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STATUTORY INSTRUMENTS

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**2002 No. 1240**

**INSOLVENCY**

COMPANIES

INDIVIDUALS

The Insolvency Act 1986 (Amendment)  
(No. 2) Regulations 2002

<i>Made</i>	- - - -	<i>1st May 2002</i>
<i>Laid before Parliament</i>		<i>2nd May 2002</i>
<i>Coming into force</i>	- -	<i>31st May 2002</i>

The Secretary of State, being designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> 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 Act 1986 (Amendment) (No. 2) Regulations 2002 and shall come into force on 31st May 2002.

**Interpretation**

2. In these Regulations “the Act” means the Insolvency Act 1986<sup>(3)</sup>.

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(1) S.I. 2001/3495.

(2) 1972 c. 68. The Secretary of State was designated by the European Communities (Designation Order) (No. 3) 2001. S.I. 2001/3495.

(3) 1986 c. 45; section 1(2) was amended by the Insolvency Act 2000 (c. 39), section 2(a), Schedule 2, paragraphs 1 and 2; section 8 was amended by the Financial Markets and Services Act 2000 (Consequential Amendments and Repeals) Order 2001, S.I. 2001/3649; section 120(2) was amended by the Court of Session Act 1988 (c. 36), section 52, Schedule 2; section 124(1) was amended by the Criminal Justice Act 1988 (c. 33), section 62(2) and by the Access to Justice Act 1999 (c. 22), section 90(1), Schedule 13, paragraph 133; section 124(3A) was inserted by the Insolvency Act 2000 (c. 39), section 1, Schedule 1, paragraphs 1 and 7; section 124(4) was amended by the Companies Act 1989 (c. 40), section 60(2); section 221(6) was repealed by the Trustee Savings Banks Act 1985 (Appointed Day) (No. 4) Order, S.I. 1989/1223; section 264(1) (d) prospectively repealed, from a day to be appointed, by the Criminal Justice Act 1988, section 170(2), Schedule 16; section 387(2) was amended, and 387(2A) was inserted, by the Insolvency Act 2000, section 2(a), Schedule 2, paragraphs 1, 9 and 11; section 387(5) was amended by that same Act, section 3, Schedule 3, paragraphs 1 and 15; section 388(1), (2) were amended and section 388(2B) was inserted, by the Insolvency Act 2000, section 4(1); sections 388(2A) was inserted and section 388(3) was omitted by the Insolvent Partnerships Order 1994, S.I. 1994/2421, articles 15(1) and 15(2); section 388(5) was amended by the Bankruptcy (Scotland) Act 1993 (c. 6), section 11(1); sections 411, 412, 420 and 421 were amended,

### **Amendments to the Insolvency Act 1986**

3. The Act is amended as provided for in these Regulations.

#### **Amendment to section 1**

4. After section 1(3) (Persons who may propose a voluntary arrangement) insert—

“(4) In this Part a reference to a company includes a reference to a company in relation to which a proposal for a voluntary arrangement may be made by virtue of Article 3 of the EC Regulation.”.

#### **Amendment to section 8**

5. After section 8(6) (Power of court to make administration order) insert—

“(7) In this Part a reference to a company includes a reference to a company in relation to which an administration order may be made by virtue of Article 3 of the EC Regulation.”.

#### **Amendment to section 117**

6. After section 117(6) (Winding up jurisdiction in England and Wales) insert—

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

#### **Amendment to section 120**

7. After section 120(5) (Winding up jurisdiction in Scotland) insert—

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

#### **Amendment to section 124**

8. In section 124(1) (Application for winding up) after “contributory or contributories” insert—

“, or 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 or a temporary administrator (within the meaning of Article 38 of the EC Regulation)”.

#### **Amendment to section 221**

9. In section 221(4) (Winding up of unregistered companies) at the end insert—

“, except in accordance with the EC Regulation”.

#### **Amendment to section 225**

10. In section 225 (Winding up of dissolved overseas company) (which becomes subsection (1)) at end insert—

“(2) This section is subject to the EC Regulation.”.

**Amendment to section 240**

**11.**—(1) In section 240(3) (Relevant time for purpose of transaction at undervalue or preference) after paragraph (a) (and before the word “and”) insert—

- “(aa) in a case where section 238 or 239 applies by reason of a company going into liquidation following conversion of administration into winding up by virtue of Article 37 of the EC Regulation, the date of the presentation of the petition on which the administration order was made,”.

**Amendment to section 247**

**12.** After section 247(2) (Meaning of “goes into liquidation”) insert—

- “(3) The reference to a resolution for voluntary winding up in subsection (2) includes a resolution deemed to occur by virtue of an order made following conversion of a voluntary arrangement or administration into winding up under Article 37 of the EC Regulation.”.

**Amendment to section 264**

**13.** After section 264(1)(b) (Who may present a bankruptcy petition) insert—

- “(ba) by a temporary administrator (within the meaning of Article 38 of the EC Regulation),  
(bb) 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,”.

**Amendment to section 265**

**14.** After section 265(2) (Conditions to be satisfied in respect of debtor) insert—

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

**Amendment to section 330**

**15.** After section 330(5) (Final distribution) insert—

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

**Amendments to section 387**

**16.** In section 387(3) (Relevant date in relation to preferential debts)—

(a) after paragraph (a) insert—

- “(aa) if the winding up is by the court and the winding-up order was made following conversion of administration into winding up by virtue of Article 37 of the EC Regulation, the relevant date is the date of the making of the administration order;

(ab) if the company is deemed to have passed a resolution for voluntary winding up by virtue of an order following conversion of administration into winding up under Article 37 of the EC Regulation, the relevant date is the date of the making of the administration order;”.

(b) in paragraph (b) after “paragraph (a)” insert “, (aa) or (ab)”, and

(c) in paragraph (c) for “either paragraph (a) or (b)” substitute—

“paragraph (a), (aa), (ab) or (b)”.

**Amendment to section 388**

17. After section 388(5) (Acting as an insolvency practitioner) insert—

“(6) Nothing in this section applies to anything done (whether in the United Kingdom or elsewhere) in relation to insolvency proceedings under the EC Regulation in a member State other than the United Kingdom.”.

**Modified definition of property**

18. After section 436 (Expressions used generally) insert—

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“Proceedings under EC Regulation:

modified definition of property

**436A.** In the application of this Act to proceedings by virtue of Article 3 of the EC Regulation, a reference to property is a reference to property which may be dealt with in the proceedings.”.

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1st May 2002

*Melanie Johnson,*  
Parliamentary Under-Secretary of  
State for Competition, Consumers and  
Markets, Department of Trade and Industry

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## EXPLANATORY NOTE

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

These Regulations are to make amendments to the Insolvency Act 1986 (c. 45) (“the Act”) as a result of the adoption by the Council of the European Union of Council Regulation (EC) No. 1346/2000 of 29th May 2000 on insolvency proceedings Official Journal No. L160, 30.06.00. p.1 (“the EC Regulation”) which comes 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).

These Regulations provide amendments to the Act to ensure that provisions of domestic law do not conflict with the EC Regulation and generally to provide for it.

Amendments to the Act made by these Regulations provide that—

- companies in relation to which UK courts may open proceedings under the EC Regulation may take advantage of various procedures under the Act (Regulations 4, 5 and 9);
- the jurisdiction of the courts is clarified (Regulations 6, 7 and 10);
- provision is made to allow temporary administrators appointed by courts in other member States of the European Union and liquidators appointed in main proceedings to present winding up petitions and bankruptcy petitions (Regulations 8 and 13);
- provision is made to make it clear that the conditions which must be satisfied in order to enable a person to present a bankruptcy petition are subject to the EC Regulation (Regulation 14);
- the definition of “property” in the Act is modified (Regulation 18); and
- other technical amendments are provided for (Regulations 11, 12, 15, 16 and 17).