
STATUTORY INSTRUMENTS

2019 No. 38

The Credit Institutions and Insurance
Undertakings Reorganisation and Winding
Up (Amendment) (EU Exit) Regulations 2019

PART 3

Transitional and saving provisions

CHAPTER 1

EEA institutions subject on exit day to reorganisation or winding up in another EEA State

Interpretation

5.—(1) In this Chapter each of the following definitions has the meaning given in regulation 2(1) of the Credit Institutions (Reorganisation and Winding Up) Regulations 2004⁽¹⁾ (“the 2004 Regulations”)—

- (a) “branch”;
- (b) “capital requirements directive”;
- (c) “directive winding-up proceedings”;
- (d) “EEA State”;
- (e) “recovery and resolution directive”⁽²⁾;
- (f) “section 899 compromise or arrangement”; and
- (g) “stabilisation instrument”.

(2) The definitions of “branch” and “EEA State” have effect for the purposes of this Chapter despite being omitted by regulation 3(2)(a).

(3) The definition of “capital requirements directive” has effect for the purposes of this Chapter despite being omitted by regulation 3(2)(a), but is to be read for those purposes as if at the end there were inserted “, as it had effect immediately before exit day”.

(4) The definition of “directive winding-up proceedings”—

- (a) has effect for the purposes of this Chapter despite being omitted by regulation 3(2)(a);
- (b) despite regulation 3(2)(a)(i)(II) is to be construed by reference to the definition of “the reorganisation and winding up directive” given in regulation 2(1) of the 2004 Regulations, except that this definition is to be read as if at the end there were inserted “and as it had effect immediately before exit day”; and

(1) *S.I. 2004/1045*, which is amended by regulation 3 of these Regulations subject to the transitional and saving provisions in this Part.

(2) The definition of “recovery and resolution directive” is amended by regulation 3(2)(a)(iii) of these Regulations.

(c) despite regulation 3(2)(c) is to be construed in accordance with regulation 2(2)(b) of the 2004 Regulations.

(5) In this Chapter—

“capital requirements regulation” means Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012 as it had effect in EU law immediately before exit day;

“creditor”, in relation to a relevant institution, means any person who has a claim of any kind against the institution (whether or not the claim relates to a deposit);

“directive reorganisation measure” means a measure which is intended to preserve or restore the financial situation of a relevant institution and which could affect third parties’ pre-existing rights, including—

- (a) a measure involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims; and
- (b) a measure which applies resolution tools or exercises resolution powers for which provision is made in the recovery and resolution directive;

“EEA creditor” means a creditor who—

- (a) is located or payable in an EEA State; or
- (b) is treated by the law of the EEA State in which a directive reorganisation measure was adopted or imposed or directive winding up proceedings were opened as if they were located or payable in an EEA State;

“EEA credit institution”, except in regulation 6(3)(b), means an undertaking which—

- (a) is an EEA undertaking of the kind mentioned in Article 4(1)(1) and 4(1)(17) of the capital requirements regulation;
- (b) but is not any of the undertakings or kinds of undertaking referred to in Article 2(5)(2) to (22) of the capital requirements directive;

“EEA group company” means an EEA undertaking which is—

- (a) a financial institution within the meaning given by Article 4(1)(26) of the capital requirements regulation,
- (b) a parent undertaking within the meaning given by Article 4(1)(15)(a) of the capital requirements regulation, or
- (c) any other firm within the scope of Article 1(1) of the recovery and resolution directive, which is not otherwise subject to the 2004 Regulations and with respect to which one or more of the resolution tools or resolution powers provided for in the recovery and resolution directive have been applied;

“EEA investment firm” means an EEA undertaking of the kind mentioned in Article 4(1)(2) and 4(1)(17) of the capital requirements regulation;

“relevant institution” means—

- (a) an EEA credit institution which has a branch in the United Kingdom;
- (b) an EEA group company; or
- (c) an EEA investment firm which has a branch in the United Kingdom; and

“UK creditor” means a creditor who—

- (a) is located or payable in the United Kingdom; or

- (b) is treated by the law of the EEA State under which a directive reorganisation measure was adopted or imposed or directive winding up proceedings were opened as if they were located or payable in the United Kingdom.

(6) In this Chapter a directive reorganisation measure is adopted or imposed at the time when it is treated as adopted or imposed by the law of the relevant EEA State, and for these purposes “relevant EEA State” means the EEA State under whose law the measure is adopted or imposed.

Saving for reorganisation or winding up started in another EEA State before exit day

- 6.—(1) This regulation applies where a relevant institution is, on exit day, subject to—
- (a) a directive reorganisation measure adopted or imposed under the law of the relevant EEA State before exit day (“relevant measure”); or
 - (b) directive winding-up proceedings opened under the law of the relevant EEA State before exit day (“relevant proceedings”).
- (2) Despite regulation 3(3), (22)(b) and (24)(b)—
- (a) Part 2 of the 2004 Regulations continues to have effect in relation to the relevant institution;
 - (b) if that institution is an EEA investment firm, that Part has effect with the modification in regulation 43 of the 2004 Regulations; and
 - (c) if that institution is an EEA group company, that Part has effect with the modification in regulation 47 of the 2004 Regulations.
- (3) For the purposes of paragraph (2)—
- (a) regulation 2 of the 2004 Regulations has effect without the following amendments made by regulation 3(2)—
 - (i) the amendment of the definition of “liquidator”;
 - (ii) the omission of the definitions of “branch”, “capital requirements directive”, “directive winding up proceedings”, “EEA State” and “the reorganisation and winding up directive”;
 - (iii) the omission of regulation 2(2)(b); and
 - (b) in Part 2 of the 2004 Regulations—
 - (i) “directive reorganisation measure” and “EEA credit institution” have the same meaning as they have in this Chapter; and
 - (ii) a reference to an EEA credit institution (as so modified) includes a reference to an EEA investment firm and an EEA group company.
- (4) Part 4 of the 2004 Regulations has effect without the amendments made by regulation 3(10) to (17) in relation to rights specified in that Part which are exercisable in the EEA State under whose law the relevant measure was adopted or imposed or the relevant proceedings were opened.
- (5) This regulation has effect subject to regulations 7 to 10.

Safeguards for the operation of certain financial markets

- 7.—(1) In this regulation—
- “competent officer” and “qualifying agent” have the meaning given in regulation 5(6) of the 2004 Regulations;
 - “equivalent provision” means provision in the law of an EEA State which has an effect which is equivalent to the provision in regulation 5(1) and (2) of the 2004 Regulations;

“relevant enactments” means Part 7 of the Companies Act 1989⁽³⁾, Part 3 of the Financial Markets and Insolvency (Settlement and Finality) Regulations 1999⁽⁴⁾ and Part 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003⁽⁵⁾ (“the 2003 Regulations”);

“reorganisation measure” means any measure taken under the law of insolvency of the United Kingdom which is equivalent to a directive reorganisation measure;

“winding up proceedings” means any proceedings commenced under the law of insolvency of the United Kingdom which are equivalent to directive winding-up proceedings;

“UK credit institution” has the meaning given in regulation 2(1) of the 2004 Regulations;

“UK group company” has the meaning given in regulation 44(b) of the 2004 Regulations; and

“UK investment firm” has the meaning given in regulation 39(b) of the 2004 Regulations.

(2) This regulation applies where, by virtue of regulation 6, Part 2 of the 2004 Regulations continues to have effect in relation to a relevant institution.

(3) A competent officer or a qualifying agent, in exercising functions of the kind mentioned in regulation 5(2) of the 2004 Regulations, may not take any action which would, in the case of a reorganisation measure or winding up proceedings—

- (a) be prohibited under or by virtue of any of the relevant enactments; or
- (b) interfere with or be inconsistent with any rights of a collateral taker under Part 4 of the 2003 Regulations which could be exercised in the case of such a measure or such proceedings.

(4) Paragraph (5) has effect where the court is to exercise powers under the general law of insolvency of the United Kingdom for the purposes of, or in connection with, the relevant measure or relevant proceedings.

(5) The court may not, in exercise of those powers, grant any relief, or modify any relief already granted, or provide any co-operation or co-ordination if and to the extent that such relief or modified relief or co-operation or co-ordination would, in the case of a reorganisation measure or winding up proceedings—

- (a) be prohibited under or by virtue of any of the relevant enactments; or
- (b) interfere with or be inconsistent with any rights of a collateral taker under Part 4 of the 2003 Regulations which could be exercised in the case of such a measure or such proceedings.

Conditions under which saving may be disapplied

8.—(1) The court may make an order declaring that there is no prohibition against the commencement of any proceedings under the law of insolvency of the United Kingdom in relation to the relevant institution or any branch of that institution.

(2) An application for an order under paragraph (1) may be made—

- (a) by the Bank of England (“the Bank”) on the ground that one or more of the conditions specified in regulation 9(2) are met; or
- (b) by the Bank or by a UK creditor of the relevant institution on the ground that one or more of the conditions specified in regulation 9(2)(b) and (c) are met.

(3) In paragraph (1) the reference to the law of insolvency of the United Kingdom is to be construed in accordance with regulation 2(3) of the 2004 Regulations, and the reference to any proceedings under that law includes a reference to—

- (a) the bank insolvency procedure (provided by Part 2 of the Banking Act 2009);

⁽³⁾ 1989 c. 40.

⁽⁴⁾ S.I. 1999/2979.

⁽⁵⁾ S.I. 2003/3226.

- (b) the bank administration procedure (provided by Part 3 of that Act);
- (c) making a stabilisation instrument;
- (d) building society insolvency under Part 2 of that Act (as applied by section 90C of the Building Societies Act 1986⁽⁶⁾);
- (e) building society special administration under Part 3 of that Act (as applied by section 90C of the Building Societies Act 1986);
- (f) the administration of a building society under Part 2 of the Insolvency Act 1986 (as applied by section 90A of the Building Societies Act 1986⁽⁷⁾);
- (g) special administration, special administration (bank insolvency) or special administration (bank administration) under the Investment Bank Special Administration Regulations 2011⁽⁸⁾;
- (h) an application for a court order sanctioning a section 899 compromise or arrangement.

(4) In this regulation “the court” means a court having jurisdiction to wind up a company registered under the Companies Act 2006 in England and Wales or Scotland or Northern Ireland.

Grounds for making an order under regulation 8

9.—(1) In this regulation “relevant measure” does not include—

- (a) the application of a resolution tool within the meaning given by Article 2.1(19) of the recovery and resolution directive;
- (b) the exercise of a resolution power within the meaning given by Article 2.1(20) of the recovery and resolution directive;
- (c) any other measure to which Article 66 of the recovery and resolution directive applied immediately before exit day.

(2) The court may make an order under regulation 8 only if the court is satisfied that one or more of the following conditions are met—

- (a) that if an order is not made (on application by the Bank)—
 - (i) the relevant measure or relevant proceedings will have an adverse effect on financial stability in the United Kingdom;
 - (ii) the taking of action in relation to a branch of the relevant institution located in the United Kingdom is necessary to achieve one or more of the special resolution objectives (within the meaning given in section 4 of the Banking Act 2009);
- (b) that an order should be made (on application by the Bank or a UK creditor) because under the relevant measure or in the relevant proceedings UK creditors of the relevant institution would be materially prejudiced by the operation of the law of the EEA State under which the measure was adopted or imposed or the proceedings were opened—
 - (i) in relation to its treatment of the United Kingdom as a State which is outside the EEA; or
 - (ii) by reason of its different treatment of UK creditors by comparison with its treatment of EEA creditors who have similar rights;
- (c) that having regard to the operation of the law of the EEA State under which the measure was adopted or imposed or the proceedings were opened, a refusal to make the order (on application by the Bank or a UK creditor) would be unlawful under section 6 of the Human

⁽⁶⁾ 1986 c. 53. Section 90C was inserted by S.I. 2009/805.

⁽⁷⁾ Section 90A was inserted by the Building Societies Act 1997 (c. 32).

⁽⁸⁾ S.I. 2011/245.

Rights Act 1998⁽⁹⁾ (public authority not to act incompatibly with European Convention on Human Rights).

- (3) Where the court makes an order under regulation 8—
- (a) the court must state in the order which one or more of the conditions specified in paragraph (2) are met; and
 - (b) an officer of the court must serve a copy of the order on—
 - (i) the applicant for the order;
 - (ii) if the Bank is not the applicant, the Bank;
 - (iii) the Prudential Regulation Authority;
 - (iv) the Financial Conduct Authority;
 - (v) the relevant institution.

Effect of an order made under regulation 8

10.—(1) An order made in relation to the relevant institution under regulation 8 comes into force on the day on which it is made or on such later date as the court may specify.

(2) On the day on which the order comes into force, regulation 6 ceases to have effect in relation to the relevant institution.

- (3) On or at any time after the day on which the order comes into force—
- (a) the Bank or the Prudential Regulation Authority may, in relation to the relevant institution or any branch of that institution, commence such proceedings under the law of insolvency of the United Kingdom as it sees fit, having regard to the grounds on which the court is satisfied that the condition is met; and
 - (b) where, according to the court’s statement in the order, the condition met (or one of them) is one of the conditions specified in regulation 9(2)(b) and (c), a UK creditor of the relevant institution may commence such proceedings under the law of insolvency of the United Kingdom as that person is entitled to commence as a creditor of the institution.

CHAPTER 2

EEA insurers subject on exit day to reorganisation or winding up in another EEA State

Interpretation

11.—(1) In this Chapter each of the following definitions has the meaning given in regulation 2(1) of the Insurers (Reorganisation and Winding Up) Regulations 2004⁽¹⁰⁾ (“the 2004 Regulations”)—

- (a) “branch”;
- (b) “directive reorganisation measure”;
- (c) “directive winding-up proceedings”;
- (d) “EEA insurer”;
- (e) “EEA State”; and
- (f) “section 899 compromise or arrangement”.

(2) The definitions of “branch”, “EEA insurer” and “EEA State” have effect for the purposes of this Chapter despite being omitted by regulation 2(2)(a).

⁽⁹⁾ 1998 c. 42.

⁽¹⁰⁾ S.I. 2004/353, which is amended by regulation 2 of these Regulations subject to the transitional and saving provisions in this Part.

(3) The definitions of “directive reorganisation measure” and “directive winding-up proceedings”—

- (a) have effect for the purposes of this Chapter despite being omitted by regulation 2(2)(a); and
- (b) despite regulation 2(2)(b) are to be construed in accordance with regulation 2(2) of the 2004 Regulations.

(4) In this Chapter—

“creditor”, in relation to a relevant EEA insurer, means any person who has a claim of any kind against the insurer (whether or not it is an insurance claim);

“EEA creditor” means a creditor who—

- (a) is located or payable in an EEA State; or
- (b) is treated by the law of the EEA State in which law a directive reorganisation measure was adopted or imposed or directive winding up proceedings were opened as if they were located or payable in an EEA State;

“relevant EEA insurer” means—

- (a) an EEA insurer which has a branch in the United Kingdom; or
- (b) a person who—
 - (i) by virtue of regulation 8 or 11 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018⁽¹¹⁾ is treated as having permission under the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance; and
 - (ii) has a branch in the United Kingdom;

“UK creditor” means a creditor who—

- (a) is located or payable in the United Kingdom; or
- (b) is treated by the law of the EEA State under which a directive reorganisation measure was adopted or imposed or directive winding up proceedings were opened as if they were located or payable in the United Kingdom.

Saving for reorganisation or winding up started in another EEA State before exit day

12.—(1) This regulation applies where a relevant EEA insurer is, on exit day, subject to—

- (a) a directive reorganisation measure adopted or imposed before exit day under the law of an EEA State other than the United Kingdom (“relevant measure”); or
- (b) directive winding-up proceedings opened before exit day under the law of an EEA State other than the United Kingdom (“relevant proceedings”).

(2) Despite regulation 2(3) Part 2 of the 2004 Regulations continues to have effect in relation to the relevant EEA insurer.

(3) For the purposes of paragraph (2) regulation 2 of the 2004 Regulations has effect without the following amendments made by regulation 2(2)—

- (a) the omission of the definitions of “branch”, “directive reorganisation measure”, “directive winding up proceedings” and “EEA State”;
- (b) the omission of regulation 2(2).

(4) Part 5 of the 2004 Regulations has effect without the amendments made by regulation 2(10) to (16) in relation to rights specified in that Part which are exercisable in the EEA State under whose law the relevant measure was adopted or imposed or the relevant proceedings were opened.

(11) S.I. 2018/1149.

- (5) This regulation has effect subject to regulations 13 to 15.

Conditions under which saving may be disapplied

13.—(1) The court may make an order declaring that there is no prohibition against the commencement of any proceedings under the law of insolvency of the United Kingdom in relation to the relevant EEA insurer or any branch of that insurer.

(2) An application for an order under paragraph (1) may be made—

- (a) by the Bank of England (“the Bank”) on the ground that the condition specified in regulation 14(1)(a) is met; or
- (b) on the ground that one or more of the conditions specified in regulation 14(1)(b) and (c) are met—
 - (i) by the scheme manager (within the meaning given by section 212(1) of the Financial Services and Markets Act 2000⁽¹²⁾);
 - (ii) by a UK creditor of the relevant EEA insurer.

(3) In paragraph (1)—

- (a) the reference to the law of insolvency of the United Kingdom is to be construed in accordance with regulation 2(3) of the 2004 Regulations; and
- (b) the reference to any proceedings under that law includes a reference to an application for a court order sanctioning a section 899 compromise or arrangement.

(4) In this regulation “the court” means a court having jurisdiction to wind up a company registered under the Companies Act 2006 in England and Wales or Scotland or Northern Ireland.

Grounds for making an order under regulation 13

14.—(1) The court may make an order under regulation 13 only if the court is satisfied that one or more of the following conditions are met—

- (a) that if an order is not made (on application by the Bank), the relevant measure or relevant proceedings will have an adverse effect on financial stability in the United Kingdom;
- (b) that an order should be made (on application by the scheme manager or a UK creditor) because under the relevant measure or in the relevant proceedings UK creditors of the relevant EEA insurer would be materially prejudiced by the operation of the law of the EEA State under which the measure was adopted or imposed or the proceedings were opened—
 - (i) in relation to its treatment of the United Kingdom as a State which is outside the EEA; or
 - (ii) by reason of its different treatment of UK creditors by comparison with its treatment of EEA creditors who have similar rights;
- (c) that having regard to the operation of the law of the EEA State under which the measure was adopted or imposed or the proceedings were opened, a refusal to make the order (on application by the scheme manager or a UK creditor) would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act incompatibly with European Convention on Human Rights).

(2) Where the court makes an order under regulation 13—

- (a) the court must state in the order which one or more of the conditions specified in paragraph (1) are met; and

(12) 2000 c. 8.

- (b) an officer of the court must serve a copy of the order on—
 - (i) the applicant for the order;
 - (ii) if the Bank is not the applicant, the Bank;
 - (iii) if the scheme manager is not the applicant, the scheme manager;
 - (iv) the Prudential Regulation Authority;
 - (v) the Financial Conduct Authority;
 - (vi) the relevant EEA insurer.

Effect of an order made under regulation 13

15.—(1) An order made in relation to the relevant EEA insurer under regulation 13 comes into force on the day on which it is made or on such later date as the court may specify.

(2) On the day on which the order comes into force, regulation 12 ceases to have effect in relation to the relevant EEA insurer.

(3) On or at any time after the day on which the order comes into force—

- (a) Where, according to the court's statement in the order, the condition met (or one of them) is the condition specified in regulation 14(1)(a), the Bank or the Prudential Regulation Authority may, in relation to the relevant EEA insurer or any branch of that insurer, commence such proceedings under the law of insolvency of the United Kingdom as it sees fit, having regard to the grounds on which the court is satisfied that the condition is met; and
- (b) where, according to the court's statement in the order, the condition met (or one of them) is one of the conditions specified in regulation 14(1)(b) and (c)—
 - (i) the scheme manager may, in relation to the relevant EEA insurer or any branch of that insurer, commence such proceedings under the law of insolvency of the United Kingdom as it sees fit, having regard to the grounds on which the court is satisfied that the condition is met; and
 - (ii) a UK creditor of the relevant EEA insurer may commence such proceedings under the law of insolvency of the United Kingdom as that person is entitled to commence as a creditor of the insurer.