

2011 No. 140

INSOLVENCY

COMPANIES

**The Insolvency Act 1986 Amendment (Appointment of
Receivers) (Scotland) Regulations 2011**

Made - - - - - *17th February 2011*

Laid before the Scottish Parliament *22nd February 2011*

Coming into force - - - *17th March 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Insolvency Act 1986 Amendment (Appointment of Receivers) (Scotland) Regulations 2011 and come into force on 17th March 2011.

Amendment of section 51 of the Insolvency Act 1986

2. In section 51 of the Insolvency Act 1986(b)—

(a) in subsection (1), for the words from “which” where it second occurs to the end substitute—

“(a) which the Court of Session has jurisdiction to wind up; or

(b) where paragraph (a) does not apply, in respect of which a court of a member state other than the United Kingdom has under the EU Regulation jurisdiction to open insolvency proceedings,

to appoint a receiver of such part of the property of the company as is subject to the charge.”;

(b) after subsection (2) insert—

“(2ZA) But, in relation to a company mentioned in subsection (1)(b), a receiver may be appointed under subsection (1) or (2) only in respect of property situated in Scotland.”; and

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3) and the Legislative and Regulatory Reform Act 2006 (c.51), section 27. The functions conferred upon the Minister of the Crown under section 2(2) in so far as within devolved competence were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) 1986 c.45.

(c) in subsection (6)(a) at the end insert—

““the EU Regulation” is the Regulation of the Council of the European Union published as Council Regulation (EC) No. 1346/2000 on insolvency proceedings**(b)**;

“court” is to be construed in accordance with Article 2(d) of the EU Regulation;

“insolvency proceedings” is to be construed in accordance with Article 2(a) of the EU Regulation.”.

St Andrew’s House,
Edinburgh
17th February 2011

FERGUS EWING
Authorised to sign by the Scottish Ministers

(a) Section 51(6) was amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 3(4).
(b) O.J. L 160, 30.6.2000, p.1.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend section 51 of the Insolvency Act 1986 (“the 1986 Act”) to deal with an unintended consequence arising out of the EU Council Regulation on Insolvency Proceedings (Regulation (EC) No. 1346/2000) (“the EU Regulation”).

Article 3 of the EU Regulation provides that the courts of the member state in which a company has its centre of main interests have jurisdiction to open insolvency proceedings in relation to that company. The courts of another member state have such jurisdiction only where the company also has an establishment in that member state. The EU Regulation therefore also had the unintended effect of limiting the power in section 51 of the 1986 Act to appoint a receiver to enforce a floating charge over property situated in Scotland where a borrowing company has its centre of main interest in a member state other than the UK and no establishment in the UK. This is because section 51 requires that the Court of Session has jurisdiction to wind up the company.

The regulations remove this limitation by making provision in section 51 for the power to appoint a receiver over the property in Scotland of a company in respect of which the courts of another member state have jurisdiction to open insolvency proceedings.

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