

Final  
Business and Regulatory Impact Assessment

**Title of Proposal**

Insolvency (Scotland) Amendment Rules 2014 (“the Amendment Rules”)

**Purpose and intended effect**

**Background**

The Accountant in Bankruptcy (AiB) has been developing its vision of a Financial Health Service over the last 2 years. We are currently amending the Insolvency (Scotland) Rules 1986 (“the Rules”). The Rules have been in existence since 1986. They are in need of modernisation and improvement to provide a set of rules which is easy to apply and is fit for a modern business world. Changes have been made in recent years to the English and Welsh insolvency rules with a view to modernising them. These changes had an impact upon reserved areas of corporate insolvency in Scotland, broadly speaking company voluntary arrangements and administration. Accordingly the Rules have been partly modernised, although modernisation is lacking within the areas of liquidation and receivership. In addition when the Rules were created, several of the rules had a read-across to sections of the Bankruptcy (Scotland) Act 1985 which has traditionally made reading the Rules more difficult and time consuming than may have been necessary. We undertook a project to review the Rules and make proposals for amendment and modernisation. Throughout this project we consulted with various experts from within the sector including IP’s, Solicitors and regulatory body members.

**Objective**

The intention of the project is to make the Rules more accessible and easier to apply, as well as modernising the Rules to create legislation which is fit for purpose in a modern business environment. The modernisation proposals which were made were largely in accordance with changes, which have already taken effect, to the Insolvency Rules 1986 in England and Wales

The proposed amendments to the Rules are intended to achieve the following:

- Create a set of stand-alone rules for corporate insolvency by largely removing references to the Bankruptcy (Scotland) Act 1985;
- Extend electronic submission of information to liquidation and receivership;
- Introduce block transfer of cases where the liquidator is unable or unwilling to continue in office;
- Introduce standard content for notices across all insolvency procedures.

**Rationale for Government intervention**

We hope to have the Amendment Rules laid in Parliament by 1<sup>st</sup> May 2014, coming into force on 30<sup>th</sup> May 2014. The changes include the following:

- Disentangling corporate insolvency and personal insolvency by largely removing references to the Bankruptcy (Scotland) Act 1985 from the Rules.

This change will create a clear and self-contained set of procedural rules for corporate insolvency.

- Introduce standard content for notices across all procedures to create uniformity.

The proposed change will introduce standard content for notices required to be advertised in receivership and liquidation in Scotland, so far as it is within the legislative competence of the Scottish Parliament to do, ensuring that all notices required to be advertised in the Edinburgh Gazette or otherwise shall contain the necessary information. This requirement already exists for reserved areas and is being extended into receivership and liquidation. The requirement will not displace additional requirements on content contained in the Act or elsewhere in the Rules.

- Introduce electronic submission of information to apply in devolved areas, namely parts 3, 4, 5 and 6 of the Rules.

The Rules already contain provision on electronic submission of information in the reserved areas of company voluntary arrangements and administration. We are introducing provision on electronic communication and electronic submission in the devolved areas of receivership and liquidation. Consent will be required from the recipient before electronic submission may be used. The change will make the process of sending forms, notices and other documents cheaper and more efficient.

- Block transfer of cases where a liquidator is unable to continue in office.

We are seeking to simplify the process relating to the transfer of cases in circumstances where a liquidator dies, retires from practice or is unable to continue in office. The change will allow a single application to be made to the Court of Session in respect of all cases. The current process can be time consuming and costly and accordingly this amendment seeks to simplify the process and reduce costs.

If agreed, the Amendment Rules will also contribute towards the Scottish Governments purpose, specifically the four objectives described below:

**Business** - A culture of entrepreneurship, leadership, creativity and international ambition;

**Inequalities** - We have tackled the significant inequalities in Scottish society;

**Employment opportunities** - Realising our full economic potential with more and better employment opportunities for our people;

**Communities** - We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.

## **Consultation**

### **Within Government**

Wide consultation and discussion with colleagues in the Scottish Government has taken place throughout the development of the Amendment Rules. Comments have been sought on the Rules themselves and the potential impact of the Amendment Rules on their relevant areas of government business. We liaised with colleagues in the Finance Directorate throughout the development of the Amendment Rules regarding the financial impact of the provisions. We consulted with the Scottish Civil Justice Council in relation to amendments required to the Scottish Court Rules as a result of the changes we are making.

### **Public Consultation**

We undertook a project to review the Rules and make proposals for amendment and modernisation. Throughout this project we consulted with various experts from within the sector including IP's, Solicitors and regulatory body members. A Corporate Insolvency Working Group (CIWG) was set up featuring representatives for various businesses and representative bodies, further details on the CIWG's discussions are detailed in the business section below.

### **Business**

The CIWG was formed to allow representatives from various business, including insolvency practitioners who are most directly affected by the changes in legislation. The CIWG met 5 times between November 2012 and November 2013 to allow business the chance to feed into the development of the legislation. The provisions within the Amendment Rules are largely a result of the CIWG's discussions.

During the final meeting the CIWG were presented with a near completed draft of the Amendment Rules to allow members an opportunity to comment whilst still enabling us to consider any feedback. At this meeting the draft Amendment Rules achieved support.

In addition to officials from the Accountant in Bankrupt, the CIWG contained 10 members comprised of insolvency professionals, including representatives from the Law Society of Scotland and ICAS. A full list of member of the CIWG is included in Annex A of this document.

## **Options**

### **Option 1 – No change**

**Sectors and groups affected:** Individuals, creditors and the broader Scottish economy.

**Benefits** – Status quo maintained.

**Cost** – There would be no costs requiring additional spending incurred by the

Scottish Government as a result of these changes.

## Option 2 - The Amendment Rules

**Sectors and groups affected** – Creditors, Insolvency Practitioners and the broader Scottish economy.

**Benefits** – The changes involved in the disentangling element of the Amendment Rules make no change in the law or effect and therefore it is not possible to quantify the benefits of this aspect, although these changes are necessary before the further future amendments made with our counterparts in the UK Government can take place.

In the Amendment Rules, however, we are introducing 3 provisions which will simplify and streamline processes followed by Insolvency Practitioners. These 3 provisions are:

- Extend electronic submission of information to liquidation and receivership;
- Introduce block transfer of cases where the liquidator is unable or unwilling to continue in office;
- Introduce standard content for notices across all insolvency procedures.

Of these 3 provisions, both the electronic submission of information and block transfers will produce significant quantifiable savings to insolvency practitioners in terms of time and cost. We envisage these time and cost savings will ensure the best possible return to creditors a proportion of which are small and medium enterprises. This will in turn benefit the wider Scottish economy as a whole.

### Electronic Submission

A breakdown of estimated time and costs saved by the introduction of the electronic submission of information is outlined in Table A below.

**Table A\***

Insolvency Procedure	Estimated Number of cases per annum	Creditors / Members per case	Number of times written to	Total number of Communications	Estimated cost per communication £	Total Estimated Costs £	% consenting	Total Net Savings £
Receiver	20	35	5	3,500	3	10,500	50	5,250
CWU	450	25	6	67,500	1	67,500	50	33,750
CVL	350	35	6	73,500	3	220,500	50	110,250
MVL	300	60	5	90,000	4	360,000	60	216,000
<b>Total</b>	<b>1,120</b>					<b>658,500</b>		<b>365,250</b>

### Block Transfer of cases

While it is not possible to quantify the number of occasions that a liquidator will require to transfer appointments to a replacement liquidator, the information in table B overleaf is based upon an approximation of the number of appointments that a

liquidator may hold at any one time and the costs involved in replacing the liquidator on a case by case basis rather than in one application to the Court of Session.

The costs are estimates based upon discussions with office holders and in some cases the savings may be significantly higher.

**Table B\***

Insolvency Procedure	Estimated Number of cases	Cost of meeting of creditors to receive resignation (per appointment) £	Total Estimated Costs £	Estimated Cost of a single application to Court of Session £	Total Net Savings £	Total Net saving per case £
CWU	50	300	15,000	N/A	N/A	N/A
CVL	30	306	9,180	N/A	N/A	N/A
MVL	10	321	3,210	N/A	N/A	N/A
<b>Total</b>	<b>90</b>		<b>27,390</b>	<b>3,000</b>	<b>24,390</b>	<b>271</b>

### Standard Content

The standardisation of notices will not produce any quantifiable benefits as we are simply formalising existing practices.

\*The figures in tables A and B relate to the estimated amount of cases that will be received in Scotland per annum as a whole. The figures are estimated on the basis of existing insolvency process numbers in Scotland. The savings are based on the current estimated cost and the potential savings that could be made by the changes being proposed.

#### Abbreviations:

- Receiver - Receivership
- CWU - Court Winding Up
- CVL - Creditors' Voluntary Liquidation
- MVL - Members' Voluntary Liquidation

**Costs** – There would be no costs requiring additional spending incurred by the Scottish Government as a result of these changes.

## **Scottish Firms Impact Test**

Through the CIWG we had frequent and detailed face to face engagement with businesses, as described in the business consultation section on page 2 of this document. We posed a number of wide ranging open questions to generate discussion which shaped the proposal within the Amendment Rules.

Within these meetings discussion related to the Rules. The group were asked for suggestions of what could be done to improve and modernise the Rules. These discussions took place over a period of several months at 5 different meetings. The result of the meetings were that the group agreed that the following changes should be implemented:

- Disentangle the Bankruptcy (Scotland) Act 1985 from the Rules;
- Extend electronic submission of information and electronic communication to receivership and liquidation;
- Extend limited disclosure of information into receivership and liquidation;
- Introduce a rule to allow block transfer of cases where the liquidator is no longer willing or able to act, via a single application to the court of session;
- Extend standard content of notices to liquidation and receivership for notices to be published in the Edinburgh Gazette or otherwise.

A full list of members of the CIWG is included in Annex A of this document.

## **Competition Assessment**

Having considered the Office of Fair Trading competition filter questions –i.e. does the proposal limit suppliers either directly or indirectly and reduce ability and/or incentives to compete? - I can confirm that these changes will apply equally to all who engage with the Amendment Rules. There should be no competitive advantage to any particular individual or group as a consequence of the introduction of the Amendment Rules.

We applied the competition filter and the answers were as follows:

- This proposal will not directly limit the number or range of suppliers.
- This proposal will not indirectly limit the number or range of suppliers.
- This proposal will not limit the ability of suppliers to compete.
- This proposal will not reduce suppliers' incentives to compete vigorously.

Therefore, no full competition assessment was necessary.

## **Test run of business forms**

No new statutory forms will be introduced as a result of the Amendment Rules.

## **Legal Aid Impact Test**

The introduction of the Amendment Rules will have no impact on the legal aid fund. The Scottish Legal Aid Board has confirmed this assessment.

**Enforcement, sanctions and monitoring**

The Scottish Government will review the Amendment Rules following their first year of operation in order to assess how successful they have been in meeting their policy objective. AiB will also provide and encourage feedback with stakeholders. Where appropriate the new legislation sets out the process for enforcement or sanctions as a result of non-compliance.

**Implementation and delivery plan**

The Accountant in Bankruptcy will, where appropriate, prepare and publish guidance to support stakeholders when implementing the new legislation. The Amendment Rules are expected to be laid on 1<sup>st</sup> May 2014 and coming into force on 30<sup>th</sup> May 2014.

**Post-implementation review**

To evaluate the impact of the new legislation the Scottish Government has given an undertaking that AiB will carry out a review after the first year of operation. This will involve the analysis of statistical data collated by AiB.

The Scottish Government will review the findings of this research and consider whether any changes are necessary to the legislation or associated guidance in light of its findings.

**Summary and recommendation**

Option	Costs	Benefits
1 - No change	There would be no costs requiring additional spending incurred by the Scottish Government as a result of these changes.	Status quo maintained
2 -	There would be no costs requiring additional spending incurred by the Scottish Government as a result of these changes.	As well as disentangling existing legislation, provision within the Amendment Rules will simplify and streamline processes followed by Insolvency Practitioners. As a result we envisage these time and costs savings will ensure the best possible return to creditors a proportion of

which are small and medium enterprises. This will in turn benefit the wider Scottish economy as a whole.

Option 2 is recommended. The Scottish Government believes the provisions contained within the Amendment Rules will:

- Create a set of stand-alone rules for corporate insolvency by largely removing the references to the Bankruptcy (Scotland) Act 1985
- Extend electronic submission of information to liquidation and receivership
- Introduce block transfer of cases where the liquidator is unable or unwilling to continue in office

**Summary costs and benefits table**

<b>Option</b>	<b>Total benefit per annum: - economic, environmental, social</b>	<b>Total cost per annum: - economic, environmental, social - policy and administrative</b>
<b>1</b>	No Change	No Change
<b>2</b>	As well as disentangling existing legislation, provision within the Amendment Rules will simplify and streamline processes followed by Insolvency Practitioners. As a result we envisage these time and costs savings will ensure the best possible return to creditors a proportion of which are small and medium enterprises. This will in turn benefit the wider Scottish economy as a whole.	No costs are expected to be incurred as a result of these changes in legislation.



**Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:****Date:****Fergus Ewing MSP,  
Minister for Energy, Enterprise and Tourism****Scottish Government Contact point:**

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**Annex A – List of Corporate Insolvency Working Group Members**

The following members of the group attended meetings to discuss the proposed changes to the Rules and the content of the Amendment Rules:

Scott Milne - WRI Associates  
Robert Barclay - PKF  
Sian Aitken - Dundas and Wilson representing ICAS  
Steven Wright - BDO  
Tony Friar -KPMG  
Maureen Leslie - MLM Solutions - representing IPA

The following members of the group did not attend the meetings however were included in detailed correspondence regarding the amendments to the Rules:

Rachel Grant - Brodies  
Roy Roxburgh - Maclay Murray & Spens LLP  
Louise Docherty - Law Society of Scotland  
Ann Condick - ICAS