

2019 No. 1058

INSOLVENCY

**The Small Business, Enterprise and Employment Act 2015
(Consequential Amendments, Savings and Transitional
Provisions) Regulations 2019**

<i>Made</i> - - - -	<i>26th June 2019</i>
<i>Laid before Parliament</i> -	<i>1st July 2019</i>
<i>Coming into force</i> - -	<i>23rd July 2019</i>

The Secretary of State for Business, Energy and Industrial Strategy makes these Regulations in exercise of the powers conferred by sections 159(1) and (2) and 161(2) of the Small Business, Enterprise and Employment Act 2015(a).

PART 1

Introductory provision

Citation and commencement

1. These Regulations may be cited as the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2019 and come into force on 23rd July 2019.

Extent

2. Any provision of these Regulations amending an enactment has the same extent as the enactment being amended.

PART 2

Consequential amendments of secondary legislation

Insolvent Partnerships Order 1994

3.—(1) The Insolvent Partnerships Order 1994(b) is amended as follows.

(2) In Schedule 7, in paragraph 15, in section 298 as there modified—

(a) in subsection (5) for “subsection (7)” substitute “subsections (6) and (7)”; and

(a) 2015 c. 26.
(b) S.I. 1994/2421.

- (b) in subsection (6) for “section 331(3)” substitute “section 331(2)”.

The Insurers (Winding Up) (Scotland) Rules 2001

- 4.**—(1) The Insurers (Winding Up) (Scotland) Rules 2001(a) are amended as follows.
- (2) In rule 2(1) (interpretation) after the definition of “the principal rules” insert—
- ““qualifying decision procedure” has the meaning given by section 246ZE(11) of the 1986 Act;”.
- (3) In rule 21 (notice of valuation of policy), in paragraph (6)—
- (a) for “summons a meeting of” substitute “seeks a decision from”; and
- (b) for the words from “by the time” to “using” substitute “before the date on which the liquidator seeks the decision, the liquidator may for the purposes of the qualifying decision procedure use”.
- (4) In rule 23 (meetings of creditors)—
- (a) for the heading substitute “creditors’ decisions”;
- (b) in paragraph (1) for “creditors’ meetings” substitute “a qualifying decision procedure”; and
- (c) for paragraphs (1A)(b) and (2) substitute—
- “(1A) For the purposes of any such separate qualifying decision procedure, rule 8.34 of the principal rules (requisite majorities) applies with the modification in paragraph (2).
- (2) For the purposes of calculating the proportion (in value) of creditors voting who have voted in favour of the proposed decision, the value to be attributed to a creditor who is not, by virtue of rule 6, 7 or 8 above, required to prove for the amount of a debt or claim, is the value most recently notified to the creditor under rule 21 above, or, if the court has determined a different value in accordance with rule 21(4), that different value.”.

The Financial Collateral Arrangements (No. 2) Regulations 2003

- 5.** In regulation 12(2)(aa) of the Financial Collateral Arrangements (No. 2) Regulations 2003(c) (close-out netting provisions to take effect in accordance with their terms)—
- (a) after “that party had notice that” insert “a statement as to the affairs of the other party had been sent to the other party’s creditors under section 99(1) of that Act(d);”; and
- (b) omit the words from “a meeting” to the end.

The Insurers (Reorganisation and Winding Up) Regulations 2004

- 6.**—(1) The Insurers (Reorganisation and Winding Up) Regulations 2004(e) are amended as follows.
- (2) In regulation 28A(1) (composite insurers: seeking decisions from creditors)—
- (a) in subparagraph (a) at the end insert “or Scotland”;
- (b) in subparagraph (b) after “England and Wales” insert “or Scotland”;
- (c) in subparagraph (c) after “the High Court” insert “or the Court of Session”.

(a) S.I. 2001/4040.

(b) Paragraphs (1) and (1A) were substituted by S.I. 2003/1102 and paragraph (1A) was amended by S.I. 2004/353.

(c) S.I. 2003/3226, as amended by S.I. 2010/2993, S.I. 2018/208 and S.I. 2019/341. The amendments made by S.I. 2019/341 will come into force on exit day. There are other amendments, but they are not relevant.

(d) Section 99(1) was substituted by the Small Business, Enterprise and Employment Act 2015, section 126 and Schedule 9, paragraphs 1 and 23.

(e) S.I. 2004/353, as amended by S.I. 2007/851, S.I. 2018/208 and S.I. 2019/38. The amendments made by S.I. 2019/38 will come into force on exit day.

(3) In regulation 29 (composite insurers: general meetings of creditors), in paragraph (1) omit “Scotland or”.

(4) In regulation 33 (voluntary arrangements: treatment of insurance debts), in paragraph (2)(a) omit the text which is treated as inserted in section 4 of the Insolvency Act 1986 and substitute with—

“(4A) Neither the company nor its creditors may approve any proposal or modification under which any insurance debt of the company is to be paid otherwise than in priority to such of its debts as are not insurance debts or preferential debts.”.

The Banks (Former Authorised Institutions) (Insolvency) Order 2006

7. In the Schedule to the Banks (Former Authorised Institutions) (Insolvency) Order 2006 (a) (modifications of Part 2 of the Insolvency Act in its application to companies that are former authorised institutions), omit paragraph 8.

The Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2010

8. In the Schedule to the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2010(b) (modifications of Part 2 of the Insolvency Act 1986 in relation to insurers), omit paragraph 11.

PART 3

Transitional provisions

Interpretation of Part 3

9. In this Part—

“the 1986 Act” means the Insolvency Act 1986;

“the 2009 Act” means the Banking Act 2009; and

“relevant meeting” means a meeting of creditors which is to be held on or after the date on which these Regulations come into force, and was—

- (a) called, summoned or otherwise required before 6th April 2019(c) under a provision of the 1986 Act or the Insolvency (Scotland) Rules 1986(d); or
- (b) requisitioned by a creditor before 6th April 2019 under a provision of the 1986 Act or the Insolvency (Scotland) Rules 1986.

Transitional provision for regulation 5

10.—(1) Paragraph (2) applies where a relevant meeting is to be held in winding up proceedings or in relation to reorganisation measures commenced in Scotland in respect of the collateral-provider or collateral-taker under—

- (a) a financial collateral arrangement; or
- (b) an arrangement of which a financial collateral arrangement forms part.

(a) S.I. 2006/3107, to which there are relevant amendments by S.I. 2018/208.

(b) S.I. 2010/3023, to which there are relevant amendments by S.I. 2018/208.

(c) The amendments made by these Regulations, for which Part 3 makes transitional provision, are made in consequence of the commencement on 6th April 2019 (by S.I. 2019/816) for all remaining purposes in Scotland of the following sections of the Small Business, Enterprise and Employment Act 2015: section 122 (abolition of requirements to hold meetings: company insolvency); section 124 of that Act (ability for creditors to opt not to receive certain notices: company insolvency); and section 126 (sections 122 to 125: further amendments) of, and Part 1 (company insolvency) of Schedule 9 to, that Act.

(d) S.I. 1986/1915.

(2) Regulation 12 of the Financial Collateral Arrangements (No. 2) Regulations 2003 applies in relation to the meeting without the amendments made by regulation 5.

(3) In this regulation—

- (a) the reference to the commencement of winding up proceedings or reorganisation measures is to be construed in accordance with regulation 12(3) of those Regulations;
- (b) “financial collateral arrangement” has the same meaning as in those Regulations;
- (c) “reorganisation measures” means—
 - (i) administration under Schedule B1 to the 1986 Act;
 - (ii) a proposal for a company voluntary arrangement under Part 1 of the 1986 Act (company voluntary arrangements); or
 - (iii) the making of an interim order on an administration application (within the meaning given in paragraph 12 of Schedule B1 to the 1986 Act).
- (d) “winding up proceedings” means—
 - (i) voluntary winding up or winding up by the court under Part 4 of the 1986 Act; or
 - (ii) bank insolvency under Part 2 of the 2009 Act.

Transitional provision for regulation 6

11.—(1) Where a relevant meeting is to be held in proceedings for the winding up by the court or a creditors’ voluntary winding up of a non-transferring composite insurer (within the meaning given in regulation 17(1) of the Insurers (Reorganisation and Winding Up) Regulations 2004), those Regulations apply in relation to the meeting without the amendments made by regulation 6(2) and (3).

(2) Where a relevant meeting is to be held in proceedings relating to a proposal for a company voluntary arrangement made under Part 1 of the 1986 Act in respect of a UK insurer (within the meaning given in regulation 2(1) of the Insurers (Reorganisation and Winding Up) Regulations 2004), those Regulations apply in relation to the meeting without the amendments made by regulation 6(4).

Transitional provision for regulation 8

12. Where a relevant meeting is to be held in proceedings for the administration under Schedule B1 to the 1986 Act of an insurer within the meaning given in the Financial Services and Markets Act 2000 (Insolvency) (Definition of “Insurer”) Order 2001(a), the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2010 applies in relation to the meeting without the amendment made by regulation 8, so far as that amendment relates to the abolition of requirements to hold creditors’ meetings(b).

PART 4

Saving provisions for the Insolvency Act 1986 and the Insolvency (Scotland) Rules 1986

Interpretation of Part 4

13. In this Part—

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- (a) S.I. 2001/2634, as amended by S.I. 2002/1242.
 - (b) The amendment made by regulation 8 relates to the abolition of requirements to hold creditors’ meetings, except the omission of paragraph (c) in omitted paragraph 11.

- (a) the “relevant amendments” means the amendments made by sections 122, 124, 126(b), and Part 1 of Schedule 9(a) to, the Small Business, Enterprise and Employment Act 2015; and
- (b) a reference to the revocation of the Insolvency (Scotland) Rules 1986(b) is a reference to the revocation of the Rules listed in—
 - (i) schedule 1 to the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018(c) by introductory rule 2 of those Rules; and
 - (ii) schedule 1 to the Insolvency (Scotland) (Receivership and Winding up) Rules 2018(d) by introductory rule 2 of those Rules.

Savings for certain insolvency rules

14. Despite the revocation of the Insolvency (Scotland) Rules 1986, those Rules apply as they applied immediately before they were revoked(e) such that the Insolvency Act 1986(f), insofar as it applies to proceedings under the following instruments, continues to have effect without the relevant amendments for the purposes of the application of those instruments—

- (a) the Energy Administration (Scotland) Rules 2006(g);
- (b) the Energy Supply Company Administration (Scotland) Rules 2013(h); and
- (c) the Postal Administration (Scotland) Rules 2016(i).

Savings in relation to special insolvency rules

15.—(1) Despite the revocation of the Insolvency (Scotland) Rules 1986, those Rules apply as they applied(j) immediately before they were revoked for the purposes of the application of—

- (a) the Bank Insolvency (Scotland) Rules 2009(k);
- (b) the Bank Administration (Scotland) Rules 2009(l);
- (c) the Building Society Special Administration (Scotland) Rules 2009(m); and
- (d) the Building Society Insolvency (Scotland) Rules 2010(n).

(2) Despite the revocation of the Insolvency (Scotland) Rules 1986, Rule 7.30 of, and Schedule 5 to, the Insolvency (Scotland) Rules 1986 (forms for use in insolvency proceedings) apply as they applied before they were revoked for the purpose of prescribing forms for the statement of affairs required to be delivered and for any statement of concurrence required to be submitted under rule 35 of the Investment Bank Special Administration (Scotland) Rules 2011(o) (statements of affairs and statements of concurrence).

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- (a) Schedule 9 was amended by S.S.I. 2016/141.
 - (b) S.I. 1986/1915.
 - (c) S.I. 2018/1082 (S. 4). The savings in regulations 14, 15 and 16 are made in consequence of the revocation of the Insolvency (Scotland) Rules 1986 on the 6 April 2019 by S.I. 2018/1082 and S.S.I. 2018/347.
 - (d) S.S.I. 2018/347.
 - (e) For the purposes specified in sub-paragraph (a), (b) and (c), the Insolvency (Scotland) Rules 1986 applied without the amendments made by the Insolvency (Scotland) Amendment Rules (S.I. 2010/688) and the amending instruments made after that instrument.
 - (f) 1986 c. 45.
 - (g) S.I. 2006/772.
 - (h) S.I. 2013/1047.
 - (i) S.I. 2016/900. There are amendments, but none are relevant.
 - (j) For the purposes specified in sub-paragraph (a), (b) and (d), the Insolvency (Scotland) Rules 1986 applied without the amendments made by the Insolvency (Scotland) Amendment Rules (S.I. 2010/688) and the amending instruments made after that instrument.
 - (k) S.I. 2009/351, as amended by S.I. 2010/2586 and 2013/472.
 - (l) S.I. 2009/350, as amended by S.I. 2010/2578 and 2013/472.
 - (m) S.I. 2009/806, as amended by S.I. 2013/472.
 - (n) S.I. 2010/2584, as amended by S.I. 2013/472.
 - (o) S.I. 2011/2262, as amended by S.I. 2013/472. Rule 35(1) and (2) provides that a statement of affairs or statement of concurrence must be in the form required by rule 7.30 of, and Schedule 5 to the Insolvency (Scotland) Rules 1986.

Savings in relation to insolvency proceedings

16.—(1) Despite the revocation of the Insolvency (Scotland) Rules 1986, those Rules apply as they applied before they were revoked for the purposes of—

- (a) a proposal to a society and its creditors for a voluntary arrangement within the meaning given in section 1 of the Insolvency Act 1986^(a) as applied in relation to a relevant society by article 2(1) of the 2014 Order;
- (b) the administration of a society under Part 2 of the Insolvency Act 1986 as applied by article 2(2) of the 2014 Order; and
- (c) proceedings instituted in Scotland for the winding up of a relevant scheme (within the meaning given in regulation 17(1)(a) of the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013).

(2) In this regulation—

“the 2014 Order” means the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014^(b); and

“society” means a relevant society within the meaning given in article 1(2) of the 2014 Order which the courts in Scotland have jurisdiction to wind up.

Kelly Tolhurst

Minister for Small Business, Consumers and Corporate Responsibility
Department for Business, Energy and Industrial Strategy

26th June 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make consequential amendments, transitional and savings provisions for Scotland in consequence of the company insolvency provisions in sections 122, 124 and 126 and Schedule 9, Part 1 (Company Insolvency) of the Small Business, Enterprise and Employment Act 2015 (c. 26) (“the 2015 Act”) where these introduced reforms for creditors meetings and notices by amending the Insolvency Act 1986 (c. 45) (“the SBEEA reforms”). The SBEEA reforms came into force in England and Wales on 6th April 2017 and came into force in Scotland on 6th April 2019. The Regulations also make a minor amendment to the Insolvent Partnership Order 1994 (S.I. 1994/2421) (“the IPO 1994”).

These Regulations will come into force on 23rd July 2019 and in consequence of the commencement on the 6th April 2019 (by S.I. 2019/816) of the SBEEA reforms in Scotland.

Part 2 of these Regulations make consequential amendments to secondary legislation for the most part in consequence of the coming into force of the SBEEA reforms in Scotland. However, regulation 3 (which extends to England and Wales only) makes minor amendments to Schedule 7 to the IPO 1994. The provisions make minor amendments to the vacation of office of a trustee appointed in the individual bankruptcy of the members of an insolvent partnership under Article 11 of the IPO 1994.

Part 3 of these Regulations makes transitional provision, where necessary, for amendments made to give effect to the reforms. The transitional provision ensures that certain amendments will not

(a) Section 1 was amended by the Insolvency Act 2000 (c. 39), Schedule 2, paragraphs 1 and 2, and by the Enterprise Act 2002, Schedule 17, paragraphs 9 and 10. There are other amendments, but they are not relevant.

(b) S.I. 2014/229.

have effect in relation to creditors' meetings arranged before 6th April 2019 which are to be held on or after the date on which these Regulations come into force.

Part 4 of these Regulations makes saving provision for the Insolvency Act 1986 so that it continues to have effect in relation to proceedings under certain instruments as if the SBEEA reforms had not been enacted. It also makes saving provision for the Insolvency (Scotland) Rules 1986 (1986/1915) which were revoked on 6th April 2019 by the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018 (S.I. 1082/2018) and the Insolvency (Scotland) (Receivership and Winding up) Rules 2018 (S.S.I. 347/2018). These savings are necessary to ensure that the SBEEA reforms do not apply to certain special insolvency rules and procedures.

No impact assessment has been prepared for these Regulations as no impact on the private or voluntary sectors is foreseen.

An Explanatory Memorandum has been prepared and is available alongside these Regulations at www.legislation.gov.uk.

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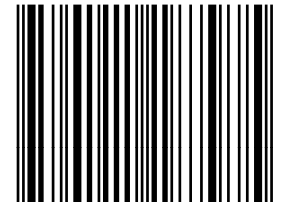
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.90

UK201906271007 07/2019 19585

<http://www.legislation.gov.uk/id/uksi/2019/1058>

ISBN 978-0-11-118797-5



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