

SCHEDULE

PART 9

Amendments to the Insolvency (Northern Ireland) Order 1989 and the Insolvency Rules (Northern Ireland) 1991

Amendments to the Insolvency (Northern Ireland) Order 1989

161. The Insolvency (Northern Ireland) Order 1989(1) is amended as follows.

162. In Article 2(2) in the definition of “the EU Regulation” at the end insert “as it forms part of domestic law on and after exit day”(2).

163. In Article 2(2) omit the definitions of “EU insolvency proceedings” and “member State liquidator”(3).

164. Omit Article 2A(4).

165. In Article 3 omit paragraph (6).

166. In Article 6 in paragraph (3) omit sub-paragraph (b) and the “or” preceding it.

167. In Article 14 in paragraph (4)—

(a) in sub-paragraph (b) omit “other than the United Kingdom”; and

(b) in sub-paragraph (c) after “interests” insert “either” and after “Denmark” insert “or in the United Kingdom”.

168. In Article 80 omit paragraphs (3A) and (3B)(5).

169. In Article 104 in paragraph (1) omit the words from “or by a member State liquidator” to “Article 52 of the EU Regulation”(6).

170. In Article 124 omit paragraphs (6) and (7)(7).

171. Omit Article 124A(8).

172.—(1) Article 166 is amended as follows(9).

(2) In paragraph (2) omit “and any statement under Article 80(3B)” and “(except where paragraph (2A) applies)”.

(3) Omit paragraphs (2A) and (2B).

173.—(1) Article 167 is amended as follows(10).

(2) Omit paragraphs (1A) and (1B).

(3) In paragraph (2) for “an application under paragraph (1)” substitute “that application”.

(1) [S.I. 1989/2405 \(N.I. 19\)](#). Relevant amendments have been made by [S.R. \(NI\) 2002 No.334](#) and [S.I. 2017/702](#).

(2) The definition of “EU Regulation” was substituted by [S.I. 2017/702](#).

(3) These definitions were inserted by paragraph 96 of the Schedule to [S.I. 2017/702](#).

(4) Article 2A was inserted by [S.R. \(NI\) 2002 No. 334](#) and amended by [S.I. 2017/702](#).

(5) Paragraphs (3A) and (3B) were inserted by paragraph 100 of the Schedule to [S.I. 2017/702](#).

(6) Paragraph (1) was amended by paragraph 101 of the Schedule to [S.I. 2017/702](#).

(7) Paragraphs (6) and (7) were inserted by paragraph 102 of the Schedule to [S.I. 2017/702](#).

(8) Article 124A was inserted by paragraph 103 of the Schedule to [S.I. 2017/702](#).

(9) Article 166 was amended by paragraph 104 of the Schedule to [S.I. 2017/702](#).

(10) Article 167 was amended by paragraph 105 of the Schedule to [S.I. 2017/702](#) which inserted paragraphs (5) and (6) and renumbered and amended paragraph (7).

- (4) In paragraph (3) omit “and to send any statement under paragraph (1B)”.
- (5) In paragraph (4)—
 - (a) omit “and any statement under paragraph (1B)” and “or them”;
 - (b) for “subject to paragraph (5)” substitute “subject to paragraph (7)”; and
 - (c) omit “(except where paragraph (5) applies)”.
- (6) Omit paragraphs (5) and (6).
- (7) In paragraph (7) for “the period in paragraph (4) or (6)” substitute “that period”.

174.—(1) Article 169(11) is amended as follows.

(2) In paragraph (1) omit “and any statement under Article 124(7) or 124A(2)” and “of the final account or notice”.

(3) Omit paragraphs (1A) and (1B).

175. In Article 204(12) in paragraph (3)(d) omit the words from “either following” to “Article 51 of the EU Regulation or”.

176. In Article 238 in paragraph (1) omit sub-paragraphs (ba) and (bb)(13).

177. For Article 239 substitute—

“239. Conditions to be satisfied in respect of debtor

(1) A bankruptcy petition may be presented to the High Court under Article 238(1)(a) or (b) only if—

- (a) the centre of the debtor’s main interests is in Northern Ireland,
- (b) the centre of the debtor’s main interests is in a member State of the European Union which has adopted the EU Regulation and the debtor has an establishment in Northern Ireland, or
- (c) the centre of the debtor’s main interests is not in a member State of the European Union which has adopted the EU Regulation, but the test in paragraph (2) is met.

(2) The test is that—

- (a) the debtor is domiciled in Northern Ireland, or
- (b) the debtor is personally present in Northern Ireland on the day on which the petition is presented, or
- (c) at any time in the period of three years ending with the day on which the petition is presented, the debtor—
 - (i) has been ordinarily resident, or has had a place of residence, in Northern Ireland, or
 - (ii) has carried on business in Northern Ireland.

(3) The reference in paragraph (2) to the debtor carrying on business includes—

- (a) the carrying on of business by a firm or partnership of which the debtor is a member, and
- (b) the carrying on of business by an agent or manager for the debtor or for such a firm or partnership.

(11) Article 169 was amended by paragraph 107 of the Schedule to [S.I. 2017/702](#).

(12) Article 204 was amended by paragraph 110 of the Schedule to [S.I. 2017/702](#).

(13) Paragraphs (ba) and (bb) were amended by paragraph 111 of the Schedule to [S.I. 2017/702](#).

(4) In this Article—

- (a) references to the centre of the debtor’s main interests have the same meaning as in Article 3 of the EU Regulation, and
- (b) “establishment” has the same meaning as in Article 2(10) of the EU Regulation.”.

178.—(1) Article 239(14) (as substituted by paragraph 177) is amended as follows.

(2) In paragraph (1)—

- (a) in sub-paragraph (b) after “European Union” insert “other than Denmark” and omit the words “which has adopted the EU Regulation”; and
- (b) in sub-paragraph (c) omit the words from the beginning of the paragraph to “the EU Regulation, but”.

179. In Article 303 omit paragraph (6)(15).

180. In Article 347 in paragraph (3)(16)—

- (a) omit sub-paragraphs (aa) and (ab);
- (b) in sub-paragraph (b) omit “, (aa) or (ab)”;
- (c) in sub-paragraph (ba) omit “, (aa), (ab)”;
- (d) in sub-paragraph (c) omit “(aa), (ab),”.

181. In Article 359(17) in paragraph (2B) for the words from “an offence” to the end of the sentence substitute “a new relevant offence (see Article 366A)”.

182. In Article 364(18) in paragraph (1B) for the words from “an offence” to the end of the sentence substitute “a new relevant offence (see Article 366A)”.

183. In Article 365(19) in paragraph (1B) for the words from “an offence” to the end of the sentence substitute “a new relevant offence (see Article 366A)”.

184. After Article 366 insert—

“366A. Meaning of “relevant offence”

In Articles 359(2B), 364(1B) and 365(1B), a “relevant offence” is a criminal offence punishable with imprisonment for more than two years or punishable on summary conviction with imprisonment for more than three months or with a fine of more than level 5 on the standard scale (if not calculated on a daily basis) or with a fine of more than £100 a day.”.

185. In Schedule B1—

- (a) in paragraph 1—
 - (i) in sub-paragraph (1A)(b) omit “other than the United Kingdom”;
 - (ii) in sub-paragraph (1A)(c) after “interests” insert “either” and after “Denmark” insert “or in the United Kingdom”;
- (b) in paragraph 85(20)—

(14) Article 239 was amended by paragraph 112 of the Schedule to [S.I. 2017/702](#).

(15) Article 303 paragraph (6) was inserted by regulation 15 of S.R. (NI) 2002 No. 334 and amended by paragraph 113 of the Schedule to [S.I. 2017/702](#).

(16) Article 347 was amended by paragraph 114 of the Schedule to [S.I. 2017/702](#).

(17) Article 359 was amended by S.R. (NI) 2002 No. 223, regulation 4 (2) and paragraph 115 of the Schedule to [S.I. 2017/702](#).

(18) Article 364 was amended by S.R. (NI) 2002 No. 223, regulation 4(3) and [S.I. 2017/702](#), regulation 116.

(19) Article 365 was amended by S.R. (NI) 2002 No. 223, regulation 4(3) and paragraph 117 of the Schedule to [S.I. 2017/702](#).

(20) Paragraph 85 was amended by paragraph 119 of the Schedule to [S.I. 2017/702](#).

- (i) omit sub-paragraphs (1A) and (1B);
- (ii) in sub-paragraph (3) omit “and any statement under sub-paragraph (1B)” and at the end omit “or them”;
- (iii) in sub-paragraph (6) omit “(except where sub-paragraph (6A) applies)”;
- (iv) omit sub-paragraphs (6A) and (6B); and
- (v) in sub-paragraphs (7)(a) and (c) omit “or (6B)”.

Amendments to the Insolvency Rules (Northern Ireland) 1991

186. The Insolvency Rules (Northern Ireland) 1991⁽²¹⁾ are amended as follows.

187. In Rule 0.2 (Interpretation)—

(a) omit the following definitions—

- (i) “main proceedings”,
- (ii) “Member State liquidator”,
- (iii) “secondary proceedings”,
- (iv) “temporary administrator”,
- (v) “territorial proceedings”;

(b) insert in the appropriate places—

““COMI proceedings” means insolvency proceedings in Northern Ireland to which the EU Regulation applies where the centre of the debtor’s main interests is in the United Kingdom;”;

““establishment proceedings” means insolvency proceedings in Northern Ireland to which the EU Regulation applies where the debtor has an establishment in the United Kingdom;”;

(c) in the definition of “establishment” for “Article 2(h) of the EC Regulation” substitute “Article 2(10) of the EU Regulation”.

188. In Rule 1.03 in paragraph (2) for sub-paragraph (q) substitute—

“(q) 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 with reasons.”⁽²²⁾.

189. In Rule 1.09 in paragraph (1A)⁽²³⁾ for the words “main, secondary, territorial” substitute “COMI proceedings, establishment proceedings”.

190. In Rule 1.24 in paragraph (2)(ca) for the words “whether the proceedings are main proceedings, secondary proceedings or territorial proceedings;” substitute “whether the proceedings are 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;”⁽²⁴⁾.

191. Omit Rules 1.31 to 1.33 (Chapter 7)⁽²⁵⁾.

192. Omit Rule 1.34 (Chapter 8)⁽²⁶⁾.

⁽²¹⁾ S.R. (NI) 1991 No. 364. Relevant amendments were made by S.I. 2017/702.

⁽²²⁾ Paragraph (2)(q) was inserted by Rule 5 of the Insolvency (Amendment) Rules (Northern Ireland) 2002, S.R. 2002 No. 261.

⁽²³⁾ Rule 1.09 was amended by paragraph 122 of the Schedule to S.I. 2017/702.

⁽²⁴⁾ Rule 1.24 was amended by S.R. (NI) 2002 No. 261

⁽²⁵⁾ Chapter 7, Rules 1.31, 1.32 and 1.33 were amended by paragraphs 123, 124 and 125 of the Schedule to S.I. 2017/702.

⁽²⁶⁾ Chapter 8, Rule 1.34 was amended by paragraph 126 of the Schedule to S.I. 2017/702.

193. In Rule 1.39 in paragraph (2)(c) for the words “main, secondary, territorial” substitute “COMI proceedings, establishment proceedings”(27).

194. In Rule 2.001 in paragraph (d) omit the reference to Chapters 14 and 15.

195. In Rule 2.004 in paragraph (4) for the words from “main” to the second “proceedings” substitute “COMI proceedings or establishment proceedings”.

196. In Rule 2.006 omit paragraph (3)(c).

197. In Rule 2.012 omit paragraph (1)(g).

198. In Rule 2.034 for paragraph (2)(p)(ii) substitute—

“(ii) if so, 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 with reasons; and”.

199. In Rule 2.039 omit—

- (a) paragraph (1)(a)(ii) and the “or” preceding it, and
- (b) paragraphs (8) to (11).

200. In Rule 2.068 in paragraph (1)(f) omit the words “costs referred to in Articles 30 or 59 of the EU Regulations and”(28).

201. In Rule 2.096 omit paragraph (2)(a)(ii) and the “and” preceding it.

202. In Rule 2.097 omit paragraph (4).

203. In Rule 2.099 in paragraph (1) omit the words from “and” to the end of the sentence.

204. In Rule 2.121 omit paragraph (2).

205. Omit Rules 2.131 to 2.133 (Chapter 14)(29).

206. Omit Rules 2.134 to 2.143 (Chapter 15)(30).

207. In Rule 4.007 omit paragraph (4)(ea).

208. In Rule 4.010 omit paragraph (3A).

209. In Rule 4.012—

- (a) in paragraph (8) omit the words from “(i)” to “whether”; and
- (b) for the words “main proceedings or territorial proceedings” substitute “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”.

210. In Rule 4.024 omit paragraph (6).

211. In Rule 4.027 omit paragraph (1)(g).

212. In Rule 4.073(31)—

- (a) omit paragraph (1)(a)(ii) and the “or” preceding it; and
- (b) omit paragraphs (8) to (10).

(27) Rule 1.39 was amended by paragraph 127 of the Schedule to [S.I. 2017/702](#).

(28) Rule 2.068 was amended by paragraph 128 of the Schedule to [S.I. 2017/702](#).

(29) Chapter 14, Rules 2.131, 2.132 and 2.133, was amended by paragraphs 129, 130 and 131 of the Schedule to [S.I. 2017/702](#).

(30) Chapter 15, Rules 2.134 to 2.143, was amended by paragraphs 132 and 133 of the Schedule to [S.I. 2017/702](#).

(31) Rule 4.073 was amended by S.R. (NI) [2002 No 261](#).

213. In Rule 4.228 in paragraph (3) sub-paragraph (m) omit the words “costs referred to in Articles 30 or 59 of the EU Regulation and”**(32)**.

214. In Rule 5.04 in paragraph (2)(r) for the words “main proceedings or territorial proceedings” substitute “COMI proceedings or establishment proceedings”.

215. Omit Rules 5.61 to 5.64 (Chapter 13)**(33)**.

216. In Rule 6.007 in paragraph (1) in sub-paragraph (f) for “another” substitute “the UK or a”.

217. In Rule 6.013 omit paragraph (5).

218. In Rule 6.027 in paragraph (2)(c) omit the wording in the second set of brackets.

219. In Rule 6.049**(34)**—

(a) in paragraph (1)(d) omit “or” at the end of the sentence; and

(b) omit paragraph (1)(e).

220. In Rule 6.090 omit paragraphs (8) to (10).

221. In Rule 6.113 omit paragraph (3).

222. In Rule 6.222 in paragraph (1) sub-paragraph (m) omit the words “insert costs referred to in Articles 30 or 59 of the EU Regulation and” **(35)**.

223. Omit Rules 6.231 and 6.232 (Chapter 26).

224. In Rule 7.08A omit “including any member State liquidator”.

225. In Rule 7.56 in paragraph (2) for the words in sub-paragraph (e) substitute “whether the proceedings will be COMI proceedings or establishment proceedings.”**(36)**.

226. Omit Rule 7.57.

227. Omit Rule 7.58 (Chapter 11).

228. Omit Rule 8.8.

229. In Rule 11.01 omit paragraph (3).

230. In Rule 11.02 omit paragraph (1)(b) and the “and” preceding it.

231. In Rule 11.03 omit paragraph (4).

232. In Rule 11.06 omit paragraph (1)(b) and the “and” preceding it.

233. In Rule 12.13 omit paragraph (5).

234. In Rule 12.19 omit paragraph (3A).

(32) Rule 4.228(3)(m) was amended by paragraph 135 of the Schedule to [S.I. 2017/702](#).

(33) Chapter 13, Rules 5.61 and 5.62 were amended by paragraphs 138 and 139 of the Schedule to [S.I. 2017/702](#).

(34) Rule 6.049 was amended by paragraph 140 of the Schedule to [S.I. 2017/702](#).

(35) Rule 6.222(1)(m) was amended by paragraph 141 of the Schedule to [S.I. 2017/702](#).

(36) Rule 7.56 was amended by paragraph 142 of the Schedule 70 [S.I. 2017/702](#).