

## SCOTTISH STATUTORY INSTRUMENTS

### 2018 No. 347

#### The Insolvency (Scotland) (Receivership and Winding up) Rules 2018

### PART 11

#### THE EU REGULATION

[Note: a document required by the Act or these Rules must also contain the standard contents required as set out in Part 1.]

#### Interpretation of this Part

##### <sup>F1</sup>11.1. ....

**F1** Rules 11.1-11.3 omitted (31.12.2020) by virtue of S.I. 2019/146, **Sch. para. 137L** (as inserted by **The Insolvency (Amendment) (EU Exit) (No. 2) Regulations 2019** (S.I. 2019/1459), reg. 1(2), **Sch. para. 6**; 2020 c. 1, **Sch. 5 para. 1(1)**)

#### Conversion into other winding up proceedings: application

##### <sup>F1</sup>11.2. ....

**F1** Rules 11.1-11.3 omitted (31.12.2020) by virtue of S.I. 2019/146, **Sch. para. 137L** (as inserted by **The Insolvency (Amendment) (EU Exit) (No. 2) Regulations 2019** (S.I. 2019/1459), reg. 1(2), **Sch. para. 6**; 2020 c. 1, **Sch. 5 para. 1(1)**)

#### Conversion into winding up proceedings: court order

##### <sup>F1</sup>11.3. ....

**F1** Rules 11.1-11.3 omitted (31.12.2020) by virtue of S.I. 2019/146, **Sch. para. 137L** (as inserted by **The Insolvency (Amendment) (EU Exit) (No. 2) Regulations 2019** (S.I. 2019/1459), reg. 1(2), **Sch. para. 6**; 2020 c. 1, **Sch. 5 para. 1(1)**)

#### Confirmation of creditors' voluntary winding up: application

##### 11.4.—(1) This rule applies where—

- (a) a company has passed a resolution for voluntary winding up, and either—
  - (i) no declaration of solvency has been made in accordance with section 89, or
  - (ii) a declaration made under section 89—
    - (aa) has no effect by virtue of section 89(2), or

- (bb) is treated as not having been made by virtue of section 96 <sup>M1</sup>; or
- (b) a company has moved from administration to creditors' voluntary winding up in accordance with paragraph 83 of schedule B1 <sup>M2</sup>.
- (2) The liquidator may apply to court for an order confirming the winding up as a creditors' voluntary winding up for the purposes of the EU Regulation.
- (3) The application must be supported by a statement containing a statutory declaration made by the liquidator which must contain—
- identification details for the liquidator and the company;
  - the date on which the resolution for voluntary winding up was passed;
  - a statement that the application is accompanied by the documents required by paragraph (4);
  - a statement that the documents required by paragraph (4)(c) and (d) are true copies of the originals; and
- [<sup>F2</sup>(e) a statement whether the proceedings will be COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply and the reasons for so stating.]
- (4) The liquidator must lodge with the court—
- 2 copies of the application;
  - evidence of having been appointed liquidator of the company;
  - a copy of—
    - the resolution for voluntary winding up, or
    - the notice of moving from administration to creditors' voluntary winding up sent by the administrator to the registrar of companies under paragraph 83(3) of schedule B1; and
  - a copy of—
    - the statement of affairs required by section 99 <sup>M3</sup> or under paragraph 47 of schedule B1, or
    - the information included in the administrator's statement of proposals under paragraph 49 of schedule B1.

**F2** Rule 11.4(3)(e) substituted (31.12.2020) by [S.I. 2019/146](#), **Sch. para. 137M** (as inserted by [The Insolvency \(Amendment\) \(EU Exit\) \(No. 2\) Regulations 2019](#) (S.I. 2019/1459), reg. 1(2), **Sch. para. 6**; 2020 c. 1, **Sch. 5 para. 1(1)**)

#### Marginal Citations

- M1** A new section 96 is prospectively substituted by paragraph 20 of schedule 9 of the 2015 Act.
- M2** [Paragraph 83](#) sub-paragraphs (1)(b) and (2)(b) are prospectively amended by section 128(3) of the 2015 Act and sub-paragraphs (5)(b) and (8)(d) amended by paragraph 10(31) and (32) of schedule 9 of that Act.
- M3** [Section 99](#) subsections (1) and (3) are prospectively substituted by new subsections (1) and (3) by paragraph 23 of schedule 9 of the 2015 Act.

### Confirmation of creditors' voluntary winding up: court order

**11.5.—**(1) On an application under the preceding rule, the court may make an order confirming the creditors' voluntary winding up.

(2) It may do so without a hearing.

### Confirmation of creditors' voluntary winding up: notice to member State liquidator

<sup>F3</sup>11.6. ....

**F3** Rules 11.6-11.17 omitted (31.12.2020) by virtue of S.I. 2019/146, **Sch. para. 137N** (as inserted by [The Insolvency \(Amendment\) \(EU Exit\) \(No. 2\) Regulations 2019](#) (S.I. 2019/1459), reg. 1(2), **Sch. para. 6**; 2020 c. 1, **Sch. 5 para. 1(1)**)

### Proceedings in another member State: duty to give notice

<sup>F3</sup>11.7. ....

**F3** Rules 11.6-11.17 omitted (31.12.2020) by virtue of S.I. 2019/146, **Sch. para. 137N** (as inserted by [The Insolvency \(Amendment\) \(EU Exit\) \(No. 2\) Regulations 2019](#) (S.I. 2019/1459), reg. 1(2), **Sch. para. 6**; 2020 c. 1, **Sch. 5 para. 1(1)**)

### Member State liquidator: rules on creditors' participation in proceedings

<sup>F3</sup>11.8. ....

**F3** Rules 11.6-11.17 omitted (31.12.2020) by virtue of S.I. 2019/146, **Sch. para. 137N** (as inserted by [The Insolvency \(Amendment\) \(EU Exit\) \(No. 2\) Regulations 2019](#) (S.I. 2019/1459), reg. 1(2), **Sch. para. 6**; 2020 c. 1, **Sch. 5 para. 1(1)**)

### Main proceedings in Scotland: undertaking in respect of assets in another member State (Article 36 of the EU Regulation)

<sup>F3</sup>11.9. ....

**F3** Rules 11.6-11.17 omitted (31.12.2020) by virtue of S.I. 2019/146, **Sch. para. 137N** (as inserted by [The Insolvency \(Amendment\) \(EU Exit\) \(No. 2\) Regulations 2019](#) (S.I. 2019/1459), reg. 1(2), **Sch. para. 6**; 2020 c. 1, **Sch. 5 para. 1(1)**)

### Main proceedings in another member State: approval of undertaking offered by the member State liquidator to local creditors in the UK

<sup>F3</sup>11.10. ....

**F3** Rules 11.6-11.17 omitted (31.12.2020) by virtue of S.I. 2019/146, **Sch. para. 137N** (as inserted by [The Insolvency \(Amendment\) \(EU Exit\) \(No. 2\) Regulations 2019](#) (S.I. 2019/1459), reg. 1(2), **Sch. para. 6**; 2020 c. 1, **Sch. 5 para. 1(1)**)

### Powers of a liquidator, provisional liquidator or member State liquidator in proceedings concerning members of a group of companies (Article 60 of the EU Regulation)

<sup>F3</sup>11.11. ....

**F3** Rules 11.6-11.17 omitted (31.12.2020) by virtue of S.I. 2019/146, **Sch. para. 137N** (as inserted by The Insolvency (Amendment) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1459), reg. 1(2), **Sch. para. 6**; 2020 c. 1, **Sch. 5 para. 1(1)**)

## Group coordination proceedings (Section 2 of Chapter 5 of the EU Regulation)

**F3** 11.12. ....

**F3** Rules 11.6-11.17 omitted (31.12.2020) by virtue of S.I. 2019/146, **Sch. para. 137N** (as inserted by The Insolvency (Amendment) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1459), reg. 1(2), **Sch. para. 6**; 2020 c. 1, **Sch. 5 para. 1(1)**)

## Group coordination order (Article 68 of the EU Regulation)

**F3** 11.13. ....

**F3** Rules 11.6-11.17 omitted (31.12.2020) by virtue of S.I. 2019/146, **Sch. para. 137N** (as inserted by The Insolvency (Amendment) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1459), reg. 1(2), **Sch. para. 6**; 2020 c. 1, **Sch. 5 para. 1(1)**)

## Delivery of group coordination order to registrar of companies

**F3** 11.14. ....

**F3** Rules 11.6-11.17 omitted (31.12.2020) by virtue of S.I. 2019/146, **Sch. para. 137N** (as inserted by The Insolvency (Amendment) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1459), reg. 1(2), **Sch. para. 6**; 2020 c. 1, **Sch. 5 para. 1(1)**)

## Liquidator or provisional liquidator's report

**F3** 11.15. ....

**F3** Rules 11.6-11.17 omitted (31.12.2020) by virtue of S.I. 2019/146, **Sch. para. 137N** (as inserted by The Insolvency (Amendment) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1459), reg. 1(2), **Sch. para. 6**; 2020 c. 1, **Sch. 5 para. 1(1)**)

## Publication of opening of proceedings by a member State liquidator

**F3** 11.16. ....

**F3** Rules 11.6-11.17 omitted (31.12.2020) by virtue of S.I. 2019/146, **Sch. para. 137N** (as inserted by The Insolvency (Amendment) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1459), reg. 1(2), **Sch. para. 6**; 2020 c. 1, **Sch. 5 para. 1(1)**)

## Statement by member State liquidator that insolvency proceedings in another member State are closed etc.

**F3** 11.17. ....

- F3** Rules 11.6-11.17 omitted (31.12.2020) by virtue of S.I. 2019/146, **Sch. para. 137N** (as inserted by The Insolvency (Amendment) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1459), reg. 1(2), **Sch. para. 6**; 2020 c. 1, **Sch. 5 para. 1(1)**)

**Changes to legislation:**

There are currently no known outstanding effects for the The Insolvency (Scotland) (Receivership and Winding up) Rules 2018, PART 11.