
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Insolvency Act 1986 in connection with receivers, the Bankruptcy (Scotland) Act 2016 (“the 2016 Act”), the Bankruptcy (Scotland) Regulations 2016 (“the 2016 Regulations”), and other statutes and secondary legislation to implement Regulation (EU) 2015/848 on insolvency proceedings (O.J. No L 141, 5.6.2015, p.19) (“Regulation (EU) 2015/848”) which replaces Council Regulation (EC) No. 1346/2000.

Relevant parts of Regulation (EU) 2015/848 have effect from 26th June 2017, but these amendments do not apply to insolvency proceedings opened before 26th June 2017 in accordance with Articles 84 and 92 of Regulation (EU) 2015/848.

The EU Regulation aims to provide for the efficient and effective functioning of cross-border insolvency proceedings in the European Union. Information is provided in guidance issued by the Insolvency Service which may be found on the Insolvency Service website, the address of which is <https://www.gov.uk/government/organisations/insolvency-service>, and by the Accountant in Bankruptcy at <https://www.aib.gov.uk/>

The Regulations update the provisions in the 2016 Act and Regulations and those other enactments, including in certain forms. Annex D of Regulation (EU) 2015/848 contains a correlation Table between the corresponding provisions of the EC and EU Regulations.

The main amendments made are to—

- a) replace a consequential reference in receivership law in the Insolvency Act 1986 to the jurisdiction rules on centre of main interests by reference to Council Regulation (EC) No. 1346/2000 on insolvency proceedings;
- b) replace references to Council Regulation (EC) No. 1346/2000 on insolvency proceedings with references to the corresponding provisions of Regulation (EU) 2015/848 for sequestration proceedings by an insolvency practitioner (within the meaning of Article 2(5) of Regulation (EU) 2015/848) appointed in proceedings by virtue of Article 3(1) of Regulation (EU) 2015/848;
- c) replace references in the 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 (formerly “a member State liquidator”) in main proceedings (“member State insolvency practitioner”, “main proceedings” and “secondary proceedings” are defined by reference to the EU Regulation in section 228 (interpretation) of the 2016 Act);
- d) support the recognition of undertakings under Article 36 of the Regulation (EU) 2015/848:—
 - given by trustees in sequestration or protected trust deeds (i.e. in main insolvency proceedings) in respect of assets in other member States where secondary insolvency proceedings could be opened, to require certain additional details to be provided in the proposed undertakings, and for the manner of their notification and advertisement (new section 14A of the 2016 Act);
 - given by insolvency practitioners in main insolvency proceedings in other member States to avoid sequestration or a 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);

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- e) amend form 11 (creditor claims) in the schedule to the 2016 Regulations for creditors making a claim in the case of a member State insolvency practitioner in applying for sequestration and specifying and vouching the underlying claims for which the practitioner is claiming as a creditor.

No business and regulatory impact has been prepared for these Regulations as no significant change is foreseen to the existing impacts upon business, charities or voluntary bodies.