

SCHEDULE

PART I

AMENDMENT OF THE PRINCIPAL RULES

Rule 0.2

1. In paragraph (1) of Rule 0.2 after the definition “the Companies Act” there shall be inserted the following definition:—

““the Banking Act” means the Banking Act 1987(1);”;

and after the definition of “insolvency proceedings”, there shall be inserted the following definition:—

““proxy-holder” shall be construed in accordance with Rule 7.14;”.

Rule 1.10

2. In paragraph (1)(a) of Rule 1.10 after the word “them” there shall be inserted the words “with, in addition, where the company is subject to an administration order, the names and addresses of the company’s preferential creditors (defined in section 386), with the amounts of their respective claims,”.

Rule 1.12

3. In paragraph (3) of Rule 1.12, for the words from “Rule 1.3” to the end there shall be substituted the words “Rule 1.10”.

Rule 2.2

4. In paragraph (1) of Rule 2.2 for the words “to the person” there shall be substituted the words “to any person”.

Rule 2.3

5. For paragraph (3)(a) of Rule 2.3 there shall be substituted the following:—

“(a) any person who has appointed, or is or may be entitled to appoint, an administrative receiver;”.

Rule 2.7

6.—(1) In Rule 2.7 there shall be inserted at the beginning of the Rule the word “(1)”.

(2) For paragraph (f) of that Rule there shall be substituted the following:—

“(f) the manner in which the affairs and business of the company—

(i) have, since the date of the administrator’s appointment, been managed and financed, and

(ii) will, if the administrator’s proposals are approved, continue to be managed and financed; and”.

(3) At the end of that Rule there shall be inserted the following paragraph:—

(1) 1987 c. 22

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“(2) Where the administrator intends to apply to the court under section 18 for the administration order to be discharged at a time before he has sent a statement of his proposals to creditors, in accordance with section 23(1), he shall, at least 10 days before he makes such an application, send to all creditors of the company of whom he is aware, a report containing the information required by paragraph (1)(a) to (f)(i) of this Rule.”.

Rule 2.13

7. For Rule 2.13 there shall be substituted the following:—

“Report and notice of meetings

2.13. Any report or notice by the administrator of the result of creditors' meetings held under section 23(1) or 25(2) shall have annexed to it details of the proposals which were considered by the meeting in question and of any revisions and modifications to the proposals which were also considered.”.

Rule 2.20

8. In Rule 2.20, for the words “original appointment of an administrator” there shall be substituted the words “administration order”.

Rule 4.1

9. In Rule 4.1 there shall be inserted at the beginning of the Rule the word “(1)” and there shall be inserted at the end of the Rule the following paragraph:—

“(2) The court shall be satisfied that a person has caution for the proper performance of his functions as provisional liquidator if a statement is lodged in court or it is averred in the winding-up petition that the person to be appointed is an insolvency practitioner, duly qualified under the Act to act as liquidator, and that he consents so to act.”.

Rule 4.5

10.—(1) In paragraph (3) of Rule 4.5, for the words from the beginning of the paragraph to “accordingly” there shall be substituted the following:

“(3) Without prejudice to any order of the court as to expenses, the provisional liquidator’s remuneration shall be paid to him, and the amount of any expenses incurred by him (including the remuneration and expenses of any special manager appointed under section 177) reimbursed—

(a) if a winding up order is not made, out of the property of the company”.

(2) After paragraph (3) of that Rule there shall be inserted the following paragraph:—

“(4) Unless the court otherwise directs, in a case falling within paragraph (3)(a) above, the provisional liquidator may retain out of the company’s property such sums or property as are or may be required for meeting his remuneration and expenses.”.

Rule 4.6

11. In Rule 4.6(2) the words from “and, without prejudice to the power of the court” to the end of the Rule shall be deleted.

Rule 4.10

12. After paragraph (3) of Rule 4.10, there shall be inserted the following paragraph:—

“(4) Any person appointed as liquidator of a company under section 140(1) who, following such appointment becomes aware of creditors of the company of whom he was not aware when he was acting as the administrator of the company, shall send to such creditors a copy of any statement or report which was sent by him to creditors under Rule 2.7, with a note to the effect that it is being sent under this Rule.”.

Rule 4.11

13. In Rule 4.11, for the words “at 6 monthly intervals” there shall be substituted the words “not more than 30 days after the end of each accounting period which ends after that year”.

Rule 4.12

14.—(1) In paragraph (1) of Rule 4.12, for the words “section 138(3)” there shall be substituted “section 138(3) or (4)” and after the words “contributories of the company” there shall be inserted the words “or, as the case may be, a meeting of the creditors”.

(2) After paragraph (2) of that Rule, there shall be inserted the following paragraph:—

“(2A) Any meetings of creditors or contributories under section 138(3) or (4) shall be summoned for a date not later than 42 days after the date of the winding up order or such longer period as the court may allow.”.

Rule 4.16

15. In paragraph (2) of Rule 4.16—

- (a) for the word “Company” in Column 2 there shall be substituted the words “The company or, in the application of section 49(6) of the Bankruptcy Act, any member or contributory of the company”; and
- (b) for the words “Debtor’s assets” in Column 1 there shall be substituted the words “Debtor’s estate”.

Rule 4.18

16. In Rule 4.18(5), there shall be inserted after the word “shall” the following:—

“state whether a liquidation committee has been established by a meeting of creditors or contributories, and, if this is not the case, he shall—”.

Rule 4.19

17.—(1) In paragraph (3) of Rule 4.19 for the words from “shall be effective” to “meeting of the contributories”, there shall be substituted the words “takes effect upon the passing of the resolution for his appointment” and for the words “this date” there shall be substituted the words “the date of his appointment”.

(2) In paragraph (6) of that Rule for the words “company meeting” there shall be substituted the words “a meeting of contributories”.

Rule 4.22

18. For Rule 4.22 there shall be inserted the following:—

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“Taking possession and realisation of the company’s assets

4.22.—(1) The liquidator shall—

- (a) as soon as may be after his appointment take possession of the whole assets of the company and any property, books, papers or records in the possession or control of the company or to which the company appears to be entitled; and
- (b) make up and maintain an inventory and valuation of the assets which he shall retain in the sederunt book.

(2) The liquidator shall be entitled to have access to all documents or records relating to the assets or the property or the business or financial affairs of the company sent by or on behalf of the company to a third party and in that third party’s hands and to make copies of any such documents or records.

(3) If any person obstructs a liquidator who is exercising, or attempting to exercise, a power conferred by sub-section (2) above, the court, on the application of the liquidator, may order that person to cease so to obstruct the liquidator.

(4) The liquidator may require delivery to him of any title deed or other document or record of the company, notwithstanding that a right of lien is claimed over the title deed or document or record, but this paragraph is without prejudice to any preference of the holder of the lien.

(5) Section 39(4) and (7) of the Bankruptcy Act shall apply in relation to a liquidation of a company as it applies in relation to a sequestration of a debtor’s estate, subject to the modifications specified in Rule 4.16(2) and to any other necessary modifications.”.

Rule 4.24

19. In sub-paragraph (a) of paragraph (1) of Rule 4.24 before the words “to the registrar of companies” there shall be inserted the words “a copy of the certificate” and in sub-paragraph (b) of that paragraph for the word “it” there shall be substituted the words “a copy of the certificate”.

Rule 4.29

20. After paragraph (5) of Rule 4.29, there shall be inserted the following paragraphs:—

“(6) If there is no quorum present at the meeting summoned to receive the liquidator’s resignation, the meeting is deemed to have been held, a resolution is deemed to have been passed that the liquidator’s resignation be accepted, and the creditors are deemed not to have resolved against the liquidator having his release.

(7) Where paragraph (6) applies—

- (a) the liquidator’s resignation is effective as from the date for which the meeting was summoned and that date shall be stated in the notice given by the liquidator under paragraph (3), and
- (b) the liquidator is deemed to have been released as from that date.”.

Rule 4.31

21. In Rule 4.31, there shall be inserted at the end of paragraph (6) the following:—

“subject to the modifications that in Rule 4.25(3) sub-paragraph (a) shall apply with the word “new” replaced by the word “former” and sub-paragraph (b) shall not apply”.

Rule 4.34

22. In paragraph (4) of Rule 4.34, after the word “appearing” in both places where it occurs, there shall be inserted the words “or being represented”.

Rule 4.41

23.—(1) In paragraph (1)(b) of Rule 4.41, there shall be inserted after the word “decides,” the word “of”.

(2) In paragraph (6) of that Rule, for the words “section 28 of the Banking Act 1979” there shall be substituted the words “section 58 of the Banking Act”.

Rule 4.42

24. In paragraph (3) of Rule 4.42, there shall be inserted after the words “agreed to do so”, the following:—

“and, unless the relevant proxy or authorisation contains a statement to the contrary, such agreement may be given on behalf of the member by his proxy-holder or any representative under section 375 of the Companies Act who is present at the meeting at which the committee is established”.

Rule 4.43

25. In paragraph (4) of Rule 4.43, for the words from “with the substitution” to the end of that paragraph there shall be substituted the words “with the substitution of the reference to Rule 4.41 in paragraph (3) of that Rule by a reference to this paragraph”.

Rule 4.48

26. In paragraph (2) of Rule 4.48, there shall be added at the end the following:—

“, and for this purpose any proxy or authorisation under section 375 of the Companies Act in relation to any meeting of creditors (or, as the case may be, members or contributories) of the company shall, unless it contains a statement to the contrary, be treated as such a mandate to act generally signed by or on behalf of the committee-member”.

Rule 4.53

27. In paragraph (2) of Rule 4.53, for the reference to “Rule 4.41(1)” there shall be substituted a reference to “Rule 4.43(4)”.

Rule 4.55

28. In paragraph (2) of Rule 4.55, for the words from “a statement incorporating” to the end of the paragraph, there shall be substituted the following:—

“a copy of any proposed resolution on which a decision is sought, which shall be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent”.

Rule 4.59A

29. After Rule 4.59, there shall be inserted the following new Rule:—

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“Formal defects

4.59A. The acts of the liquidation committee established for any winding up are valid notwithstanding any defect in the appointment, election or qualifications of any member of the committee or any committee-member’s representative or in the formalities of its establishment.”.

Rule 4.65

30. In Rule 4.65, for the reference to “Rules 4.44 to 4.59” there shall be substituted a reference to “Rules 4.44 to 4.59A”.

Rule 4.66

31.—(1) In paragraph (1) of Rule 4.66, there shall be inserted, before sub-paragraph (b), the following sub-paragraph:—

“(aa) Where the court makes a winding up order in relation to a company and, at the time when the petition for winding up was first presented to the court, there was in force in relation to the company a voluntary arrangement under Part 1 of the Act, any expenses properly incurred as expenses of the administration of that arrangement;”.

(2) In paragraph (6)(b) of that Rule, for the words “the permanent trustee” there shall be substituted the words “the liquidator” and, for the words from “section 38(4)” to the end of the paragraph, there shall be substituted the words “Rule 4.22(4)”.

Rule 4.67

32. In paragraph (1)(i) of Rule 4.67, for the words “capital gains” there shall be substituted the word “corporation”.

Rule 4.78

33. At the end of paragraph (a) of Rule 4.78, the word “and” shall be omitted and at the end of paragraph (b) of that Rule there shall be inserted the following:—

“, and

(c) apply to all windings up to which section 216 applies, whether or not the winding up commenced before or after the coming into force of the Insolvency (Scotland) Amendment Rules 1987.”.

Rule 4.81

34. For Rule 4.81 there shall be substituted the following:—

“Second excepted case

4.81.—(1) Where a person to whom section 216 applies as having been a director or shadow director of the liquidating company applies for leave of the court under that section not later than 7 days from the date on which the company went into liquidation, he may, during the period specified in paragraph (2) below, act in any of the ways mentioned in section 216(3), notwithstanding that he has not the leave of the court under that section.

(2) The period referred to in paragraph (1) begins with the day in which the company goes into liquidation and ends either on the day falling 6 weeks after that date or on the day on which the court disposes of the application for leave under section 216, whichever of those days occurs first.”.

Rule 7.3

35.—(1) In paragraph (2) of Rule 7.3, the word “and” after sub-paragraph (b) shall be deleted and at the end of sub-paragraph (c) there shall be inserted a new sub-paragraph as follows:—

“, and

(d) a meeting of creditors or contributories under section 138(3) or (4).”.

(2) After paragraph (3) of that Rule there shall be inserted the following paragraph:—

“(3A) Any notice under this Rule shall be published not less than 21 days or, in cases to which paragraph (2) above applies, 14 days before the meeting.”.

(3) There shall be inserted after paragraph (6) of that Rule the following paragraph:—

“(7) The provisions of this Rule shall not apply to a meeting of creditors summoned under section 95 or 98 but any notice advertised in accordance with section 95(2)(c) or 98(1)(c) shall give not less than 7 days' notice of the meeting.”.

Rule 7.4

36. For paragraph (1) of Rule 7.4 there shall be substituted the following:—

“(1) This Rule applies where a company goes, or proposes to go, into liquidation and it is an authorised institution or a former authorised institution within the meaning of the Banking Act.”.

Rule 7.5

37. In paragraph (1) of Rule 7.5 there shall be inserted—

- (a) after the words “insolvency proceedings” the words “, other than at a meeting of creditors summoned under section 98,”, and
- (b) after the word “or” the words “except at a meeting of creditors summoned under section 95”.

Rule 7.6

38.—(1) For paragraph (1) of Rule 7.6 there shall be substituted the following:—

“(1) Subject to paragraph (8), this Rule applies to any request by a creditor or creditors—

(a) to—

(i) an administrator under section 17(3), or

(ii) a liquidator under section 171(3) or 172(3),

for a meeting of creditors; or

(b) to a liquidator under section 142(3) for separate meetings of creditors and contributories,

or for any other meeting under any other provision of the Act or the Rules.”.

(2) In paragraph (4) of that Rule after the word “administrator” there shall be inserted the words “or, as the case may be, the liquidator”.

Rule 7.7

39. After paragraph (2) of Rule 7.7, there shall be inserted the following paragraph:—

“(3) Where at any meeting of creditors or contributories—

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- (a) the provisions of this Rule as to a quorum being present are satisfied by the attendance of—
 - (i) the chairman alone, or
 - (ii) one other person in addition to the chairman, and
 - (b) the chairman is aware, by virtue of claims and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote,
- the meeting shall not commence until at least the expiry of 15 minutes after the time appointed for its commencement.”.

Rule 7.8

40.—(1) In paragraph (5) of Rule 7.8—

- (a) the words “(1) or (2)” shall be replaced by the words “(2) or (3)”; and
 - (b) there shall be inserted at the end of that paragraph the words “and notice of the adjourned meeting may be given by the chairman”.
- (2) After paragraph (6) of that Rule, there shall be inserted the following paragraph:—

“(7) Where a company meeting at which a resolution for voluntary winding up is to be proposed is adjourned without that resolution having been passed, any resolution passed at a meeting under section 98 held before the holding of the adjourned company meeting only has effect on and from the passing by the company of a resolution for winding up.”.

Rule 7.12

41. In paragraph (4) of Rule 7.12—

- (a) there shall be inserted after the words “by a person” the words “(whether personally or on his behalf by a proxy-holder),” and
- (b) there shall be substituted for the word “proxy” the words “proxy-holder”.

Rule 7.14

42. In paragraph (4) of Rule 7.14 there shall be inserted at the end of the paragraph the words “and any person to whom such a proxy is given cannot decline to be the proxy-holder in relation to that proxy”.

Rule 7.16

43. After paragraph (3) of Rule 7.16, there shall be added the following paragraphs:—

“(4) Where a proxy directs a proxy-holder to vote for or against a resolution for the nomination or appointment of a person to be the responsible insolvency practitioner, the proxy-holder may, unless the proxy states otherwise, vote for or against (as he thinks fit) any resolution for the nomination or appointment of that person jointly with another or others.

(5) A proxy-holder may propose any resolution which, if proposed by another, would be a resolution in favour of which he would be entitled to vote by virtue of the proxy.

(6) Where a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, preclude the proxy-holder from voting at his discretion on resolutions put to the meeting which are not dealt with in the proxy.”.

Rule 7.18

44. In paragraph (4) of Rule 7.18 for the words “to be used” to the end there shall be substituted the following:—

“(including claims)—

- (a) to be used in connection with that meeting, or
- (b) sent or given to the chairman of that meeting or to any other person by a creditor, member or contributory for the purpose of that meeting, whether or not they are to be used at it.”.

Rule 7.19

45.—(1) After paragraph (1) of Rule 7.19 there shall be inserted the following paragraph:—

“(1A) Where a proxy-holder has signed the proxy as being authorised to do so by his principal and the proxy specifically directs him to vote in the way mentioned in paragraph (1), he shall nevertheless not vote in that way unless he produces to the chairman of the meeting written authorisation from his principal sufficient to show that the proxy-holder was entitled so to sign the proxy.”.

(2) In paragraph (2) of Rule 7.19:—

- (a) after the word “capacity” there shall be inserted the words “in accordance with Rule 7.16(3)”, and
- (b) for the words “in its application to him” there shall be substituted “in the application of this Rule to any such person”.

Rule 7.20

46. After paragraph (2) of Rule 7.20 there shall be added the following paragraph:—

“(3) Nothing in this Rule requires the authority of a person to sign a proxy on behalf of a principal which is a corporation to be in the form of a resolution of that corporation.”.

Rule 7.21

47. In paragraph (2) of Rule 7.21 there shall be inserted before the word “Rules” the words “Act or the”.

Rule 7.22

48. In Rule 7.22 after paragraph (1) there shall be inserted the following paragraph:—

“(1A) Any document to be sent by post may be sent to the last known address of the person to whom the document is to be sent.”.

Rule 7.26

49. After paragraph (2) of Rule 7.26 there shall be inserted the following paragraph:—

“(2A) Where the responsible insolvency practitioner is requested by a creditor, member, contributory or by a member of a liquidation committee or of a creditors' committee to supply a copy of any document, he is entitled to require payment of the appropriate fee in respect of the supply of that copy.”.

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Rule 7.27

50. After paragraph (3) of Rule 7.27 there shall be inserted the following paragraph:—

“(4) Nothing in this Rule entitles the responsible insolvency practitioner to decline to allow inspection of any claim or proxy.”.

Rule 7.33

51. At the end of Rule 7.33 there shall be inserted the following paragraphs:—

“(5) Without prejudice to paragraph (3), the responsible insolvency practitioner shall retain, or shall make arrangements for retention of, the sederunt book for a period of ten years from the relevant date.

(6) Where the sederunt book is maintained in non-documentary form it shall be capable of reproduction in legible form.

(7) In this Rule “the relevant date” has the following meanings:—

- (a) in the case of a company voluntary arrangement under Part I of the Act, the date of final completion of the voluntary arrangement;
- (b) in the case of an administration order under Part II of the Act, the date on which the administration order is discharged;
- (c) in the case of a receivership under Part III of the Act, the date on which the receiver resigns and the receivership terminates without a further receiver being appointed; and
- (d) in the case of a winding-up, the date of dissolution of the company.”

Rule 7.34

52. After Rule 7.33 there shall be inserted the following Rule:—

“Disposal of company’s books, papers and other records

7.34.—(1) Where a company has been the subject of insolvency proceedings (“the original proceedings”) which have terminated and other insolvency proceedings (“the subsequent proceedings”) have commenced in relation to that company, the responsible insolvency practitioner appointed in relation to the original proceedings, shall, before the expiry of the later of—

- (a) the period of 30 days following a request to him to do so by the responsible insolvency practitioner appointed in relation to the subsequent proceedings, or
- (b) the period of 6 months after the relevant date (within the meaning of Rule 7.33),

deliver to the responsible insolvency practitioner appointed in relation to the subsequent proceedings the books, papers and other records of the company.

(2) In the case of insolvency proceedings, other than winding up, where—

- (a) the original proceedings have terminated, and
- (b) no subsequent proceedings have commenced within the period of 6 months after the relevant date in relation to the original proceedings,

the responsible insolvency practitioner appointed in relation to the original proceedings may dispose of the books, papers and records of the company after the expiry of the period of 6 months referred to in sub-paragraph (b), but only in accordance with directions given by—

- (i) the creditors' committee (if any) appointed in the original proceedings,

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- (ii) the members of the company by extraordinary resolution, or
- (iii) the court.

(3) Where a company is being wound up the liquidator shall dispose of the books, papers and records of the company either in accordance with—

- (a) in the case of a winding up by the court, directions of the liquidation committee, or, if there is no such committee, directions of the court;
- (b) in the case of a members' voluntary winding up, directions of the members by extraordinary resolution; and
- (c) in the case of a creditors' voluntary winding up, directions of the liquidation committee, or, if there is no such committee, of the creditors given at or before the final meeting under section 106,

or, if, by the date which is 12 months after the dissolution of the company, no such directions have been given, he may do so after that date in such a way as he deems appropriate.”.

Schedule 1

Paragraph 4 (Rule 4.7)

53. In paragraph 4 of Schedule 1—

- (a) after paragraph (3) of Rule 4.7, as substituted by that paragraph, there shall be inserted the following paragraph:—

“(3A) Where a liquidator is nominated by the company at a general meeting held on a day prior to that on which the creditors' meeting summoned under section 98 is held, the directors shall forthwith after his nomination or the making of the statement of affairs, whichever is the later, deliver to him a copy of the statement of affairs.”; and

- (b) at the end of the said Rule 4.7 there shall be inserted the following paragraphs:—

“(5) The statement of affairs under section 99(1) shall be made up to the nearest practicable date before the date of the meeting of creditors under section 98 or to a date not more than 14 days before that on which the resolution for voluntary winding up is passed by the company, whichever is the later.

(6) At any meeting held under section 98 where the statement of affairs laid before the meeting does not state the company's affairs as at the date of the meeting, the directors of the company shall cause to be made to the meeting, either by the director presiding at the meeting or by another person with knowledge of the relevant matters, a report (written or oral) on any material transactions relating to the company occurring between the date of the making of the statement of affairs and that of the meeting and any such report shall be recorded in the report of the meeting kept under Rule 7.13.”.

Paragraph 9 (Rule 4.15)

54. In paragraph 9 of Schedule 1, there shall be inserted at the beginning the word “(1)” and at the end the following sub-paragraph:—

“(2) In paragraph (6) there shall be inserted at the end the following:—

“and to the director who presides over any meeting of creditors as provided by section 99(1)”.

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Paragraph 12 (Rule 4.19)

55. In paragraph 12 of Schedule 1—

- (a) in Rule 4.19(2), as substituted by that paragraph, for the words “is effective from the date of the certificate” there shall be substituted the words “takes effect on the passing of the resolution for his appointment”; and
- (b) at the end of the said paragraph there shall be inserted the following sub-paragraph:—

“(4) After paragraph 6 there shall be inserted the following paragraph:—

“(7) Where a vacancy in the office of liquidator occurs in the manner mentioned in section 104, a meeting of creditors to fill the vacancy may be convened by any creditor or, if there were more liquidators than one, by any continuing liquidator”.

Paragraph 18 (Rule 4.31)

56. In paragraph 18 of Schedule 1, at the end of paragraph (4) of Rule 4.31, as substituted by that paragraph, there shall be inserted the following:—

“subject to the modifications that in Rule 4.25(3) sub-paragraph (a) shall apply with the word “new” replaced by the word “former” and sub-paragraph (b) shall not apply”.

Schedule 2

Paragraph 3 (Rule 4.11)

57. In paragraph 3 of Schedule 2, there shall be inserted at the end the following:—

“subject to the modifications that for the words “accounting period” where they occur, there shall be substituted the words “period of twenty six weeks”.

Paragraph 5 (Rule 4.19)

58. In paragraph 5(2) of Schedule 2, in Rule 4.19(2), as substituted by that paragraph, for the words “is effective from the date of the certificate” there shall be substituted the words “takes effect on the passing of the resolution for his appointment”.

Paragraph 9 (Rule 4.28)

59. In paragraph 9(4) of Schedule 2, after paragraph (6) of Rule 4.28 as amended by the said paragraph 9(4) there shall be inserted the following paragraph:—

“(7) If there is no quorum present at the meeting summoned to receive the liquidator’s resignation the meeting is deemed to have been held.”.

Forms

60.—(1) The form contained in Part II of this Schedule shall be added to Schedule 5 to the principal Rules as Form 4.29 (Scot).

(2) The forms contained in Part III of this Schedule shall be substituted for the forms bearing the identical numbers in Schedule 5 to the principal Rules.