a member State liquidator in main proceedings applies to the court under Article 51 of the EU Regulation for conversion of winding up proceedings of one kind into winding up proceedings of another kind.

(2) A statement containing a statutory declaration made by or on behalf of the member State liquidator must be lodged with the court in support of the application.

(3) The statement must state—

- (a) that main proceedings have been opened in relation to the company in a member State other than the United Kingdom;
- (b) the belief of the person making the statement that conversion into other winding up proceedings would be most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings;
- (c) the kind of winding up proceedings into which, in the opinion of the person making the statement, the winding up proceedings should be converted; and
- (d) all other matters that, in the opinion of the member State liquidator, would assist the court in—
 - (i) deciding whether to make such an order, and
 - (ii) considering whether and, if so, what consequential provision to include.

(4) The application and the statement must be served upon the company.

Conversion into winding up proceedings: court order

11.3.—(1) On hearing an application for conversion of winding up proceedings under rule 11.2, the court may, subject to Article 51 of the EU Regulation, make such order as it thinks just.

- (2) An order for conversion into winding up proceedings may—
- (a) provide that the company be wound up as if a resolution for voluntary winding up under section 84 were passed on the day on which the order is made; and
 - (b) contain such consequential provisions as the court thinks just.

Confirmation of creditors' voluntary winding up: application

11.4.—(1) This rule applies where—

- (a) a company has passed a resolution for voluntary winding up, and either—
 - (i) no declaration of solvency has been made in accordance with section 89, or
 - (ii) a declaration made under section 89—
 - (aa) has no effect by virtue of section 89(2), or
 - (bb) is treated as not having been made by virtue of section 96(1); or
- (b) a company has moved from administration to creditors' voluntary winding up in accordance with paragraph 83 of schedule B1(2).

(2) The liquidator may apply to court for an order confirming the winding up as a creditors' voluntary winding up for the purposes of the EU Regulation.

(3) The application must be supported by a statement containing a statutory declaration made by the liquidator which must contain—

- (a) identification details for the liquidator and the company;
- (b) the date on which the resolution for voluntary winding up was passed;
- (c) a statement that the application is accompanied by the documents required by paragraph (4);
- (d) a statement that the documents required by paragraph (4)(c) and (d) are true copies of the originals; and
- (e) a statement whether the proceedings will be main proceedings, secondary proceedings or territorial proceedings and the reasons for so stating.

(4) The liquidator must lodge with the court—

- (a) 2 copies of the application;
- (b) evidence of having been appointed liquidator of the company;
- (c) a copy of—
 - (i) the resolution for voluntary winding up, or
 - (ii) the notice of moving from administration to creditors' voluntary winding up sent by the administrator to the registrar of companies under paragraph 83(3) of schedule B1; and
- (d) a copy of—

(1) A new section 96 is prospectively substituted by paragraph 20 of schedule 9 of the 2015 Act.

(2) Paragraph 83 sub-paragraphs (1)(b) and (2)(b) are prospectively amended by section 128(3) of the 2015 Act and sub-paragraphs (5)(b) and (8)(d) amended by paragraph 10(31) and (32) of schedule 9 of that Act.

- (i) the statement of affairs required by section 99(3) or under paragraph 47 of schedule B1, or
- (ii) the information included in the administrator's statement of proposals under paragraph 49 of schedule B1.

Confirmation of creditors' voluntary winding up: court order

11.5.—(1) On an application under the preceding rule, the court may make an order confirming the creditors' voluntary winding up.

- (2) It may do so without a hearing.

Confirmation of creditors' voluntary winding up: notice to member State liquidator

11.6.—(1) Where the court has confirmed the creditors' voluntary winding up, the liquidator must as soon as reasonably practicable give notice to any member State liquidator appointed in relation to the company.

(2) Paragraph (1) is without prejudice to the liquidator's obligation in Article 54 of the EU Regulation (duty to inform creditors in other member States) in relation to the creditors' voluntary winding up.

Proceedings in another member State: duty to give notice

11.7.—(1) This rule applies where a liquidator or provisional liquidator is required to give notice, or provide a copy of a document (including an order of court), to the court or the registrar of companies.

(2) Where not already required to do so by Article 41 of the EU Regulation, the liquidator or provisional liquidator must also give notice or provide a copy to—

- (a) any member State liquidator; or
- (b) where the liquidator or provisional liquidator 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.

Member State liquidator: rules on creditors' participation in proceedings

11.8.—(1) The provisions in these Rules apply to a member State liquidator's participation in proceedings in accordance with Article 45 of the EU Regulation (exercise of creditors' rights) in the same manner as they do to creditors' participation in those proceedings.

(2) In this rule, "creditors' participation"—

- (a) includes the following matters:—
 - (i) requesting and being provided with information, including inspecting or obtaining copies of documents or files,
 - (ii) being provided with notices or other documents,
 - (iii) participating and voting in decision procedures,
 - (iv) the establishment and operation of creditor committees,
 - (v) submitting statements of claim and documentary evidence of debt in respect of debts and receipt of dividends, and

(3) Section 99 subsections (1) and (3) are prospectively substituted by new subsections (1) and (3) by paragraph 23 of schedule 9 of the 2015 Act.

- (vi) applying to the court and appearing at hearings; and
- (b) is limited to creditors' participation from the time of the opening of proceedings in accordance with Article 2(8) of the EU Regulation.

Main proceedings in Scotland: undertaking in respect of assets in another member State (Article 36 of the EU Regulation)

11.9.—(1) This rule applies where a liquidator or provisional liquidator 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) In addition to the requirements as to form and content set out in Article 36, the undertaking must 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 liquidator or provisional liquidator; and
- (d) a description of the effect of the undertaking if approved.

(3) The proposed undertaking must be delivered to all the local creditors in the member State concerned of whose address the liquidator or provisional liquidator is aware.

(4) Where the undertaking is rejected the liquidator or provisional liquidator must inform all the creditors of the company of the rejection of the undertaking as soon as reasonably practicable.

(5) Where the undertaking is approved the liquidator or provisional liquidator must 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 (2)(d));
- (b) where the insolvency proceedings relate to a registered company, deliver a copy of the undertaking to the registrar of companies.

(6) The liquidator or provisional liquidator 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

11.10.—(1) This rule applies where a member State liquidator proposes an undertaking under Article 36 of the EU Regulation and the secondary proceedings which the undertaking is intended to avoid would be winding up proceedings to which these Rules apply.

(2) The decision by the local creditors whether to approve the undertaking must be made by a decision procedure subject to the rules which apply to the approval of a proposed CVA under section 4A(4) of the Act.

(3) The rules in Chapters 1 to 9 of Part 5 of the CVA and Administration Rules 2018 apply to the decision procedure (with any necessary modifications) except for the following— 5.7, 5.12, 5.14, 5.16 to 5.18 and 5.27.

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

(4) Section 4A was inserted by paragraph 5 of schedule 2 of the Insolvency Act 2000 (c.39) and paragraph 5 of schedule 18 of the Financial Services Act 2012 (c.21) and prospectively amended by paragraph 5 of schedule 9 of the 2015 Act.

Powers of a liquidator, provisional liquidator or member State liquidator in proceedings concerning members of a group of companies (Article 60 of the EU Regulation)

11.11. Where a liquidator or provisional liquidator or a member State liquidator makes an application in accordance with paragraph (1)(b) of Article 60 of the EU Regulation the application must state with reasons why the applicant thinks the matters set out in points (i) to (iv) of that paragraph apply.

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

11.12.—(1) An application to open group coordination proceedings must be headed “Application under Article 61 of Regulation (EU) 2015/848 to open group coordination proceedings”.

(2) The application must, in addition to the requirements in Article 61 of the EU Regulation, contain—

- (a) identification and contact details for the liquidator or provisional liquidator making the application;
- (b) identification details for the company and the insolvency proceedings by virtue of which the liquidator or provisional liquidator is making the application;
- (c) identification details for the company and 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
- (f) if relevant, a copy of any such agreement as is mentioned in Article 66 of the EU Regulation.

(3) An “office-holder” in paragraph (2)(d) includes a person holding office in insolvency proceedings in relation to the company in England and Wales or Northern Ireland.

Group coordination order (Article 68 of the EU Regulation)

11.13.—(1) An order opening group coordination proceedings must also contain—

- (a) details of the matters set out in Article 68(1)(a) to (c) of the EU Regulation;
- (b) identification details for the insolvency proceedings by virtue of which the liquidator or provisional liquidator is making the application;
- (c) identification and contact details for the liquidator or provisional liquidator making the application;
- (d) identification details for the insolvency proceedings which are subject to the coordination; and
- (e) 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 liquidator or provisional liquidator must 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 England and Wales or Northern Ireland, and
- (c) a member State liquidator.

Delivery of group coordination order to registrar of companies

11.14. A liquidator or provisional liquidator in respect of insolvency proceedings subject to coordination must deliver a copy of the group coordination order to the registrar of companies.

Liquidator or provisional liquidator's report

11.15.—(1) This rule applies where, under the second paragraph of Article 70(2) of the EU Regulation, a liquidator or provisional liquidator is required to give reasons for not following the coordinator's recommendations or the group coordination plan.

(2) Those reasons must be given as soon as reasonably practicable by a notice to all the creditors.

(3) Those 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

11.16.—(1) This rule applies where—

- (a) a company subject to insolvency proceedings has an establishment in Scotland; and
- (b) a member State liquidator is required or authorised under Article 28 of the EU Regulation to publish a notice.

(2) The notice must be gazetted.

Statement by member State liquidator that insolvency proceedings in another member State are closed etc.

11.17. A statement by a member State liquidator under any of sections 201, 204 or 205 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.