

2014 No. 114

INSOLVENCY

COMPANIES

The Insolvency (Scotland) Amendment Rules 2014

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| <i>Made</i> - - - - | <i>29th April 2014</i> |
| <i>Laid before the Scottish Parliament</i> | <i>1st May 2014</i> |
| <i>Coming into force</i> - - | <i>30th May 2014</i> |

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

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Insolvency (Scotland) Amendment Rules 2014 and come into force on 30th May 2014.

(2) In these Rules—

“the Act” means the Insolvency Act 1986; and

“the 1986 Rules” means the Insolvency (Scotland) Rules 1986(b).

Amendments to the Insolvency (Scotland) Rules 1986

2. The 1986 Rules are amended in accordance with Rules 3 to 28.

Definition of accounting period and statutory demand

3. In Rule 0.2(1) (interpretation)—

(a) in the definition of “accounting period”, for “section 52(1) and (6) of the Bankruptcy Act as applied by Rule 4.68” substitute “Rule 4.68(1) to (3)”; and

(b) after the definition of “Standard content”, insert—

““statutory demand” means a written demand served by a creditor on a company under section 123(1)(a)(c) or 222(1)(a)(d);”.

(a) 1986 c.45 (“the 1986 Act”); section 411 was amended by S.I. 2002/1037, the Constitutional Reform Act 2005 (c.4), Schedule 4, Part 1, paragraph 188, S.I. 2007/2194, the Banking Act 2009 (c.1), sections 125 and 160, S.I. 2009/805 and S.I. 2009/1941. 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).

(b) S.I. 1986/1915, as amended by S.I. 1987/1921, S.I. 1999/1820, S.I. 2002/2709, S.I. 2003/2108, S.I. 2003/2109, S.I. 2003/2111, S.I. 2006/734, S.I. 2007/2537, S.I. 2008/662, S.I. 2009/662, S.I. 2010/688 and S.I. 2012/2404 and S.S.I. 2008/393.

(c) Section 123 (definition of inability to pay debts) of the 1986 Act.

(d) Section 222 (inability to pay debts: unpaid creditor for £750 or more) of the 1986 Act.

Claims and distribution of assets in administration

4. In Rule 2.41(a)—

- (a) for paragraph (1A) substitute—
“(1A) Rule 4.68A shall not apply for the purposes of this Rule.”;
- (b) in paragraph (2), omit “, or in any provision of the Bankruptcy Act as applied by Rule 4.16 or 4.68”;
- (c) for paragraph (3) substitute—
“(3) Rule 4.68(4) shall apply subject to paragraph (4) of this Rule.”; and
- (d) for paragraph (5)(b) substitute—
“(b) in Rule 4.16E, the reference to the date on which the company entered administration in paragraph (1) and the second reference to that date in paragraph (2) shall be construed as references to the date of commencement of winding up within the meaning of section 129(b);”.

Payments of dividends in administration

5. In Rule 2.41A(2)(b) (payments of dividends)(c), for “subsection (7) or (8) of section 52 of the Bankruptcy Act as applied by Rules 2.41 and 4.68” substitute “Rule 4.68(7) or (8) as applied by Rule 2.41”.

Provisional liquidator

6. For Rule 4.5(2) (remuneration)(d) substitute—

- “(2) The basis for the court fixing the amount of the remuneration payable to the provisional liquidator may be a commission calculated by reference to the value of the company’s assets with which the provisional liquidator has had to deal but there shall in any event be taken into account—
- (a) the work which, having regard to that value, was reasonably undertaken by the provisional liquidator; and
 - (b) the extent of the provisional liquidator’s responsibilities in administering the company’s assets.”.

Claims in liquidation

7. In Rule 4.15 (submission of claims)(e)—

- (a) in paragraph (4), for “paragraph 5(2) of Schedule 1 to the Bankruptcy Act, as applied by the following Rule” substitute “Rule 4.16G(2)”; and
- (b) for paragraph (6) substitute—
“(6) In this Rule and in Rules 4.16 to 4.16G, any reference to the liquidator includes a reference to the chairman of the meeting (construed in accordance with Rule 7.5).”.

(a) Existing Part 2 of S.I. 1986/1915 was substituted by S.I. 2003/2111. Rule 2.41 was amended by S.I. 2006/734, S.I. 2008/662 and S.I. 2010/688.
(b) Section 129 (commencement of winding up by the court) of the 1986 Act which was amended by the Enterprise Act 2002 (c.40), Schedule 17, paragraph 16.
(c) Rule 2.41A was inserted by S.I. 2006/734.
(d) Rule 4.5 was amended by S.I. 1987/1921.
(e) Rule 4.15 was amended by S.I. 2003/2109.

8. For Rule 4.16 (application of the Bankruptcy Act)(a) substitute—

“False claims or evidence

4.16.—(1) If a creditor produces under Rule 4.15 a statement of claim, account, voucher or other evidence which is false—

- (a) the creditor shall be guilty of an offence unless the creditor shows that the creditor neither knew nor had reason to believe that the statement of claim, account, voucher or other evidence was false;
- (b) the company shall be guilty of an offence if the company—
 - (i) knew or became aware that the statement of claim, account, voucher or other evidence was false; and
 - (ii) failed as soon as practicable after acquiring such knowledge to report it to the liquidator.

(2) A person convicted of an offence under paragraph (1) shall be liable—

- (a) on summary conviction—
 - (i) to a fine not exceeding the statutory maximum;
 - (ii) to imprisonment for a term not exceeding three months or, if the person has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at such appropriation, to imprisonment for a term not exceeding six months; or
 - (iii) to both such a fine and such imprisonment; or
- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to both.

Evidence of Claims

4.16A.—(1) The liquidator, for the purpose of being satisfied as to the validity or amount of a claim submitted by a creditor under Rule 4.15, may require—

- (a) the creditor to produce further evidence; or
- (b) any other person who the liquidator believes can produce relevant evidence, to produce such evidence,

and, if the creditor or other person refuses or delays to do so, the liquidator may apply to the court for an order requiring the creditor or other person to attend for private examination before the court.

(2) Subject to paragraph (3), on an application to it under paragraph (1) above the court may make an order requiring the creditor or other person to attend for private examination before it on a date (being not earlier than 8 days nor later than 16 days after the date of the order) and at a time specified in the order.

(3) If a creditor or other person is for any good reason prevented from attending for examination, the court may grant a commission to take the examination (the commissioner being in this Rule as an “examining commissioner”).

(4) At any private examination under paragraph (2), a solicitor or counsel may act on behalf of the liquidator, or the liquidator may appear.

(5) The examination, whether before the court or an examining commissioner, shall be taken on oath.

(6) A person who fails without reasonable excuse to comply with an order made under paragraph (2) above shall be guilty of an offence and liable on summary conviction to a fine

(a) Rule 4.16 was amended by S.I. 1987/1921 and S.S.I. 2008/393.

not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.

(7) References in this Rule to a creditor in a case where the creditor is one of the following entities—

- (a) a trust;
- (b) a partnership (including a dissolved partnership);
- (c) a body corporate or an unincorporated body;
- (d) a limited partnership (including a dissolved partnership) within the meaning of the Limited Partnerships Act 1907(a),

shall be construed, unless the context otherwise requires, as references to a person representing the entity.

Adjudication of claims

4.16B.—(1) At the commencement of every meeting of creditors, the liquidator shall, for the purposes of Rule 4.15 so far as it relates to voting at that meeting, accept or reject the claim of each creditor.

(2) Where funds are available for payment of a dividend out of the company's assets in respect of an accounting period, the liquidator for the purpose of determining who is entitled to such a dividend shall—

- (a) not later than 4 weeks before the end of the period, accept or reject every claim submitted or deemed to have been re-submitted under Rule 4.15; and
- (b) at the same time make a decision on any matter requiring to be specified under paragraph (5)(a) or (b) below.

(3) On accepting or rejecting, under paragraph (2) above, every claim submitted or deemed to have been re-submitted, the liquidator shall, as soon as is reasonably practicable, send a list of every claim so accepted or rejected (including the amount of each claim and whether it has been accepted or rejected) to every creditor known to the liquidator.

(4) Where the liquidator rejects a claim, the liquidator shall without delay notify the creditor giving reasons for the rejection.

(5) Where the liquidator accepts or rejects a claim, the liquidator shall record in the sederunt book the decision on the claim specifying—

- (a) the amount of the claim accepted;
- (b) the category of debt, and the value of any security, as decided by the liquidator; and
- (c) if rejecting the claim, the reasons therefor.

(6) Any member or contributory of the company or any creditor may, if dissatisfied with the acceptance or rejection of any claim (or, in relation to such acceptance or rejection, with a decision in respect of any matter requiring to be specified under paragraph (5)(a) or (b) above), appeal therefrom to the court—

- (a) if the acceptance or rejection is under paragraph (1) above, within 2 weeks of that acceptance or rejection;
- (b) if the acceptance or rejection is under paragraph (2) above, not later than 2 weeks before the end of the accounting period,

and the liquidator shall record the court's decision in the sederunt book.

(7) Any reference in this Rule to the acceptance or rejection of a claim shall be construed as a reference to the acceptance or rejection of the claim in whole or in part.

(a) 1907 c.24.

Entitlement to vote and draw a dividend

4.16C.—(1) A creditor who has had that creditor’s claim accepted in whole or in part by the liquidator or on appeal under Rule 4.16B(6) shall be entitled—

- (a) in a case where the acceptance is under (or on appeal arising from) Rule 4.16B(1), to vote on any matter at the meeting of creditors for the purpose of voting at which the claim is accepted; and
- (b) in a case where the acceptance is under (or on appeal arising from) Rule 4.16B(2), to payment out of the company’s assets of a dividend in respect of the accounting period for the purposes of which the claim is accepted; but such entitlement to payment shall arise only in so far as the company has funds available to make that payment, having regard to Rule 4.66.

(2) No vote shall be cast by virtue of a debt more than once on any resolution put to a meeting of creditors.

(3) Where a creditor—

- (a) is entitled to vote under this Rule;
- (b) has lodged the creditor’s claim in one or more sets of other proceedings; and
- (c) votes (either in person or by proxy) on a resolution put to the meeting,

only the creditor’s vote shall be counted.

(4) Where—

- (a) a creditor has lodged the creditor’s claim in more than one set of other proceedings; and
- (b) more than one member State liquidator seeks to vote by virtue of that claim,

the entitlement to vote by virtue of that claim is exercisable by the member State liquidator in main proceedings, whether or not the creditor has lodged the claim in the main proceedings.

(5) For the purposes of paragraphs (3) and (4) above, “other proceedings” means main proceedings, secondary proceedings or territorial proceedings in a member State other than the United Kingdom.

Liabilities and rights of co-obligants

4.16D.—(1) Where a creditor has an obligant (the “co-obligant”) bound to the creditor along with the company for the whole or part of the debt, the co-obligant is not freed or discharged from liability for the debt by reason of the dissolution of the company or the creditor’s voting or drawing a dividend or assenting to or not opposing—

- (a) the dissolution of the company; or
- (b) any composition.

(2) Where—

- (a) a creditor has had a claim accepted in whole or in part; and
- (b) a co-obligant holds a security over any part of the company’s assets,

the co-obligant shall account to the liquidator so as to put the estate in the same position as if the co-obligant had paid the debt to the creditor and thereafter had had the co-obligant’s claim accepted in whole or in part in the liquidation after deduction of the value of the security.

(3) Without prejudice to any right under any rule of law of a co-obligant who has paid the debt, the co-obligant may require and obtain at the co-obligant’s own expense from the creditor an assignation of the debt on payment of the amount thereof, and thereafter may in respect of that debt submit a claim, and vote and draw a dividend, if otherwise legally entitled to do so.

(4) In this Rule a “co-obligant” includes a cautioner.

Amount which may be claimed generally

4.16E.—(1) Subject to the provisions of this Rule and Rules 4.16F and 4.16G, the amount in respect of which a creditor shall be entitled to claim shall be the accumulated sum of principal and any interest which is due on the debt as at the date of commencement of winding up.

(2) If a debt does not depend on a contingency but would not be payable but for the liquidation until after the date of commencement of winding up, the amount of the claim shall be calculated as if the debt were payable on the date of commencement of winding up but subject to the deduction of interest at the rate specified in paragraph (4) from that date until the date for payment of the debt.

(3) In calculating the amount of a creditor's claim, the creditor shall deduct any discount (other than any discount for payment in cash) which is allowable by contract or course of dealing between the creditor and the company or by the usage of trade.

(4) The rate of interest referred to in paragraph (2) shall be whichever is the greater of—

- (a) the prescribed rate at the date of commencement of winding up; and
- (b) the rate applicable to that debt apart from the liquidation.

(5) Subject to paragraph (6), in this Rule, "date of commencement of winding up" means the date on which the winding up is deemed to commence by virtue of section 129(a).

(6) Where the winding up was immediately preceded by an administration, the reference to the date of commencement of winding up in paragraph (1) and the second reference to that date in paragraph (2) shall be construed as references to the date on which the company entered administration.

Debts depending on contingency

4.16F.—(1) Subject to paragraph (2) below, the amount which a creditor shall be entitled to claim shall not include a debt in so far as its existence or amount depends upon a contingency.

(2) On an application by the creditor—

- (a) to the liquidator; or
- (b) if there is no liquidator, to the court,

the liquidator or court shall put a value on the debt in so far as it is contingent, and the amount in respect of which the creditor shall then be entitled to claim shall be that value but no more; and, where the contingent debt is an annuity, a cautioner may not then be sued for more than that value.

(3) Any interested person may appeal to the court against a valuation under sub-paragraph (2) above by the liquidator, and the court may affirm or vary that valuation.

Secured debts

4.16G.—(1) In calculating the amount of a secured creditor's claim—

- (a) the secured creditor is to deduct the value of any security as estimated by the secured creditor;
- (b) but if the secured creditor surrenders, or undertakes in writing to surrender, a security for the benefit of the company's assets, the secured creditor is not required to deduct the value of that security.

(2) The liquidator may, at any time after the expiry of 12 weeks from the date of commencement of winding up within the meaning of section 129, require a secured creditor

(a) Section 129 (commencement of winding up by the court) of the 1986 Act which was amended by the Enterprise Act 2002 (c.40), Schedule 17, paragraph 16.

at the expense of the company's assets to discharge the security or convey or assign it to the liquidator on payment to the creditor of the value specified by the creditor; and the amount in respect of which the creditor shall then be entitled to claim shall be any balance of the creditor's debt remaining after receipt of such payment.

(3) In calculating the amount of the claim of a creditor whose security has been realised the creditor shall deduct the amount (less the expenses of realisation) which the creditor has received, or is entitled to receive, from the realisation.”.

Functions of liquidator

9. Rule 4.22(5) (taking possession and realisation of the company's assets)(a) is omitted.

10.—(1) After Rule 4.22 insert—

“Realisation of the company's heritable property

4.22A.—(1) In the case of the sale of any part of the company's heritable property over which a heritable security is held by a creditor or creditors if the rights of the secured creditor or creditors are preferable to those of the liquidator—

- (a) the liquidator may sell that part only with the concurrence of every such creditor unless the liquidator obtains a sufficiently high price to discharge every such security;
- (b) subject to sub-paragraph (c) below, the following acts shall be precluded—
 - (i) the taking of steps by a creditor to enforce the creditor's security over that part after the liquidator has intimated to the creditor an intention to sell it;
 - (ii) the commencement by the liquidator of the procedure for the sale of that part after a creditor has intimated to the liquidator that the creditor intends to commence the procedure for its sale;
- (c) where the liquidator or a creditor has given intimation under paragraph (b) above, but has unduly delayed in proceeding with the sale, then, if authorised by the court in the case of intimation under—
 - (i) sub-paragraph (b)(i), any creditor to whom intimation has been given may enforce the creditor's security; or
 - (ii) sub-paragraph (b)(ii), the liquidator may sell that part.

(2) The validity of the title of any purchaser shall not be challengeable on the ground that there has been a failure to comply with a requirement of this Rule.”.

(2) For the title of paragraph 6 of Schedule 2 (application of Part 4 in relation to members' voluntary winding-up) substitute “**Rules 4.20 to 4.22A**”.

(a) Rule 4.22 was substituted by S.I. 1987/1921.

Block transfer order

11.—(1) After Rule 4.26 (removal of liquidator by court)(a) insert—

“Power to make a block transfer of cases

4.26A.—(1) This Rule applies where a person appointed as a liquidator (“the outgoing liquidator”)—

- (a) dies;
- (b) retires from practice; or
- (c) is otherwise unable or unwilling to continue in office,

and it is expedient to transfer some or all of the cases in which the outgoing liquidator holds office to one or more liquidators (“the replacement liquidator”) in a single transaction.

(2) In a case to which this Rule applies the Court of Session may make an order (“a block transfer order”) appointing a replacement liquidator in the place of the outgoing liquidator.

(3) The replacement liquidator must be qualified to act as an insolvency practitioner.

Application for block transfer order

4.26B.—(1) A single application may be made to the Court of Session for a block transfer order seeking—

- (a) the removal of the outgoing liquidator by the exercise of any of the powers in—
 - (i) section 172(2)(b) and Rule 4.26A(2); and
 - (ii) section 108(2)(c);
- (b) the appointment of a replacement liquidator by the exercise of any of the powers in—
 - (i) Rule 4.26A(2); and
 - (ii) section 108(2);
- (c) such other order or direction as may be necessary or expedient in connection with the matters referred to in sub-paragraphs (a) and (b).

(2) An application may be made by—

- (a) the outgoing liquidator;
- (b) any person who holds the office of liquidator jointly with the outgoing liquidator;
- (c) any person who is proposed to be appointed as the replacement liquidator; or
- (d) the recognised professional body by which the outgoing liquidator is or was authorised.

(3) The application must include—

- (a) evidence of the circumstances which gave rise to it being expedient to appoint a replacement liquidator;
- (b) a statement that the replacement liquidator is an insolvency practitioner duly qualified under the Act(d) to be a replacement liquidator and consents to act as replacement liquidator; and
- (c) the name of each case, the case number (if any) and, where relevant, the name of the sheriff court which has jurisdiction for each case.

(a) Rule 4.26 was amended by S.I. 1999/1820.

(b) Section 172 (removal, etc (winding up by the court)) of the 1986 Act.

(c) Section 108 (appointment or removal of liquidator by the court) of the 1986 Act.

(d) The 1986 Act.

- (4) The application must be served on—
 - (a) the outgoing liquidator (if not the applicant or deceased);
 - (b) every person who holds office jointly with the outgoing liquidator; and
 - (c) any person the Court of Session directs.

Action following application for a block transfer order

4.26C.—(1) In determining to what extent (if any) the costs of making an application under Rule 4.26B should be paid as an expense of the case to which the application relates, the Court of Session must take into account—

- (a) the reasons for making the application;
- (b) the number of cases to which the application relates;
- (c) the value of the assets comprised in those cases;
- (d) the nature and extent of costs involved.

(2) Where an appointment under Rule 4.26A(2) is made—

- (a) the replacement liquidator must—
 - (i) as soon as reasonably practicable give notice of the appointment to the Accountant in Bankruptcy;
 - (ii) within 28 days give notice of the appointment to the creditors and contributories, or if the court so permits, advertise the appointment in accordance with the directions of the court; and
 - (iii) give notice to such other persons, and in such form, as the Court of Session may direct; and
- (b) Rule 4.26(5)(c) does not apply.

(3) In any notice given by the replacement liquidator under this Rule the replacement liquidator must state—

- (a) that the outgoing liquidator has been removed; and
- (b) whether the outgoing liquidator has been released.”.

(2) After paragraph 7 of Schedule 2 (application of Part 4 in relation to members’ voluntary winding-up) insert—

“Rules 4.26A to 4.26C

7A. These Rules shall apply.”.

Outlays and remuneration of liquidator

12. For Rule 4.32 (determination of amount of outlays and remuneration) substitute—

“Determination of amount of outlays and remuneration

4.32.—(1) Subject to the provision of Rules 4.33 to 4.35, claims by the liquidator for the outlays reasonably incurred and for the liquidator’s remuneration shall be made in accordance with this Rule.

(2) Within 14 days after the end of an accounting period, the liquidator shall in respect of that period submit to the liquidation committee or, if there is no liquidation committee, to the court—

- (a) accounts of the liquidator’s 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 the liquidator and for the liquidator's remuneration.

(3) Where the documents mentioned in paragraph (2) are submitted to the liquidation committee, the liquidator shall send a copy of them to the court.

(4) The liquidator may, at any time before the end of the accounting period, submit to the liquidation committee (if any) an interim claim in respect of that period for the outlays reasonably incurred by the liquidator and for the liquidator's remuneration and the liquidation committee may make an interim determination in relation to the amount of the outlays and remuneration payable to the liquidator and, where they do so, they shall take into account that interim determination when making their determination under paragraph (7)(a)(ii).

(5) Subject to paragraph (6) below, all accounts in respect of legal services incurred by the liquidator shall, before payment thereof, be submitted for taxation to the auditor of the court before which the liquidation is pending.

(6) Where—

- (a) any such account has been agreed between the liquidator and the person entitled to payment in respect of that account (in this paragraph referred to as "the payee");
- (b) the liquidator is not an associate of the payee; and
- (c) the liquidation committee or, if there is no liquidation committee, the court, have determined that the account need not be submitted for taxation,

the liquidator may pay such account without submitting it for taxation.

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

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

(8) The basis of remuneration must be fixed—

- (a) as a percentage of the value of the company's assets which are realised by the liquidator;
- (b) by reference to the work which was reasonably undertaken by the liquidator and the liquidator's staff in attending to matters arising in the winding up; or
- (c) as a set amount.

(9) The basis of remuneration may be fixed as any one or more of the bases set out in paragraph (8)(a) to (c), and different bases may be fixed in respect of different things done by the liquidator.

(10) In fixing the amount of such remuneration in respect of any accounting period, the liquidation committee or, as the case may be, the court may take into account any adjustment which the liquidation committee or the court may wish to make in the amount of the remuneration fixed in respect of any earlier accounting period.

(11) Not later than 14 days after the issue of the determination, the liquidator, any creditor or contributory may appeal against a determination issued under paragraph (4) or (7)(a)(ii) above, where it is a determination of the liquidation committee, to the court.

(12) An appeal may only be made against a determination issued under paragraph (7)(a) by a creditor or a contributory if notice is given to the liquidator of intention to appeal."

The liquidation committee

13. In Rule 4.42 (formalities of establishment)(a)—

- (a) in paragraphs (2) and (3), for “forthwith” substitute “without delay”; and
- (b) in paragraph (3), for “any representative under section 375 of the Companies Act” substitute “, in the case of a corporation, by its duly authorised representative”.

14. In Rule 4.45(2) (meetings of the committee), for “3 months” substitute “6 weeks”.

15. In Rule 4.48(2) (committee members’ representatives)(b) for “authorisation under section 375 of the Companies Act” substitute “authorisation given by a corporation”.

16. For Rule 4.50 (termination of membership)(c), substitute—

“Termination of membership

4.50.—(1) A person’s membership of the liquidation committee is automatically terminated if—

- (a) that person’s estate is sequestrated or the person becomes bankrupt or is made subject to a debt relief order (under Part 7A of the Act(d)) or grants a trust deed for the benefit of or makes a composition with creditors;
- (b) at 3 consecutive meetings of the committee the person is neither present nor represented (unless at the third of those meetings it is resolved that this Rule is not to apply in the case of the person); or
- (c) the person is deceased.

(2) The membership of a creditor member who ceases to be, or is found never to have been, a creditor is also automatically terminated.

(3) The membership of a body corporate member or partnership member of the liquidation committee is also automatically terminated if the body corporate or partnership is dissolved.”.

Composition of committee when creditors paid in full

17. For Rule 4.59 (composition of committee when creditors paid in full)(e)—

“Composition of committee when creditors paid in full

4.59.—(1) Where the creditors have been paid in full together with interest in accordance with section 189(f), the liquidator must, without delay—

- (a) issue a certificate to that effect by sending a copy to each member of the liquidation committee; and
- (b) send a notice to that effect, together with a copy of the certificate to the Accountant in Bankruptcy.

(2) On the issue of a certificate the creditor members of the liquidation committee cease to be members of the committee.

(3) The committee continues to exist unless—

- (a) it is abolished by a decision of a meeting of contributories; or

(a) Rule 4.42 was amended by S.I. 1987/1921 and S.I. 1999/1820.

(b) Rule 4.48 was amended by S.I. 1987/1921 and S.I. 2012/2404.

(c) Rule 4.50 was amended by S.I. 2012/2404.

(d) Part 7A of the 1986 Act, inserted by the Tribunals, Courts and Enforcement Act 2007 (c.15), Schedule 17, paragraph 1.

(e) Rule 4.59 was amended by S.I. 1999/1820.

(f) Section 189 (interest on debts) of the 1986 Act.

- (b) the number of members is less than 3 and 28 days have elapsed since the issue of the liquidator’s certificate.
- (4) At any time in the period referred to in paragraph (3)(b) where the committee consists of less than 3 contributory members it is suspended and cannot act.
- (5) The certificate issued under paragraph (1)(a) must—
 - (a) identify the liquidator;
 - (b) contain a statement by the liquidator certifying that the creditors of the company have been paid in full with interest in accordance with section 189; and
 - (c) be authenticated and dated by the liquidator.”.

Distribution of company’s assets by liquidator

18. For Rule 4.68 (application of the Bankruptcy Act)(a) substitute—

“Estate to be distributed in respect of the accounting periods

4.68.—(1) The liquidator shall make up accounts of the liquidator’s intromissions with the company’s assets in respect of each accounting period.

(2) In this Rule “accounting period” shall be construed as follows—

- (a) the first accounting period shall be the period of 6 months beginning with the date of commencement of winding up within the meaning of section 129(b); and
- (b) any subsequent accounting period shall be the period of 6 months beginning with the end of the last accounting period; except that—
 - (i) where the liquidator and the liquidation committee agree; or
 - (ii) where there is no liquidation committee, the court determines,

that the accounting period shall be such other period beginning with the end of the last accounting period as may be agreed or, as the case may be determined, it shall be that other period.

(3) An agreement or determination under paragraph (2)(b)(i) or (ii) above—

- (a) may be made in respect of one or more than one accounting period;
- (b) may be made before the beginning of the accounting period in relation to which it has effect and, in any event, shall not have effect unless made before the day on which such accounting period would, but for the agreement or determination, have ended;
- (c) may provide for different accounting periods to be of different durations,

and shall be recorded in the sederunt book by the liquidator.

(4) Subject to the following provisions of this Rule, the liquidator shall, if the funds of the company’s assets are sufficient and after making allowance for future contingencies, pay under Rule 4.68A(1) a dividend out of the company’s assets to the creditors in respect of each accounting period.

(5) The liquidator may pay—

- (a) the expenses of the winding up mentioned in Rule 4.67(1)(a), other than the liquidator’s own remuneration, at any time;

(a) Rule 4.68 was amended by S.I. 2003/2109.
 (b) Section 129 (commencement of winding up by the court) of the 1986 Act which was amended by the Enterprise Act 2002 (c.40), Schedule 17, paragraph 16.

- (b) the preferential debts within the meaning of section 386(a) at any time but only with the consent of the liquidation committee or, if there is no liquidation committee, of the court.

(6) If the liquidator—

- (a) is not ready to pay a dividend in respect of an accounting period; or
- (b) considers it would be inappropriate to pay such a dividend because the expense of doing so would be disproportionate to the amount of the dividend,

the liquidator may postpone such payment to a date not later than the time for payment of a dividend in respect of the next accounting period.

(7) Where an appeal is taken under Rule 4.16B against the acceptance or rejection of a creditor's claim, the liquidator shall, at the time of payment of dividends and until the appeal is determined, set aside an amount which would be sufficient, if the determination in the appeal were to provide for the claim being accepted in full, to pay a dividend in respect of that claim.

(8) Where a creditor—

- (a) has failed to produce evidence in support of a claim earlier than 8 weeks before the end of an accounting period on being required by the liquidator to do so under Rule 4.16A(1); and
- (b) has given a reason for such failure which is acceptable to the liquidator,

the liquidator shall set aside, for such time as is reasonable to enable the creditor to produce that evidence or any other evidence that will enable the liquidator to be satisfied under Rule 4.16A(1), an amount which would be sufficient, if the claim were accepted in full, to pay a dividend in respect of that claim.

(9) Where a creditor submits a claim to the liquidator later than 8 weeks before the end of an accounting period but more than 8 weeks before the end of a subsequent accounting period in respect of which, after making allowance for contingencies, funds are available for the payment of a dividend, the liquidator shall, if accepting the claim in whole or in part, pay to the creditor—

- (a) the same dividend or dividends as has or have already been paid to creditors of the same class in respect of any accounting period or periods; and
- (b) whatever dividend may be payable to that creditor in respect of the said subsequent accounting period:

Provided that paragraph (a) above shall be without prejudice to any dividend which has already been paid.

(10) In the declaration of and payment of a dividend, no payments shall be made more than once by virtue of the same debt.

(11) Subject to any notification by the person entitled to a dividend given to the liquidator that the person wishes the dividend to be paid to another person, or has assigned that entitlement to another person, where both a creditor and a member State liquidator have had a claim accepted in relation to the same debt, payment shall only be made to the creditor.

Payment of dividends

4.68A.—(1) On the expiry of the period within which an appeal may be taken under Rule 4.32(11) or, if an appeal is so taken, on the final determination of the last such appeal, the liquidator shall pay to the creditors their dividends in accordance with the scheme of division.

(a) Section 386 (categories of preferential debts) of the 1986 Act which was amended by the Pensions Scheme Act 1993 (c.48), Schedule 8, paragraph 18 and the Enterprise Act 2002 (c.40), section 251(3).

- (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 Rule 4.68(7) or (8),

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

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

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

Unclaimed dividends

4.68B.—(1) Any person, producing evidence of that person's right, may apply to the court to receive a dividend deposited under section 193(2)(a), if the application is made not later than seven years after the date of such deposit.

(2) If the court is satisfied of the applicant's right to the dividend, it shall authorise the appropriate bank or institution to pay to the applicant the amount of that dividend and of any interest which has accrued thereon.

(3) The liquidator shall, at the expiry of 7 years from the date of deposit of any unclaimed dividend or unapplied balance under section 193(2), hand over the deposit receipt or other voucher relating to such dividend or balance to the Secretary of State, who shall thereupon be entitled to payment of the amount due, principal and interest, from the bank or institution in which the deposit was made.”.

Limitation

19. In Rule 4.76 (limitation), for “modifications specified in Rule 4.16(2)” substitute “substitution of “petition for winding up” for references to “petition for sequestration””.

EC Regulation – member State liquidator

20. In Rule 4.83 (interpretation of creditor and notice to member State liquidator)(b)—

- (a) in paragraph (3)(a)—
 - (i) after “4.15 (submission of claims),” insert “4.16A (evidence of claims), 4.16B (adjudication of claims),”; and
 - (ii) after “4.62(1) (membership of committee),” insert “4.68(4) (estate to be distributed in respect of the accounting periods),”; and
- (b) omit paragraph (3)(b) and the “and” preceding that sub-paragraph.

Meetings

21. In Rule 7.9 (entitlement to vote (creditors))(c)—

- (a) in paragraph (4) omit “, or in any provision of the Bankruptcy Act as applied by Rule 4.16(1),”; and

(a) Section 193 (unclaimed dividends (Scotland)) of the 1986 Act which was amended by S.I. 2009/1941.

(b) Rule 4.83 was inserted by S.I. 2003/2109.

(c) Rule 7.9 was amended by S.I. 2003/211 and S.I. 2010/688.

- (b) in paragraph (5), for “Schedule 1 to the Bankruptcy Act, paragraph 5(2) and (3)” substitute “Rules 4.16E to 4.16G, Rule 4.16G(2) and (3)”.

Power of court to cure defects in procedure

22. For Rule 7.32 (power of court to cure defects in procedure) substitute—

“Power of court to cure defects in procedure

7.32.—(1) The court may, on the application of any person having an interest—

- (a) if there has been a failure to comply with any requirement of the Act or the Rules, make an order waiving any such failure and, so far as practicable, restoring any person prejudiced by the failure to the position that person would have been in but for the failure;
- (b) if for any reason anything required or authorised to be done in, or in connection with, the insolvency proceedings cannot be done, make such order as may be necessary to enable that thing to be done.

(2) The court, in an order under paragraph (1) above, may impose such conditions, including conditions as to expenses, as the court thinks fit and may—

- (a) authorise or dispense with the performance of any act in the insolvency proceedings;
- (b) appoint as responsible insolvency practitioner on the company’s estate a person who would be eligible to act as a responsible insolvency practitioner, whether or not in place of an existing insolvency practitioner;
- (c) extend or waive any time limit specified in or under the Act or the Rules.

(3) An application under paragraph (1) above which is made to the sheriff—

- (a) may at any time be remitted by the sheriff to the Court of Session;
- (b) shall be so remitted if the Court of Session so directs on an application by any such person,

if the sheriff or the Court of Session, as the case may be, considers that the remit is desirable because of the importance or complexity of the matters raised by the application.

(4) The responsible insolvency practitioner shall record in the sederunt book the decision of the sheriff or the Court of Session under this Rule.”.

Creditors’ voluntary winding up

23. In Schedule 1 (modifications of part 4 in relation to creditor’s voluntary winding up)—

- (a) for paragraph 10 substitute—

“**10.** In Rules 4.16E and 4.16G, for the references to section 129(a), there shall be substituted a reference to section 86(b).”;

- (b) for the title of that paragraph substitute “**Rules 4.16E and 4.16G**”; and

- (c) after paragraph 29 insert—

“Rule 4.68

29A. In Rule 4.68, for the reference to section 129, there shall be substituted a reference to section 86.”.

(a) Section 129 (commencement of winding up by the court) of the 1986 Act which was amended by the Enterprise Act 2002 (c.40), Schedule 17, paragraph 16.

(b) Section 86 (commencement of winding up) of the 1986 Act.

Limited Disclosure of statement of affairs

24.—(1) At the beginning of Rule 3.2(3) (Notice requiring statement of affairs), insert “Subject to Rule 3.2A,”.

(2) After Rule 3.2, insert—

“Limited disclosure of the statement of affairs

3.2A.—(1) Where the receiver thinks it would prejudice the conduct of the receivership or might reasonably be expected to lead to violence against any person for the whole or part of the statement of affairs to be disclosed, the receiver may apply to the court for an order of limited disclosure in respect of the statement, or a specified part of it.

(2) The court may order that the statement or, as the case may be, the specified part of it shall not be entered in the sederunt book.

(3) The receiver shall as soon as reasonably practicable place a copy of the order in the sederunt book.

(4) A creditor who seeks disclosure of the statement of affairs or a specified part of it in relation to which an order has been made under this Rule may apply to the court for an order that the receiver disclose that statement or specified part.

(5) The court may attach to an order for disclosure any conditions as to confidentiality, duration and scope of the order in any material change of circumstances, and other matters as it sees fit.

(6) If there is a material change in circumstances rendering the limit on disclosure unnecessary, the receiver shall, as soon as reasonably practicable after the change, apply to the court for the order to be discharged or varied; and upon the discharge or variation of the order the receiver shall, as soon as reasonably practicable place a copy of the full statement of affairs (or so much of the statement as is no longer subject to the order) in the sederunt book.”.

25.—(1) In Rule 4.7(2) (notice requiring statement of affairs), after “Chapter”, insert “(except for Rule 4.8A)”.

(2) At the beginning of Rule 4.8(2) (form of the statement of affairs), insert “Subject to Rule 4.8A,”.

(3) After Rule 4.8, insert—

“Limited disclosure of the statement of affairs

4.8A.—(1) Where the liquidator thinks that it would prejudice the conduct of the winding up or might reasonably be expected to lead to violence against any person for the whole or part of the statement of affairs to be disclosed, the liquidator may apply to the court for an order of limited disclosure in respect of the statement, or any specified part of it.

(2) The court may order that the statement or, as the case may be, the specified part of it shall not be entered in the sederunt book.

(3) The liquidator shall as soon as reasonably practicable place a copy of the order in the sederunt book.

(4) A creditor who seeks disclosure of a statement or specified part of it in relation to which an order has been made under this Rule may apply to the court for an order that the liquidator disclose that statement or specified part.

(5) The court may attach to an order for disclosure any conditions as to confidentiality, duration and scope of the order in any material change of circumstances, and other matters as it sees fit.

(6) If there is a material change in circumstances rendering the limit on disclosure unnecessary, the liquidator shall, as soon as reasonably practicable after the change, apply to the court for the order to be discharged or varied; and upon the discharge or variation of

the order the liquidator shall, as soon as reasonably practicable place a copy of the full statement of affairs (or so much of the statement as is no longer subject to the order) in the sederunt book.”.

- (4) In Schedule 1 (modifications of Part 4 in relation to creditors’ voluntary winding-up)(a)—
- (a) at the beginning of Rule 4.7(4) as substituted by paragraph 4, insert “Subject to Rule 4.8A.”; and
 - (b) after paragraph 4 insert—

“Rule 4.8A

4A. After paragraph (6) there shall be inserted the following—

“(7) This Rule does not apply so far as section 95, 98 or 99 does not permit limited disclosure.”.”.

Electronic submission and delivery

26.—(1) After Rule 3.9(b), insert—

“Electronic measures - application

3.9A.—(1) Subject to paragraph (2), this Rule and Rules 3.9B and 3.9C apply where a notice or other document is required to be given, delivered or sent under this Part or Part III of the Act(c).

(2) This Rule and Rules 3.9B and 3.9C do not apply to—

- (a) lodging any application or other document with the court;
- (b) service of any application, or other document lodged with the court;
- (c) service of any order of the court; or
- (d) submission of documents to the registrar of companies.

Electronic delivery

3.9B.—(1) Unless in any particular case some other form of delivery is required by the Act or the Rules or an order of the court, a notice or other document may be given, delivered or sent by electronic means provided that the intended recipient of the notice or other document has—

- (a) consented (whether in the specific case or generally) to electronic delivery (and has not revoked that consent); and
- (b) provided an electronic address for delivery.

(2) In the absence of evidence to the contrary, a notice or other document is presumed to have been delivered where—

- (a) the sender can produce a copy of the electronic message which—
 - (i) contained the notice or other document, or to which the notice or other document was attached; and
 - (ii) shows the time and date the message was sent; and
- (b) that electronic message contains the address supplied under paragraph (1)(b).

(3) A message sent electronically is deemed to have been delivered to the recipient no later than 9.00am on the next business day after it was sent.

(a) Paragraph 4 of Schedule 1 was amended by S.I. 1987/1921.
(b) Rule 3.9 was amended by S.I. 1999/1820.
(c) The 1986 Act.

Electronic delivery by receivers etc.

3.9C.—(1) Where an office-holder gives, sends or delivers a notice or other document to any person by electronic means, the notice or document must contain or be accompanied by a statement that the recipient may request a hard copy of the notice or document and specifying a telephone number, e-mail address and postal address which may be used to request a hard copy.

(2) Where a hard copy of the notice or other document is requested, it must be sent within 5 business days of receipt of the request by the office-holder.

(3) An office-holder must not require a person making a request under paragraph (2) to pay a fee for the supply of the document.”.

(2) Before Rule 4.76, insert—

“Electronic measures - application

4.75A.—(1) Subject to paragraph (2), this Rule and Rules 4.75B and 4.75C apply where a notice or other document is required to be given, delivered or sent under this Part or Parts IV or V of the Act(a) or Part VI of the Act so far as it applies where a company goes into liquidation.

(2) This Rule and Rules 4.75B and 4.75C do not apply to—

- (a) lodging any application, or other document with the court;
- (b) service of any application, or other document lodged with the court;
- (c) service of any order of the court;
- (d) submission of documents to the registrar of companies;
- (e) service of a statutory demand;
- (f) a notice or other document to be given, delivered or sent to or by a provisional liquidator appointed under section 135(b); or
- (g) a notice or other document to be given, delivered or sent under section 233(c).

(3) For the purposes of paragraph (1) a company goes into liquidation if it passes a resolution for voluntary winding up or a winding-up order is made by the court at a time when it has not already gone into liquidation by passing such a resolution.

(4) The reference to a resolution for voluntary winding up in paragraph (3) includes a reference to a resolution which is deemed to occur by virtue of—

- (a) paragraph 83(6)(b) of Schedule B1 to the Act(d); or
- (b) an order made following conversion of administration or a voluntary arrangement into winding up by virtue of Article 37 of the EC Regulation(e).

(a) The 1986 Act.
(b) Section 135 (appointment and powers of provisional liquidator) of the 1986 Act.
(c) Section 233 (supplies of gas, water, electricity, etc) of the 1986 Act which was amended by the Water Act 1989 (c.15), section 190 and Schedule 25, paragraph 78, the Gas Act 1995 (c.45), Schedule 4, paragraph 14 and Schedule 6, paragraph 1, the Utilities Act 2000 (c.27), Schedule 6, Part III, paragraph 47 and Schedule 8, paragraph 1, the Insolvency Act 2000 (c.39), Schedule 1, paragraph 8, the Enterprise Act 2002 (c.40), Schedule 17, paragraph 22, the Communications Act 2003 (c.21), Schedule 17, paragraph 82 and S.I. 2004/1822.
(d) Paragraph 83(6)(b) of Schedule B1 (administration) to the 1986 Act which was inserted by the Enterprise Act 2002 (c.40), section 248(2).
(e) Council Regulation (EC) No. 1346/2000 of 29th May 2000 on insolvency proceedings (OJ L 160, 30.6.2000, p.19).

Electronic delivery

4.75B.—(1) Unless in any particular case some other form of delivery is required by the Act or the Rules or an order of the court, a notice or other document may be given, delivered or sent by electronic means provided that the intended recipient of the notice or other document has—

- (a) consented (whether in the specific case or generally) to electronic delivery (and has not revoked that consent); and
- (b) provided an electronic address for delivery.

(2) In the absence of evidence to the contrary, a notice or other document is presumed to have been delivered where—

- (a) the sender can produce a copy of the electronic message which—
 - (i) contained the notice or other document, or to which the notice or other document was attached; and
 - (ii) shows the time and date the message was sent; and
- (b) that electronic message contains the address supplied under paragraph (1)(b).

(3) A message sent electronically is deemed to have been delivered to the recipient no later than 9.00am on the next business day after it was sent.

Electronic delivery by liquidators etc.

4.75C.—(1) Where an office-holder gives, sends or delivers a notice or other document to any person by electronic means, the notice or document must contain or be accompanied by a statement that the recipient may request a hard copy of the notice or document and specifying a telephone number, e-mail address and postal address which may be used to request a hard copy.

(2) Where a hard copy of the notice or other document is requested, it must be sent within 5 business days of receipt of the request by the office-holder.

(3) An office-holder must not require a person making a request under paragraph (2) to pay a fee for the supply of the document.”.

(3) In Rule 0.2(3) and (4) (interpretation)(a) for “and 2, or any other Rule applied by those parts” substitute “to 6, or any other Rule applied by any of those parts”.

(4) In Rule 7.21(1A) (giving of notices, etc.)(b) for “and 2” substitute “to 6”.

(5) In Rules 7.30A(1) (electronic submission instead of forms to Secretary of State, office-holders and of copies to the registrar of companies)(c) and 7.30B(1) (electronic submission instead of forms in all other cases)(d) for “Part 1 or 2” substitute “Parts 1 to 6”.

(6) After Rule 7.30B insert—

“Electronic submission: exceptions

7.30C.—(1) Rule 7.30A does not apply to a form to be sent—

- (a) under section 204(6)(e) and Rule 4.77 or section 205(6)(f) and Rule 4.77; or
- (b) to or by a provisional liquidator appointed under section 135(g).

(a) Paragraphs (3) and (4) of rule 0.2 were inserted by S.I. 2010/688.

(b) Rule 7.21 was amended by S.I. 1987/1921 and S.I. 2010/688.

(c) Rule 7.30A was inserted by S.I. 2010/688.

(d) Rule 7.30B was inserted by S.I. 2010/688.

(e) Section 204 (early dissolution (Scotland)) of the 1986 Act.

(f) Section 205 (dissolution otherwise than under ss 202-204) of the 1986 Act.

(g) Section 135 (appointment and powers of provisional liquidator) of the 1986 Act.

(2) Rule 7.30B does not apply—

- (a) to a Form to be sent under Rule 4.80;
- (b) to a form to be sent to or by a provisional liquidator appointed under section 135; or
- (c) in respect of a statutory demand.”.

(7) After paragraph 32 of Schedule 1 (modifications of Part 4 in relation to creditors’ winding up) insert—

“Rule 4.75A

32A. After Rule 4.75A(2)(d) there shall be inserted the following—

“(da) a notice or other document to be given, delivered or sent under section 84(2A) or (2B)(b);”.”.

(8) After paragraph 14 of Schedule 2 (application of Part 4 in relation to members’ voluntary winding up) insert—

“Rules 4.75A to 4.75C

15. These Rules shall apply subject to the modification that after Rule 4.75A(2)(d) there shall be inserted the following—

“(da) a notice or other document to be given, delivered or sent under section 84(2A) or (2B)(b);”.”.

Content of notices in Edinburgh Gazette or otherwise advertised

27.—(1) In Rule 7.21A (contents of notices in Parts 1 and 2 to be published in the Edinburgh Gazette)**(a)**—

(a) in paragraph (1) for “Where under Parts I and II of the Act or Parts 1 and 2” substitute “Subject to paragraph (1A), where under Parts I to IV of the Act**(b)** or Parts 1, 2, 4, 5 and 6”; and

(b) after paragraph (1) insert—

“(1A) This rule does not apply to a notice to be published or advertised under—

- (a) section 59(2)**(c)**;
- (b) Rule 4.2(2); or
- (c) Rule 4.80(2)(b).”.

(2) In the heading to Rule 7.21A omit “in Parts 1 and 2”.

(3) In Rule 7.21B (notices otherwise advertised under the Act or Rules)**(d)**—

(a) in paragraph (1) for “Where under Parts I and II of the Act or Parts 1 and 2” substitute “Subject to paragraph (1A), where under Parts I to IV of the Act or Parts 1, 2, 4, 5 and 6”; and

(b) after paragraph (1) insert—

“(1A) This rule does not apply to a notice to be advertised under—

- (a) section 59(2); or
- (b) Rule 4.2(2).”.

(a) Rule 7.21A was inserted by S.I. 2010/688.

(b) Parts I (company voluntary arrangements), II (administration), III (receivership) and IV (winding up of companies registered under the Companies Acts) of the 1986 Act.

(c) Section 59(2) (priority of debts) of the 1986 Act.

(d) Rule 7.21B was inserted by S.I. 2010/688.

Amendments to forms

28. For—

- (a) Form 4.9 (Scot) (notice of appointment of liquidator)(a); and
- (b) Form 4.24 (Scot) (notice of certificate that creditors have been paid in full),

set out in Schedule 5 (forms) substitute Form 4.9 (Scot) and Form 4.24 (Scot) set out in the Schedule to these Rules.

Saving

29.—(1) Notwithstanding Rule 2, the 1986 Rules continue to have effect on and after 30th May 2014 as if the amendments made by Rules 3 to 28 had not been made where this Rule applies as provided for in any of paragraphs (2) to (5).

(2) This Rule applies where, in a receivership, a receiver is appointed in respect of a company under section 51 of the Act(b) before 30th May 2014.

(3) This Rule applies where a company goes into liquidation upon a resolution for voluntary winding up passed before 30th May 2014.

(4) This Rule applies where—

- (a) there is an application for the appointment of a provisional liquidator under section 135 of the Act; or
- (b) a company goes into liquidation on the making of a winding-up order,

on a winding-up petition presented before 30th May 2014.

(5) This Rule applies where—

- (a) there is an application for the appointment of a provisional liquidator under section 135 of the Act; or
- (b) a company goes into liquidation on the making of a winding-up order,

on a winding-up petition presented on or after 30th May 2014 if at the time the winding-up petition is presented the company is in liquidation upon a resolution for voluntary winding up passed before 30th May 2014.

(6) In this Rule—

“resolution for voluntary winding” up includes a resolution which is deemed to occur by virtue of—

- (a) paragraph 83(6)(b) of Schedule B1 (administration) to the Act; or
- (b) an order made following conversion of administration or a voluntary arrangement into winding up by virtue of Article 37 of the EC Regulation(c); and

“winding-up petition” includes an administration application under paragraph 12 of Schedule B1 to the Act which the court treats as a winding-up petition under paragraph 13(1)(e) of that Schedule.

FERGUS EWING

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
29th April 2014

(a) Form 4.9 (Scot) was substituted by S.S.I. 1987/1921.

(b) Section 51 was amended by the Enterprise Act 2002 (c.40), Schedule 17, paragraph 13, the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 3 and S.S.I. 2011/140.

(c) Council Regulation (EC) No. 1346/2000 of 29th May 2000 on insolvency proceedings (OJ L 160, 30.6.2000, p.19).

SCHEDULE Forms

Rule 28

Rule 4.2, 4.18, 4.19, 4.26C, 4.27
(Scot)

The Insolvency Act 1986 Form 4.9

Notice of Appointment of Liquidator

R 4.19

Pursuant to Rules 4.2, 4.18, 4.19, 4.26C and 4.27 of the Insolvency (Scotland) Rules 1986

For Official Use

| | | |
|--|--|--|
| | | |
|--|--|--|

(a) Delete except where the liquidator is appointed by a meeting of creditors or contributories
(b) Insert name of Company

To the Accountant in Bankruptcy

Company number

| |
|--|
| |
|--|

(a) To the Court

Name of Company

| |
|-----|
| (b) |
|-----|

(c) Insert full name(s) and address(es)

I/We (c)

(d) Insert date

give notice that on (d) _____ I/We *was/were appointed liquidator(s)/ provisional liquidator of

(b) _____

*Delete whichever does not apply

by *an order of the court dated (d) _____

(e) Leave in and complete only where liquidator is appointed to succeed a former liquidator

or *a resolution of a meeting of the *creditors/contributories on

(d) _____

(f) Insert name and address of former liquidator

(e) *I/We *was/were appointed to succeed as liquidator

(f) _____

who *was removed/resigned from office as liquidator on

(d) _____

and who *has/has not been released.

(g) Delete or complete in accordance with Rule 4.18(5)

(g) A liquidation committee was established by a meeting of Creditors/contributories on (d) _____.

(h) Delete if (g) applies

(h) I *intend/do not intend to summon a meeting of *creditors only/creditors and contributories for the purpose of establishing a liquidation committee

Date _____

Signed _____

(by each liquidator if more than one)

Name in BLOCK LETTERS _____

Presentor's name address and reference (if any)

| | |
|---|-----------|
| For Official Use Liquidation Section | Post Room |
|---|-----------|

Notice of Certificate that Creditors Have Been Paid in Full

R 4.59

Pursuant to Rule 4.59(1) of the Insolvency (Scotland) Rules 1986

For Official Use

| | | |
|--|--|--|
| | | |
|--|--|--|

To the Accountant in Bankruptcy

Company number

| |
|--|
| |
|--|

(a) Insert name of company

Name of Company

| |
|-----|
| (a) |
|-----|

(b) Insert full name(s) and address(es)

I/We (b)

the liquidator(s) of the above-named company attach a copy of my/our certificate that the creditors of the above-named company have been paid in full with interest.

Signed _____ Date _____

Presenter's name address and reference (if any)

| | |
|---|------------------|
| <p>For Official Use Liquidation Section</p> | <p>Post Room</p> |
|---|------------------|

EXPLANATORY NOTE

(This note is not part of the Rules)

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

The Rules restate provision in the Insolvency Rules in relation to receivership and the process of liquidation to remove the application of provisions of the Bankruptcy (Scotland) Act 1985. They also restate other Rules in relation to liquidation and administration for that purpose.

Insofar as the Rules restate the law on reserved matters by virtue of paragraph 7 of Schedule 4 to the Scotland Act 1998 (c.46) the law as restated remains reserved law.

The Rules also update and amend the Insolvency Rules in relation to receivership and the process of liquidation by new provision in relation to—

- block transfer orders for removal and appointment of liquidators (Rule 11)
- the remuneration of the liquidator (Rule 12)
- the liquidation committee (Rules 13 to 17)
- limited disclosure of statement of affairs in receivership (Rules 24 and 25)
- electronic submission and delivery of forms, notices and other documents (Rule 26)
- standard content of notices in Edinburgh Gazette or otherwise advertised (Rule 27)

Rule 26 on electronic submission and delivery of documents makes provision in relation to receivership and the process of liquidation equivalent to that made for company voluntary arrangements and administration by the Insolvency (Scotland) Amendment Rules 2010 (S.I. 2010/688). See also the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18) and the Explanatory Document published to accompany a draft of that Order (available here:

<http://www.legislation.gov.uk/ukdsi/2009/9780111479391/memorandum/contents>). The provision for electronic submission and delivery in these Rules is subject to contrary provision in the Insolvency Act 1986, for example, sections 95(2) and 98(1) (sending of notices by post) and section 436B(2) (provisions of the 1986 Act to which section 436B(1) does not apply).

Rule 28 provides for the forms 4.9 (Scot) and 4.24 (Scot) in the Schedule to these Rules to be substituted for those forms as set out in Schedule 5 to the Insolvency Rules.

Subject to Rule 29 (saving), the Rules apply from 30th May 2014.

A Business and Regulatory Impact Assessment has been prepared for these Regulations. Copies can be obtained from the Accountant in Bankruptcy’s website: <http://www.aib.gov.uk>.

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