

**2003 No. 2109 (S. 8)**

**BANKRUPTCY, SCOTLAND  
INSOLVENCY, SCOTLAND**

**The Insolvency (Scotland) Regulations 2003**

<i>Made</i>	<i>7th August 2003</i>
<i>Laid before Parliament</i>	<i>13th August 2003</i>
<i>Coming into force</i>	<i>8th September 2003</i>

The Secretary of State, being designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to insolvency, in exercise of the powers conferred upon her by that section, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Insolvency (Scotland) Regulations 2003 and shall come into force on 8th September 2003.

PART I  
SEQUESTRATION

**Interpretation**

2. In this Part of these Regulations “the Act” means the Bankruptcy (Scotland) Act 1985(b); and “the 1985 Regulations” means the Bankruptcy (Scotland) Regulations 1985(c).

**Amendments to the Bankruptcy (Scotland) Act 1985**

3. The Act is amended as provided for in regulations 5 to 19 of these Regulations.

**Amendments to the Bankruptcy (Scotland) Regulations 1985**

4. The 1985 Regulations are amended as provided for in regulations 20 and 21 of these Regulations.

**Amendment of section 5 of the Act**

5.—(1) After section 5(2)(b) of the Act (sequestration of the estate of living debtor) insert—

“(ba) a temporary administrator;

(bb) a member State liquidator appointed in main proceedings;” and

(2) After section 5(3)(b) of the Act (sequestration of the estate of deceased debtor) insert—

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(a) 1972 c.68. The Secretary of State was designated by the European Communities (Designation) (No. 3) Order 2001 (S.I. 2001/3495). Section 57(1) of the Scotland Act 1998 (1998 c.46) provides that despite the transfer to the Scottish Ministers of functions in relation to observing and implementing obligations under Community law, any function of a Minister of the crown shall continue to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

(b) 1985 c.66.

(c) S.I. 1985/1925.

- “(ba) a temporary administrator;
- (bb) a member State liquidator appointed in main proceedings;”.

**Amendment of section 6 of the Act**

**6.**—(1) In section 6 of the Act (sequestration of other estates), after each of subsections (3)(a), (4)(a) and (6)(a) insert—

- “(aa) a temporary administrator;
- (ab) a member State liquidator appointed in main proceedings;”.

(2) In section 6(5) of the Act for “subsection (4)(b)” substitute “subsection (4)(aa) to (b)”.

**Application of EC Regulation to petitions for sequestration of debtor**

**7.** After section 6 of the Act insert—

**“Petition for sequestration of estate: provision of information**

**6A.**—(1) A petitioner for sequestration of a debtor’s estate shall, insofar as it is within the petitioner’s knowledge, state in the petition—

- (a) whether or not the debtor’s centre of main interests is situated—
  - (i) in the United Kingdom; or
  - (ii) in another member State; and
- (b) whether or not the debtor possesses an establishment—
  - (i) in the United Kingdom; or
  - (ii) in any other member State.

(2) If, to the petitioner’s knowledge, there is a member State liquidator appointed in main proceedings in relation to the debtor, the petitioner shall, as soon as reasonably practicable, send a copy of the petition to that member State liquidator.”.

**Amendment of section 7 of the Act**

**8.**—(1) In section 7(1) of the Act (meaning of apparent insolvency), after paragraph (b) insert—  
“(ba) he becomes subject to main proceedings in a member State other than the United Kingdom;”.

- (2) In section 7(2) of the Act—
- (a) the word “or” immediately following sub-paragraph (a) is repealed; and
  - (b) at the end of sub-paragraph (b) after “due” there is inserted “; or
  - (c) subsection (1)(ba), when main proceedings have ended”.

**Amendment of section 8 of the Act**

**9.**—(1) For section 8(1)(a) of the Act (time limits for presentation of petition for sequestration of debtor’s estate) substitute—

- “(a) at any time by—
- (i) the debtor;
  - (ii) a trustee acting under a trust deed;
  - (iii) a temporary administrator; or
  - (iv) a member State liquidator appointed in main proceedings;”.

(2) For section 8(3)(a) of the Act (time limits for presentation of petition for sequestration of deceased debtor’s estate) substitute—

- “(a) at any time by—
- (i) an executor;
  - (ii) a person entitled to be appointed as executor of the estate;
  - (iii) a trustee acting under a trust deed;
  - (iv) a temporary administrator; or
  - (v) a member State liquidator appointed in main proceedings;”.

**Amendment of section 9 of the Act**

10. After section 9(5) of the Act (jurisdiction) insert–

“(6) This section is subject to Article 3 of the EC Regulation.”.

**Amendment of section 31 of the Act**

11. In section 31(8) of the Act after “subsection (1) above” insert “, subject to section 31A of this Act,”.

**Modified definition of “estate”**

12. After section 31 of the Act insert–

**“Proceedings under EC Regulation: modified definition of “estate”**

31A. In the application of this Act to insolvency proceedings under the EC Regulation, a reference to “estate” is a reference to estate which may be dealt with in those proceedings.”.

**Amendment of section 50 of the Act**

13. In section 50 of the Act (entitlement to vote and draw dividend)–

(a) the existing text is renumbered as subsection (1); and

(b) after that subsection (1) (as so renumbered) insert–

“(2) No vote shall be cast by virtue of a debt more than once on any resolution put to a meeting of creditors.

(3) Where a creditor–

(a) is entitled to vote under this section;

(b) has lodged his claim in one or more sets of other proceedings; and

(c) votes (either in person or by proxy) on a resolution put to the meeting, only the creditor’s vote shall be counted.

(4) Where–

(a) a creditor has lodged his claim in more than one set of other proceedings; and

(b) more than one member State liquidator seeks to vote by virtue of that claim, the entitlement to vote by virtue of that claim is exercisable by the member State liquidator in main proceedings, whether or not the creditor has lodged his claim in the main proceedings.

(5) For the purposes of subsections (3) and (4) above, “other proceedings” means main proceedings, secondary proceedings or territorial proceedings in a member State other than the United Kingdom.”.

**Amendment of section 51 of the Act**

14. After section 51(5) of the Act (order of priority in distribution) insert–

“(5A) Subsection (5) above is subject to Article 35 of the EC Regulation (surplus in secondary proceedings to be transferred to main proceedings).”.

**Amendment of section 52 of the Act**

15. In section 52 of the Act, after subsection (9) insert–

“(10) In the declaration of and payment of a dividend, no payments shall be made more than once by virtue of the same debt.

(11) Any dividend paid in respect of a claim should be paid to the creditor.”.

## **Conversion of trust deed into sequestration**

16. After section 59 of the Act insert–

### **“Petition for conversion into sequestration**

**59A.**—(1) Where a member State liquidator proposes to petition the court for the conversion under Article 37 of the EC Regulation (conversion of earlier proceedings) of a protected trust deed into sequestration, an affidavit complying with section 59B of this Act must be prepared and sworn, and lodged in court in support of the petition.

(2) The petition and the affidavit required under subsection (1) above shall be served upon–

- (a) the debtor;
- (b) the trustee;
- (c) such other person as may be prescribed.

### **Contents of affidavit**

**59B.**—(1) The affidavit shall–

- (a) state that main proceedings have been opened in relation to the debtor in a member State other than the United Kingdom;
- (b) state that the member State liquidator believes that the conversion of the trust deed into a sequestration would prove to be in the interests of the creditors in the main proceedings;
- (c) contain such other information the member State liquidator considers will be of assistance to the court–
  - (i) in deciding whether to make an order under section 59C; and
  - (ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable; and
- (d) contain any other matters as may be prescribed.

(2) An affidavit under this section shall be sworn by, or on behalf of, the member State liquidator.

### **Power of court**

**59C.**—(1) On hearing the petition for conversion of a trust deed into a sequestration the court may make such order as it thinks fit.

(2) If the court makes an order for conversion into sequestration the order may contain all such consequential provisions as the court deems necessary or desirable.

(3) Where the court makes an order for conversion into sequestration under subsection (1) above, any expenses properly incurred as expenses of the administration of the trust deed in question shall be a first charge on the debtor’s estate.”.

## **Insertion into the Act of new sections 60A and 60B**

17. After section 60 of the Act insert–

### **“Member State liquidator deemed creditor**

**60A.** For the purposes of this Act, and without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditors’ rights) a member State liquidator appointed in relation to the debtor is deemed to be a creditor in the sum due to creditors in proceedings in relation to which he holds office.

### **Trustee’s duties concerning notices and copies of documents**

**60B.**—(1) This section applies where a member State liquidator has been appointed in relation to the debtor.

(2) Where an interim or a permanent trustee is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court or the Accountant in Bankruptcy, the trustee shall give notice or provide copies, as appropriate, to the member State liquidator.

(3) Subsection (2) above is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to co-operate and communicate information).”.

### **Modification of regulation making powers**

**18.** After section 72 of the Act, insert -

#### **“Modification of regulation making powers**

**72ZA.** Any power in any provision of this Act to make regulations may, insofar as that provision relates to a matter to which the EC Regulation applies, be exercised for the purpose of making provision in consequence of the EC Regulation.”.

### **Amendment of section 73 of the Act**

**19.** In section 73(1) (interpretation) of the Act insert the following definitions in alphabetical order:-

““centre of main interests” has the same meaning as in the EC Regulation;

“creditor” includes a member State liquidator deemed to be a creditor under section 60A of this Act;

“the EC Regulation” means Council Regulation (EC) No. 1346/2000 of 29th May 2000 on insolvency proceedings(a);

“establishment” has the meaning given by Article 2(h) of the EC Regulation;

“main proceedings” means proceedings opened in accordance with Article 3(1) of the EC Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Regulation and-

(a) in relation to England and Wales and Scotland, set out in Annex A to the EC Regulation under the heading “United Kingdom”; and

(b) in relation to another member State, set out in Annex A to the EC Regulation under the heading relating to that member State;

“member State liquidator” means a person falling within the definition of liquidator in Article 2(b) of the EC Regulation appointed in proceedings to which it applies in a member State other than the United Kingdom;

“secondary proceedings” means proceedings opened in accordance with Articles 3(2) and 3(3) of the EC Regulation and falling within the definition of winding-up proceedings in Article 2(c) of the EC Regulation, and-

(a) in relation to England and Wales and Scotland, set out in Annex B to the EC Regulation under the heading “United Kingdom”; and

(b) in relation to another member State, set out in Annex B to the EC Regulation under the heading relating to that member State;

“temporary administrator” means a temporary administrator referred to by Article 38 of the EC Regulation; and

“territorial proceedings” means proceedings opened in accordance with Articles 3(2) and 3(4) of the EC Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Regulation, and-

(a) in relation to England and Wales and Scotland, set out in Annex A to the EC Regulation under the heading “United Kingdom”; and

(b) in relation to another member State, set out in Annex A to the EC Regulation under the heading relating to that member State.”.

### **Amendment of Regulation 18 of the 1985 Regulations**

**20.** In regulation 18 of the 1985 Regulations(b) (information to be sent by trustee acting under trust deed to creditors known to him)-

(a) the word “and” immediately following paragraph (a) is omitted; and

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(a) Council Regulation (EC) 1346/2000, O.J. No. L 160, 30.06.00, p.1.

(b) Regulation 18 was inserted by S.I. 1993/439, regulation 5.

- (b) after paragraph (b) insert—  
“; and
- (c) a statement whether, in the opinion of the trustee—
  - (i) the EC Regulation applies to the trust deed; and
  - (ii) if so, whether the proceedings are main proceedings, secondary proceedings or territorial proceedings”.

#### **Amendment of the Schedule to the 1985 Regulations (New form)**

**21.** For Form 5 in the Schedule to the 1985 Regulations, substitute the form (Form 5) contained in Schedule 1 to these Regulations.

## PART II COMPANIES

### **Interpretation of Part II**

**22.** In this Part of these Regulations, references to “the principal Rules” are references to the Insolvency (Scotland) Rules 1986(a) and a Rule referred to by number alone means the Rule so numbered in the principal Rules.

### **Amendments to the principal Rules**

**23.—(1)** The principal Rules are amended as provided in this Part of these Regulations.

(2) Anything done before 8th September 2003 under or for the purposes of any provision of the principal Rules is not invalidated by the amendment of that provision by these Regulations, but it has effect as if done under or for the purposes of the provision as amended.

### **Amendments to the principal Rules in relation to Introductory Provisions**

**24.—(1)** Rule 0.2 (interpretation) is amended as follows.

(2) The following expressions are inserted in paragraph (1) in the appropriate alphabetical order:—

“centre of main interests” has the same meaning as in the EC Regulation;

“EC Regulation” means Council Regulation (EC) No. 1346/2000 of 29th May 2000 on insolvency proceedings;

“establishment” has the meaning given by Article 2(h) of the EC Regulation;

“main proceedings” means proceedings opened in accordance with Article 3(1) of the EC Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Regulation, and

(a) in relation to England and Wales and Scotland set out in Annex A to the EC Regulation under the heading “United Kingdom”; and

(b) in relation to another member State, set out in Annex A to the EC Regulation under the heading relating to that member State;

“member State liquidator” means a person falling within the definition of liquidator in Article 2(b) of the EC Regulation appointed in proceedings to which it applies in a member State other than the United Kingdom;

“secondary proceedings” means proceedings opened in accordance with Articles 3(2) and 3(3) of the EC Regulation and falling within the definition of winding-up proceedings in Article 2(c) of the EC Regulation, and

(a) in relation to England and Wales and Scotland, set out in Annex B to the EC Regulation under the heading “United Kingdom”; and

(b) in relation to another member State, set out in Annex B to the EC Regulation under the heading relating to that member State;

“territorial proceedings” means proceedings opened in accordance with Articles 3(2) and 3(4) of the EC Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Regulation, and

- (a) in relation to England and Wales and Scotland, set out in Annex A to the EC Regulation under the heading “United Kingdom”; and
- (b) in relation to another member State, set out in Annex A to the EC Regulation under the heading relating to that member State.

#### **Amendments to principal Rules in relation to Company Voluntary Arrangements**

**25.**—(1) In Rule 1.1(2)(d) (scope of this Part; interpretation)(a) for “5 and 6” substitute—  
“5, 6, and 8”.

(2) In Rule 1.3(2) (contents of proposal)(b), at the end of sub-paragraph (o), for “; and.” substitute—

“; and

- (p) whether the EC Regulation will apply and, if so, whether the proceedings will be main proceedings or territorial proceedings.”.

(3) In Rule 1.17(2) (report of meetings)—

(a) at the end of sub-paragraph (c) omit “and”; and

(b) after sub-paragraph (c) insert—

“(ca) state whether, in the opinion of the supervisor—

(i) the EC Regulation applies to the voluntary arrangement; and

(ii) if so, whether the proceedings are main proceedings or territorial proceedings; and”.

(4) After Rule 1.45 (implementation of the arrangement)(c) insert—

#### “CHAPTER 8

#### EC REGULATION - CONVERSION OF VOLUNTARY ARRANGEMENT INTO WINDING UP

#### **Application for conversion into winding up**

**1.46.**—(1) Where a member State liquidator proposes to apply to the court for the conversion under Article 37 of the EC Regulation (conversion of earlier proceedings) of a voluntary arrangement into a winding up, an affidavit complying with Rule 1.47 must be prepared and sworn, and lodged in court in support of the application.

(2) The application and the affidavit required under this Rule shall be served upon—

(a) the company; and

(b) the supervisor.

#### **Contents of affidavit**

**1.47.**—(1) The affidavit shall state—

(a) that main proceedings have been opened in relation to the company in a member State other than the United Kingdom;

(b) the deponent’s belief that the conversion of the voluntary arrangement into a winding up would prove to be in the interests of the creditors in the main proceedings;

(c) the deponent’s opinion as to whether the company ought to enter voluntary winding up or be wound up by the court; and

(d) all other matters that, in the opinion of the member State liquidator, would assist the court—

(i) in deciding whether to make such an order, and

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(a) Rule 1.1(2)(d) was substituted by S.I. 2002/2709.

(b) Rule 1.3(2)(o) was substituted by S.I. 2002/2709.

(c) Rule 1.45 was inserted by S.I. 2002/2709.

(ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable.

(2) An affidavit under this Rule shall be sworn by, or on behalf of, the member State liquidator.

#### **Power of court**

**1.48.**—(1) On hearing the application for conversion into winding up, the court may make such order as it thinks fit.

(2) If the court makes an order for conversion into winding up, the order may contain all such consequential provisions as the court deems necessary or desirable.

(3) Without prejudice to the generality of paragraph (1), an order under that paragraph may provide that the company be wound up as if a resolution for voluntary winding up under section 84 were passed on the day on which the order is made.

(4) Where the court makes an order for conversion into winding up under paragraph (1), any expenses properly incurred as expenses of the administration of the voluntary arrangement in question shall be a first charge on the company's assets.

### CHAPTER 9

#### EC REGULATION - MEMBER STATE LIQUIDATOR

#### **Notice to member State liquidator**

**1.49.**—(1) This Rule applies where a member State liquidator has been appointed in relation to the company.

(2) Where the supervisor is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court or the registrar of companies, the supervisor shall give notice or provide a copy, as appropriate, to the member State liquidator.

(3) Paragraph (2) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to co-operate and communicate information)."

#### **Amendments to the principal Rules in relation to Administration**

**26.**—(1) In Rule 2.7(1) (statement to be annexed to proposals)—

(a) at the end of sub-paragraph (f)(a) omit "and"; and

(b) after sub-paragraph (f) insert—

“(fa) whether—

(i) the EC Regulation applies; and

(ii) if so, whether the proceedings are main proceedings or territorial proceedings; and”.

(2) After Rule 2.9 (general) insert—

#### **“Applicable law**

**2.9A.**—(1) Rule 2.9 does not apply where the laws of a member State (and not the law of Scotland) apply in relation to the conduct of the meeting.

(2) Where this Rule applies, subject as above, the meeting shall be summoned and conducted in accordance with the constitution of the company and the laws of the member State referred to in paragraph (1) above shall apply to the conduct of the meeting.

#### **Entitlement to vote**

**2.9B.**—(1) No vote shall be cast by virtue of a claim more than once on any resolution put to the meeting.

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(a) Sub-paragraph (f) was substituted by S.I. 1987/1921.



- (2) Where–
  - (a) a creditor is entitled to vote under this Rule,
  - (b) has lodged his claim in one or more sets of other proceedings; and
  - (c) votes (either in person or by proxy) on a resolution put to the meeting, only the creditor’s vote shall be counted.
- (3) Where–
  - (a) a creditor has lodged his claim in more than one set of other proceedings, and
  - (b) more than one member State liquidator seeks to vote by virtue of that claim, the entitlement to vote by virtue of that claim is exercisable by the member State liquidator in main proceedings, whether or not the creditor has lodged his claim in the main proceedings.
- (4) For the purposes of paragraph (1), the claim of a creditor and of any member State liquidator in relation to the same debt are a single claim.
- (5) For the purposes of paragraphs (2) and (3), “other proceedings” mean main proceedings or territorial proceedings in another member State.”.
- (3) In Rule 2.18 (resignation from office), after paragraph (3) insert–
  - “(4) Where the administrator gives notice under paragraph (3), he must also give notice to a member State liquidator, if such a person has been appointed in relation to the company.”.
- (4) After Rule 2.21 (VAT Bad Debt relief – application of provisions in Part 3 (Receivers)) insert–

“CHAPTER 7

EC REGULATION - CONVERSION OF ADMINISTRATION INTO WINDING UP

**Application for conversion into winding up**

**2.22.**—(1) Where a member State liquidator proposes to apply to the court for the conversion under Article 37 of the EC Regulation (conversion of earlier proceedings) of an administration into a winding up, an affidavit complying with Rule 2.23 must be prepared and sworn, and lodged in court in support of the application.

- (2) The application and the affidavit required under this Rule shall be served upon–
  - (a) the company; and
  - (b) the administrator.

**Contents of affidavit**

- 2.23.**—(1) The affidavit shall state–
- (a) that main proceedings have been opened in relation to the company in a member State other than the United Kingdom;
  - (b) the deponent’s belief that the conversion of the administration into a winding up would prove to be in the interests of the creditors in the main proceedings;
  - (c) the deponent’s opinion as to whether the company ought to enter voluntary winding up or be wound up by the court; and
  - (d) all other matters that, in the opinion of the member State liquidator, would assist the court–
    - (i) in deciding whether to make such an order, and
    - (ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable.

(2) An affidavit under this Rule shall be sworn by, or on behalf of, the member State liquidator.

**Power of court**

**2.24.**—(1) On hearing the application for conversion into winding up, the court may make such order as it thinks fit.

(2) If the court makes an order for conversion into winding up, the order may contain all such consequential provisions as the court deems necessary or desirable.

(3) Without prejudice to the generality of paragraph (1), an order under that paragraph may provide that the company be wound up as if a resolution for voluntary winding up under section 84 were passed on the day on which the order is made.

## CHAPTER 8

### EC REGULATION - MEMBER STATE LIQUIDATOR

#### **Interpretation of creditor and notice to member State liquidator**

**2.25.**—(1) This Rule applies where a member State liquidator has been appointed in relation to the company.

(2) For the purposes of the Rules referred to in paragraph (3) the member State liquidator is deemed to be a creditor.

(3) The Rules referred to in paragraph (2) are—

- (a) Rule 2.10(1);
- (b) Rule 2.11;
- (c) Rule 2.12; and
- (d) Rule 2.14.

(4) For the purposes of the application by Rule 2.15 of Rule 3.4 with regard to a creditors' committee in an administration, the member State liquidator is deemed to be a creditor.

(5) For the purposes of the application by Rule 2.9 of Rule 7.9(3) insofar as—

- (a) Rule 7.9(3) applies Rules 4.15 and 4.16; and
- (b) by virtue of its application by Rule 7.9(3), Rule 4.16 applies section 49 of the Bankruptcy Act,

the member State liquidator is deemed to be a creditor.

(6) For the purposes of the application by Rule 2.15 of Chapter 3 of Part 3 and the application by Rule 3.6 of Rules 4.50(b) and 4.52(3), the member State liquidator is deemed to be a creditor.

(7) For the purposes of the application by Rule 2.16 of Rule 4.34(3), the member State liquidator is deemed to be a creditor.

(8) Paragraphs (2) to (7) are without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditors' rights).

(9) Where the administrator is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court or the registrar of companies, the administrator shall give notice or provide copies, as the case may be, to the member State liquidator.

(10) Paragraph (9) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to co-operate and communicate information)."

#### **Amendments to the principal Rules in relation to Companies Winding up**

**27.**—(1) In Rule 4.15 (submission of claims)—

(a) for paragraph (5) substitute—

“(5) Votes are calculated according to the amount of—

- (a) a creditor's debt as at the date of the commencement of the winding up within the meaning of section 129, deducting any amount paid in respect of that debt after that date; or
- (b) in relation to a member State liquidator, the debt claimed to be due to creditors in proceedings in relation to which he holds office.”; and

- (b) after paragraph (5) insert–
  - “(5A) No vote shall be cast by virtue of a debt more than once on any resolution put to the meeting.
  - (5B) Where a creditor–
    - (a) is entitled to vote under this Rule (as read with Rule 7.9);
    - (b) has lodged his claim in one or more sets of other proceedings; and
    - (c) votes (either in person or by proxy) on a resolution put to the meeting, only the creditor’s vote shall be counted.
  - (5C) Where–
    - (a) a creditor has lodged his claim in more than one set of other proceedings; and
    - (b) more than one member State liquidator seeks to vote by virtue of that claim, the entitlement to vote by virtue of that claim is exercisable by the member State liquidator in main proceedings, whether or not the creditor has lodged his claim in the main proceedings.
  - (5D) For the purposes of paragraphs (5B) and (5C), “other proceedings” means main proceedings, secondary proceedings or territorial proceedings in another member State.”.
- (2) In Rule 4.68 (application of the Bankruptcy Act)–
  - (a) in paragraph (2), delete “and” at the end of sub-paragraph (b); and
  - (b) at the end of paragraph (2)(c) insert–
    - “; and
  - (d) for subsection (11) substitute–
    - “(11) Subject to any notification by the person entitled to a dividend given to the liquidator that he wishes the dividend to be paid to another person, or that he has assigned his entitlement to another person, where both a creditor and a member State liquidator have had a claim accepted in relation to the same debt, payment shall only be made to the creditor.”.
- (3) After Rule 4.82 (leave to act as director – third excepted case) insert–

“CHAPTER 14

EC REGULATION - MEMBER STATE LIQUIDATOR

**Interpretation of creditor and notice to member State liquidator**

**4.83.**—(1) This Rule applies where a member State liquidator has been appointed in relation to the company.

(2) For the purposes of the provisions referred to in paragraph (3) the member State liquidator is deemed to be a creditor.

- (3) The provisions referred to in paragraph (2) are–
  - (a) Rules 4.10(1) (report to creditors and contributories), 4.10(3) (summary of statement of affairs), 4.13 (other meetings of creditors), 4.15 (submission of claims), 4.17 (claims in foreign currency), 4.18(4) (appointment of liquidator by court), 4.23(2) and (4) (summoning of meeting for removal of liquidator), 4.31 (final meeting), 4.35 (creditors’ claim that remuneration is excessive), 4.41(1), (2) and (3) (membership of liquidation committee), 4.52(3) (vacancy (creditor members)), 4.62(1) (membership of committee), 4.74 (notice of order for public examination), 7.3 (notice of meeting) (insofar as it applies to a notice of meeting of creditors under section 138(3) or (4) for the purposes of rule 4.12 and to a meeting requisitioned under rule 7.6 insofar as it applies in a winding up by the court), 7.6(2) (meetings requisitioned) (insofar as it applies in a winding up by the court) and 7.9 (entitlement to vote (creditors)) (insofar as it applies in a winding up by the court); and
  - (b) sections 48(5), (6) and (8) and 49 of the Bankruptcy Act as applied by Rule 4.16 and section 52(3) of that Act as applied by rule 4.68(1).

(4) Paragraphs (2) and (3) are without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditors' rights).

(5) Where the liquidator is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court or the registrar of companies, the liquidator shall give notice or provide copies, as the case may be, to the member State liquidator.

(6) Paragraph (5) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to co-operate and communicate information).

## CHAPTER 15

### EC REGULATION – CREDITORS' VOLUNTARY WINDING UP – CONFIRMATION BY THE COURT

#### **Application for confirmation**

**4.84.**—(1) Where a company has passed a resolution for voluntary winding up, and no declaration under section 89 has been made, the liquidator may apply to the court for an order confirming the creditors' voluntary winding up for the purposes of the EC Regulation.

(2) The application shall be in writing in the form required by Rule 7.30 and Schedule 5 and verified by affidavit by the liquidator (using the same form) and shall state—

Form 4.30  
(Scot)

- (a) the name of the applicant;
- (b) the name of the company and its registered number;
- (c) the date on which the resolution for voluntary winding up was passed;
- (d) that the application is accompanied by all of the documents required under paragraph (3) which are true copies of the documents required; and
- (e) that the EC Regulation will apply to the company and whether the proceedings will be main proceedings, territorial proceedings or secondary proceedings.

(3) The liquidator shall lodge in court two copies of the application, together with one copy of the following:—

- (a) the resolution for voluntary winding up referred to by section 84(3);
- (b) evidence of his appointment as liquidator of the company; and
- (c) the statement of affairs required under section 99.

(4) It shall not be necessary to serve the application on, or give notice of it to, any person.

(5) On an application under this Rule the court may confirm the creditors' voluntary winding up.

(6) If the court confirms the creditor's voluntary winding up it may do so without a hearing.

(7) This Rule applies in relation to a UK insurer (within the meaning of the Insurers (Reorganisation and Winding Up) Regulations 2003<sup>(a)</sup>) with the modification specified in paragraph (8) below.

(8) For the purposes of paragraph (7), this Rule has effect as if there were substituted for paragraph (1) above—

“(1) Where a UK Insurer (within the meaning of the Insurers (Reorganisation and Winding Up) Regulations 2003) has passed a resolution for voluntary winding up, and no declaration under section 89 has been made, the liquidator may apply to court for an order confirming the creditors' voluntary winding up for the purposes of Articles 9 and 27 of Directive 2001/17/EC of the European Parliament and of the Council of 19th March 2001 on the reorganisation and winding up of insurance undertakings<sup>(b)</sup>.”.

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(a) S.I. 2003/1102.

(b) O.J. No. L 110, 20.4.2001, p.28.

**Notice to member State liquidator and creditors in member States**

**4.85.** Where the court has confirmed the creditors' voluntary winding up, the liquidator shall forthwith give notice—

- (a) if there is a member State liquidator in relation to the company, to the member State liquidator;
- (b) in accordance with Article 40 of the EC Regulation (duty to inform creditors).”.

**Amendment to the principal Rules in relation to Part 7 (provisions of general application)**

**28.—**(1) After Rule 7.20 (representation of corporations) insert—

**“Interpretation of creditor**

**7.20A.—**(1) This Rule applies where a member State liquidator has been appointed in relation to a person subject to insolvency proceedings.

(2) For the purposes of the Rule 7.18(1) (right of inspection of proxies) a member State liquidator appointed in main proceedings is deemed to be a creditor.

(3) Paragraph (2) is without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditors' rights).”.

(2) After rule 7.26(2) (right to have list of creditors) insert—

“(2A) For the purpose of this Rule a member State liquidator appointed in main proceedings in relation to a person is deemed to be a creditor.”.

**Forms**

**29.—**(1) The form 4.7 (Scot) (Statement of Claim by Creditor) contained in Part I of Schedule 2 to these Regulations shall be substituted for the form bearing that number in Schedule 5 to the principal Rules (Forms).

(2) The form contained in Part II of Schedule 2 to these Regulations shall be added to Schedule 5 to the principal Rules as Form 4.30 (Scot).

*NIGEL GRIFFITHS*  
Parliamentary Under-Secretary of State for  
Small Business and Enterprise,  
Department of Trade and Industry

7th August 2003

SCHEDULE 1

FORM 5

STATEMENT OF CLAIM BY CREDITOR

Bankruptcy (Scotland) Act 1985: Sections 22(2)(a) and 48

<p><b>WARNING</b></p> <p>It is a criminal offence</p> <ul style="list-style-type: none"> <li>for a creditor to produce a statement of claim, account, voucher or other evidence which is false, unless he shows that he neither knew nor had reason to believe that it was false; or</li> <li>for a debtor who knows or becomes aware that it is false to fail to report it to the interim or permanent trustee within one month of acquiring such knowledge.</li> </ul> <p>On conviction either creditor or debtor may be liable to a fine and/or imprisonment.</p>	
--	--

*Notes*

(a) *Insert name and address of debtor*

(b) *Insert name and address of creditor*

(c) *Insert name and address, if applicable, of authorised person acting on behalf of the creditor*

(d) *Insert details of any other proceedings in which a claim has been or is being submitted in respect of the debt or part of the debt and the amount claimed*

(e) *Insert total amount claimed in respect of all the debts, the particulars of which are set out overleaf.*

Sequestration of the estate of

(a) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(b) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(c) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(d) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I submit a claim of (e) £ \_\_\_\_\_  
 In the above sequestration and certify that the particulars of the debt or debts making up that claim, which are set out overleaf, are true, complete and accurate, to the best of my knowledge and belief.

Signed \_\_\_\_\_  
 Creditor\*/person acting on behalf of creditor

Date \_\_\_\_\_

## **PARTICULARS OF EACH DEBT**

### *Notes*

*A separate set of particulars should be made out in respect of each debt.*

*1. Describe briefly the debt, giving details of its nature, the date when it was incurred and when payment became due.*

*Attach any documentary evidence of the debt, if available.*

*2. Insert total amount of the debt, showing separately the amount of principal and any interest which is due on the debt as at the date of sequestration. Interest may only be claimed if the creditor is entitled to it. Show separately the VAT on the debt and indicate whether the VAT is being claimed back from HM Customs and Excise.*

*3. Specify and give details of the nature of any security held in respect of the debt including—*

*(a) the subjects covered and the date when it was given;*

*(b) the value of the security.*

*Note: The permanent trustee may, at any time after 12 weeks from the date of sequestration, require a creditor to discharge a security or to convey or assign it to him on payment of the value specified by the creditor.*

*(c) whether the creditor is surrendering or undertakes to surrender the security.*

*Security is defined for the purposes of the Bankruptcy (Scotland) Act 1985 as meaning "any security, heritable or moveable, or any right of lien, retention or preference".*

*4. In the case of a member State liquidator creditor, specify and give details of underlying claims in respect of which he is claiming as creditor.*

*Attach documentary evidence of debts.*

*5. In calculating the total amount of his claim, a secured creditor must deduct the value of any security as estimated by him, unless he surrenders it (see note 3(c) above).*

**1. Particulars of debt**

**2. Amount of debt**

**3. Security for debt**

**4. Underlying claims**

**5. Total amount of the debt**

SCHEDULE 2

PART I



Statement of Claim by Creditor

Pursuant to Rule 4.15(2)(a) of the Insolvency (Scotland) Rules 1986

<p><b>WARNING</b></p> <p>It is a criminal offence</p> <ul style="list-style-type: none"> <li>for a creditor to produce a statement of claim, account, voucher or other evidence which is false, unless he shows that he neither knew nor had reason to believe that it was false; or</li> <li>for a director or other officer of the company who knows or becomes aware that it is false to fail to report it to the liquidator within one month of acquiring such knowledge.</li> </ul> <p>On conviction either the creditor or such director or other officer of the company may be liable to a fine and/or imprisonment.</p>	
---	--

Notes

(a) Insert name of company

(a) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(b) Insert name and address of creditor

(b) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(c) Insert name and address, if applicable, of authorised person acting on behalf of the creditor

(c) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(d) Insert total amount as at the due date (see note (e) below) claimed in respect of all the debts, the particulars of which are set out overleaf.

I submit a claim of (d) £\_\_\_\_\_ in the liquidation of the above company and certify that the particulars of the debt or debts making up that claim, which are set out overleaf, are true, complete and accurate, to the best of my knowledge and belief.

(e) The due date in the case of a company

(i) which is subject to a voluntary arrangement is the date of a creditors' meeting in the voluntary arrangement;

(ii) which is in administration is the date of the administration order;

(iii) which is in receivership is the date of appointment of the receiver; and

(iv) which is in liquidation is the commencement of the winding up.

Signed \_\_\_\_\_  
 Creditor/person acting on behalf of creditor

Date \_\_\_\_\_

The date of commencement of the winding up is

(i) in a voluntary winding up the date of the resolution by the company for winding up (section 86 or 98); and

(ii) in a winding up by the court, the date of the presentation of the petition for winding up unless it is preceded by a resolution for voluntary winding up (section 129).

**PARTICULARS OF EACH DEBT***Notes*

*A separate set of particulars should be made out in respect of each debt.*

*1. Describe briefly the debt, giving details of its nature, the date when it was incurred and when payment became due.*

*Attach any documentary evidence of the debt, if available.*

*2. Insert total amount of the debt, showing separately the amount of principal and any interest which is due on the debt as at the due date (see note (e)). Interest may only be claimed if the creditor is entitled to it. Show separately the VAT on the debt and indicate whether the VAT is being claimed back from HM Customs and Excise.*

*3. Insert the nature and amount of any preference under Schedule 6 to the Act claimed in respect of the debt.*

*4. Specify and give details of the nature of any security held in respect of the debt including—*

*(a) the subjects covered and the date when it was given;*

*(b) the value of the security.*

*Security is defined in section 248(b) of the Insolvency Act 1986 as meaning “any security (whether heritable or moveable), any floating charge and any right of lien or preference and any right of retention (other than a right of compensation or set off)”. For claims in administration procedure security also includes a retention of title agreement, hire purchase agreement, agreement for the hire of goods for more than three months and a conditional sale agreement (see Rules 2.11 and 2.12).*

*In liquidation only the creditor should state whether he is surrendering or undertakes to surrender his security; the liquidator may at any time after 12 weeks from the date of commencement of the winding up (note (e)) require a creditor to discharge a security or to convey or assign it to him on payment of the value specified by the creditor.*

**1. Particulars of debt****2. Amount of debt****3. Preference claimed for debt****4. Security for debt**

5. *In calculating the total amount of his claim in a liquidation, a creditor shall deduct the value of any security as estimated by him unless he surrenders it (see note 4). This may apply in administration (see Rule 2.11).*

6. *In the case of a member State liquidator creditor, specify and give details of underlying claims in respect of which he is claiming as creditor.*

5. **Total amount of the debt**

6. **Underlying claims**

PART II

Rule 4.84

Form 4.30 (Scot)

**Confirmation by Court of Creditors' Voluntary Winding up Application and Order**

**(Title) (Registered No. )**

- (a) Insert name of applicant  
1. I (a)..... hereby make application to the court for confirmation of the creditors' voluntary winding up proceedings under Part IV of the Insolvency Act 1986 in relation to
  - (b) Insert name of company  
(b).....
  - (c) Insert date of resolution  
2. The resolution for voluntary winding up was passed on (c).....
  - (d) Insert date  
3. I was appointed liquidator of the company on (d).....
  - (e) Insert whether main, secondary or territorial proceedings  
4. I declare that the EC Regulation will apply and that these proceedings will be (e)..... proceedings as defined in Article 3 of the EC Regulation.
5. I attach the following documents required to accompany the application under Rule 4.84:
- (a) copy of resolution for voluntary winding up
  - (b) evidence of my appointment as liquidator of the company
  - (c) copy of statement of affairs required under section 99

---

**Affidavit**

After sections 1 to 4 have been completed (and having the documents required under section 4 available), this affidavit must be sworn before a notary public or commissioner for oaths.

(f) Insert name and occupation  
I (f) .....

of (g).....

(g) Insert full address  
.....  
.....  
.....

swear that the contents of this application are to the best of my knowledge and belief true and that the documents exhibited hereto are all those required to accompany this application under Rule 4.84 and that they are true copies of the stated documents.

Signature of Applicant .....

(h) Insert place SWORN at (h).....  
this day of ..... (i).....  
(i) Insert month and before me (j).....  
year  
(j) Insert full name Signature .....  
and address of Notary  
Public or Commissioner (k) Notary Public/Commissioner for Oaths  
for Oaths

(k) Delete as  
applicable

(l) Insert date Upon reading the application dated (h) ..... of  
(m) Insert name of (j) .....  
applicant

and the evidence lodged in support

It is hereby confirmed by the court that the proceedings are creditors'  
voluntary winding up proceedings under Part IV of the Insolvency Act  
1986

Date .....

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”), the Bankruptcy (Scotland) Regulations 1985 (“the 1985 Regulations”), and the Insolvency (Scotland) Rules 1986 (S.I. 1986/1921) (“the 1986 Rules”) in the light of Council Regulation (EC) No. 1346/2000 of 29th May 2000 on insolvency proceedings, O.J. No. L 160, 30.06.00. p.1 (“the EC Regulation”) which came into force on 31st May 2002.

The EC Regulation aims to provide for the efficient and effective functioning of cross-border insolvency proceedings in the European Union. Information concerning the EC Regulation is provided in Guidance Notes issued by the Insolvency Service which may be found, together with the text of the EC Regulation, on the Insolvency Service website, the address of which is [www.insolvency.gov.uk](http://www.insolvency.gov.uk).

The main amendments to the 1985 Act and the 1985 Regulations are–

- to provide for sequestration proceedings to be brought in the case of the estates of living and dead debtors and certain other estates listed in section 6 of the 1985 Act by a temporary administrator (within the meaning of Article 38 of the EC Regulation) and by a liquidator (within the meaning of Article 2(b) of the EC Regulation) appointed in proceedings by virtue of Article 3(1) of the EC Regulation (Regulation 5 of these Regulations);
- to provide that a petition for the sequestration of a debtor must, so far as is within the petitioner’s knowledge, state a) whether the debtor has his centre of main interests or an establishment in the United Kingdom; or b) whether the debtor has his centre of main interests or an establishment in a member State other than the United Kingdom (Regulation 7 of these Regulations);
- to make provision with regard to voting at creditors’ meetings and proving for dividends in sequestration proceedings where the EC Regulation applies (Regulation 13 of these Regulations);
- to provide procedures for the conversion of a protected trust deed into a sequestration on the application of a liquidator appointed in another EU member State (“a member State liquidator”) in main proceedings (“member State liquidator” and “main proceedings” are defined by new definitions by reference to the EC Regulation which are inserted into section 73 (interpretation) of the 1985 Act) (Regulation 16 of these Regulations);
- to provide that for the purposes of the 1985 Act, and without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditors’ rights) a member State liquidator appointed in relation a debtor is to be deemed to be a creditor in the sum due to creditors in proceedings in relation to which he holds office (Regulation 17 of these Regulations); and
- to substitute for Form 5 in the Schedule to the 1985 Regulations a new Form 5 which is the same as the substituted form except that a) it stipulates that a creditor making a claim must detail any other proceedings in which the claim has or is being submitted in respect of the same debt or part debt and the amount so claimed; and b) in the case of a member State liquidator he must specify and vouch the underlying claims in respect of which he is claiming as a creditor (Regulation 21 of these Regulations);

The main amendments to the 1986 Rules are–

- to provide procedures for the conversion of company voluntary arrangements and arrangements and administration into winding up for companies on the application of a liquidator appointed in another EU member State (“a member State liquidator”) in main proceedings (“member State liquidator” and “main proceedings” are defined by new definitions by reference to the EC Regulation which are inserted into the 1986 Rules);
- to note particular rules in the 1986 Rules to which the right of a member State liquidator to participate in proceedings on the same basis as a creditor is relevant, for example, entitlement to vote under Rules 2.9B (administration) and 4.15 (winding up);
- to provide, under the 1986 Rules, for giving notice of insolvency proceedings, and to give notice of various steps taken in such proceedings, to member State liquidators;

- to provide a procedure allowing a liquidator of a company being wound up voluntarily under Part IV of the Insolvency Act 1986 to apply to the court (using a newly prescribed form) for the confirmation of the proceedings, such confirmation being a pre-requisite for recognition of a voluntary winding up in other member States under the EC Regulation; and
- to make provision with regard to voting at creditors' meetings and proving for dividends in insolvency proceedings where the EC Regulation applies.

**2003 No.2109 (S. 8)**

**BANKRUPTCY, SCOTLAND  
INSOLVENCY, SCOTLAND**

**The Insolvency (Scotland) Regulations 2003**

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