

STATUTORY INSTRUMENTS

2004 No. 353

The Insurers (Reorganisation and Winding Up) Regulations 2004

PART V

REORGANISATION OR WINDING UP OF UK INSURERS ^{F1}...

Textual Amendments

- F1** Words in Pt. 5 heading omitted (31.12.2020) by virtue of [The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/38), regs. 1(3), **2(10)** (with Pt. 3 Ch. 2) (as amended by S.I. 2020/1301, reg. 3, Sch. para. 13(g)(h)); 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

- C1** Pt. 5 applied (with modifications) (10.8.2005) by [The Insurers \(Reorganisation and Winding Up\) \(Lloyd's\) Regulations 2005](#) (S.I. 2005/1998), regs. 1, **45**, 46 (with reg. 32) (as amended (31.12.2020) by [The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/38), regs. 1(3), **4(6)(7)**; 2020 c. 1, **Sch. 5 para. 1(1)**)
- C2** Pt. 5 excluded (10.8.2005) by [The Insurers \(Reorganisation and Winding Up\) \(Lloyd's\) Regulations 2005](#) (S.I. 2005/1998), regs. 1, **47(2)** (with reg. 32)

Application of this Part

34.—(1) This Part applies—

- (a) where a decision with respect to the approval of a proposed voluntary arrangement having a qualifying purpose is made under section 4A of the 1986 Act or Article 17A of the 1989 Order on or after 20th April 2003 in relation to a UK insurer;
 - (b) where an administration order made under section 8 of the 1986 Act on or after 20th April 2003 or, on or after 15th September 2003, made under paragraph 13 of Schedule B1 [^{F2}or under paragraph 14 of Schedule B1 to the 1989 Order] is in force in relation to a UK insurer;
 - (c) where on or after 20th April 2003 the court reduces the value of one or more of the contracts of a UK insurer under section 377 of the 2000 Act or section 24(5) of the Friendly Societies Act 1992;
 - (d) where a UK insurer is subject to a relevant winding up;
 - (e) where a provisional liquidator is appointed in relation to a UK insurer on or after 20th April 2003.
- (2) For the purposes of paragraph (1)(a), a voluntary arrangement has a qualifying purpose if it—

Changes to legislation: *The Insurers (Reorganisation and Winding Up) Regulations 2004, PART V is up to date with all changes known to be in force on or before 22 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (a) varies the rights of the creditors as against the insurer and is intended to enable the insurer, and the whole or any part of its undertaking, to survive as a going concern; or
 - (b) includes a realisation of some or all of the assets of the insurer to which it relates and the distribution of the proceeds to creditors, with a view to terminating the whole or any part of the business of that insurer.
- (3) For the purposes of paragraph (1)(d), a winding up is a relevant winding up if—
- (a) in the case of a winding up by the court, the winding up order is made on or after 20th April 2003; or
 - (b) in the case of a creditors' voluntary winding up, the liquidator is appointed in accordance with section 100 of the 1986 Act, paragraph 83 of Schedule B1^{F3}, paragraph 84 of Schedule B1 to the 1989 Order] or Article 86 of the 1989 Order on or after 20th April 2003.

Textual Amendments

- F2** Words in reg. 34(1)(b) inserted (6.4.2007) by [The Insurers \(Reorganisation and Winding Up\) \(Amendment\) Regulations 2007 \(S.I. 2007/851\)](#), regs. 1, **2(14)**
- F3** Words in reg. 34(3)(b) inserted (6.4.2007) by [The Insurers \(Reorganisation and Winding Up\) \(Amendment\) Regulations 2007 \(S.I. 2007/851\)](#), regs. 1, **2(15)**

Application of this Part: ^{F4}certain assets excluded from insolvent estate of UK insurer]

35.—(1) For the purposes of this Part, the insolvent estate of a UK insurer shall not include any assets which at the commencement date are subject to ^{F5}a relevant compromise or arrangement].

(2) In this regulation—

- (a) “assets” has the same meaning as “property” in section 436 of the 1986 Act or Article 2(2) of the 1989 Order;
- (b) “commencement date” has the meaning given in regulation 18(4);
- (c) “insolvent estate” in England and Wales and Northern Ireland has the meaning given by ^{F6}rule 1.2] of the Insolvency Rules or Rule 0.2 of the Insolvency Rules (Northern Ireland) and in Scotland means the company’s assets;
- ^{F7}(d) “relevant compromise or arrangement” means—
 - (i) a compromise or arrangement sanctioned by the court in relation to a UK insurer before 20th April 2003 under—
 - (aa) section 425 of the Companies Act 1985 (excluding a compromise or arrangement falling within section 427 or 427A of that Act), or
 - (bb) Article 418 of the Companies (Northern Ireland) Order 1986 (excluding a compromise or arrangement falling within Article 420 or 420A of that Order); or
 - (ii) any subsequent compromise or arrangement sanctioned by the court to amend or replace a compromise or arrangement of a kind mentioned in paragraph (i) which is—
 - (aa) itself of a kind mentioned in sub-paragraph (aa) or (bb) of paragraph (i) (whether sanctioned before, on or after 20th April 2003), or
 - (bb) a section 899 compromise or arrangement.]

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Textual Amendments

- F4** Words in reg. 35 heading substituted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), arts. 1(2), **23(7)**
- F5** Words in reg. 35(1) substituted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), arts. 1(2), **23(8)(a)**
- F6** Words in reg. 35(2)(c) substituted (23.4.2019) by [The Financial Services and Markets \(Insolvency\) \(Amendment of Miscellaneous Enactments\) Regulations 2019 \(S.I. 2019/755\)](#), regs. 1, **4(9)**
- F7** Reg. 35(2)(d) substituted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), arts. 1(2), **23(8)(b)**

Modifications etc. (not altering text)

- C3** Reg. 35 disappplied (10.8.2005) by [The Insurers \(Reorganisation and Winding Up\) \(Lloyd's\) Regulations 2005 \(S.I. 2005/1998\)](#), regs. 1, **45**, 46(2) (with reg. 32)

Interpretation of this Part

36.—(1) For the purposes of this Part—

- (a) “affected insurer” means a UK insurer which is the subject of a relevant reorganisation or a relevant winding up;
- (b) “relevant reorganisation or a relevant winding up” means any voluntary arrangement, administration order, winding up, or order referred to in regulation 34(1)(d) to which this Part applies; ^{F8} ...

^{F8}(c)

(2) In this Part, references to the opening of a relevant reorganisation or a relevant winding up mean—

- (a) in the case of winding up proceedings—
 - (i) in the case of a winding up by the court, the date on which the winding up order is made, or
 - (ii) in the case of a creditors' voluntary winding up, the date on which the liquidator is appointed in accordance with section 100 of the 1986 Act ^{M1}, paragraph 83 of Schedule B1 or Article 86 of the 1989 Order [^{F9}or paragraph 84 of Schedule B1 to the 1989 Order];
- (b) in the case of a voluntary arrangement, the date when a decision with respect to that voluntary arrangement has effect in accordance with section 4A(2) of the 1986 Act or Article 17A(2) of the 1989 Order;
- (c) in a case where an administration order under paragraph 13 of Schedule B1 [^{F10}or under paragraph 14 of Schedule B1 to the 1989 Order] is in force, the date of the making of that order;
- (d) in a case where an administrator is appointed under paragraphs 14 or 22 of Schedule B1 [^{F11}or under paragraph 15 or 23 of Schedule B1 to the 1989 Order,] the date on which that appointment takes effect;
- (e) in a case where the court reduces the value of one or more of the contracts of a UK insurer under section 377 of the 2000 Act or section 24(5) of the Friendly Societies Act 1992, the date the court exercises that power; and
- (f) in a case where a provisional liquidator has been appointed, the date of that appointment,

and references to the time of an opening must be construed accordingly.

Changes to legislation: The Insurers (Reorganisation and Winding Up) Regulations 2004, PART V is up to date with all changes known to be in force on or before 22 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

- F8** Reg. 36(1)(c) and word omitted (31.12.2020) by virtue of The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/38), regs. 1(3), **2(11)** (with Pt. 3 Ch. 2) (as amended by S.I. 2020/1301, reg. 3, Sch. para. 13(g)(h)); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in reg. 36(2)(a)(ii) added (6.4.2007) by The Insurers (Reorganisation and Winding Up) (Amendment) Regulations 2007 (S.I. 2007/851), regs. 1, **2(16)(a)**
- F10** Words in reg. 36(2)(c) inserted (6.4.2007) by The Insurers (Reorganisation and Winding Up) (Amendment) Regulations 2007 (S.I. 2007/851), regs. 1, **2(16)(b)**
- F11** Words in reg. 36(2)(d) inserted (6.4.2007) by The Insurers (Reorganisation and Winding Up) (Amendment) Regulations 2007 (S.I. 2007/851), regs. 1, **2(16)(c)**

Modifications etc. (not altering text)

- C4** Reg. 36 modified (10.8.2005) by The Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005 (S.I. 2005/1998), regs. 1, **45**, 46(3) (with reg. 32)

Marginal Citations

- M1** Section 4A was inserted into the 1986 Act by the Insolvency Act 2000(c.), section 2(a) and Schedule 2 paragraphs 1 and 5.

[^{F12}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.]

Textual Amendments

- F12** Reg. 37 substituted (31.12.2020) by The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/38), regs. 1(3), **2(12)** (with Pt. 3 Ch. 2) (as amended by S.I. 2020/1301, reg. 3, Sch. para. 13(g)(h)); 2020 c. 1, Sch. 5 para. 1(1)

Employment contracts and relationships

^{F13}38.

Textual Amendments

- F13** Reg. 38 omitted (31.12.2020) by virtue of The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/38), regs. 1(3), **2(13)(a)** (with Pt. 3 Ch. 2) (as amended by S.I. 2020/1301, reg. 3, Sch. para. 13(g)(h)); 2020 c. 1, Sch. 5 para. 1(1)

Contracts in connection with immovable property

^{F14}39.

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Textual Amendments

F14 Reg. 39 omitted (31.12.2020) by virtue of [The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/38\)](#), regs. 1(3), **2(13)(b)** (with Pt. 3 Ch. 2) (as amended by S.I. 2020/1301, reg. 3, Sch. para. 13(g)(h)); 2020 c. 1, Sch. 5 para. 1(1)

Registrable rights

F15 40.

Textual Amendments

F15 Reg. 40 omitted (31.12.2020) by virtue of [The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/38\)](#), regs. 1(3), **2(13)(c)** (with Pt. 3 Ch. 2) (as amended by S.I. 2020/1301, reg. 3, Sch. para. 13(g)(h)); 2020 c. 1, Sch. 5 para. 1(1)

Third parties' rights in rem

F16 41.

Textual Amendments

F16 Reg. 41 omitted (31.12.2020) by virtue of [The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/38\)](#), regs. 1(3), **2(13)(d)** (with Pt. 3 Ch. 2) (as amended by S.I. 2020/1301, reg. 3, Sch. para. 13(g)(h)); 2020 c. 1, Sch. 5 para. 1(1)

Reservation of title agreements etc.

F17 42.

Textual Amendments

F17 Reg. 42 omitted (31.12.2020) by virtue of [The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/38\)](#), regs. 1(3), **2(13)(e)** (with Pt. 3 Ch. 2) (as amended by S.I. 2020/1301, reg. 3, Sch. para. 13(g)(h)); 2020 c. 1, Sch. 5 para. 1(1)

Creditors' rights to set off

43.—(1) A relevant reorganisation or a relevant winding up shall not affect the right of creditors to demand the set-off of their claims against the claims of the affected insurer, where such a set-off is permitted by the ^{F18}law applicable to the affected insurer's claim].

F19(2)

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(3) Paragraph (1) does not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors under the general law of insolvency of the United Kingdom, as referred to in regulation 37(3)(m).

Textual Amendments

- F18** Words in [reg. 43\(1\)](#) substituted (31.12.2020) by [The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/38\)](#), regs. 1(3), **2(14)(a)** (with Pt. 3 Ch. 2) (as amended by [S.I. 2020/1301](#), reg. 3, Sch. para. 13(g)(h)); 2020 c. 1, Sch. 5 para. 1(1)
- F19** [Reg. 43\(2\)](#) omitted (31.12.2020) by virtue of [The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/38\)](#), regs. 1(3), **2(14)(b)** (with Pt. 3 Ch. 2) (as amended by [S.I. 2020/1301](#), reg. 3, Sch. para. 13(g)(h)); 2020 c. 1, Sch. 5 para. 1(1)

Regulated markets

44.—(1) ^{F20}... The effects of a relevant reorganisation measure or winding up on the rights and obligations of the parties to [^{F21}UK regulated market] must be determined in accordance with the law applicable to that market.

(2) Paragraph (1) does not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors under the general law of insolvency of the United Kingdom, as referred to in regulation 37(3)(m).

[^{F22}(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.]

Textual Amendments

- F20** Words in [reg. 44\(1\)](#) omitted (31.12.2020) by virtue of [The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/38\)](#), regs. 1(3), **2(15)(a)(i)** (with Pt. 3 Ch. 2) (as amended by [S.I. 2020/1301](#), reg. 3, Sch. para. 13(g)(h)); 2020 c. 1, Sch. 5 para. 1(1)
- F21** Words in [reg. 44\(1\)](#) substituted (31.12.2020) by [The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/38\)](#), regs. 1(3), **2(15)(a)(ii)** (with Pt. 3 Ch. 2) (as amended by [S.I. 2020/1301](#), reg. 3, Sch. para. 13(g)(h)); 2020 c. 1, Sch. 5 para. 1(1)
- F22** [Reg. 44\(3\)](#) substituted (31.12.2020) by [The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/38\)](#), regs. 1(3), **2(15)(b)** (with Pt. 3 Ch. 2) (as amended by [S.I. 2020/1301](#), reg. 3, Sch. para. 13(g)(h)); 2020 c. 1, Sch. 5 para. 1(1)

Detrimental acts pursuant to the law of an EEA State

^{F23}**45.**

Textual Amendments

- F23** [Reg. 45](#) omitted (31.12.2020) by virtue of [The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/38\)](#), regs. 1(3),

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2(16)(a) (with Pt. 3 Ch. 2) (as amended by S.I. 2020/1301, reg. 3, Sch. para. 13(g)(h)); 2020 c. 1, Sch. 5 para. 1(1)

Protection of third party purchasers

^{F24} **46.**

Textual Amendments

F24 Reg. 46 omitted (31.12.2020) by virtue of [The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/38\)](#), regs. 1(3), **2(16)(b)** (with Pt. 3 Ch. 2) (as amended by S.I. 2020/1301, reg. 3, Sch. para. 13(g)(h)); 2020 c. 1, Sch. 5 para. 1(1)

Lawsuits pending

^{F25} **47.**

Textual Amendments

F25 Reg. 47 omitted (31.12.2020) by virtue of [The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/38\)](#), regs. 1(3), **2(16)(c)** (with Pt. 3 Ch. 2) (as amended by S.I. 2020/1301, reg. 3, Sch. para. 13(g)(h)); 2020 c. 1, Sch. 5 para. 1(1)

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Changes and effects yet to be applied to :

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)