Draft Order in Council laid before Parliament and the Scottish Parliament under paragraphs 1 and 2 of Schedule 7 to the Scotland Act 1998, for approval by resolution of each House of Parliament and of the Scottish Parliament.

DRAFT STATUTORY INSTRUMENTS

2017 No. [ ]

CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
INSOLVENCY

The Scotland Act 1998 (Insolvency Functions) Order 2017

Made - - - -

Coming into force in accordance with article 1(1)

At the Court , the day of

Present,

The Queen's Most Excellent Majesty in Council

This Order is made by Her Majesty in Council in exercise of the powers conferred upon Her by sections 63(1)(b) and (3), 108(1)(b) and (3), 113(3) and (4) and 124(2) of the Scotland Act 1998(**1**).

In accordance with paragraphs 1 and 2 of Schedule 7 to that Act(**2**), a draft of this Order has been—

(a) laid before and approved by a resolution of each House of Parliament; and

(b) laid before and approved by a resolution of the Scottish Parliament.

Accordingly, Her Majesty, by and with the advice of Her Privy Council, makes the following Order:

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Scotland Act 1998 (Insolvency Functions) Order 2017 and comes into force on the day after the day on which it is made.

(2) This Order does not extend to Northern Ireland.

(3) In this Order—

(**1**) 1998 c.46. Section 108(1) was amended by section 12(2)(a) of the Scotland Act 2012 (c.11).

(**2**) Paragraphs 1 and 2 of Schedule 7 have been modified by paragraph 3(2) of schedule 4 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

"the 1986 Act" means the Insolvency Act 1986(**3**);

"the 1992 Act" means the Friendly Societies Act 1992(**4**);

"the 1998 Act" means the Scotland Act 1998(**5**);

"the 2000 Act" means the Limited Liability Partnerships Act 2000(**6**);

"the 2010 Act" means the Interpretation and Legislative Reform (Scotland) Act 2010(**7**);

"incorporated friendly society" has the same meaning as in section 116 of the 1992 Act;

"limited liability partnership" has the same meaning as section 1(2) of the 2000 Act;

"oversea limited liability partnership" has the same meaning as in section 14(3) of the 2000 Act(**8**);

"the EU Regulation" has the same meaning as in section 436(1) of the 1986 Act(**9**); and

"winding up" in relation to companies, incorporated friendly societies and limited liability partnerships, includes winding up of solvent, as well as insolvent companies, incorporated friendly societies and limited liability partnerships.

Reserved functions shared by a Minister of the Crown and the Scottish Ministers

2.—(1) Subject to paragraph (2), the functions described in paragraph (3) are exercisable by the Scottish Ministers concurrently with a Minister of the Crown, so far as they are exercisable by the Minister of the Crown in or as regards Scotland.

(2) The Scottish Ministers may exercise a function under paragraph (1) only with the agreement of a Minister of the Crown.

(3) The functions are those conferred by—

(a) section 411(1)(b) and (2) of the 1986 Act(**10**) (company insolvency rules) for the purpose of making rules which give effect to any provision about winding up in the Parts of the 1986 Act described in paragraph (4) or the EU Regulation;

(b) section 411(1)(b) and (2) of the 1986 Act as applied by section 23 and paragraph 69(1)(a) of Schedule 10 to the 1992 Act(**11**) (insolvency rules and fees) for the purpose of making rules, in relation to incorporated friendly societies, which give effect to any provision about winding up in the Parts of the 1986 Act described in paragraph (5);

(c) sections 14(2)(a), 16 and 17(1), (2) and (3) of the 2000 Act (insolvency and winding up) for the purpose of making provision by regulations about the winding up of—

(i) limited liability partnerships; and

(ii) oversea limited liability partnerships,

(**3**) 1986 c.45.
(**4**) 1992 c.40.
(**5**) 1998 c.46.
(**6**) 2000 c.12.
(**7**) 2010 asp 10.
(**8**) Section 14(3) was amended by S.I. 2009/1804, Schedule 3, paragraph 6(3).
(**9**) A definition of "EU Regulation" was inserted into section 436(1) by S.I. 2017/702, regulation 2 and the Schedule, Part 1, paragraph 28(b) and means Regulation (EU) 2015/848 of the European Parliament and of the Council of 20th May 2015 on insolvency proceedings (OJEU L. 141, 5.6.2015, p.19).
(**10**) Section 411(1) was amended by S.I. 2002/1037, regulation 3(1); S.I. 2017/702, regulation 2 and the Schedule, Part 1, paragraph 24 and the Constitutional Reform Act 2005 (c.4), Schedule 4, Part 1, paragraph 188.
(**11**) Paragraph 69(1) of Schedule 10 provides that rules may be made under section 411 of the Insolvency Act 1986 (c.45) ("the 1986 Act") for the purpose of giving effect, in relation to incorporated friendly societies, to the provisions of the applicable winding up legislation. A definition of "the applicable winding up legislation" is contained in section 23(3) of the Friendly Societies Act 1992 (c.40) ("the 1992 Act") and means "the companies winding up legislation" (as defined in section 23(1) of that Act) and includes, so far as relevant to this Order, Parts 4, 6 and 7 of the 1986 Act, modified as described in section 23(2) of that Act (ie modified as set out in Parts 1 to 3 of Schedule 10 to that Act).

by applying or incorporating, with such modifications as appear appropriate, rules made under section 411(1)(b) and (2) of the 1986 Act which give effect to any provision about winding up in the Parts of the 1986 Act described in paragraph (5)(**12**) or the EU Regulation.

(4) The Parts of the 1986 Act are—

(a) Part 4 (winding up of companies registered under the Companies Acts);

(b) Part 5 (winding up of unregistered companies);

(c) Part 6 (miscellaneous provisions applying to companies which are insolvent or in liquidation); and

(d) Part 7 (interpretation for First Group of Parts), so far as it relates to Parts 4, 5 or 6.

(5) The Parts of the 1986 Act are—

(a) Part 4 (winding up of companies registered under the Companies Acts);

(b) Part 6 (miscellaneous provisions applying to companies which are insolvent or in liquidation); and

(c) Part 7 (interpretation for First Group of Parts), so far as it relates to Part 4 or Part 6.

General modifications of enactments

3.—(1) Section 117 of the 1998 Act(**13**) (general modification of enactments: Ministers of the Crown) applies in relation to the exercise of functions by the Scottish Ministers by virtue of article 2 as it applies in relation to the exercise of functions by the Scottish Ministers within devolved competence.

(2) In the application of that section by virtue of this article, the reference in it to any pre-commencement enactment is to be read as if it were a reference to any enactment.

Rules and regulations made by the Scottish Ministers

4.—(1) Section 411(4) of the 1986 Act does not apply in relation to rules made by the Scottish Ministers by virtue of article 2(3)(a) or (b).

(2) Rules made by the Scottish Ministers by virtue of article 2(3)(a) or (b) are subject to the negative procedure (see section 28 of the 2010 Act).

(3) Section 411(5) of the 1986 Act does not apply in relation to regulations made under rules made by the Scottish Ministers by virtue of paragraph 27 of Schedule 8 to the 1986 Act(**14**) and article 2(3)(a) or (b) (but see section 30(2) of the 2010 Act(**15**)).

(4) Section 17(1), (4) and (6) of the 2000 Act do not apply in relation to regulations made by the Scottish Ministers by virtue of article 2(3)(c).

(**12**) Parts 4, 6 and 7 of the 1986 Act were applied to limited liability partnerships, with modifications, by S.I. 2001/1090, regulation 5 and Schedules 3 and 4 (as amended by S.I. 2004/355, S.I. 2005/1989, S.I. 2009/1941, S.I. 2015/989 and S.I. 2015/1641 and prospectively amended by S.S.I. 2016/141); for application to Scotland see in particular regulation 5(3) and Schedule 4, in relation to aspects of Parts 4, 6 and 7 of the 1986 Act reserved under Section C2 of Schedule 5 to the Scotland Act 1998 (c.45) ("the 1998 Act"); 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. 2006/735, S.I. 2007/2537, S.S.I. 2008/393, S.I. 2008/662, S.I. 2009/662, S.I. 2010/688, S.I. 2012/2404, S.S.I. 2014/114, S.I. 2015/575, S.I. 2016/1034 and S.I. 2017/702) so far as relating to aspects of winding up reserved under Section C2 of Schedule 5 to the 1998 Act was applied to limited liability partnerships, with modifications by S.I. 2001/1090, regulation 10 and Schedule 6, Part 2, paragraph 3 (as amended by S.I. 2009/1804).

(**13**) Section 117 was amended by the Scotland Act 2012 (c.11), section 12(2)(a).

(**14**) Paragraph 27 of Schedule 8 was amended by the Banking Act 2009 (c.1), section 125(7).

(**15**) Section 30(2) provides that a Scottish statutory instrument which is not subject to either the negative procedure or the affirmative procedure must be laid in the Scottish Parliament as soon as practicable after the instrument is made and before it comes into force.