

## SCHEDULE

### PART 5

#### Amendments to the Insolvency (Scotland) Rules 1986

##### **The Insolvency (Scotland) Rules 1986**

**61.** The Insolvency (Scotland) Rules 1986(1) are amended as follows.

##### **Rule 0.2 Interpretation**

**62.** In Rule 0.2 (interpretation)—

- (a) in the definition of “centre of main interests” for “EC” substitute “EU”;
- (b) for the definition of “EC Regulation” substitute—  
““EU Regulation” means Regulation (EU) 2015/848 of the European Parliament and of the Council on insolvency proceedings”;
- (c) for the definition of establishment substitute—  
““establishment” has the meaning given by Article 2(10) of the EU Regulation;”
- (d) for the definition of “main proceedings” substitute—  
““main proceedings” means “proceedings opened in accordance with Article 3(1) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of the EU Regulation and which—
  - (a) in relation to Scotland are set out in Annex A to the EU Regulation under the heading “United Kingdom”; and
  - (b) in relation to another member State, are set out under the heading relating to that member State;””
- (e) for the definition of “member State liquidator” substitute—  
““member State liquidator” means a person falling within the definition of “insolvency practitioner” in Article 2(5) of the EU Regulation appointed in proceedings to which the EU Regulation applies in a member State other than the United Kingdom”;
- (f) for the definition of “secondary proceedings” substitute—  
““secondary proceedings” means proceedings opened in accordance with Article 3(2) and (3) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of that Regulation and which—
  - (a) in relation to Scotland are set out in Annex A to that Regulation under the heading “United Kingdom”; and
  - (b) and in relation to another member State are set out under the heading relating to that member State”;”
- (g) for the definition of “territorial proceedings” substitute—  
““territorial proceedings” means proceedings opened in accordance with Article 3(2) and (4) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of the EU Regulation and which—

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(1) S.I. 1986/1915 as amended by S.I. 1987/1921, S.I. 1999/1820, S.I. 2002/2709, S.I. 2003/2108, S.I. 2003/2109, S.I. 2003/2111, S.I. 2006/734, S.I. 2007/2537, S.I. 2008/662, S.I. 2009/662, S.I. 2010/688, S.I. 2012/2404, S.S.I. 2008/393 and S.S.I. 2014/114

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

### **Rule 1.3 Contents of proposal**

63. Rule 1.3(2)(p) is amended by substituting “EU Regulation” for “EC Regulation”.

### **Rule 1.7 Nominee’s report on the proposal**

64. Rule 1.7 is amended by inserting after paragraph (2)—

“(2A) The nominee must examine whether there is jurisdiction to open the proceedings and must specify in the nominee’s comments on the proposal required by paragraph (2) whether the EU Regulation will apply and, if so, whether the proceedings will be main proceedings, territorial proceedings or secondary with the reasons for so stating.”.

### **Rule 1.10 preparation of proposal**

65. Rule 1.10 is amended by inserting—

“(d) the reasons for stating whether the EU Regulation will apply and, if so, whether the proceedings will be main proceedings, territorial proceedings or secondary proceedings.”

### **Rule 1.17 Report of meetings**

66. Rule 1.17(2) is amended—

- (a) by substituting in paragraph 2(ca)(i) “EU Regulation” for “EC Regulation”; and
- (b) by inserting in paragraph 2(ca)(ii) “or secondary proceedings” after “territorial proceedings”.

### **Rule 1.28 the nominee’s statement**

67. Rule 1.28 is amended by inserting after paragraph (2)—

“(2A) The nominee must examine whether there is jurisdiction to open the proceedings and must specify in the nominee’s comments on the proposal required by paragraph (2) whether the EU Regulation will apply and, if so, whether the proceedings will be main proceedings, territorial proceedings, or secondary proceedings with the reasons for so stating.”.

### **Documents submitted to the court to obtain a moratorium**

68. Rule 1.29(2) is amended by inserting after subparagraph (b)—

“(c) a statement from the nominee whether the proceedings will be main, secondary, territorial or non-EU proceedings with the reasons for so stating must also be filed with the court.”.

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(2) Rule 1.17 was amended by [SI 2003/2109](#).

## **Part 1 Chapter 8: EC Regulation – Conversion of voluntary Arrangement into Winding Up**

69. In the heading to Chapter 8 of Part 1 for “EC Regulation” substitute “EU Regulation”.

### **Rule 1.46 Application for conversion into winding up**

70. Rule 1.46(1A) is amended as follows—

- (a) for “Article 37 of the EC Regulation (conversion of earlier proceedings)” substitute “Article 51 of the EU Regulation (conversion of secondary insolvency proceedings”;
- and
- (b) in sub-paragraph (a) delete the words from “whose purposes are” to the end of the sub-paragraph.

### **Rule 1.47 Contents of affidavit**

71. Rule 1.47 is amended as follows—

- (a) in paragraph (1)(b) for the words “would prove to be in the interests of the creditors in the main proceedings” substitute: “would be most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings”;
- and
- (b) in paragraph (1)(c) after “as to whether the company ought to enter” insert “administration,”.

## **Part 1 Chapter 9: EC Regulation – Member State Liquidator**

72. In the heading to Chapter 9 of Part 1 for “EC Regulation” substitute “EU Regulation”.

### **Rule 1.49 Notice to member State liquidator**

73.—(1) Rule 1.49 is amended as follows.

(2) In paragraph (2) for “the member State liquidator” substitute—

“—

- (a) any member State liquidator; or
- (b) where the supervisor knows that an application has been made to commence insolvency proceedings in another member State, but a member State liquidator has not yet been appointed, to the court to which that application has been made.”

(3) In paragraph (3) for “Article 31 of the EC Regulation (duty to co-operate and communicate information)” substitute “Article 41 of the EU Regulation (cooperation and communication between insolvency practitioners)”.

### **Rule 2.1: Introductory and interpretation**

74. In Rule 2.1(1)(d) in the entries for Chapter 12 and Chapter 13 for “EC Regulation” substitute “EU Regulation”.

### **Rule 2.2: Form of application**

75. In rule 2.2(3) for “the EC Regulation” substitute “the EU Regulation”.

### **Rule 2.25 : Administrator’s proposals**

76. In Rule 2.25(1)(q)(i) for “the EC Regulation” substitute “the EU Regulation”.

## **Part 2 Chapter 12: EC Regulation – Conversion of Administration into Winding Up**

77. For the heading to Chapter 12 of Part 2 substitute “EU Regulation – conversion of administration proceedings under Article 51 of the EU Regulation”.

### **Rule 2.57 Application for conversion into winding up**

78.—(1) In the heading to the Rule delete the words “into winding up”.

(2) Rule 2.57(1A) is amended as follows—

- (a) for “Article 37 of the EC Regulation (conversion of earlier proceedings)” substitute “Article 51 of the EU Regulation (conversion of secondary insolvency proceedings)”,
- (b) delete sub-paragraph (a), and
- (c) insert—  
“(aa) the administration is converted into a company voluntary arrangement;”

### **Rule 2.58 Contents of affidavit**

79. In Rule 2.58(1)(b) for the words “would prove to be in the interests of the creditors in the main proceedings” substitute “would be most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings;”

## **Part 2 Chapter 13: EC Regulation —member State liquidator**

80. In the heading to Chapter 13 of Part 2 for “EC Regulation” substitute “EU Regulation”.

### **Rule 2.60 Interpretation of creditor and notice to member State liquidator**

81. Rule 2.60 is amended as follows—

- (a) in paragraph (3) for “Article 32 of the EC Regulation” substitute “Article 45 of the EU Regulation”;
- (b) in paragraph (5) for “Article 31 of the EC Regulation (duty to co-operate and communicate information)” substitute “Article 41 of the EU Regulation (cooperation and communication between insolvency practitioners)”.

### **Rule 4.67 (order of priority of expenses of liquidation)**

82. Rule 4.67(1)(a) is amended by inserting after “functions in the liquidation” the words “including any costs referred to in Article 30 and 59 of the EU Regulation”.

### **Rule 4.75A (electronic measures - application)**

83. In Rule 4.75A(4)(b) (electronic measures - application), for “Article 37 of the EC Regulation” substitute “Article 51 of the EU Regulation”.

## **Part 4 Chapter 14: EC Regulation – member State liquidator**

84. In the heading to Chapter 14 of Part 4 for “EC Regulation” substitute “EU Regulation”.

### **Winding up – member State liquidator**

85. In Rule 4.83 (interpretation of creditor and notice to member State liquidator)—

- (a) in paragraph (4) for “Article 32 of the EC Regulation” substitute “Article 45 of the EU Regulation”; and
- (b) in paragraph (6) for “Article 31 of the EC Regulation (duty to co-operate and communicate information)” substitute “Article 41 of the EU Regulation (cooperation and communication between insolvency practitioners)”.

#### **Part 4 Chapter 15**

**86.** In the heading to Chapter 15 for “EC Regulation” substitute “EU Regulation”.

#### **Confirmation of creditors’ voluntary winding up: application**

**87.** In Rule 4.84 (application for confirmation)—

- (a) in paragraph (1) for “EC Regulation” substitute “EU Regulation”; and
- (b) for sub-paragraph (2)(e) substitute—
  - “(e) that the EU Regulation will apply to the company and whether the proceedings will be main proceedings, territorial proceedings or secondary proceedings and the reasons for so stating”.

#### **Member State liquidator: duty to give notice**

**88.** In Rule 4.85 (notice to member State liquidator and creditors in member States)—

- (a) in paragraph (a) for “the member State liquidator” the second time it occurs substitute—
  - “—
  - (i) any member State liquidator; or
  - (ii) where the liquidator knows that an application has been made to commence insolvency proceedings in another member State but a member State liquidator has not yet been appointed, to the court to which that application has been made”; and
- (b) in paragraph (b), for “Article 40 of the EC Regulation” substitute “Article 54 of the EU Regulation”.

#### **Member State liquidator: interpretation of creditor**

**89.** In Rule 7.20A (interpretation of creditor) for “Article 32 of the EC Regulation” substitute “Article 45 of the EU Regulation”.

#### **EU Regulation – undertakings and group proceedings etc.**

**90.** After Rule 7.20A, insert—

##### **“CHAPTER 2A**

##### **The EU Regulation**

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

**7.20B.**—(1) This rule applies where an office-holder in main proceedings proposes to give an undertaking under Article 36 of the EU Regulation in respect of assets located in another member State.

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- (2) The following requirements apply in respect of the proposed undertaking.
- (3) In addition to the requirements as to form and content set out in Article 36 the undertaking must contain—
  - (a) the heading “Proposed Undertaking under Article 36 of the EU Insolvency Regulation (2015/848)”;
  - (b) identification details for the company and for the main proceedings;
  - (c) identification and contact details for the office-holder; and
  - (d) a description of the effect of the undertaking if approved.
- (4) The proposed undertaking must be delivered to all the local creditors<sup>(3)</sup> in the member State concerned of whose address the office-holder is aware.
- (5) Where the undertaking is rejected the office-holder must inform all the creditors of the company of the rejection of the undertaking as soon as reasonably practicable.
- (6) Where the undertaking is approved the office-holder must as soon as reasonably practicable—
  - (a) send a copy of the undertaking to all the creditors with a notice informing them of the approval of the undertaking and of its effect (so far as they have not already been given this information under paragraph (3)(d));
  - (b) where the insolvency proceedings relate to a registered company deliver a copy of the undertaking to the registrar of companies.
- (7) The office-holder may advertise details of the undertaking in the other member State in such manner as the office-holder thinks fit.

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

- 7.20C.**—(1) This rule applies where a member State liquidator proposes an undertaking under Article 36 and the secondary proceedings which the undertaking is intended to avoid would be insolvency proceedings to which these Rules apply.
- (2) A decision by the local creditors whether to approve the undertaking shall be taken as if it were a decision taken by a company’s creditors to approve a proposed company voluntary arrangement under section 4A of the Act<sup>(4)</sup>.
  - (3) Without prejudice to the generality of paragraph (2), Rules 1.14 to 1.16E apply to that decision.
  - (4) Where the main proceedings relate to a registered company the member State liquidator must deliver a copy of the approved undertaking to the registrar of companies.

**Powers of an office-holder or member State liquidator in proceedings concerning members of a group of companies (Article 60 of the EU Regulation)**

**7.20D.** Where an office-holder or a member State liquidator makes an application in accordance with paragraph (1)(b) of Article 60 of the EU Regulation the application must state with reasons why the applicant thinks the matters set out in (i) to (iv) of that paragraph apply.

<sup>(3)</sup> “Local creditor” is defined in Article 2(11) of the EU Regulation.

<sup>(4)</sup> Section 4A was inserted by the Insolvency Act 2000 (c. 39). There are amendments made by the Small Business, Enterprise and Employment Act 2015 which are not yet in force for Scotland, and there are other amendments which are not relevant.

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

**7.20E.**—(1) An application to open group coordination proceedings must be headed “Application under Article 61 of Regulation (EU) 2015/848 to open group coordination proceedings” and must, in addition to the requirements in Article 61 contain—

- (a) identification and contact details for the office-holder making the application;
- (b) identification details for the company and the insolvency proceedings by virtue of which the office-holder is making the application;
- (c) identification details for the company and the insolvency proceedings in respect of each company which is a member of the group;
- (d) contact details for the office-holders and member State liquidators appointed in those proceedings;
- (e) identification details for any insolvency proceedings in respect of a member of the group which are not to be subject to the coordination because of an objection to being included; and
- (f) if relevant, a copy of any such agreement as is mentioned in Article 66 of the EU Regulation.

(2) “office-holder” in this rule includes as the context requires a person holding office in insolvency proceedings in relation to the company in Scotland or Northern Ireland and a member State liquidator.

### **Group coordination order (Article 68 EU Regulation)**

**7.20F.**—(1) An order opening group coordination proceedings must also~~(5)~~ contain—

- (a) identification details for the insolvency proceedings by virtue of which the office-holder is making the application;
- (b) identification and contact details for the office-holder making the application;
- (c) identification details for the insolvency proceedings which are subject to the coordination; and
- (d) identification details for any insolvency proceedings for a member of the group which is not subject to the coordination because of an objection to being included.

(2) The office-holder making the application must deliver a copy of the order to the coordinator and to any person who is, in respect of proceedings subject to the coordination,

- 
- (a) an office-holder,
  - (b) a person holding office in insolvency proceedings in relation to the company in England and Wales or Northern Ireland, and
  - (c) a member State liquidator.

### **Delivery of group coordination order to registrar of companies**

**7.20G.** An office-holder in respect of insolvency proceedings subject to coordination must deliver a copy of the group coordination order to the registrar of companies.

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(5) An order opening group coordination proceedings must contain the matters set out in Article 68(1)(a) to (c).

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### **Office holder's report**

**7.20H.** Where, under the second paragraph of Article 70(2) of the EU Regulation, an office-holder is required to give reasons for not following the coordinator's recommendations or the group coordination plan those reasons must be given as soon as reasonably practicable by a notice to all the creditors.

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

**7.20I.**—(1) This rule applies where—

- (a) a company subject to insolvency proceedings has an establishment in Scotland; and
- (b) a member State liquidator is required or authorised under Article 28 of the EU Regulation to publish a notice.

(2) The notice must be published in the Edinburgh Gazette.

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

**7.20J.** A statement by a member State liquidator under any of sections 201, 204, 205 or paragraph 84 of Schedule B1 informing the registrar of companies that the insolvency proceedings in another member State are closed or that the member State liquidator consents to the dissolution must contain—

- (a) identification details for the company; and
- (b) identification details for the member State liquidator.”.

### **Forms**

**91.** In Schedule 5 (Forms)—

- (a) in Form 4.7 (Scot) (Statement of Claim by Creditor) note 6, for “liquidator” substitute “insolvency practitioner”; and
- (b) in Form 4.30 (Scot) (Confirmation by Court of Creditors’ Voluntary Winding up Application and Order) in marginal note (e), for “or territorial proceedings” substitute “, territorial proceedings or non-EU proceedings”.