
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 393

**INSOLVENCY
COMPANIES**

The Insolvency (Scotland) Rules 1986 Amendment Rules 2008

Made - - - - 26th November 2008
*Laid before the Scottish
Parliament* - - - - 27th November 2008
Coming into force - - 20th December 2008

The Scottish Ministers make the following Rules in exercise of the powers conferred by section 411 of the Insolvency Act 1986(1) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Insolvency (Scotland) Rules 1986 Amendment Rules 2008 and come into force on 20th December 2008 (“the commencement date”).

(2) In these Rules “the 1986 Rules” means the Insolvency (Scotland) Rules 1986(2).

Amendments to the 1986 Rules

2. The 1986 Rules are amended in accordance with Rules 3 to 6.

Application of the Bankruptcy Act

3. In Rule 4.16(3)–

- (a) in paragraph (1), for “paragraph (2)” substitute “paragraphs (2) and (3)”;
- (b) at the start of paragraph (2) insert “Subject to paragraph (3) below,”; and
- (c) after paragraph (2) insert–

“(3) Where the winding up was immediately preceded by an administration, the references to the date of sequestration in paragraph 1(1) of Schedule 1 to the Bankruptcy Act and the second reference to that date in paragraph 1(2) shall be construed as references to the date on which the company entered administration.”.

(1) 1986 c. 45; section 411 was amended by the Constitutional Reform Act 2005 (c. 4), Schedule 4, Part 1, paragraph 188 and S.I. 2002/1037 and 2007/2194. The functions of the Secretary of State, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).
(2) S.I. 1986/1915, as relevantly amended by S.I. 1987/1921.
(3) Rule 4.16 was amended by S.I. 1987/1921, Schedule 1, Part I, paragraph 15.

Claims in foreign currency

4. At the end of Rule 4.17(2) insert “or, if the liquidation was immediately preceded by an administration, on the date on which the company entered administration”.

Information about time spent on a case

5. After Rule 7.35 insert–

“Information about time spent on a case

7.36.—(1) Subject as set out in this Rule, in respect of any liquidation or receivership in which an insolvency practitioner acts, the 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) where the case relates to a company, any director or contributory of that 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 the insolvency practitioner 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 the insolvency practitioner 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.”.

Final meeting – creditors' voluntary winding up

6. In paragraph 18 of Schedule 1(4), in the substituted Rule 4.31(3) for “the registrar of companies” substitute “the Accountant in Bankruptcy”.

Transitional and savings provision

7.—(1) Notwithstanding Rule 2 above, in respect of any case where a company has commenced liquidation before the commencement date the 1986 Rules shall continue to have effect as if the amendments in Rules 3, 4 and 6 had not been made.

(2) The amendment in Rule 5 shall not apply in any case where a provisional liquidator, liquidator or receiver is appointed before the commencement date.

(4) Paragraph 18 of Schedule 1 was amended by S.I. 1987/1921, Schedule 1, Part I, paragraph 56.

St Andrew's House, Edinburgh
26th November 2008

FERGUS EWING
Authorised to sign for the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Insolvency (Scotland) Rules 1986 (S.I.1986/1915).

As a result of the changes made to the law on administration by the Enterprise Act 2002 (c. 40) a company can move between administration and liquidation. The amendments in Rules 3 and 4 enable creditors to make their claim as at the date of the administration. The amendments provide that the relevant date is the date of the commencement of the administration.

Rule 5 inserts a new Rule 7.36 into the Insolvency (Scotland) Rules 1986. This rule allows a creditor or, where a company is involved, a director or contributor to request details of time spent on a liquidation or receivership from an insolvency practitioner. These details are the number of hours spent on the case, the grades and wages of the staff involved and the hours spent on the case by each grade of staff.

Rule 6 provides that the report of a final meeting in a Creditors' Voluntary Winding Up is to be reported to the Accountant in Bankruptcy instead of the registrar of companies.

Rule 7 provides that these changes only have effect as regards companies which have gone into liquidation on or after the commencement date.