
STATUTORY INSTRUMENTS

2018 No. 208

The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018

PART 2

Consequential amendments of primary legislation

The Financial Services and Markets Act 2000

- 4.—(1) The Financial Services and Markets Act 2000(1) is amended as follows.
- (2) In section 355 (interpretation of Part 24 (insolvency)), in subsection (1)—
- (a) after the definition of “court” insert—
““creditors’ decision procedure” has the meaning given by section 379ZA(11)(2) of the 1986 Act;”;
 - (b) at the end insert—
““qualifying decision procedure” has the meaning given by section 246ZE(11) of the 1986 Act.”.
- (3) In section 357(3) (powers of FCA and PRA to participate in proceedings: individual voluntary arrangements)—
- (a) in subsection (2) for “(3)” substitute “(2A)”;
 - (b) after subsection (2) insert—
“(2A) Where under section 257 of the 1986 Act the individual’s creditors are asked to decide whether to approve the proposed voluntary arrangement—
 - (a) notice of the creditors’ decision procedure must be given to the appropriate regulator; and
 - (b) the appropriate regulator or a person appointed by the appropriate regulator is entitled to participate in (but not vote in) the creditors’ decision procedure by which the decision is made(4).
 - (2B) Notice of the decision made by the creditors’ decision procedure is to be given to the appropriate regulator by the nominee or the nominee’s replacement under section 256(3) or 256A(4) of the 1986 Act.”;
 - (c) in subsection (3) for “section 257 of the 1986 Act (or Article 231 of the 1989 Order)” substitute “Article 231 of the 1989 Order”; and

(1) 2000 c. 8.

(2) Section 379ZA was inserted by the Small Business, Enterprise and Employment Act 2015, section 123(1) and (2).

(3) Section 357 was amended by the Financial Services Act 2012 (c. 21), Schedule 14, paragraphs 1 and 4.

(4) Part 15 of the Insolvency (England and Wales) Rules 2016 (S.I. 2016/1024) contains common rules about decision making for company and personal insolvency proceedings.

- (d) in subsection (7) for paragraph (a) substitute—
- “(a) in the case of a PRA-authorized person, each of the FCA and the PRA, except that the references in subsections (2A)(b) and (3) to a person appointed by the appropriate regulator are to be read as references to a person appointed by either the FCA or the PRA;”.
- (4) In section 362(5) (powers of FCA and PRA to participate in proceedings: administration)—
- (a) after subsection (5) insert—
- “(5A) The appropriate regulator or a person appointed by the appropriate regulator is entitled to participate in (but not vote in) a qualifying decision procedure by which a decision about any matter is sought from the creditors of the company or partnership.”; and
- (b) for subsection (7) substitute—
- “(7) “The appropriate regulator” means—
- (a) where the company or partnership is a PRA-regulated person, each of the FCA and the PRA, except that the references in subsections (5) and (5A) to a person appointed by the appropriate regulator are to be read as references to a person appointed by either the FCA or the PRA;
- (b) in any other case, the FCA.”.
- (5) In section 365(6) (powers of FCA and PRA to participate in proceedings: voluntary winding up)—
- (a) after subsection (5) insert—
- “(5A) The appropriate regulator or a person appointed by the appropriate regulator is entitled to participate in (but not vote in) a qualifying decision procedure by which a decision about any matter is sought from the creditors of the company.”; and
- (b) for subsection (8) substitute—
- “(8) “The appropriate regulator” means—
- (a) where the company is a PRA-authorized person, each of the FCA and the PRA, except that the references in subsections (5) and (5A) to a person appointed by the appropriate regulator are to be read as references to a person appointed by either the FCA or the PRA;
- (b) in any other case, the FCA.”.
- (6) In section 371(7) (powers of FCA and PRA to participate in proceedings: winding up by the court)—
- (a) after subsection (4) insert—
- “(4A) The appropriate regulator or a person appointed by the appropriate regulator is entitled to participate in (but not vote in) a qualifying decision procedure by which a decision about any matter is sought from the creditors of the body.”; and
- (b) for subsection (6) substitute—
- “(6) “The appropriate regulator” means—
- (a) where the body is a PRA-regulated person, each of the FCA and the PRA, except that the references in subsections (4) and (4A) to a person appointed by the appropriate regulator are to be read as references to a person appointed by either the FCA or the PRA;

(5) Section 362 was amended by the Financial Services Act 2012, Schedule 14, paragraphs 1 and 8(1), (4), (5) and (6), and by the Enterprise Act 2002 (c. 40), Schedule 17, paragraph 57(d). There are other amendments, but they are not relevant.

(6) Section 365 was amended by the Financial Services Act 2012, Schedule 14, paragraphs 1 and 12, and by S.I. 2008/948.

(7) Section 371 was amended by the Financial Services Act 2012, Schedule 14, paragraphs 1 and 19, and by S.I. 2008/948.

- (b) in any other case, the FCA.”.
- (7) In section 374(8) (powers of FCA and PRA to participate in proceedings: bankruptcy)—
 - (a) after subsection (4) insert—

“(4A) The appropriate regulator or a person appointed by the appropriate regulator is entitled to participate in (but not vote in) a creditors’ decision procedure by which a decision about any matter is sought from the creditors of the individual or entity.”; and
 - (b) for subsection (7) substitute—

“(7) “The appropriate regulator” means—

 - (a) where the individual or entity is a PRA-regulated person, each of the FCA and the PRA, except that the references in subsections (4) and (4A) to a person appointed by the appropriate regulator are to be read as references to a person appointed by either the FCA or the PRA;
 - (b) in any other case, the FCA.”.