
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2017 No.

**The Insolvency (Regulation (EU) 2015/848)
(Miscellaneous Amendments) (Scotland) Regulations 2017**

PART 1

Amendments to primary legislation

Amendment of Insolvency Act 1986 – receivers (Scotland)

- 2.—**(1) The Insolvency Act 1986(1) is amended as follows.
- (2) In section 51(6) (power to appoint receiver)—
- (a) in the definition of “the EU Regulation”(2) for “the Regulation of the Council of the European Union published as Council Regulation (EC) No. 1346/2000” substitute “Regulation (EU) 2015/848 of the European Parliament and of the Council”(3);
 - (b) in the definition of “court”, for “Article 2(d)” substitute “Article 2(6)”; and
 - (c) in the definition of “insolvency proceedings” for “Article 2(a)” substitute “Article 2(4)”.

Amendment of Bankruptcy and Diligence etc. (Scotland) Act 2007

- 3.—**(1) Section 45 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (effect of floating charges on winding up)(4) is amended as follows.
- (2) In subsection (7)(a) for “EC Regulation” substitute “EU insolvency Regulation”.
- (3) In subsection (8)—
- (a) for the definition of “the EC Regulation” substitute—
““the EU insolvency Regulation” is Regulation (EU) 2015/848 of the European Parliament and of the Council on insolvency proceedings;”;
 - (b) in the definition of “court”, for “article 2(d)” substitute “Article 2(6)”; and
 - (c) in the definition of “insolvency proceedings”, for “Article 2(a)” substitute “Article 2(4)”.

Amendment of the Bankruptcy (Scotland) Act 2016

- 4.—**(1) The Bankruptcy (Scotland) Act 2016(5) is amended as follows.
- (2) In section 2(1)(b)(iii) (sequestration of estate of living debtor) for “liquidator” substitute “insolvency practitioner”.

(1) 1986 c.45.

(2) The definition of “the EU Regulation” was inserted by S.S.I. 2011/140.

(3) Regulation (EU) 2015/848 of the European Parliament and of the Council on insolvency proceedings (O.J. No. L 141, 5.6.2015, p.19).

(4) 2007 asp 3.

(5) 2016 asp 21. Sections 170(1)(d)(ii), 171(1) and 193 were amended by S.S.I. 2016/398.

(3) In section 5(d) (sequestration of estate of deceased debtor) for “liquidator” substitute “insolvency practitioner”.

(4) In section 6(3)(b)(ii), (4)(c)(ii) and (7)(b)(ii) (sequestration of other estates) for “liquidator” substitute “insolvency practitioner”.

(5) In section 11(3) (debtor application: provision of information) for “liquidator”, each time it occurs, substitute “insolvency practitioner”.

(6) In section 12(2) (petition for sequestration of estate: provision of information) for “liquidator”, each time it occurs, substitute “insolvency practitioner”.

(7) In section 13(2)(b)(iii), (3)(b)(iii) and (4)(b)(iv) (further provisions relating to presentation of petitions) for “liquidator” substitute “insolvency practitioner”.

(8) After section 14, insert—

“14A. Main proceedings in Scotland: undertaking by trustee in respect of assets in another EU member State

(1) This section applies where a trustee in sequestration or acting under a protected trust deed in main proceedings proposes to give an undertaking under Article 36 of the EU insolvency proceedings regulation in respect of assets located in another member State.

(2) In addition to the requirements as to form and content set out in Article 36 the proposed 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 trustee, and
- (d) a description of the effect of the undertaking if approved.

(3) The proposed undertaking must be delivered to all local creditors⁽⁶⁾ in the member State concerned of whose address the trustee is aware.

(4) Where the undertaking is rejected the trustee must inform every creditor known to the trustee of the rejection of the undertaking as soon as reasonably practicable.

(5) Where the undertaking is approved the trustee must as soon as reasonably practicable send a copy of the undertaking to every creditor known to the trustee with a notice—

- (a) informing them of the approval of the undertaking, and
- (b) describing its effect (so far as they have not already been given this information under subsection (2)(d)).

(6) The trustee may advertise details of the undertaking in the other member State in such manner as the trustee thinks fit.

14B. Main proceedings in another member State: approval of undertaking offered by member State insolvency practitioner to local creditors in the UK

(1) This section applies where a member State insolvency practitioner proposes an undertaking under Article 36 of the EU insolvency proceedings regulation and the secondary proceedings which the undertaking is intended to avoid would be sequestration or a protected trust deed.

⁽⁶⁾ “Local creditor” is defined in Article 2(11) of the EU Regulation.

- (2) A decision on approval of the undertaking by local creditors 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 Insolvency Act 1986(7).
- (3) Without prejudice to the generality of subsection (2), Rules 1.12 to 1.16E(8) of the Insolvency (Scotland) Rules 1986 apply to that decision.
- (4) The member State insolvency practitioner must publish a notice in the Edinburgh Gazette 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.”.
- (9) In section 15(9) (jurisdiction) for “EC” substitute “EU”.
- (10) In section 128 (voting and drawing a dividend) in subsections (5)(b) and (6) for “liquidator” substitute “insolvency practitioner”.
- (11) In section 129(8) (surplus to be made over to debtor, successors or assignees subject to the EC insolvency proceedings regulation) for “Article 35 of the EC” substitute “Article 49 of the EU”.
- (12) In section 170(1)(d)(iv) and (v) (protected trust deeds - documents to be sent to creditors) for “EC” substitute “EU”.
- (13) In section 190(1) (application for conversion of protected trust deed to sequestration)—
- (a) for “liquidator” substitute “insolvency practitioner”;
 - (b) for “Article 37 of the EC” substitute “Article 51 of the EU”; and
 - (c) for “earlier” substitute “secondary insolvency”.
- (14) In section 191 (contents of affidavit required under section 190(2))—
- (a) for subsection (1)(b) substitute—
 - “(b) state that the member State insolvency practitioner believes that the conversion of the protected trust deed into sequestration would be most appropriate as regards the interests of the local creditors(9) and coherence between the main and secondary proceedings,”; and
 - (b) in subsections (1)(c) and (2), for “liquidator” substitute “insolvency practitioner”; and
- (15) In section 192 (powers of Accountant in Bankruptcy on application for conversion to sequestration) in subsection (3)(b), for “liquidator” substitute “insolvency practitioner”.
- (16) In section 207 (member State liquidator deemed creditor)—
- (a) for “paragraph 3 of Article 32 of the EC” substitute “paragraph 3 of Article 45 of the EU”; and
 - (b) for each occurrence of “liquidator” substitute “insolvency practitioner”.
- (17) In the title of section 207 for “liquidator” substitute “insolvency practitioner”.
- (18) In section 208 (trustee's duty to provide certain notices and copies of documents to member State liquidator)—
- (a) in subsection (1) and (2), for “liquidator” substitute “insolvency practitioner”; and
 - (b) in subsection (3), for “Article 31 of the EC” substitute “Article 41 of the EU”.
- (19) In the title of section 208 for “liquidator” substitute “insolvency practitioner”.

(7) Section 4A was inserted by the Insolvency Act 2000, section 2, schedule 2, Part 1, paras 1, 5.

(8) Rules 1.12 to 1.16E were amended by, and Rules 1.14ZA, 1.14A and 1.1.4AA, 1.15A, 1.1.5AA, 1.15B, 1.16A, 1.16B, 1.16C, 1.16D, 1.1.6E inserted by, [S.I. 1987/1921](#), [S.I. 2010/688](#), [S.I. 2002/2709](#) and [S.I. 2009/662](#).

(9) “Local creditor” is defined in Article 2(11) of the EU Regulation.

(20) In section 226 (modification of regulation making powers), for each occurrence of “EC” substitute “EU”.

(21) In section 228(1) (interpretation)—

- (a) in the definition of “centre of main interests” for “EC” substitute “EU”;
- (b) in the definition of “creditor”, for “liquidator” substitute “insolvency practitioner”;
- (c) omit the definition of “the EC insolvency proceedings regulation”;
- (d) in the definition of “establishment” for “Article 2(h) of the EC” substitute “Article 2(10) of the EU”;
- (e) after the definition of “establishment”, insert—

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

- (f) in the definition of “main proceedings”—

- (i) for “EC” substitute “EU”;
- (ii) for “Article 2(a)” substitute “Article 2(4)”;
- (iii) omit “England and Wales and”.

- (g) for the definition of “member State liquidator” substitute—

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

- (h) for the definition of “secondary proceedings” substitute—

““secondary proceedings” means proceedings opened in accordance with Articles 3(2) and (3) of the EU insolvency proceedings regulation which are set out in Annex A to that regulation—

- (a) in relation to Scotland, under the heading “United Kingdom”, and
- (b) in relation to another member State, under the heading relating to that member State,”

- (i) in the definition of “temporary administrator”, for “Article 38 of the EC” substitute “Article 52 of the EU”; and

- (j) in the definition of “territorial proceedings”—

- (i) for “Article 2(a)” substitute “Article 2(4)”;
- (ii) omit “England and Wales and”.

(22) In section 231 (proceedings under EC insolvency proceedings regulation: modified definition of “estate”), for “EC” substitute “EU”.

(23) In the title to section 231 for “EC” substitute “EU”.

(24) In schedule 5 (information to be included in the sederunt book), after paragraph 3, insert—

3A. Any undertaking given by the trustee approved under Article 36 of the EU insolvency proceedings regulation.”.