

**2017 No. 702**

**INSOLVENCY**

**COMPANIES**

**INDIVIDUALS**

**The Insolvency Amendment (EU 2015/848) Regulations 2017**

<i>Made</i> - - - -	<i>21st June 2017</i>
<i>Laid before Parliament</i>	<i>23rd June 2017</i>
<i>Coming into force</i> - -	<i>26th June 2017</i>

The Secretary of State, being designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to insolvency(a) makes the following Regulations in exercise of the powers conferred upon him by that section.

**Citation and Commencement**

1. These Regulations may be cited as the Insolvency Amendment (EU 2015/848) Regulations 2017 and come into force on 26th June 2017.

**Amendments and extent**

2.—(1) The Schedule has effect.

(2) Any provision of these Regulations amending or applying an enactment has the same extent as the enactment amended or applied, except that—

- (a) the amendments made to the Insolvency Act 1986(b) by paragraphs 3, 7, 9, and 12, of the Schedule extend to England and Wales only; and
- (b) the amendments to that Act made by Part 4 of that Schedule apply to Scotland only.

**Temporal application**

3.—(1) These Regulations do not apply to proceedings opened before 26 June 2017.

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(a) 1972 c. 68. The Secretary of State was designated by S.I. 2001/3495. Section 57(1) of the Scotland Act 1998 (1998 c. 46) provides that despite the transfer to the Scottish Ministers of functions in relation to observing and implementing obligations under Community law, any function of a Minister of the Crown shall continue to be exercisable by the Minister as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

(b) 1986 c.45. Relevant amendments have been made by the Insolvency Act 2000 (c. 39); the Enterprise and Regulatory Reform Act 2013 (c.24); the Small Business, Enterprise and Employment Act 2015(c. 26); S.I. 2002/1037; and S.I. 2002/1240.

(2) The time at which proceedings are opened is to be determined in accordance with Article 2(8) of Regulation (EU) 2015/848 of the European Parliament and of the Council(a).

### **Saving**

4. The Insolvency Act 1986 as it applies to the instruments listed in regulation 4(2) of the Deregulation Act 2015 and Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) (Savings) Regulations 2017(b) continues to apply to those instruments without the amendments made to the Insolvency Act 1986 by Parts 1 and 4 of the Schedule.

21st June 2017

*Margot James*  
Parliamentary Under Secretary of State  
Department for Business Energy and Industrial Strategy

## **SCHEDULE**

Regulation 2

### **PART 1**

#### **Amendments to the Insolvency Act 1986**

1. The Insolvency Act 1986 is amended as follows.
2. In section 1 (those who may propose an arrangement) in subsection (5) for the words from “the EC Regulation” to the end substitute “Article 3 of the EU Regulation”(c).
3. In section 106 (final account prior to dissolution) after subsection 4 insert—

“(4A) Subsection (4B) applies where, immediately before the liquidator sends a copy of the account of the winding up to the registrar under subsection (3), there are EU insolvency proceedings open in respect of the company in one or more other member States.

(4B) The liquidator must send to the registrar, with the copy of the account, a statement—

  - (a) identifying those proceedings,
  - (b) identifying that member State liquidator appointed in each of those proceedings, and
  - (c) indicating, in relation to each of those member State liquidators, whether that member State liquidator consents to the company being dissolved.”
4. In section 117 (High Court and county court jurisdiction) in subsection (7) for “the EC Regulation (jurisdiction under EC Regulation)” substitute “the EU Regulation (jurisdiction under EU Regulation)”(d).
5. In section 120 (Court of Session and sheriff court jurisdiction) in subsection (6) for “the EC Regulation (jurisdiction under EC Regulation)” substitute “the EU Regulation (jurisdiction under EU Regulation)”(e).
6. In section 124 (application for winding up)(f) in subsection (1) for the words from “a liquidator” to “(within the meaning of Article 38 of the EC Regulation)” substitute “a member

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(a) OJEU L.141 of 5.6.2015 p.19.

(b) S.I. 2017/540.

(c) Subsection (5) was inserted by S.I. 2005/879.

(d) Subsection (7) was inserted by S.I. 2002/1240.

(e) Subsection (6) was inserted by S.I. 2002/1240.

(f) Relevant amendments to subsection (1) were made by S.I. 2002/1240.

State liquidator appointed in proceedings by virtue of Article 3(1) of the EU Regulation or a temporary administrator (within the meaning of Article 52 of the EU Regulation)”.

7. In section 146 (final account)(a) after subsection (5) insert—

“(6) Subsection (7) applies where, immediately before the liquidator sends a copy of the account to the registrar under subsection (4) (or, where the liquidator sends a copy of the account to the court and the registrar on different days, immediately before the liquidator sends the first of those copies) there are EU insolvency proceedings open in respect of the company in one or more other member States.

(7) The liquidator must send to the court and the registrar, with the copy of the account, a statement—

- (a) identifying those proceedings,
- (b) identifying the member State liquidator appointed in each of those proceedings,
- (c) indicating, in relation to each of those member State liquidators, whether that member State liquidator consents to the company being dissolved.”

8. After section 146 insert—

**“146A Official receiver’s duty to send statement to registrar about other proceedings**

(1) This section applies where—

- (a) the official receiver sends to the registrar of companies a notice that the winding up of a company by the court is complete, and
- (b) immediately before the official receiver sends the notice there are EU insolvency proceedings open in respect of the company in one or more other member States.

(2) The official receiver must send to the registrar, with the notice, a statement—

- (a) identifying those proceedings,
- (b) identifying the member State liquidator appointed in each of those proceedings, and
- (c) indicating, in relation to each of those member State liquidators, whether that member State liquidator consents to the company being dissolved.”

9.—(1) Section 201 (dissolution on voluntary winding up)(b) is amended as follows.

(2) In subsection (2)—

- (a) after “or the account and statement” insert “and any statement under section 106(4B),”;
- (b) at the end insert “(except where subsection (2A) applies)”.

(3) After that subsection insert—

“(2A) This subsection applies where a statement sent to the registrar under section 106(4B) indicates that a member State liquidator does not consent to the company being dissolved.

(2B) Where subsection (2A) applies, the company is deemed to be dissolved at the end of the period of 3 months beginning with the date (if any) recorded in the register as the date on which the registrar was notified that—

- (a) all proceedings identified in the statement sent under section 106(4B) were closed, or
- (b) every member State liquidator appointed in those proceedings consented to the company being dissolved.”

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(a) Section 146 has been amended by the Small Business, Enterprise and Employment Act 2015.

(b) Relevant amendments to section 201 have been made by the Small Business, Enterprise and Employment Act 2015 (c.26) and by S.I. 2006/3429.

**10.**—(1) Section 202 (early dissolution: England and Wales)(a) is amended as follows.

(2) After subsection (2) insert—

“(2A) Subsection (2B) applies where, immediately before the official receiver makes an application under subsection (2), there are EU insolvency proceedings open in respect of the company in one or more other member States.

(2B) The official receiver must send to the registrar, with the application, a statement—

- (a) identifying those proceedings,
- (b) identifying the member State liquidator appointed in each of those proceedings, and
- (c) indicating, in relation to each of those member State liquidators, whether that member State liquidator consents to the company being dissolved.”

(3) In subsection (3) for “that application” substitute “an application under subsection (2)”.

(4) In subsection (4) for “of this section” substitute “and send any statement under subsection (2B)”.

(5) In subsection (5)—

(a) in the first sentence—

- (i) after “under subsection (2)” insert “and any statement under subsection (2B)”,
- (ii) after “shall forthwith register it” insert “or them”, and
- (iii) at the end insert “(except where subsection (6) applies)”;

(b) after the first sentence insert—

“(6) This subsection applies where a statement under subsection (2B) indicates that a member State liquidator does not consent to the company being dissolved.

(7) Where subsection (6) applies, the company is deemed to be dissolved at the end of the period of 3 months beginning with the date (if any) recorded in the register as the date on which the registrar was notified that—

- (a) all proceedings identified in the statement under subsection (2B) were closed, or
- (b) every member State liquidator appointed in those proceedings consented to the company being dissolved.”

(6) In that subsection the second sentence becomes subsection (8).

(7) In that subsection, for “that period” substitute “the period in subsection (5) or (7)”.

**11.** In section 203 (consequence of notice under section 202), in subsection (3)(b) for “section 202(5)” substitute “section 202(8)”.

**12.**—(1) Section 205 (dissolution otherwise than under sections 202 to 204) is amended as follows.

(2) In subsection (2)—

- (a) after “or the notice” insert “and any statement under section 146(7) or 146A(2)”, and
- (b) after “the registration” insert “of the final account or notice”.

(3) After that subsection insert—

“(2A) Subsection (2B) applies where a statement sent to the registrar under section 146(7) or 146A(2) indicates that a member State liquidator does not consent to the company being dissolved.

(2B) The company is not dissolved at the end of the period mentioned in subsection (2) but is instead dissolved at the end of the period of 3 months beginning with the date (if any) recorded in the register as the date on which the registrar was notified that—

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(a) Relevant amendments to section 202 have been made by the Small Business, Enterprise and Employment Act 2015 (c.26).

- (a) all proceedings identified in the statement under section 146(7) or 146A(2) were closed, or
- (b) every member State liquidator appointed in those proceedings consented to the company being dissolved.”

**13.** In section 221 (winding up of unregistered companies)(a) in subsection (4) for “EC Regulation” substitute “EU Regulation”.

**14.** In section 225 (company incorporated outside Great Britain may be wound up though dissolved)(b) in subsection (2) for “EC Regulation” substitute “EU Regulation”.

**15.** In section 240 (“relevant time” under sections 238 and 239) in subsection (3)(d) for “Article 37 of the EC Regulation” substitute “Article 51 of the EU Regulation”.

**16.** In section 247 (meaning of “insolvency” and “go into liquidation”)(c) in subsection (3)(b) for “Article 37 of the EC Regulation” substitute “Article 51 of the EU Regulation”.

**17.** In section 251 (expressions used generally) at the appropriate places insert the following definitions—

““EU insolvency proceedings” means insolvency proceedings as defined in Article 2(4) of the EU Regulation;”;

““member State liquidator” means a person falling within the definition of “insolvency practitioner” in Article 2(5) of the EU Regulation appointed in insolvency proceedings listed in Annex A to the EU Regulation;”.

**18.** In section 263I (debtors against whom an adjudicator may make a bankruptcy order)(d) in subsections (1)(b) and (4) for “EC Regulation” substitute “EU Regulation”.

**19.** In section 264 (who may present a bankruptcy petition)(e)—

(a) in subsection (1)(ba) for “Article 38 of the EC Regulation” substitute “Article 52 of the EU Regulation”, and

(b) for subsection (1)(bb) substitute—

“(bb) by an insolvency practitioner (within the meaning of Article 2(5) of the EU Regulation) appointed in proceedings by virtue of Article 3(1) of the EU Regulation.”.

**20.** In section 265 (creditor’s petition: debtors against whom the court may make a bankruptcy order)(f) in subsections (1)(b) and (4) for “EC Regulation” substitute “EU Regulation”.

**21.** In section 330 (final distribution)(g) in subsection (6) for “Article 35 of the EC Regulation” (surplus in secondary proceedings to be transferred to main proceedings) substitute “Article 49 of the EU Regulation” (assets remaining in the secondary compulsory proceedings).

**22.** In section 387 (meaning of “the relevant date”)(h) in subsections (3)(aa) and (ab) for “Article 37 of the EC Regulation” substitute “Article 51 of the EU Regulation”(i).

**23.** In section 388 (meaning of “act as an insolvency practitioner”)(j) in subsection (6) for “EC Regulation” substitute “EU Regulation”.

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(a) Relevant amendment has been made by S.I. 2002/1240.

(b) Relevant amendment has been made by S.I. 2002/1240.

(c) Relevant amendments have been made by S.I. 2002/1240 and paragraph 33 of Schedule 17 to the Enterprise Act 2002 (c.40).

(d) Section 263I was inserted by the Enterprise and Regulatory Reform Act 2013 (c.24).

(e) Section 264 has been amended by the Enterprise and Regulatory Reform Act 2013 (c.24) and subsections (1)(ba) and (bb) were inserted by S.I. 2002/1240.

(f) Section 265 was substituted by the Enterprise and Regulatory Reform Act 2013.

(g) Subsection (6) was inserted by SI 2002/1240.

(h) Subsection 3(aa) and (ab) were inserted by S.I. 2002/1240.

(i) Paragraphs (aa) and (ab) were inserted by S.I. 2002/1240.

(j) Subsection (6) was inserted by SI 2002/1240.

**24.** In section 411 (company insolvency rules)(a) in subsections (1), (2A) and (2B) for “EC Regulation” in each place where it occurs substitute “EU Regulation”.

**25.** In section 412 (individual insolvency rules (England and Wales))(b) in subsections (1), (2A) and (2B) for “EC Regulation” in each place where it occurs substitute “EU Regulation”.

**26.** In section 420 (insolvent partnerships)(c) in subsections (1A) and (1B) for “EC Regulation” substitute “EU Regulation”.

**27.** In section 421 (insolvent estates of deceased persons)(d) in subsections (1A) and (1B) for “EC Regulation” substitute “EU Regulation”.

**28.** In section 436 (expressions used generally)(e) in subsection (1)—

(a) omit the definition of “the EC Regulation”, and

(b) at the appropriate place insert—

““the EU Regulation” means Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings;”.

**29.** In section 436A (proceedings under EC Regulation: modified definition of property)(f) including in the heading, for “EC Regulation” substitute “EU Regulation”.

**30.—**(1) Schedule B1 (administration)(g) is amended as follows.

(2) In paragraph 84—

(a) after sub-paragraph (1) insert—

“(1A) Sub-paragraph (1B) applies where, immediately before the administrator sends the notice, there are EU insolvency proceedings open in respect of the company in one or more other member States.

(1B) The administrator must send to the registrar, with the notice, a statement—

(a) identifying those proceedings,

(b) identifying the member State liquidator appointed in each of those proceedings, and

(c) indicating, in relation to each of those member State liquidators, whether that member State liquidator consents to the company being dissolved.”

(b) In sub-paragraph (3)—

(i) after “sub-paragraph (1)” insert “and any statement under sub-paragraph (1B)”, and

(ii) at the end insert “or them”.

(3) In sub-paragraph (6) at the end, insert “(except where sub-paragraph (6A) applies)”.

(4) After sub-paragraph (6) insert—

“(6A) This sub-paragraph applies where a statement under sub-paragraph (1B) indicates that a member State liquidator does not consent to the company being dissolved.

(6B) Where sub-paragraph (6A) applies, the company is deemed to be dissolved at the end of the period of three months beginning with the date (if any) recorded in the register as the date on which the registrar was notified that—

(a) all proceedings identified in the statement under sub-paragraph (1B) were closed, or

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(a) Subsection (1) was amended and subsections (2A) and (2B) were inserted by SI 2002/1037.

(b) Subsection (1) was amended and subsections (2A) and (2B) were inserted by SI 2002/1037.

(c) Subsections (1A) and (1B) were inserted by S.I. 2002/1037.

(d) Subsections (1A) and (1B) were inserted by S.I. 2002/1037.

(e) The definition of EC Regulation was inserted by S.I. 2002/1037.

(f) Section 436A was inserted by S.I. 2002/1240.

(g) Schedule B1 was inserted by the Enterprise Act 2002 (c.40).

(b) every member State liquidator appointed in those proceedings consented to the company being dissolved.”

(5) In sub-paragraph (7)(a) and (c), after “sub-paragraph (6)” insert “or (6B)”.

**31.** In Schedule B1(a) (administration) in paragraph 111(1B) for the words from “the EC Regulation” to the end substitute “Article 3 of the EU Regulation”.

## PART 2

### Amendments to the Insolvency (England and Wales) Rules 2016

#### Amendments to the Insolvency Rules 2016

**32.** The Insolvency (England and Wales) Rules 2016(b) are amended as follows.

#### Rule 1.2 (defined terms)

[Note: The note appearing after the definition of “document” should be replaced by: “[Note: EU Regulation is defined for the purposes of these Rules by section 436 of the Act as Regulation (EU) No 2015/848 of the European Parliament and of the Council].”

**33.** In rule 1.2(2)—

- (a) in the definition of “Article 1.2 undertaking” for “Council Regulation (EC) No.1346/2000 (“the EC Regulations”)” substitute “Regulation (EU) No 2015/848 of the European Parliament and of the Council” (“the EU Regulations”)” and for footnote “(a)” substitute “OJEU L141/19, 5.6.2015;”;
- (b) for the definition of “main proceedings” substitute—
  - ““main proceedings” means proceedings opened in accordance with Article 3(1) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of that Regulation and which—
  - (a) in relation to England and Wales, are set out in Annex A to that Regulation under the heading “United Kingdom”; and
  - (b) in relation to another member State, are set out under the heading relating to that member State;”
- (c) in the definition of “member State liquidator” for “a person falling within the definition of liquidator in Article 2(b)” substitute “a person falling within the definition of “insolvency practitioner” in Article 2(5)” and for the two references to the “EC Regulation” substitute the “EU Regulation”;
- (d) in the definition of “non-EC proceedings” for that term substitute “non-EU proceedings”;
- (e) for the definition of “secondary proceedings” substitute—
  - ““secondary proceedings” means proceedings opened in accordance with Article 3(2) and (3) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of that Regulation and which—
  - (a) in relation to England and Wales, are set out in Annex A to that Regulation under the heading “United Kingdom”;
  - (b) and in relation to another member State are set out under the heading relating to that member State;”
- (f) for the definition of “territorial proceedings” substitute—

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(a) Paragraph 111(1B) was inserted by S.I. 2005/879.

(b) S.I. 2016/1024.

““territorial proceedings” means proceedings opened in accordance with Article 3(2) and (4) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of that Regulation and which—

- (a) in relation to England and Wales, are set out in Annex A to the EU Regulation under the heading “United Kingdom”; and
- (b) in relation to another member State, are set out under the heading relating to that member State;”

**34.**—(1) Rule 1.20 (registrar of companies: covering notices) is amended as follows.

(2) After paragraph (1)(n) insert—

“(o) an undertaking given under Article 36 of the EU Regulation.”.

**Rule 2.14 (documents filed with the court to obtain a moratorium (paragraph 7(1) of Schedule A1))**

**35.** Rule 2.14 is amended by inserting after paragraph (2)—

“(2A) A statement from the nominee whether the proceedings will be main, secondary, territorial or non-EC proceedings with the reasons for so stating must also be filed with the court.”.

**Rule 2.25 (CVA: consideration of proposal: common requirements (section 3))**

**36.**—(1) Rule 2.25 is amended as follows.

(2) After paragraph (2) insert—

“(2A) The nominee must examine whether there is jurisdiction to open the proceedings and must specify in the nominee’s comments on the proposal required by paragraphs (3)(d)(iii) and (5)(a)(iii) whether the proceedings will be main, secondary, territorial or non-EU proceedings with the reasons for so stating”;

(3) Paragraph (3)(d)(iii) is amended by inserting after the words “administrator or liquidator” the words “in which case the comments required are limited to stating whether the proceedings will be main, secondary, territorial or non-EU proceedings with the reasons for so stating”.

**Rule 3.51 (order of priority)**

**37.** In rule 3.51(2)(g) after “(including any” insert “costs referred to in Articles 30 or 59 of the EU Regulation and”.

**Rule 6.42 (general rule as to priority)**

**38.** In rule 6.42(4)(f) after “(including any” insert “costs referred to in Articles 30 or 59 of the EU Regulation and”.

**Rule 7.33 (application for the appointment of provisional liquidator (section 135))**

**39.** In rule 7.33(2) after sub-paragraph (e) insert—

“(f) a statement whether the proceedings will be main, secondary, territorial or non-EU proceedings with the reasons for so stating.”.

**Rule 7.108 (general rule as to priority)**

**40.** In rule 7.108(4)(m) after “(including any” insert “costs referred to in Articles 30 or 59 of the EU Regulation and”.

**Rule 8.19 (IVA: Nominee’s report (section 256A))**

41.—(1) Rule 8.19 is amended as follows.

(2) After paragraph (1) insert—

“(1A) The nominee must examine whether there is jurisdiction to open the proceedings and must specify in the nominee’s report whether the proceedings will be main, secondary, territorial or non-EU proceedings with the reasons for so stating.”.

**Rule 10.49 (application for the appointment of interim receiver (section 286))**

42. In rule 10.49—

(a) in paragraph (1)(d) for “Article 29 of the EC Regulation” substitute “Article 37 of the EU Regulation”; and

(b) in paragraph (2) after sub-paragraph (e) insert—

“(f) a statement whether the proceedings will be main, secondary, territorial or non-EU proceedings with the reasons for so stating.”.

**Rule 10.149 (general rule as to priority)**

43. In rule 10.149(n) after “(including any” insert costs referred to in Article 30 of the EU Regulation and”.

**Rule 15.11 (Notice of decision procedures or of seeking deemed consent: when and to whom delivered)**

44. In the table in rule 15.11 (Notice of decision procedures or of seeking deemed consent: when and to whom delivered) at the end of the table insert—

**Table 1**

<i>Proceedings</i>	<i>Decision</i>	<i>Persons to whom notice must be delivered</i>	<i>Minimum notice required</i>
Main proceedings in another member State	Approval under Article 36(5) of the EU Regulation of proposed undertaking offered by a member State liquidator	all the local creditors in the United Kingdom	14 days

**Part 21**

45. For the heading to Part 21 substitute “The EU Regulation”.

**Interpretation for Part 21**

46. In rule 21.1—

(a) for the definition of “winding-up proceedings” substitute—

““winding-up proceedings” means insolvency proceedings listed in the United Kingdom entry in Annex A to the EU Regulation other than voluntary arrangements where they relate to individuals, bankruptcy or sequestration;”

(b) in the definition of “conversion into winding-up proceedings”—

- (i) for the words “Article 37 of the EC Regulation (conversion of earlier proceedings)” substitute “Article 51 of the EU Regulation (conversion of secondary insolvency proceedings)”; and
- (ii) for “that—” to the end of sub-paragraph (c) substitute “that winding-up proceedings of one kind are converted into winding-up proceedings of another kind.”.

**Standard contents of applications to court under the EU Regulation**

47. After rule 21.1 insert—

“**21.1A.** Where an application is made to the court under the EU Regulation the standard contents set out in rule 1.35 apply to the application with any necessary adaptations except in so far as these Rules make specific provision for such an application.”

**Conversion into winding-up proceedings or bankruptcy: application**

[Insert the following after the heading to Rule 21.2: “Note: Local creditor” is defined in Article 2(11) of the EU Regulation.”]

48. Rule 21.2 is amended as follows—

- (a) in paragraph (1) for “Article 37 of the EC Regulation” substitute “Article 51 of the EU Regulation”;
- (b) for paragraph (1)(a) and (b) substitute—
  - “(a) conversion of winding-up proceedings of one kind into winding-up proceedings of another kind; or
  - (b) conversion of an IVA into bankruptcy or of bankruptcy into an IVA;”
- (c) in paragraph (3)(b) for the words “would prove to be in the interests of the creditors in the main proceedings” substitute “would be most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings”.

**Confirmation of creditors’ voluntary winding up: application**

49. In rule 21.4(3) at the end of sub-paragraph (e) insert “and the reasons for so stating”.

**Member state liquidator: duty to give notice**

50. In rule 21.7—

- (a) for the heading substitute “Proceedings in another member State: duty to give notice”;
- (b) in paragraph (1)(a) after “liquidator” insert “, provisional liquidator, interim receiver” and delete sub-paragraph (b) and the “and” preceding it”;
- (c) in paragraph (2)—
  - (i) for “Article 31 of the EC Regulation” substitute “Article 41 of the EU Regulation”;
  - (ii) after “liquidator” insert “, provisional liquidator, interim receiver”;
  - (iii) and for “the member State liquidator” substitute—
    - “(a) any member State liquidator; or
    - (b) where the supervisor, administrator, liquidator, provisional liquidator, interim receiver or trustee 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**

51. In rule 21.8—

- (a) in paragraph (1) for “Article 32(3) of the EC Regulation” substitute “Article 45 of the EU Regulation”; and
- (b) in paragraph (2)(b) for “Article 2(f) of the EC Regulation” substitute “Article 2(8) of the EU Regulation”.

52. After rule 21.8 insert the following—

**“Main proceedings in England and Wales: undertaking by office-holder in respect of assets in another member State (Article 36 of the EU Regulation)**

[Note: “local creditor” is defined in Article 2(11) of the EU Regulation.]

**21.9.**—(1) This rule applies where an office-holder 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) The following requirements apply in respect of the proposed undertaking.

(3) 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 office-holder; and
- (d) a description of the effect of the undertaking if approved.

(4) The proposed undertaking must be delivered to all the local creditors in the member State concerned of whose address the office-holder is aware.

(5) Where the undertaking is rejected the office-holder must inform all the creditors of the company of the rejection of the undertaking as soon as reasonably practicable.

(6) Where the undertaking is approved the office-holder 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 (3)(d));
- (b) in the case of a bankruptcy file the undertaking on the court file or the bankruptcy file as the case may be;
- (c) where the insolvency proceedings relate to a registered company deliver a copy of the undertaking to the registrar of companies.

(7) The office-holder 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**

**21.10.**—(1) This rule applies where a member State liquidator proposes an undertaking under Article 36 and the secondary proceedings which the undertaking is intended to avoid would be insolvency 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 CVA (with any necessary modifications) and subject as follows.

(3) In Part 15 the rules in Chapters 1 to 9 and 11 apply to the decision procedure (with any necessary modifications) except for the following—

15.7, 15.12, 15.14, 15.16-15.19, 15.24, 15.29 to 15.30.

(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.

(5) Where the main proceedings relate to an individual the member State liquidator must gazette a notice of the undertaking containing—

- (a) the fact that the undertaking was approved;
- (b) the date the undertaking was approved; and
- (c) a description of the effect of the undertaking.

**Powers of an office-holder or member State liquidator in proceedings concerning members of a group of companies (Article 60 of the EU Regulation)**

**21.11.** Where an office-holder 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)**

**21.12.**—(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” and must, in addition to the requirements in Article 61 contain—

- (a) identification and contact details for the office-holder making the application;
- (b) identification details for the insolvency proceedings by virtue of which the office-holder is making the application;
- (c) identification details for 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.

(2) “office-holder” in this rule includes a person holding office in insolvency proceedings in relation to the company in Scotland or Northern Ireland, and a member State liquidator.

**Group coordination order (Article 68 EU Regulation)**

[Note: an order opening group coordination proceedings must also contain the matters set out in Article 68(1)(a) to (c).]

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

- (a) identification details for the insolvency proceedings by virtue of which the office-holder is making the application;
- (b) identification and contact details for the office-holder making the application;
- (c) identification details for the insolvency proceedings which are subject to the coordination;
- (d) 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 office-holder who made the application 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 Scotland or Northern Ireland, and
- (c) a member State liquidator.

#### **Delivery of group coordination order to registrar of companies**

**21.14.** An office-holder in respect of insolvency proceedings subject to coordination must deliver a copy of the group coordination order to the registrar of companies.

#### **Office-holder's report**

**21.15.**—(1) This rule applies where, under the second paragraph of Article 70(2) of the EU Regulation, an office-holder 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) The 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**

**21.16.**—(1) This rule applies where—

- (a) a company subject to insolvency proceedings has an establishment in England and Wales; 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 published in the Gazette.

#### **Notice by office-holder that insolvency proceedings in another member State are closed etc**

**21.17.** A statement by a member State liquidator under any of sections 201, 202, 205 or paragraph 84 of Schedule B1 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.”.

## **PART 3**

### **Other amendments: England and Wales**

#### **Land Registration Rules 2003**

**53.**—(1) The Land Registration Rules 2003(a) are amended as follows.

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(a) S.I. 2003/1417.

(2) In paragraph (4) of rule 171 (proceedings under the EC Regulation on insolvency proceedings)—

- (a) for the definition of “Regulation” substitute ““Regulation” means Regulation (EU) 2015/848 of the European Parliament and of the Council”; and
- (b) in the definition of “relevant person” for the words “any person or body authorised under the provisions of article 22” substitute “any person authorised under the provisions of Article 29”.

(3) For the heading to Rule 171 substitute “Proceedings under the EU Regulation on insolvency proceedings.”

### **Civil Proceedings Fees Order 2008**

**54.**—(1) The Civil Proceedings Fees Order 2008(a) are amended as follows.

(2) In Schedule 1 (fees to be taken)—

- (a) for fee 3.6 substitute—

“**3.6.** “On the conversion of insolvency proceedings into a different type of insolvency proceedings under Article 51 of Regulation (EU) 2015/848 of the European Parliament and of the Council.”; and

- (b) in fee 3.7 for “Council Regulation (EC) No 1346/2000” substitute “Regulation (EU) 2015/848 of the European Parliament and of the Council”.

## **PART 4**

### **Amendments to the Insolvency Act 1986 extending to Scotland only**

**55.** The Insolvency Act 1986 is amended as follows.

**56.** In section 106 (final meeting prior to dissolution) after subsection (6) insert—

“(7) Subsection (8) applies where, immediately before the liquidator sends a copy of the account of the winding up to the registrar under subsection (3), there are EU insolvency proceedings open in respect of the company in one or more other member States.

(8) The liquidator must send to the registrar, with the copy of the account, a statement—

- (a) identifying those proceedings,
- (b) identifying the member State liquidator appointed in each of those proceedings, and
- (c) indicating, in relation to each of those member State liquidators, whether that member State liquidator consents to the company being dissolved.”

**57.** In section 172 (liquidator vacating office in winding up by court) after subsection (8) insert—

“(9) Subsection (10) applies where, immediately before a liquidator gives notice to the court and the registrar under subsection (8) (or, where the liquidator gives notice to the court and the registrar on different days, immediately before the liquidator gives the first of those notices), there are EU insolvency proceedings open in respect of the company in one or more other member States.

(10) The liquidator must send to the court and the registrar, with the notice, a statement—

- (a) identifying those proceedings,
- (b) identifying the member State liquidator appointed in each of those proceedings, and

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(a) S.I. 2008/1053.

- (c) indicating, in relation to each of those member State liquidators, whether that member State liquidator consents to the company being dissolved.”

**58.**—(1) In section 201 (dissolution (voluntary winding up)) in subsection (2)—

- (a) after “the account and return” insert “and any statement under section 106(8)”, and
- (b) at the end insert “(except where subsection (2A) applies)”.

(2) After that subsection insert—

“(2A) This subsection applies where a statement sent to the registrar under section 106(8) indicates that a member State liquidator does not consent to the company being dissolved.

(2B) Where subsection (2A) applies, the company is deemed to be dissolved on the expiration of 3 months from the date (if any) recorded in the register as the date on which the registrar was notified that—

- (a) all proceedings identified in the statement sent under section 106(8) were closed, or
- (b) every member State liquidator appointed in those proceedings consented to the company being dissolved.”

**59.** In section 204 (early dissolution: Scotland)(a) after subsection (4) insert—

“(4A) Subsection (4B) applies where immediately before the liquidator makes an application under subsection (2), there are EU insolvency proceedings open in respect of the company in one or more other member States.

(4B) The liquidator must send to the registrar with the copy of the order forwarded under subsection (4) a statement—

- (a) identifying those proceedings,
- (b) identifying the member State liquidator appointed in each of those proceedings, and
- (c) indicating, in relation to each of those member State liquidators, whether that member State liquidator consents to the company being dissolved.

(4C) The registrar must forthwith register a statement received under subsection (4B).

(4D) Subsection (4E) applies where—

- (a) the court makes an order under subsection (3) that the company be dissolved in accordance with this section, but
- (b) a statement under subsection (4B) indicates that a member State liquidator does not consent to the company being dissolved.

(4E) The company is deemed to be dissolved at the end of the period of 3 months beginning with the date (if any) recorded in the register as the date on which the registrar was notified that—

- (a) all proceedings identified in the statement under subsection (4B) were closed, or
- (b) every member State liquidator appointed in those proceedings consented to the company being dissolved.”

**60.**—(1) In section 205 (dissolution otherwise than under sections 202 to 204) in subsection (2), for “on receipt of the notice, forthwith register it” substitute “on receipt of the notice and any statement sent under section 172(10), forthwith register it or them”.

(2) After that subsection insert—

“(2A) Subsection (2B) applies where a statement sent to the registrar under section 172(10) indicates that a member State liquidator does not consent to the company being dissolved.

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(a) Section 204 has been amended by SSI 2016/141. Amendments made by the Small Business, Enterprise and Employment Act 2015 have not been commenced in respect of Scotland.

(2B) The company is not dissolved at the end of the period mentioned in subsection (2) but is instead dissolved at the end of the period of 3 months beginning with the date (if any) recorded in the register as the date on which the registrar was notified that—

- (a) all proceedings identified in the statement under section 172(10) were closed, or
- (b) every member State liquidator appointed in those proceedings consented to the company being dissolved.”

## PART 5

### Amendments to the Insolvency (Scotland) Rules 1986

#### **The Insolvency (Scotland) Rules 1986**

**61.** The Insolvency (Scotland) Rules 1986(a) are amended as follows.

#### **Rule 0.2 Interpretation**

**62.** In Rule 0.2 (interpretation)—

- (a) in the definition of “centre of main interests” for “EC” substitute “EU”;
- (b) for the definition of “EC Regulation” substitute—

““EU Regulation” means Regulation (EU) 2015/848 of the European Parliament and of the Council on insolvency proceedings”;
- (c) for the definition of establishment substitute—

““establishment” has the meaning given by Article 2(10) of the EU Regulation;”
- (d) for the definition of “main proceedings” substitute—

““main proceedings” means “proceedings opened in accordance with Article 3(1) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of the EU Regulation and which—

  - (a) in relation to Scotland are set out in Annex A to the EU Regulation under the heading “United Kingdom”; and
  - (b) in relation to another member State, are set out under the heading relating to that member State;”
- (e) for the definition of “member State liquidator” substitute—

““member state liquidator” means a person falling within the definition of “insolvency practitioner” in Article 2(5) of the EU Regulation appointed in proceedings to which the EU Regulation applies in a member State other than the United Kingdom”;
- (f) for the definition of “secondary proceedings” substitute—

““secondary proceedings” means proceedings opened in accordance with Article 3(2) and (3) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of that Regulation and which—

  - (a) in relation to Scotland are set out in Annex A to that Regulation under the heading “United Kingdom”;
  - (b) and in relation to another member State are set out under the heading relating to that member State”;
- (g) for the definition of “territorial proceedings” substitute—

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(a) S.I. 1986/1915 as amended by S.I. 1987/1921, S.I. 1999/1820, S.I. 2002/2709, S.I. 2003/2108, S.I. 2003/2109, S.I. 2003/2111, S.I. 2006/734, S.I. 2007/2537, S.I. 2008/662, S.I. 2009/662, S.I. 2010/688, S.I. 2012/2404, S.S.I. 2008/393 and S.S.I. 2014/114

““territorial proceedings” means proceedings opened in accordance with Article 3(2) and (4) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of the EU Regulation and which—

- (a) in relation to Scotland are set out in Annex A to that Regulation under the heading “United Kingdom”;
- (b) and in relation to another member State are set out under the heading relating to that member State;”

### **Rule 1.3 Contents of proposal**

63. Rule 1.3(2)(p) is amended by substituting “EU Regulation” for “EC Regulation”.

### **Rule 1.7 Nominee’s report on the proposal**

64. Rule 1.7 is amended by inserting after paragraph (2)—

“(2A) The nominee must examine whether there is jurisdiction to open the proceedings and must specify in the nominee’s comments on the proposal required by paragraph (2) whether the EU Regulation will apply and, if so, whether the proceedings will be main proceedings, territorial proceedings or secondary with the reasons for so stating.”.

### **Rule 1.10 preparation of proposal**

65. Rule 1.10 is amended by inserting—

“(d) the reasons for stating whether the EU Regulation will apply and, if so, whether the proceedings will be main proceedings, territorial proceedings or secondary proceedings.”

### **Rule 1.17 Report of meetings**

66. Rule 1.17(a) is amended—

- (a) by substituting in paragraph 2(ca)(i) “EU Regulation” for “EC Regulation”; and
- (b) by inserting in paragraph 2(ca)(ii) “or secondary proceedings” after “territorial proceedings”.

### **Rule 1.28 the nominee’s statement**

67. Rule 1.28 is amended by inserting after paragraph (2)—

“(2A) The nominee must examine whether there is jurisdiction to open the proceedings and must specify in the nominee’s comments on the proposal required by paragraph (2) whether the EU Regulation will apply and, if so, whether the proceedings will be main proceedings, territorial proceedings, or secondary proceedings with the reasons for so stating.”.

### **Documents submitted to the court to obtain a moratorium**

68. Rule 1.29(2) is amended by inserting after subparagraph (b)—

“(c) a statement from the nominee whether the proceedings will be main, secondary, territorial or non-EC proceedings with the reasons for so stating must also be filed with the court.”.

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(a) Rule 1.17 was amended by SI 2003/2109.

## **Part 1 Chapter 8: EC Regulation – Conversion of voluntary Arrangement into Winding Up**

69. In the heading to Chapter 8 of Part 1 for “EC Regulation” substitute “EU Regulation”.

### **Rule 1.46 Application for conversion into winding up**

70. Rule 1.46(1A) is amended as follows—

- (a) for “Article 37 of the EC Regulation (conversion of earlier proceedings)” substitute “Article 51 of the EU Regulation (conversion of secondary insolvency proceedings”); and
- (b) in sub-paragraph (a) delete the words from “whose purposes are” to the end of the sub-paragraph.

### **Rule 1.47 Contents of affidavit**

71. Rule 1.47 is amended as follows—

- (a) in paragraph (1)(b) for the words “would prove to be in the interests of the creditors in the main proceedings” substitute: “would be most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings”;
- and
- (b) in paragraph (1)(c) after “as to whether the company ought to enter” insert “administration,”.

## **Part 1 Chapter 9: EC Regulation – Member State Liquidator**

72. In the heading to Chapter 9 of Part 1 for “EC Regulation” substitute “EU Regulation”.

### **Rule 1.49 Notice to member State liquidator**

73.—(1) Rule 1.49 is amended as follows.

(2) In paragraph (2) for “the member State liquidator” substitute—

“—

- (a) any member state liquidator; or
- (b) where the supervisor 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.”

(3) In paragraph (3) for “Article 31 of the EC Regulation (duty to co-operate and communicate information)” substitute “Article 41 of the EU Regulation (cooperation and communication between insolvency practitioners)”.

### **Rule 2.1: Introductory and interpretation**

74. In Rule 2.1(1)(d) in the entries for Chapter 12 and Chapter 13 for “EC Regulation” substitute “EU Regulation”.

### **Rule 2.2: Form of application**

75. In rule 2.2(3) for “the EC Regulation” substitute “the EU Regulation”.

### **Rule 2.25 : Administrator’s proposals**

76. In Rule 2.25(1)(q)(i) for “the EC Regulation” substitute “the EU Regulation”.

## **Part 2 Chapter 12: EC Regulation – Conversion of Administration into Winding Up**

77. For the heading to Chapter 12 of Part 2 substitute “EU Regulation – conversion of administration proceedings under Article 51 of the EU Regulation”.

### **Rule 2.57 Application for conversion into winding up**

78.—(1) In the heading to the Rule delete the words “into winding up”.

(2) Rule 2.57(1A) is amended as follows—

- (a) for “Article 37 of the EC Regulation (conversion of earlier proceedings)” substitute “Article 51 of the EU Regulation (conversion of secondary insolvency proceedings)”,
- (b) delete sub-paragraph (a), and
- (c) insert—
  - “(aa) the administration is converted into a company voluntary arrangement;”

### **Rule 2.58 Contents of affidavit**

79. In Rule 2.58(1)(b) for the words “would prove to be in the interests of the creditors in the main proceedings” substitute “would be most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings;”

## **Part 2 Chapter 13: EC Regulation —Member State Liquidator**

80. In the heading to Chapter 13 of Part 2 for “EC Regulation” substitute “EU Regulation”.

### **Rule 2.60 Interpretation of creditor and notice to member State liquidator**

81. Rule 2.60 is amended as follows—

- (a) in paragraph (3) for “Article 32 of the EC Regulation” substitute “Article 45 of the EU Regulation”;
- (b) in paragraph (5) for “Article 31 of the EC Regulation (duty to co-operate and communicate information)” substitute “Article 41 of the EU Regulation (cooperation and communication between insolvency practitioners)”.

### **Rule 4.67 (order of priority of expenses of liquidation)**

82. Rule 4.67(1)(a) is amended by inserting after “functions in the liquidation” the words “including any costs referred to in Article 30 and 59 of the EU Regulation”.

### **Rule 4.75A (electronic measures - application)**

83. In Rule 4.75A(4)(b) (electronic measures - application), for “Article 37 of the EC Regulation” substitute “Article 51 of the EU Regulation”.

## **Part 4 Chapter 14: EC Regulation – member State liquidator**

84. In the heading to Chapter 14 of Part 4 for “EC Regulation” substitute “EU Regulation”.

### **Winding up – member State liquidator**

85. In Rule 4.83 (interpretation of creditor and notice to member State liquidator)—

- (a) in paragraph (4) for “Article 32 of the EC Regulation” substitute “Article 45 of the EU Regulation”; and

- (b) in paragraph (6) for “Article 31 of the EC Regulation (duty to co-operate and communicate information)” substitute “Article 41 of the EU Regulation (cooperation and communication between insolvency practitioners)”.

#### **Part 4 Chapter 15**

**86.** In the heading to Chapter 15 for “EC Regulation” substitute “EU Regulation”.

#### **Confirmation of creditors’ voluntary winding up: application**

**87.** In Rule 4.84 (application for confirmation)—

- (a) in paragraph (1) for “EC Regulation” substitute “EU Regulation”; and
- (b) for sub-paragraph (2)(e) substitute—

“(e) that the EU Regulation will apply to the company and whether the proceedings will be main proceedings, territorial proceedings or secondary proceedings and the reasons for so stating”.

#### **Member state liquidator: duty to give notice**

**88.** In Rule 4.85 (notice to member State liquidator and creditors in member States)-

- (a) in paragraph (a) for “the member State liquidator” the second time it occurs substitute—

“—

- (i) any member State liquidator; or
- (ii) where the 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”; and

- (b) in paragraph (b), for “Article 40 of the EC Regulation” substitute “Article 54 of the EU Regulation”.

#### **Member state liquidator: interpretation of creditor**

**89.** In Rule 7.20A (interpretation of creditor) for “Article 32 of the EC Regulation” substitute “Article 45 of the EU Regulation”.

#### **EU Regulation – undertakings and group proceedings etc.**

**90.** After Rule 7.20A, insert—

“CHAPTER 2A

The EU Regulation

#### **Main proceedings in Scotland: undertaking by office-holder in respect of assets in another member State (Article 36 of the EU Regulation)**

**7.20B.**—(1) This rule applies where an office-holder 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) The following requirements apply in respect of the proposed undertaking.

(3) 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 company and for the main proceedings;
- (c) identification and contact details for the office-holder; and
- (d) a description of the effect of the undertaking if approved.

(4) The proposed undertaking must be delivered to all the local creditors<sup>(a)</sup> in the member State concerned of whose address the office-holder is aware.

(5) Where the undertaking is rejected the office-holder must inform all the creditors of the company of the rejection of the undertaking as soon as reasonably practicable.

(6) Where the undertaking is approved the office-holder 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 (3)(d));
- (b) where the insolvency proceedings relate to a registered company deliver a copy of the undertaking to the registrar of companies.

(7) The office-holder 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**

**7.20C.**—(1) This rule applies where a member State liquidator proposes an undertaking under Article 36 and the secondary proceedings which the undertaking is intended to avoid would be insolvency proceedings to which these Rules apply.

(2) A decision by the local creditors whether to approve the undertaking shall be taken as if it were a decision taken by a company’s creditors to approve a proposed company voluntary arrangement under section 4A of the Act<sup>(b)</sup>.

(3) Without prejudice to the generality of paragraph (2), Rules 1.14 to 1.16E apply to that decision.

(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.

**Powers of an office-holder or member State liquidator in proceedings concerning members of a group of companies (Article 60 of the EU Regulation)**

**7.20D.** Where an office-holder or a member State liquidator makes an application in accordance with paragraph (1)(b) of Article 60.1 of the EU Regulation the application must state with reasons why the applicant thinks the matters set out in (i) to (iv) of that paragraph apply.

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

**7.20E.**—(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” and must, in addition to the requirements in Article 61 contain—

- (a) identification and contact details for the office-holder making the application;
- (b) identification details for the company and the insolvency proceedings by virtue of which the office-holder is making the application;

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<sup>(a)</sup> “Local creditor” is defined in Article 2(11) of the EU Regulation.

<sup>(b)</sup> Section 4A was inserted by the Insolvency Act 2000 (c. 39). There are amendments made by the Small Business, Enterprise and Employment Act 2015 which are not yet in force for Scotland, and there are other amendments which are not relevant.

- (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.

(2) “office-holder” in this rule includes as the context requires a person holding office in insolvency proceedings in relation to the company in Scotland or Northern Ireland and a member State liquidator.

**Group coordination order (Article 68 EU Regulation)**

**7.20F.**—(1) An order opening group coordination proceedings must also(a) contain—

- (a) identification details for the insolvency proceedings by virtue of which the office-holder is making the application;
- (b) identification and contact details for the office-holder making the application;
- (c) identification details for the insolvency proceedings which are subject to the coordination; and
- (d) identification details for any insolvency proceedings for a member of the group which is not subject to the coordination because of an objection to being included.

(2) The office-holder making the application 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**

**7.20G.** An office-holder in respect of insolvency proceedings subject to coordination must deliver a copy of the group coordination order to the registrar of companies.

**Office holder’s report**

**7.20H.** Where, under the second paragraph of Article 70(2) of the EU Regulation, an office-holder is required to give reasons for not following the coordinator’s recommendations or the group coordination plan those reasons must be given as soon as reasonably practicable by a notice to all the creditors.

**Publication of opening of proceedings by a member State liquidator**

**7.20I.**—(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.

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(a) An order opening group coordination proceedings must contain the matters set out in Article 68(1)(a) to (c).

(2) The notice must be published in the Edinburgh Gazette.

**Notice by office-holder that insolvency proceedings in another member State are closed etc.**

**7.20J.** A statement by a member State liquidator under any of sections 201, 204, 205 or paragraph 84 of Schedule B1 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.”.

**Forms**

**91.** In Schedule 5 (Forms)—

- (a) in Form 4.7 (Scot) (Statement of Claim by Creditor) note 6, for “liquidator” substitute “insolvency practitioner”; and
- (b) in Form 4.30 (Scot) (Confirmation by Court of Creditors’ Voluntary Winding up Application and Order) in marginal note (e), for “or territorial proceedings” substitute “, territorial proceedings or non-EU proceedings”.

## PART 6

### Other amendments England, Wales and Scotland

**Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016**

**92.**—(1) The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016(a) is amended as follows.

(2) In the definition of “creditor” in article 2(1), for “liquidator” substitute “insolvency practitioner”.

**The Pension Protection Fund (Entry Rules) Regulations 2005**

**93.**—(1) The Pension Protection Fund (Entry Rules) Regulations 2005(b) are amended as follows.

(2) In regulation 1(3) (citation, commencement and interpretation)—

- (a) in the definition of “establishment”, before “has the meaning” insert “, except in regulation 5A,”; and
- (b) for the definition of “the Insolvency Regulation” substitute—  
““the Insolvency Regulation” means Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings;”.

(3) In regulation 5A (European insolvency event), for paragraph (5) substitute—

“(5) In this regulation “insolvency proceedings”, “establishment” and “liquidator” each has the meaning given by Article 2 of Council Regulation (EC) No 1346/2000 of 29th May 2000 on insolvency proceedings.”.

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(a) S.I. 2016/1034.

(b) S.I. 2005/590; relevant amending instruments are S.I.s 2014/1664 and 2016/294.

## **Cross-Border Insolvency Regulations 2006**

**94.**—(1) The Cross-Border Insolvency Regulations 2006<sup>(a)</sup> are amended as follows.

(2) In Schedule 1 (Uncitral Model Law on Cross-border Insolvency) in Article 2 (Definitions) for paragraph (d) substitute—

““the EU Insolvency Regulation” means Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015”.

(3) In Schedule 2 (procedural matters in England and Wales) in paragraph 1(1) (interpretation)—

(a) in the definition of “main proceedings” for “EC Insolvency Regulation” in each place where it occurs substitute “EU Insolvency Regulation” and for “Article 2(a)” substitute “Article 2(4)”;

(b) for the definition of “member state liquidator” substitute—

““member State liquidator” means a person falling within the definition of “insolvency practitioner” in Article 2(5) of the EU Insolvency Regulation appointed in proceedings to which the Regulation applies in a member State other than the United Kingdom;”.

(4) In Schedule 3 (procedural matters in Scotland) in paragraph 1(1) (interpretation)—

(a) in the definition of “main proceedings” for “EC Insolvency Regulation” in each place where it occurs substitute “EU Insolvency Regulation” and for “Article 2(a)” substitute “Article 2(4)”;

(b) for the definition of “member state liquidator” substitute—

““member State liquidator” means a person falling within the definition of “insolvency practitioner” in Article 2(5) of the EU Insolvency Regulation appointed in proceedings to which the Regulation applies in a member State other than the United Kingdom;”.

## **Regulated Covered Bonds Regulations 2008**

**95.** The Regulated Covered Bonds Regulations 2008<sup>(b)</sup> are amended as follows. In regulation 1(2) (Citation, commencement and interpretation) in the definition of “centre of main interests” for “Council Regulation (EC) No 1346/2000” substitute “Regulation (EU) 2015/848 of the European Parliament and of the Council”.

## **PART 7**

### **Northern Ireland**

## **Amendments to the Insolvency (Northern Ireland) Order 1989**

**96.**—(1) The Insolvency (Northern Ireland) Order 1989<sup>(c)</sup> is amended as follows.

(2) In Article 2(2)<sup>(d)</sup>—

(a) for ““the EC Regulation” means Council Regulation (EC) No 1346/2000;” substitute ““the EU Regulation” means Regulation (EU) No 2015/848 of the European Parliament and of the Council;” and

(b) in the appropriate places insert—

““EU insolvency proceedings” means insolvency proceedings as defined Article 2(4) of the EU Regulation” and

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(a) S.I. 2006/1030.

(b) S.I. 2008/346 to which there are amendments that are not relevant to this instrument.

(c) S.I. 1989/2405 (N.I. 19).

(d) The definition of EC Regulation was inserted by S.R. 2002/223.

““member State liquidator” means a person falling within the definition of “insolvency practitioner” in Article 2(3) of the EU Regulation appointed in respect of corporate insolvency proceedings listed in Annex A to the EU Regulation;”.

(3) In Article 2A (proceedings under EC Regulation: modified definition of property)(a) and in the heading to that Article for “EC Regulation” substitute “EU Regulation”.

97. In Article 3 (meaning of “act as insolvency practitioner”)(b) in paragraph (6) for “EC Regulation” substitute “EU Regulation”.

98. In Article 6 (interpretation: “Insolvency” and “go into liquidation”) for “Article 37 of the EC Regulation” substitute “Article 51 of the EU Regulation”.

99. In Article 14 (those who may propose an arrangement) in paragraph (5) for “same meaning as in the EC Regulation” to the end of the sentence substitute “same meaning as in Article 3 of the EU Regulation.”

100. In Article 80 (final meeting prior to dissolution) after paragraph 3 insert—

“(3A) Paragraph (3B) applies where, immediately before the liquidator sends a copy of the account of the winding up to the registrar under paragraph (30), there are EU insolvency proceedings open in respect of the company in one or more other member States.

(3B) The liquidator must send to the registrar, with the copy of the account, a statement—

- (a) identifying those proceedings,
- (b) identifying that member State liquidator appointed in each of those proceedings, and
- (c) indicating, in relation to each of those member State liquidators, whether the member State liquidator consents to the company being dissolved.”

101. In Article 104 (application for winding up)(c) for the words from “ a liquidator ” to “(within the meaning of Article 38 of the EC Regulation)” substitute “a member State liquidator appointed in proceedings by virtue of Article 3(1) of the EU Regulation or a temporary administrator (within the meaning of Article 52 of the EU Regulation)”.

102. In Article 124 (duty to summon final meeting) after paragraph (3) insert—

“(4) The liquidator shall during the relevant period send to the court and the registrar—

- (a) a copy of the account, and
- (b) a statement of whether any of the company’s creditors objected to the liquidator’s release.

(5) The relevant period is the period of 7 days beginning with the day after the last day of the period prescribed by the rules as the period within which the creditors may object to the liquidator’s release.

(6) Paragraph (7) applies where, immediately before the liquidator sends a copy of the account to the court and the registrar under paragraph (4), there are EU insolvency proceedings open in respect of the company in one or more other member States.

(7) The liquidator shall send to the court and the registrar, with a copy of the account, a statement—

- (a) identifying those proceedings,
- (b) identifying the member State liquidator appointed in each of those proceedings,
- (c) indicating, in relation to each of those member State liquidators, whether that member State liquidator consents to the company being dissolved.”.

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(a) Article 2A was inserted by S.R. 2002/334.

(b) Paragraph 6 was inserted by S.R. 2002/334.

(c) Relevant amendments were made by S.R. 2002/334.

**103.** After Article 124 insert—

**“Official receiver’s duty to send statement to registrar about other proceedings—**

**124A.**—(1) This Article applies where—

- (a) the official receiver sends to the registrar of companies a notice that the winding up of a company by the court is complete, and
- (b) immediately before the official receiver sends the notice there are EU insolvency proceedings open in respect of the company in one or more other member States.

(2) The official receiver must send to the registrar, with the notice, a statement—

- (a) identifying those proceedings,
- (b) identifying the member State liquidator appointed in each of those proceedings, and
- (c) indicating, in relation to each of those member State liquidators, whether that member State liquidator consents to the company being dissolved.”.

**104.**—(1) Article 166 (dissolution (voluntary winding up)) is amended as follows.

(2) In paragraph (2)—

- (a) after “accounts” insert “ and any statement under Article 80 (3B),”,
- (b) at the end insert “(except where paragraph (2A) applies)”.

(3) After paragraph (2) insert—

“(2A) This paragraph applies where a statement sent to the registrar under Article 80 (3B) indicates that a member State liquidator does not consent to the company being dissolved.

(2B) Where paragraph (2A) applies, the company is deemed to be dissolved on the expiration of 3 months from the date (if any) recorded in the registrar as the date on which the registrar was notified that—

- (a) all proceedings identified in the statement sent under Article 80(3B) were closed; or
- (b) every member State liquidator appointed in those proceedings consented to the company being dissolved.”.

**105.**—(1) Article 167 (early dissolution) is amended as follows—

(2) After paragraph (1) insert—

“(1A) Subsection (1B) applies where, immediately before the official receiver makes an application under paragraph (2), there are EU insolvency proceedings open in respect of the company in one or more member States.

(1B)The official receiver shall send to the registrar, with the application, a statement—

- (a) identifying those proceedings,
- (b) identifying the member State liquidator appointed in each of those proceedings, and
- (c) indicating, in relation to each of those member State liquidators, whether that member State liquidator consents to the company being dissolved.”

(3) In subsection (2) for “that application” substitute “an application under paragraph (1).

(4) In paragraph (3) at the end add “and send any statement under paragraph (1B).”

(5) In paragraph (4)—

- (a) in the first sentence
  - (i) after “under paragraph (1)” insert “and any statement under paragraph (1B),
  - (ii) after “shall forthwith register it” insert “or them”, and
  - (iii) at the end insert “(except where paragraph (5) applies)”.

(b) After paragraph (4) insert—

“(5) This paragraph applies where a statement under paragraph (1B) indicates that a member State liquidator does not consent to the company being dissolved.

(6) Where paragraph 5(5) applies, the company is deemed to be dissolved at the end of the period of 3 months beginning with the date (if any) recorded in the register as the date on which the registrar was notified that—

- (a) all proceedings identified in the statement under paragraph (1B) were closed, or
- (b) every member State liquidator appointed in those proceedings consented to the company being dissolved.”

(c) Paragraph (5) becomes paragraph (7).

(6) In paragraph (5), for “that period” substitute “the period in paragraph (4) or (6).

**106.** In Article 168 (consequence of notice under Article 167), in sub-paragraph (3)(b) for “Article 167(5)” substitute “ Article 167(8)”.

**107.**—(1) Article 169 (dissolution otherwise than under Article 167) is amended as follows.

(2) In paragraph (1)—

- (a) after “of the notice” insert “ and any statement under Article 124(7) or 124A(2),” and
- (b) after “the registration” insert “of the [final account or notice]”.

(3) After paragraph (1) insert—

“(1A) Paragraph (1B) applies where a statement under Article 124(7) or 124 (2) indicates that a member State liquidator does not consent to the company being dissolved.

(1B) The company is not dissolved at the end of the period mentioned in paragraph (2) but is instead dissolved at the end of the period of 3 months beginning with the date (if any) recorded in the register as the date on which the registrar was notified that—

- (a) all proceedings identified in the statement under Article 124(7) or 124(2) were closed; or
- (b) every member State liquidator appointed in those proceedings consented to the company being dissolved.”

**108.** In Article 185 (winding up of unregistered companies)(a) in paragraph (3) for “EC Regulation” substitute “EU Regulation”.

**109.** In Article 189 (company incorporated outside Northern Ireland)(b) may be wound up though dissolved) in paragraph (2) for “EC Regulation” substitute “EU Regulation”.

**110.** In Article 204 (“relevant time” under Articles 202, 203)(c) in paragraph (3)(d) for “Article 37 of the EC Regulation” substitute “Article 51 of the EU Regulation”.

**111.** In Article 238 (who may present a bankruptcy petition)—

- (a) in paragraph (1)(ba) for “Article 38 of the EC Regulation” substitute “Article 52 of the EU Regulation”; and
- (b) for paragraph (1)(bb) substitute “by an insolvency practitioner within the meaning of Article 2(5) of the EU Regulation) appointed in proceedings by virtue of Article 3(1)of the EU Regulation”.

**112.** In Article 239 (conditions to be satisfied in respect of debtor)(d) in paragraph (3) for “EC Regulation” substitute “EU Regulation”.

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(a) Relevant amendments to paragraph (3) have been made by S.R. 2002/334.

(b) Relevant amendments to paragraph (2) have been made by S.R. 2002/334.

(c) Paragraphs 1(ba) and (bb) were inserted by S.R. 2002/334.

(d) Relevant amendments were made to paragraph (3) by S.R. 2002/334.

**113.** In Article 303 (final distribution)(a) in paragraph (6) for “Article 35 of the EC Regulation” substitute “Article 49 of the Insolvency Regulation”.

**114.** In Article 347 (the “relevant date”)(b) in paragraphs (3)(aa) and (ab) for “Article 37 of the EC Regulation” substitute “Article 51 of the EU Regulation”.

**115.** In Article 359 (Insolvency rules)(c) in paragraphs (1), (2A) and (2B) for “EC Regulation” in each place where it occurs substitute “EU Regulation”.

**116.** In Article 364 (Insolvent partnerships)(d) in paragraphs (1A) and (1B) for “EC Regulation” in each place it occurs substitute “EU Regulation”.

**117.** In Article 365 (Insolvent estates of deceased persons)(e) in paragraphs (1A) and (1B) for “EC Regulation” in each place where it occurs substitute “EU Regulation”.

**118.** Schedule B1 (administration) is amended as follows.

**119.**—(1) In paragraph 85 (moving from administration to dissolution) after sub-paragraph (1) insert—

“(1A) Sub-paragraph (1B) applies where, immediately before the administrator sends the notice, there are EU insolvency proceedings open in respect of the company in one or more member States.

(1B) The administrator must send to the registrar, with the notice, a statement—

- (a) identifying those proceedings
- (b) identifying the member State liquidator appointed in each of those proceedings, and
- (c) indicating, in relation to each of those member State liquidators, whether that member State liquidator consents to the company being dissolved.”

(2) In sub-paragraph (3)—

- (a) after “sub-paragraph (1)” insert “ and any statement under sub-paragraph (1B)”, and
- (b) at the end insert “or them”.

(3) In sub-paragraph (6) at the end, insert “(except where sub-paragraph (6A) applies)”.

(4) After sub-paragraph (6) insert—

“(6A) This sub-paragraph applies where a statement under sub-paragraph (1B) indicates that a member State liquidator does not consent to the company being dissolved..

(6B) Where sub-paragraph (6A) applies, the company is deemed to be dissolved at the end of the period of three months beginning with the date (if any) recorded in the register as the date on which the registrar was notified that—

- (a) all proceedings identified under sub-paragraph (1B) were closed; or
- (b) every member State liquidator appointed in those proceedings consented to the company being dissolved.”

(5) In sub-paragraph (7)(a) and (c), after “sub-paragraph (6)” insert “or 6(B)”.

**120.** In Schedule B1 (Administration) in paragraph 1 (1B)(f) for the words from “as in the EC Regulation” until the end of the sub-paragraph substitute “as in Article 3 of the EU Regulation”.

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(a) Relevant amendments were made to paragraph (6) by S.R. 2002/334.

(b) Paragraphs 3(aa) and (bb) were inserted by S.R.2002/334 and 3(ab) was amended by S.R. 2004/307.

(c) Article 359 was amended by S.R. 2002/223 and S.R. 2004/307.

(d) Article 364 was amended by S.R. 2002/223.

(e) Paragraphs (1A) and (1B) were inserted by S.R. 2002/223.

(f) Schedule B1 was inserted by S.I. 2005/1455 (N.I. 10).

**PART 8**  
Northern Ireland

**Amendments to the Insolvency Rules (Northern Ireland) 1991**

**121.**—(1) The Insolvency Rules (Northern Ireland) 1991(a) are amended as follows.

(2) In Rule 0.2(2)—

(a) for the definition of “main proceedings” substitute—

““main proceedings” means proceedings opened in accordance with Article 3(1) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of that Regulation and—

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

(b) in relation to another member State, are set out under the heading relating to that member State.”;

(b) in the definition of “member State liquidator” for “a person falling within the definition of liquidator in Article 2(b) of the EC Regulation” substitute “a person falling within the definition of “insolvency practitioner” in Article 2(5) of the EU Regulation”;

(c) for the definition of “secondary proceedings” substitute the following—

““secondary proceedings” means proceedings opened in accordance with Article 3(2) and (3) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of that Regulation and which—

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

(b) in relation to another member State are set out under the heading relating to that member State”;

(d) for the definition of “territorial proceedings” substitute—

““territorial proceedings” means proceedings opened in accordance with Article 3(2) and (4) of the EU Regulation and falling within definition of insolvency proceedings in Article 2(4) of that Regulation and which—

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

(b) in relation to another member State, are set out under the heading relating to that member State”.

**Rule 1.09 (Summoning of meetings under Article 16)**

**122.**—(1) Rule 1.09 is amended as follows.

(2) After paragraph (1) insert—

“(1A) The nominee shall examine whether there is jurisdiction to open the proceedings and shall specify in the nominee’s comments on the proposal required by paragraphs (2)(c) and (3)(c) whether the proceedings will be main, secondary, territorial or non-EU proceedings with the reasons for so stating.”

**Rule 1.31 (application for conversion into winding up)**

**123.** In Rule 1.31—

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(a) S.R.1991/364.

- (a) in paragraph (1) for “Article 37 of the EC Regulation (conversion of earlier proceedings)” substitute “Article 51 of the EU Regulation” and after the words “of a voluntary arrangement into a winding up” insert the words “or of a winding up into a voluntary arrangement; and
- (b) in paragraph (3) at the beginning of sub-paragraph (b) insert “In the case of an application for the conversion of a voluntary arrangement into a winding up, on”.

**Rule 1.32 (contents of affidavit)**

**124.** In Rule 1.32—

- (a) for paragraph 1(b) substitute “the deponent’s belief that the conversion of a voluntary arrangement into a winding up or of a winding up into a voluntary arrangement would be most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings.”; and
- (b) In paragraph (1)
  - (i) at the beginning of sub-paragraph (c) insert, “In the case of an application for the conversion of a voluntary arrangement into a winding up”; and
  - (ii) for sub-paragraph (d)(i) substitute, “in deciding whether to make the order applied for, and”.

**Rule 1.33 (power of court)**

**125.** In Rule 2.133—

- (a) in paragraph (1) after “into” insert “a voluntary arrangement or”;
- (b) in paragraph (2) after “into” insert “a voluntary arrangement or”; and
- (c) in paragraph (3), after “paragraph” in the second place where it occurs, insert “for conversion into winding up”.

**Interpretation of creditor and notice to member State liquidator**

**126.** In Rule 1.34—

- (a) for the heading substitute “Proceedings in another member State: duty to give notice”;
- (b) in paragraph (1)(a) after “liquidator” insert “, provisional liquidator, interim receiver”;
- (c) in paragraph (2) for “the member State liquidator” substitute—
  - “(a) any member State liquidator; or
  - (b) where the supervisor, administrator, liquidator, provisional liquidator, interim receiver or trustee 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.”; and
- (d) in paragraph (3)—
  - (i) after “liquidator” insert “, provisional liquidator, interim receiver”;
  - (ii) for “Article 31” substitute “Article 41 of the EU Regulation”.

**Documents submitted to the court to obtain moratorium**

**127.** Rule 1.39(2) is amended by inserting after subparagraph (b)—

- “(c) a statement from the nominee whether the proceedings will be main, secondary, territorial or non-EC proceedings with the reasons for so stating.”.

### **Rule 2.068 (expenses of the Administration)**

128. In paragraph 1(f) of Rule 2.068 after “(including any” insert “costs referred to in Articles 30 or 59 of the EU Regulations and”.

### **Rules 2.131 (application for conversion into winding-up)**

129. In Rule 2.131—

- (a) in paragraph (1) for “Article 37 of the EC Regulation (conversion of earlier proceedings)” substitute “Article 51 of the EU Regulation” and after the words “of an administration into a winding up” insert the words “or of a winding up into an administration”;
- (b) in paragraph (3) at the beginning of sub-paragraph (b) insert “In the case of an application for the conversion of an administration into a winding up, on”.

### **Rule 2.132 (contents of affidavit)**

130. In Rule 2.132—

- (a) for paragraph 1(b) substitute “the deponent’s belief that the conversion of the administration into a winding up or of a winding up into an administration would be most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings.”; and
- (b) In paragraph (1)—
  - (i) at the beginning of sub-paragraph (c) insert, “In the case of an application for the conversion of an administration into a winding up”; and
  - (ii) for sub-paragraph (d)(i) substitute, “in deciding whether to make an administration or winding up order, as the case may be”.

### **Rule 2.133 (power of court)**

131. In Rule 2.133—

- (a) in paragraph (1) after “into” insert “administration or”;
- (b) in paragraph (2) after “into” insert “administration or”; and
- (c) in paragraph (3), after “paragraph” in the second place where it occurs, insert “for conversion into winding up”.

### **Interpretation of creditor and notice to member State liquidator**

132. In Rule 2.134—

- (a) in paragraph (1) after “liquidator” insert “, provisional liquidator, interim receiver”;
- (b) in paragraph (5) for “the member State liquidator.” substitute—
  - “(a) any member State liquidator; or
  - (b) where the supervisor, administrator, liquidator, provisional liquidator, interim receiver or trustee 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.”; and
  - (c) in paragraph (6) for “Article 31” substitute “Article 41”.

133. After Rule 2.134 insert the following—

**“Main proceedings in Northern Ireland: undertaking by office-holder in respect of assets in another member State (Article 36 of the EU Regulation)**

[Note: “local creditor” is defined in Article 2(11) of the EU Regulation.]

**2.135.**—(1) This Rule applies where an office-holder 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) The following requirements apply in respect of the proposed undertaking.

(3) In addition to the requirements as to form and content set out in Article 36 the undertaking shall 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 office-holder; and
- (d) a description of the effect of the undertaking if approved.

(4) The proposed undertaking shall be delivered to all the local creditors in the member State concerned of whose address the office-holder is aware.

(5) Where the undertaking is rejected the office-holder shall inform all the creditors of the company of the rejection of the undertaking as soon as reasonably practicable.

(6) Where the undertaking is approved the office-holder shall 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 (3)(d));
- (b) in the case of a bankruptcy file the undertaking on the court file or the bankruptcy file as the case may be;
- (c) where the insolvency proceedings relate to a registered company deliver a copy of the undertaking to the registrar of companies.

(7) The office-holder 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**

**2.136.**—(1) This Rule applies where a member State liquidator proposes an undertaking under Article 36 and the secondary proceedings which the undertaking is intended to avoid would be insolvency proceedings to which these Rules apply.

(2) In an administration, a creditors’ voluntary winding-up, a winding-up by the court, or a bankruptcy, where a decision is being sought by a meeting the convener shall advertise in the Belfast Gazette a notice of the procedure stating—

- (a) that a meeting of creditors or contributories is to take place;
- (b) the venue for the meeting;
- (c) the purpose of the meeting; and
- (d) the time and date by which, and place at which, those attending shall deliver proxies and proofs (if not already delivered) in order to be entitled to vote.

(3) The notice shall also state if the procedure results from a request of one or more creditors, the fact that it was so summoned and the section of the order under which it was summoned.

(4) The notice shall be advertised in the Belfast Gazette before or as soon as reasonably practicable after notice of the meeting is delivered in accordance with these Rules.

(5) Information to be advertised in the Belfast Gazette under this Rule may also be advertised in such other manner as the convener thinks fit.

(6) Rules 1.19, 1.20, 1.52 and 1.53 apply as if the decision to approve the undertaking were a decision to approve a CVA.

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

(8) Where the main proceedings relate to an individual the member State liquidator shall advertise a notice of the undertaking in the Belfast gazette containing—

- (a) the fact that the undertaking was approved;
- (b) the date the undertaking was approved; and
- (c) a description of the effect of the undertaking.

### **Powers of an office-holder or member State liquidator in proceedings concerning members of a group of companies (Article 60 of the EC Regulation)**

**2.137.** Where an office-holder or a member State liquidator makes an application in accordance with paragraph (1)(b) of Article 60 of the EU Regulation the application shall state with reasons why the applicant thinks the matters set out in (i) to (iv) apply.

### **Group coordination proceedings (Section 2 of Chapter 5 of the EC Regulation)**

**2.138.**—(1) An application to open group coordination proceedings shall be headed “Application under Article 61 of Regulation (EU) 2015/848 to open group coordination proceedings” and shall, in addition to the requirements in Article 61 contain—

- (a) identification and contact details for the office-holder making the application;
- (b) identification for the insolvency proceedings by virtue of which the office-holder is making the application;
- (c) identification details for 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 EC Regulation.

(2) “Office-holder” in this Rule includes as the context requires a person holding office in insolvency proceedings in relation to the company in Scotland or Northern Ireland and a member State liquidator.

### **Group coordination order (Article 68 EU Regulation)**

[Note: an order opening group coordination proceedings shall also contain the matters set out in Article 68(1)(a) to (c).]

**2.139.**—(1) An order opening group coordination proceedings shall also contain—

- (a) identification details for the insolvency proceedings by virtue of which the office-holder is making the application;
- (b) identification and contact details for the office-holder making the application;
- (c) identification details for the insolvency proceedings which are subject to the coordination; and
- (d) 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 office-holder who made the application shall 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 Scotland or England and Wales, and
- (c) a member State liquidator.

#### **Delivery of group coordination order to registrar of companies**

**2.140.** An office-holder in respect of insolvency proceedings subject to coordination must deliver a copy of the group coordination order to the registrar of companies.

**2.141.**—(1) Where, under the second paragraph of Article 70(2) of the EU Regulation, an office-holder is required to give reasons for not following the coordinator’s recommendations or the group coordination plan those reasons shall be given as soon as reasonably practicable by a notice to all the creditors.

(2) The 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**

**2.142.**—(1) This Rule applies where—

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

(2) The notice shall be published in the Belfast Gazette.

#### **Statement by office-holder that insolvency proceedings are open in another member State are closed etc**

**2.143.** A statement by a member State liquidator under any of Articles 166, 167, 169 or paragraph 85 of Schedule B1 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.”.

#### **Rule 4.027 (Appointment of provisional liquidator)**

**134.** In Rule 4.027(2) after sub-paragraph (e) insert—

- “(f) a statement whether the proceedings will be main, secondary, territorial or non-EU proceedings with the reasons for so stating.”.

#### **Rule 4.228 (General Rule as to priority)**

**135.** In Rule 4.228 (3)(m) after “(including any” insert “costs referred to in Articles 30 or 59 of the EU Regulation and”.

#### **Rule 5.14 (Nominee’s report to the court)**

**136.**—(1) Rule 5.14 is amended as follows.

(2) After paragraph (3) insert—

“(3A) The nominee shall examine whether there is jurisdiction to open the proceedings and shall specify in the nominee’s report whether the proceedings will be main, secondary, territorial on non-EU proceedings with the reasons for so stating.”.

## Chapter 13 of Part 5

137. In the heading to Chapter 13 of part 5 for the words “EC Regulation” substitute the words “EU Regulation”.

### Rule 5.61 (Application for conversion of voluntary arrangement into bankruptcy)

138. In Rule 5.61(a) in paragraph (1) for “Article 37 of the EC Regulation (conversion of earlier proceedings)” substitute “Article 51 of the EU Regulation” and after the words “of a voluntary arrangement into a bankruptcy” insert the words “or of a bankruptcy into a voluntary arrangement”.

### Rule 5.62 (contents of affidavit)

139. In Rule 5.62 for paragraph 1(b) substitute “the deponent’s belief that the conversion of the IVA into a bankruptcy or of the bankruptcy into an IVA would be most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings.”

### Rule 6.049 (Application for the appointment of interim receiver)

140. In Rule 6.049—

- (a) In paragraph (1)(e), after the words “main proceedings” insert the words “(including in accordance with Article 37 of the EU Regulation)”; and
- (b) In paragraph (2) after sub-paragraph (d) insert—
  - “(e) a statement whether the proceedings will be main, secondary, territorial or non-EU proceedings with the reasons for so stating.”.

### Rule 6.222 (General Rule as to priority)

141. In Rule 6.222(1)(m) after “(including any” insert “insert costs referred to in Articles 30 or 59 of the EU Regulation and”.

### Rule 7.56 (Application for confirmation)

142. In Rule 7.56(3) at the end of sub-paragraph (e) insert “and the reasons for so stating”.

## PART 9

### Consequential amendments Northern Ireland

#### Amendments to the Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005

143.—(1) —The Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005(b) are amended as follows.

(2) In regulation 1(2) (Citation, commencement and interpretation)—

- (a) In the definition of “establishment”, before “has the meaning” insert “,except in regulation 5A,”; and
- (b) For the definition of “the insolvency Regulation” substitute—

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(a) This and Rule 5.62 were substituted by paragraph 51 of the Schedule to SI 2006/ .  
(b) S.R. 2005/126; relevant amending instruments are SR 2014/195 and S.R. 2016 No. 165

“the Insolvency Regulation” means Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings;”.

(3) In regulation 5A (European insolvency event), for paragraph (5) substitute—

“(5) In this regulation “insolvency proceedings”, “establishment” and “liquidator” each has the meaning given by Article 2 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.”.

### **Cross-Border Insolvency Regulations (Northern Ireland) 2007**

**144.**—(1) The Cross-Border Insolvency Regulations (Northern Ireland) 2007(a) are amended as follows.

(2) In Schedule 1 (Uncitral Model Law on Cross-border Insolvency) for Article 2(b) substitute—

“(b) “the EU Insolvency Regulation” means Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015”.

(3) In Schedule 2 (procedural matters in Northern Ireland) in paragraph (1)(1) (interpretation)—

(a) in the definition of “main proceedings” for “EC Regulation” in each place where it occurs substitute “EU Insolvency Regulation” and for Article 2(a) substitute “Article 2(4)”;

(b) for the definition of “member state liquidator” substitute—

““member State liquidator” means a person falling within the definition of “insolvency practitioner” in Article 2(5) of the EU Insolvency appointed in proceedings to which the Regulation applies in a member State other than the United Kingdom;”.

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the insolvency legislation for England and Wales, Scotland and Northern Ireland to make it compatible with the recast of the Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (the EIR). The EIR replaces Council Regulation (EC) No 1346/2000 on insolvency proceedings. These regulations amend the Insolvency Act 1986 which contains corporate insolvency law for England, Wales and Scotland and personal insolvency law for England and Wales. Personal insolvency law is devolved in Scotland. These Regulations also amend the Insolvency (England and Wales) Rules 2016 (S.I. 2016/1024) and the Insolvency (Scotland) Rules 1986 (S.I. 1986/1915) made under the Insolvency Act 1986. In respect of Northern Ireland these Regulations amend the Insolvency (Northern Ireland) Order 1989 and the Insolvency Rules (Northern Ireland) 1991.

These Regulations make new provision for deferring dissolution of a company registered in England and Wales, Scotland or Northern Ireland where there are concurrent insolvency proceedings in another member State. It also makes provision for two new procedures in the EIR. The first is an undertaking in lieu of secondary insolvency proceedings (Article 36) to distribute assets in a jurisdiction in accordance with the rules of that jurisdiction. These Regulations set out procedure for the approval of such an undertaking by the local creditors in United Kingdom. The second new procedure is for the appointment of a coordinator where companies in a group are subject to insolvency proceedings (Article 56-77).

A compliance cost assessment has not been prepared in respect of these Regulations as they have no impact on the costs of business. An Explanatory Memorandum has been prepared and is available alongside these Regulations at [www.legislation.gov.uk](http://www.legislation.gov.uk).

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(a) S.R. 2007/115.

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