

POLICY NOTE

THE INSOLVENCY (REGULATION (EU) 2015/848) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2017

SSI 2017/Draft

The above Regulations are made by the Scottish Ministers in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and all other powers enabling them to do so. They are subject to the affirmative procedure.

Policy Objectives

1. The policy objective of these Regulations is to implement the recast EU Regulation 2015/848 on insolvency proceedings (“the recast EU Regulation”) for Scotland.

Background

2. The recast EU Regulation¹ is primarily a restatement and modernisation of the existing Council Regulation (EC) No. 1346/2000 on insolvency proceedings². It aims to enhance administration of cross-border insolvency proceedings. These Regulations propose necessary minor, technical and supporting amendments to bankruptcy and related legislation in Scotland in connection with the recast EU Regulation.
3. The majority of the provisions of the recast EU Regulation are directly applicable in Scots law from 26 June 2017 (see Articles 84 and 92). Annex D of the recast EU Regulation contains a correlation Table between the corresponding provisions of the EC and recast EU Regulations.
4. The Annex below sets out the amendments and relevant background. The UK Insolvency Service are taking forward equivalent provision concerning other insolvency regimes in Scotland.

Consultation

5. The Scottish Government has discussed this approach with the UK Insolvency Service and ICAS.

Impact Assessments

6. A Business and Regulatory Impact Assessment (BRIA) has not been completed as these Regulations are amending for minor and technical issues and no significant change is foreseen to the existing impacts upon business, charities or voluntary bodies
7. An Equality Impact Assessment (EQIA) has not been carried out as these Regulations make minor and technical amendments which are considered not to raise any equality

¹ Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (O.J. No. L 141, 5.6.15, p.19).

² O.J. No. L 160, 30.6.2000, p.1

issues. Existing legislation was subject to equality impact assessment as necessary and highlighted no concerns.

Financial Effects

8. No financial impact is anticipated as these Regulations make minor and technical amendments.

The Accountant in Bankruptcy on behalf of the Scottish Government

2 May 2017

Specific Amending Provisions

Insolvency Act 1986

Regulation 2 – replaces a consequential reference in receivership law (not itself affected by the EU Regulation) to the jurisdiction rules on centre of main interests by reference to Council Regulation (EC) No. 1346/2000 on insolvency proceedings. It amends references to articles of the existing EC Regulation to point to the recast EU Regulation.

Bankruptcy and Diligence etc (Scotland) Act 2007

Regulation 3 – amends definition of “EC Regulation” to “EU Insolvency Regulation” and consequential references in the law on floating charges (not yet in force). Amends references to articles of the existing EC Regulation to point to those in the recast EU Regulation.

Bankruptcy (Scotland) Act 2016

Regulation 4 – substitutes references to member State “liquidator” to member State “insolvency practitioner” in a number of provisions of the Act. This regulation also generally amends references to the existing Regulation to those in the recast EU Regulation.

Regulation 4(8) – makes procedural provision to support the process under Article 36 of the recast EU Regulation for undertakings:

- given by trustees in sequestration or protected trust deeds (i.e. in main cross-border EU insolvency proceedings) to cover assets in member States outside the UK where secondary insolvency proceedings could be opened, to require additional details to be provided in the proposed undertakings, and for the manner of notification and advertisement (new section 14A of the 2016 Act);
- given by insolvency practitioners in main insolvency proceedings in member States outside the UK to avoid sequestration or protected trust deed secondary proceedings – to provide for such an undertaking by local creditors in the UK that is taken in accordance with Article 36(5) of Regulation (EU) 2015/848 as a decision by a company’s creditors to approve a company voluntary arrangement (new section 14B of the 2016 Act).

Regulation 4(14) – updates provisions for conversion of a protected trust deed into a sequestration on the application of a member state insolvency practitioner appointed in another EU member state in main proceedings.

Bankruptcy Fees (Scotland) Regulations 2014

Regulation 5 – substitutes references and definition of “member State liquidator” to “member State insolvency practitioner” in relation to conversion of a protected trust deed into a sequestration.

Public Services Reform (Insolvency) (Scotland) Order 2016

Regulation 6 - amends references in a saving provision to articles in the existing EC Regulation to those in the recast EU Regulation.

Bankruptcy (Scotland) Regulations 2016

Regulation 7 – substitutes references from “Council Regulation (EC) No 1346/2000” to “Regulation (EU) 2015/848” in existing provisions about forms and the register of insolvencies.

Bankruptcy (Applications and Decisions) (Scotland) Regulations 2016

Regulation 8 – substitutes references to “liquidator” to “insolvency practitioner” and amends references of articles in the existing EC Regulation to those in the recast EU Regulation in relation to forms and a procedural requirement.