

EXECUTIVE NOTE

THE INSOLVENCY (SCOTLAND) RULES 1986 AMENDMENT RULES 2008 (S.S.I. 2008/393)

1. This instrument is made in exercise of the powers conferred by section 411 of the Insolvency Act 1986. It is subject to negative resolution procedure.

Policy Objectives

2. This instrument amends the Insolvency (Scotland) Rules 1986 (S.I. 1986/1915). The instrument makes changes consequential to the Scotland Act 1998 and the Enterprise Act 2002.

3. Part 10 of the Enterprise Act 2002 contained several measures to encourage corporate recovery and, in particular, to support the use of administration as an alternative to liquidation and receivership. These initiatives came into force on 15 September 2003. Rules 3 and 4 of this instrument provide that where a company moves from administration to liquidation, creditors will be able to claim from the date of administration. This means that the claim will be back dated to the beginning of the insolvency process.

4. The Scotland Act 1998, Schedule 8, paragraph 23(4) provided that certain actions done to or by the Registrar of Companies in Scotland shall be done to or by the Accountant in Bankruptcy. One of these actions is the requirement in section 171(6) of the Insolvency Act 1986 to give notice to the Registrar that a final meeting of creditors in a creditors' voluntary liquidation. Rule 4.31 of the Insolvency (Scotland) Rules 1986, as modified by Schedule 1, paragraph 18 of those Rules provides that in a creditors' voluntary liquidation this notice should be given to the Registrar of Companies within 7 days of a final meeting of creditors. Rule 6 of this instrument will amend the modified Rule 4.31 so that it refers to the Accountant in Bankruptcy rather than to the Registrar of Companies.

5. Regulation 8 of the Insolvency (Amendment) Regulations 2005 (S.I. 2005/512) inserted a new Regulation 36A into the Insolvency Regulations 1994 (S.I. 1994/2507) from 1 April 2005. This provided that an insolvency practitioner can be required to provide a statement of the number of hours spent on a case by the insolvency practitioner and his staff by grade and further makes provision for the circumstances in which a statement should be made and the information to be included in that statement. The amendment of the Insolvency Regulations 1994 did not extend to Scotland. Rule 5 of this instrument inserts a new Rule in the Insolvency (Scotland) Rules 1986 to apply the same requirement to liquidators and receivers in Scotland.

Consultation

6. The amendments made by this instrument are intended to make minor consequential changes to the Insolvency (Scotland) Rules 1986 with minimal impact on the process of liquidation and receivership. Therefore no formal public consultation has been carried out. Draft copies of the Rules were circulated to stakeholders including the Institute of Chartered Accountants of Scotland and R3 (the Association of Business Recovery Professionals).

Financial Effects

7. A regulatory impact assessment has not been prepared in this instance, as the change is not expected to have any financial impact on Scottish businesses.

Accountant in Bankruptcy
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