STATUTORY INSTRUMENTS

2017 No. 702

INSOLVENCY

COMPANIES

INDIVIDUALS

The Insolvency Amendment (EU 2015/848) Regulations 2017

Made - - - -	*21st June 2017*
Laid before Parliament	*23rd June 2017*
Coming into force - -	*26th June 2017*

The Secretary of State, being designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to insolvency(**1**) makes the following Regulations in exercise of the powers conferred upon him by that section.

Citation and Commencement

1. These Regulations may be cited as the Insolvency Amendment (EU 2015/848) Regulations 2017 and come into force on 26th June 2017.

Amendments and extent

2.—(1) The Schedule has effect.

(2) Any provision of these Regulations amending or applying an enactment has the same extent as the enactment amended or applied, except that—

(a) the amendments made to the Insolvency Act 1986(**2**) by paragraphs 3, 7, 9, and 12, of the Schedule extend to England and Wales only; and

(b) the amendments to that Act made by Part 4 of that Schedule apply to Scotland only.

(**1**) 1972 c. 68. The Secretary of State was designated by 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 EU law, any function of a Minister of the Crown shall continue to be exercisable by the Minister as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

(**2**) 1986 c.45. Relevant amendments have been made by the Insolvency Act 2000 (c. 39); the Enterprise and Regulatory Reform Act 2013 (c.24); the Small Business, Enterprise and Employment Act 2015(c. 26); S.I. 2002/1037; and S.I. 2002/1240.

Temporal application

3.—(1) These Regulations do not apply to proceedings opened before 26 June 2017.

(2) The time at which proceedings are opened is to be determined in accordance with Article 2(8) of Regulation (EU) 2015/848 of the European Parliament and of the Council(**3**).

Saving

4. The Insolvency Act 1986 as it applies to the instruments listed in regulation 4(2) of the Deregulation Act 2015 and Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) (Savings) Regulations 2017(**4**) continues to apply to those instruments without the amendments made to the Insolvency Act 1986 by Parts 1 and 4 of the Schedule.

Margot James
Parliamentary Under Secretary of State
Department for Business Energy and Industrial Strategy

21st June 2017

(**3**) OJEU L.141 of 5.6.2015 p.19.
(**4**) S.I. 2017/540.

SCHEDULE Regulation 2

PART 1

Amendments to the Insolvency Act 1986

1. The Insolvency Act 1986 is amended as follows.

2. In section 1 (those who may propose an arrangement) in subsection (5) for the words from "the EC Regulation" to the end substitute "Article 3 of the EU Regulation"(**5**).

3. In section 106 (final account prior to dissolution) after subsection (4) insert—

"(4A) Subsection (4B) applies where, immediately before the liquidator sends a copy of the account of the winding up to the registrar under subsection (3), there are EU insolvency proceedings open in respect of the company in one or more other member States.

(4B) The liquidator must send to the registrar, with the copy of the account, a statement—

(a) identifying those proceedings,

(b) identifying the member State liquidator appointed in each of those proceedings, and

(c) indicating, in relation to each of those member State liquidators, whether that member State liquidator consents to the company being dissolved."

4. In section 117 (High Court and county court jurisdiction) in subsection (7) for "the EC Regulation (jurisdiction under EC Regulation)" substitute "the EU Regulation (jurisdiction under EU Regulation)"(**6**).

5. In section 120 (Court of Session and sheriff court jurisdiction) in subsection (6) for "the EC Regulation (jurisdiction under EC Regulation)" substitute "the EU Regulation (jurisdiction under EU Regulation)"(**7**).

6. In section 124 (application for winding up)(**8**) in subsection (1) for the words from "a liquidator" to "(within the meaning of Article 38 of the EC Regulation)" substitute "a member State liquidator appointed in proceedings by virtue of Article 3(1) of the EU Regulation or a temporary administrator (within the meaning of Article 52 of the EU Regulation)".

7. In section 146 (final account)(**9**) after subsection (5) insert—

"(6) Subsection (7) applies where, immediately before the liquidator sends a copy of the account to the registrar under subsection (4) (or, where the liquidator sends a copy of the account to the court and the registrar on different days, immediately before the liquidator sends the first of those copies) there are EU insolvency proceedings open in respect of the company in one or more other member States.

(7) The liquidator must send to the court and the registrar, with the copy of the account, a statement—

(a) identifying those proceedings,

(b) identifying the member State liquidator appointed in each of those proceedings,

(c) indicating, in relation to each of those member State liquidators, whether that member State liquidator consents to the company being dissolved."

(**5**) Subsection (5) was inserted by S.I. 2005/879.
(**6**) Subsection (7) was inserted by S.I. 2002/1240.
(**7**) Subsection (6) was inserted by S.I. 2002/1240.
(**8**) Relevant amendments to subsection (1) were made by S.I. 2002/1240.
(**9**) Section 146 has been amended by the Small Business, Enterprise and Employment Act 2015.

8. After section 146 insert—

"**146A Official receiver's duty to send statement to registrar about other proceedings**

(1) This section applies where—

(a) the official receiver sends to the registrar of companies a notice that the winding up of a company by the court is complete, and

(b) immediately before the official receiver sends the notice there are EU insolvency proceedings open in respect of the company in one or more other member States.

(2) The official receiver must send to the registrar, with the notice, a statement—

(a) identifying those proceedings,

(b) identifying the member State liquidator appointed in each of those proceedings, and

(c) indicating, in relation to each of those member State liquidators, whether that member State liquidator consents to the company being dissolved."

9.—(1) Section 201 (dissolution on voluntary winding up)(**10**) is amended as follows.

(2) In subsection (2)—

(a) after "or the account and statement" insert "and any statement under section 106(4B),";

(b) at the end insert "(except where subsection (2A) applies)".

(3) After that subsection insert—

"(2A) This subsection applies where a statement sent to the registrar under section 106(4B) indicates that a member State liquidator does not consent to the company being dissolved.

(2B) Where subsection (2A) applies, the company is deemed to be dissolved at the end of the period of 3 months beginning with the date (if any) recorded in the register as the date on which the registrar was notified that—

(a) all proceedings identified in the statement sent under section 106(4B) were closed, or

(b) every member State liquidator appointed in those proceedings consented to the company being dissolved."

10.—(1) Section 202 (early dissolution: England and Wales)(**11**) is amended as follows.

(2) After subsection (2) insert—

"(2A) Subsection (2B) applies where, immediately before the official receiver makes an application under subsection (2), there are EU insolvency proceedings open in respect of the company in one or more other member States.

(2B) The official receiver must send to the registrar, with the application, a statement—

(a) identifying those proceedings,

(b) identifying the member State liquidator appointed in each of those proceedings, and

(c) indicating, in relation to each of those member State liquidators, whether that member State liquidator consents to the company being dissolved."

(**10**) Relevant amendments to section 201 have been made by the Small Business, Enterprise and Employment Act 2015 (c.26) and by S.I. 2006/3429.

(**11**) Relevant amendments to section 202 have been made by the Small Business, Enterprise and Employment Act 2015 (c.26).

(3) In subsection (3) for "that application" substitute "an application under subsection (2)".

(4) In subsection (4) for "of this section" substitute "and send any statement under subsection (2B)".

(5) In subsection (5)—

(a) in the first sentence—

(i) after "under subsection (2)" insert "and any statement under subsection (2B)",

(ii) after "shall forthwith register it" insert "or them", and

(iii) at the end insert "(except where subsection (6) applies)";

(b) after the first sentence insert—

"(6) This subsection applies where a statement under subsection (2B) indicates that a member State liquidator does not consent to the company being dissolved.

(7) Where subsection (6) applies, the company is deemed to be dissolved at the end of the period of 3 months beginning with the date (if any) recorded in the register as the date on which the registrar was notified that—

(a) all proceedings identified in the statement under subsection (2B) were closed, or

(b) every member State liquidator appointed in those proceedings consented to the company being dissolved."

(6) In that subsection the second sentence becomes subsection (8).

(7) In that subsection, for "that period" substitute "the period in subsection (5) or (7)".

11. In section 203 (consequence of notice under section 202), in subsection (3)(b) for "section 202(5)" substitute "section 202(8)".

12.—(1) Section 205 (dissolution otherwise than under sections 202 to 204) is amended as follows.

(2) In subsection (2)—

(a) after "or the notice" insert "and any statement under section 146(7) or 146A(2)", and

(b) after "the registration" insert "of the final account or notice".

(3) After that subsection insert—

"(2A) Subsection (2B) applies where a statement sent to the registrar under section 146(7) or 146A(2) indicates that a member State liquidator does not consent to the company being dissolved.

(2B) The company is not dissolved at the end of the period mentioned in subsection (2) but is instead dissolved at the end of the period of 3 months beginning with the date (if any) recorded in the register as the date on which the registrar was notified that—

(a) all proceedings identified in the statement under section 146(7) or 146A(2) were closed, or

(b) every member State liquidator appointed in those proceedings consented to the company being dissolved."

13. In section 221 (winding up of unregistered companies)(**12**) in subsection (4) for "EC Regulation" substitute "EU Regulation".

(**12**) Relevant amendment has been made by S.I. 2002/1240.