
STATUTORY INSTRUMENTS

2006 No. 734

The Insolvency (Scotland) Amendment Rules 2006

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Insolvency (Scotland) Amendment Rules 2006 and shall come into force on 6th April 2006 (“the commencement date”).

(2) In these Rules “the 1986 Rules” means the Insolvency (Scotland) Rules 1986(1) and references to numbered Rules are to the Rules so numbered in the 1986 Rules.

Transitional provision

2.—(1) The provisions of Rules 5 to 8 and 10 of these Rules shall not apply, and the provisions of the 1986 Rules shall continue to apply without the amendments made by those Rules, in any case where a company has entered administration before the commencement date.

(2) The provisions of Rule 14 of these Rules apply in any case where a company entered into administration on or after 15th September 2003 other than a case where the company entered into administration by virtue of a petition presented before that date.

(3) The provisions of Rule 15 of these Rules apply in any case where an insolvency practitioner is appointed on or after the commencement date.

Amendments to the Insolvency (Scotland) Rules 1986

3. The 1986 Rules shall be amended in accordance with the following Rules.

Amendments to Forms

4.—(1) For Forms 2.4B (Scot) to 2.10B (Scot) and 2.12B (Scot) set out in Schedule 5 to the 1986 Rules substitute Forms 2.4B (Scot) to 2.10B (Scot) and 2.12B (Scot) set out in Part 1 of the Schedule to these Rules.

(2) For pages 2 and 13 of Form 2.13B(Scot) set out in Schedule 5 to the 1986 Rules substitute the pages set out in Part 2 of the Schedule to these Rules.

Amendment to Rule 2.2

5. In Rules 2.2(3) for the words “main proceedings or territorial proceedings” substitute “main, secondary or territorial proceedings”.

Amendment to Rule 2.25

6. In Rules 2.25(1)(q)(ii) for the words “main proceedings or territorial proceedings” substitute “main, secondary or territorial proceedings”.

Amendment to Rule 2.30

7. In Rules 2.30(3) for the words “main proceedings or territorial proceedings” substitute “main, secondary or territorial proceedings”.

Substitution of Rule 2.39

8.—(1) For Rule 2.39 of the 1986 Rules substitute—

“Determination of outlays and remuneration

2.39.—(1) Within 2 weeks after the end of an accounting period, the administrator shall in respect of that period submit to the creditors' committee or, if there is no creditors' committee, to a meeting of creditors—

- (a) his accounts of his intromissions with the company's assets for audit and, where funds are available after making allowance for contingencies, a scheme of division of the divisible funds; and
- (b) a claim for the outlays reasonably incurred by him and for his remuneration.

(2) The administrator may, at any time before the end of an accounting period, submit to the creditors' committee or, if there is no creditors' committee, a meeting of creditors an interim claim in respect of that period for the outlays reasonably incurred by him and for his remuneration and the creditors' committee or meeting of creditors, as the case may be, may make an interim determination in relation to the amount of the outlays and remuneration payable to the administrator and, where they do so, they shall take into account that interim determination when making their determination under paragraph (3)(a)(ii).

(3) Within 6 weeks after the end of an accounting period—

- (a) the creditors' committee or, as the case may be, a meeting of creditors—
 - (i) may audit the accounts; and
 - (ii) shall issue a determination fixing the amount of the outlays and the remuneration payable to the administrator; and
- (b) the administrator shall make the audited accounts, scheme of division and the said determination available for inspection by the members of the company and the creditors.

(4) The basis for fixing the amount of the remuneration payable to the administrator may be a commission calculated by reference to the value of the company's assets which have been realised by the administrator, but there shall in any event be taken into account—

- (a) the work which, having regard to that value, was reasonably undertaken by him; and
- (b) the extent of his responsibilities in administering the company's assets.

(5) If the administrator's remuneration and outlays have been fixed by determination of the creditors' committee in accordance with paragraph (3)(a)(ii) and he considers the amount to be insufficient, he may request that it be increased by resolution of the creditors.

(6) If the creditors' committee fails to issue a determination in accordance with paragraph (3)(a)(ii), the administrator shall submit his claim to a meeting of creditors and they shall issue a determination in accordance with paragraph (3)(a)(ii).

(7) If the meeting of creditors fails to issue a determination in accordance with paragraph (6) then the administrator shall submit his claim to the court and it shall issue a determination.

(8) In a case where the administrator has made a statement under paragraph 52(1)(b), a resolution under paragraph (5) or Rule 2.39A(8) shall be taken to be passed if (and only if) passed with the approval of—

- (a) each secured creditor of the company; or
- (b) if the administrator has made, or proposes to make, a distribution to preferential creditors—
 - (i) each secured creditor of the company; and
 - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

(9) In a case where the administrator has made a statement under paragraph 52(1)(b), if there is no creditor’s committee, or the committee does not make the requisite determination in accordance with paragraphs (2) or (3)(a)(ii), the administrator’s remuneration and outlays may be fixed (in accordance with this Rule) by the approval of—

- (a) each secured creditor of the company; or
- (b) if the administrator has made, or proposes to make, a distribution to preferential creditors—
 - (i) each secured creditor of the company; and
 - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

(10) In fixing the amount of the administrator’s remuneration and outlays in respect of any accounting period, the creditors' committee or, as the case may be, a meeting of creditors may take into account any adjustment which the creditors' committee or meeting of creditors may wish to make in the amount of the remuneration and outlays fixed in respect of any earlier accounting period.

Appeal against fixing of remuneration

2.39A.—(1) If the administrator considers that the remuneration fixed for him by the creditors' committee, or by resolution of the creditors is insufficient, he may apply to the court for an order increasing its amount or rate.

(2) The administrator shall give at least 14 days' notice of his application to the members of the creditors' committee; and the committee may nominate one or more members to appear or be represented, and to be heard, on the application.

(3) If there is no creditors' committee, the administrator’s notice of his application shall be sent to such one or more of the company’s creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented and be heard.

(4) The court may, if it appears to be a proper case, order the expenses of the administrator’s application, including the expenses of any member of the creditors' committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid as an expense of the administration.

(5) If the administrator’s remuneration has been fixed by the creditors' committee or by the creditors, any creditor or creditors of the company representing in value at least 25 percent of the creditors may apply to the court not later than 8 weeks after the end of an accounting period for an order that the administrator’s remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.

(6) If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.

(7) The court may, if it appears to be a proper case, order the expenses of the creditor making the application to be paid as an expense of the administration.

- (8) Where there are joint administrators–
 - (a) it is for them to agree between themselves as to how the remuneration payable should be apportioned;
 - (b) if they cannot agree as to how the remuneration payable should be apportioned, any one of them may refer the issue for determination–
 - (i) by the court; or
 - (ii) by resolution of the creditors' committee or a meeting of creditors.”.

Amendment to Rule 2.41

- 9.—(1) In Rule 2.41 of the 1986 Rules–
 - (a) insert the following after paragraph (1)–

“(1A) Section 53 of the Bankruptcy Act, as applied by Rule 4.68, shall not apply for the purposes of this Rule.”;
 - (b) at the start of paragraph (2) insert “Subject to paragraph (5) below.”;
 - (c) in paragraph (3) for the words “Section 53(3)” substitute “Section 52(3)”; and
 - (d) insert the following after paragraph (4)–

“(5) Where the administration was immediately preceded by a winding up–
 - (a) in Rule 4.17(2) the reference to administration and the date on which the company entered administration existing but for the application of this Rule shall be construed as a reference to liquidation and the date of commencement of winding up respectively;
 - (b) in Schedule 1 to the Bankruptcy Act, as applied by Rule 4.16, the reference to the date on which the company entered administration in paragraph 1(1) and the second reference to that date in paragraph 1(2) shall be construed as a reference to the date of commencement of winding up within the meaning of section 129.”.

New Rule 2.41A

- 10. After Rule 2.41 of the 1986 Rules, insert the following–

“Payments of Dividends

2.41A.—(1) On the final determination of the remuneration under Rules 2.39 and 2.39A, the administrator shall, subject to Rule 2.41, pay to the creditors their dividends in accordance with the scheme of division.

- (2) Any dividend–
 - (a) allocated to a creditor which is not cashed or uplifted; or
 - (b) dependent on a claim in respect of which an amount has been set aside under subsection (7) or (8) of section 52 of the Bankruptcy Act as applied by Rules 2.41 and 4.68,

shall be deposited by the administrator in an appropriate bank or institution.

- (3) If a creditor’s claim is revalued, the administrator may–
 - (a) in paying any dividend to that creditor, make such adjustment to it as he considers necessary to take account of that revaluation; or
 - (b) require the creditor to repay to him the whole or part of a dividend already paid to him.

(4) The administrator shall insert in the sederunt book the audited accounts, the scheme of division and the final determination in relation to the administrator's outlays and remuneration.

(5) For the purposes of paragraph 99(3), the former administrator's remuneration and expenses shall comprise all those items set out in Rule 4.67(1) as applied by Rule 2.41."

Amendment to Rule 2.57

11. In Rule 2.57(1) of the 1986 Rules for the words "winding up" insert the words ", whether by entering voluntary winding up, being wound up by the court or wound up through the administration".

Amendment to Rule 2.58

12. In Rule 2.58(1)(c) of the 1986 Rules for the words "or be wound up by the court" substitute ", be wound up by the court or be wound up through the administration".

Amendment to Rule 4.6

13. In Rule 4.6–

(a) in paragraph (1), at the start insert "Except in relation to winding-up petitions under section 124A,";

(b) after paragraph (2), insert–

"(3) In winding-up petitions under section 124A, the appointment of the provisional liquidator may be terminated by the court on his application, or on that of the Secretary of State."

Amendment to Rule 7.34

14. In Rule 7.34 of the 1986 Rules–

(a) in paragraph (2) after the words "other than winding up" insert the words "or administration";

(b) in paragraph (2) delete sub paragraph (i);

(c) insert the following after paragraph (3)–

"(4) In the case of administration proceedings, the administrator shall dispose of the books, papers and records of the company either in accordance with–

(a) the directions of the creditors' committee (if any); or

(b) where there is no such committee, the court,

or, if by the date which is 12 months after 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.

(5) An administrator or former administrator shall within 14 days of a request by the Secretary of State give the Secretary of State particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the company or dividends or other sums due to any person as a member or former member of the company."

New Rule 7.35

15. After Rule 7.34 of the 1986 Rules, insert the following–

“Information about time spent on a case – administration and company voluntary arrangements

7.35.—(1) Subject as set out in this Rule, in respect of any administration or company voluntary arrangement in which he acts, an insolvency practitioner shall on request in writing made by any person mentioned in paragraph (2), supply free of charge to that person a statement of the kind described in paragraph (3).

(2) The persons referred to in paragraph (1) are—

- (a) any creditor in the case; and
- (b) any director or contributory of the company.

(3) The statement referred to in paragraph (1) shall comprise in relation to the period beginning with the date of the insolvency practitioner’s appointment and ending with the relevant date the following details—

- (a) the total number of hours spent on the case by the insolvency practitioner and any staff assigned to the case during that period;
- (b) for each grade of individual so engaged, the average hourly rate at which any work carried out by individuals in that grade is charged; and
- (c) the number of hours spent by each grade of staff during that period.

(4) In relation to paragraph (3) the “relevant date” means the date next before the date of the making of the request on which the insolvency practitioner has completed any period in office which is a multiple of six months or, where the insolvency practitioner has vacated office, the date that he vacated office.

(5) Where an insolvency practitioner has vacated office, an obligation to provide information under this Rule shall only arise in relation to a request that is made within 2 years of the date he vacates office.

(6) Any statement required to be provided to any person under this Rule shall be supplied within 28 days of the date of the receipt of the request by the insolvency practitioner.”.

Gerry Sutcliffe
Parliamentary Under Secretary of State for
Employment Relations and Consumer Affairs
Department of Trade and Industry

13th March 2006