
STATUTORY INSTRUMENTS

2006 No. 734 (S. 6)

INSOLVENCY, SCOTLAND
COMPANIES

The Insolvency (Scotland) Amendment Rules 2006

<i>Made</i>	- - - -	<i>13th March 2006</i>
<i>Laid before Parliament</i>		<i>14th March 2006</i>
<i>Coming into force</i>	- -	<i>6th April 2006</i>

The Secretary of State makes the following Rules in exercise of the powers conferred by section 411 of the Insolvency Act 1986(1):

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(2) 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.

(1) 1986 c. 45 as amended by the Enterprise Act 2002 (c. 40). Section 411 was amended by the Insolvency Act 1986 (Amendment) Regulations 2002 (S.I. 2002/1037).
(2) S.I. 1986/1915: amended by S.I. 1987/1921, 1999/1820, 2002/2709, 2003/2108, 2003/2109 and 2003/2111.

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.”.

13th March 2006

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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Rule 4

PART 1

Rule 2.9

The Insolvency Act 1986

Form 2.4B(Scot)

Notice of intention to appoint an administrator by holder of qualifying floating charge

Pursuant to paragraph 44(2) of Schedule B1 to the Insolvency Act 1986 and Rule 2.9 of the Insolvency (Scotland) Rules 1986

Name of Company	Company number
-----------------	----------------

(a) Name and address of holder of qualifying floating charge

1. (a) _____
_____ (“the appointor”)

(b) Give name(s) and address(es) of proposed administrator(s)

gives notice that it is the appointor’s intention to appoint
(b) _____ as administrator(s) of

(c) Insert name and address of registered office of company

(c) _____ (“the company”)

in accordance with paragraph 14 of Schedule B1 to the Insolvency Act 1986.

2. The amount of the company’s share capital paid up or credited as paid up is £ _____

3. The appointor is the holder of the following qualifying floating charge which is now enforceable:

(d) Give details of charge relied on, date registered and financial limit (if any)

(d) _____

4. This notice has been given to the following person(s), who is/are each understood to be holder(s) of a qualifying floating charge(s) in respect of the company’s property, the said charges being prior floating charges in accordance with paragraph 15(2) of Schedule B1 to the Insolvency Act 1986:

(e) Insert name(s) and address(es) of holder(s) of qualifying floating charge(s) and details of charge held

(e) _____

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*Delete as applicable
(f) Give details of any current or outstanding insolvency proceedings

5. The company *is/is not on the date of this notice subject to insolvency proceedings.
(f) _____

Form 2.4B(Scot) continued

*Delete as applicable

6. The company *is/is not *an insurance undertaking/a credit institution/an investment undertaking providing services involving the holding of funds or securities for third parties/or a collective investment undertaking under Article 1.2 of the EC Regulation.

(g) State whether main, secondary or territorial proceedings

7. For the following reasons it is considered that the EC Regulation *will/will not apply. If it does, these proceedings will be (g) _____ proceedings as defined in Article 3 of the Regulation:

(h) Insert full name of court

8. This notice is to be lodged in (h) _____

Any enquiries should be addressed not to the court but to the appointor at the address stated in this form.

Signed _____
(If signing on behalf of appointor indicate capacity (e.g. director/solicitor))

Dated _____

Consent of Floating Charge Holder to Appointment of Administrator
(Do not detach this part of the form)

If, having read this notice, you have no objection to the making of this appointment you can indicate your consent either by completing the details in the box below and returning a copy of this notice as soon as possible, and within two business days from receipt of this notice, or by sending details of your consent in writing, in accordance with Rule 2.10(5), to the appointor at the following address:

(i) Appointor to insert address
(i) _____

If your consent has not been given within two business days the appointor may make the appointment notwithstanding that you have not notified your consent to the appointment.

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Form 2.4B(Scot) continued

(j) Insert name and address

(j) _____

(k) Give details of charge, date registered and financial limit (if any)

being the holder of the following floating charge over the company's property:
(k) _____

consents to the appointment of the administrator(s) in accordance with the details of this notice.

Signed _____
(If signing on behalf of a firm or company state position or office held)

Dated _____

(l) Insert date and time

Endorsement to be completed by the court

This notice was lodged on (l) _____

Notice of appointment of an administrator by holder of qualifying floating charge

Pursuant to paragraphs 14 and 18 of Schedule B1 to the Insolvency Act 1986 and Rule 2.10 of the Insolvency (Scotland) Rules 1986

Name of Company	Company number
-----------------	----------------

(a) Name and address of holder of qualifying floating charge

1. (a) _____
_____ (“the appointor”)

(b) Give name(s) and address(es) of administrator(s)

gives notice that (b) _____

(c) Insert name and address of registered office of company

is/are hereby appointed as administrator(s) of (c) _____ (“the company”)

(d) Give details of charge relied on, date registered and financial limit (if any)

2. The amount of the company’s share capital paid up or credited as paid up is £ _____
3. The statement(s) of the proposed administrator(s) is/are attached.
4. The appointor is the holder of the following qualifying floating charge:

(d) _____

†Delete if not applicable

5. The above charge is enforceable at the date of this appointment.
6. † [The appointor has given at least two business days’ written notice to the holder of any prior qualifying floating charge(s), and a copy of that notice, *(which was lodged in _____ (court) on _____ (date)) is attached.]

†Delete if not applicable

OR
‡ [all the holders of any prior qualifying floating charges have consented in writing to the making of this appointment and copies of the written consents are attached.]

†Delete if not applicable

OR
‡ [there are no prior qualifying floating charges.]

*Delete as applicable

7. The company *is/is not, at the date of this notice, the subject of insolvency proceedings:

(e) Give details of any current or outstanding insolvency proceedings

e) _____

*Delete as applicable

8. The company *is/is not *an insurance undertaking/a credit institution/an investment undertaking providing services involving the holding of funds or securities for third parties/a collective investment undertaking under Article 1.2 of the EC Regulation.

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Form 2.5B(Scot) continued

*Delete as applicable

(f) State whether main, secondary or territorial proceedings

9. For the following reasons it is considered that the EC Regulation*will/will not apply. If it does, these proceedings will be (f) _____ proceedings as defined in Article 3 of the Regulation: _____

10. The appointment is in accordance with Schedule B1 to the Insolvency Act 1986

11. Where there are joint administrators, a statement for the purposes of paragraph 100(2) of Schedule B1 to the Insolvency Act 1986 is attached.

(g) Insert name and address of court in which notice to be lodged

12. This notice and accompanying documents are to be lodged in (g) _____

to which any application for orders in relation to the administration should be made. Any enquiries in connection with this notice should be addressed not to the court but to the administrator at the address stated in this form.

(h) Insert name and address

13. I(h) _____

(If making the declaration on behalf of appointor indicate capacity e.g. director/solicitor)

do solemnly and sincerely declare that the information provided in this notice is, to the best of my knowledge and belief, true'

AND I making this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared at _____

Signed _____

This _____ day of _____ 20

before me _____

A Notary Public or Justice of the Peace or Solicitor

Endorsement to be completed by the court

(i) Insert date and time

This notice and the attached documents were lodged on (i) _____

Rule 2.12

The Insolvency Act 1986

Form 2.6B(Scot)

Notice of appointment of an administrator by holder of qualifying floating charge

Pursuant to paragraphs 14 and 18 of Schedule B1 to the Insolvency Act 1986 and Rule 2.12 of the Insolvency (Scotland) Rules 1986

Name of Company	Company number
-----------------	----------------

(a) Name and address of holder of qualifying floating charge

1. (a) _____ (“the appointor”)

(b) Give name(s) and address(es) of administrator(s)

gives notice that (b) _____

(c) Insert name and address of registered office of company

is/are hereby appointments as administrator(s) of (c) _____ (“the company”)

*Delete as applicable

(i) *I/we consent to act as administrator; (ii) *I/we am/are of the opinion that the purpose of administration is reasonably likely to be achieved; (iii) *I/we have/have not had any prior professional relationship with the company *and I/we have provided a summary of any prior professional relationship(s) with the company to the appointor; and (iv) *I/we certify that “I/we am/are authorised under the provisions of Part XIII of the Insolvency Act 1986 to act as *an insolvency practitioner/insolvency practitioners.

(I.P. No(s): _____
 _____ Signed by administrator(s)

2. The amount of the company’s share capital paid up or credited as paid up is £ _____

3. The appointor is the holder of the following qualifying floating charge :

(d) Give details of charge relied on, date registered and financial limit (if any)

(d) _____

4. The above charge is enforceable at the date of this appointment.

†Delete if not applicable

5. †[The appointor has given at least two business days’ written notice to the holder of any prior qualifying floating charge(s), and a copy of that notice, *(which was lodged in _____ (court) on _____ (date)) is in the appointor’s possession.]

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Form 2.6B(Scot) continued

OR

†Delete if not applicable

†[all the holders of any prior qualifying floating charges have consented in writing to the making of this appointment, copies of which are in the appointor's possession.]

OR

†Delete if not applicable

†[there are no prior qualifying floating charges].

*Delete as applicable

6. The company *is/is not, at the date of this notice, the subject of insolvency proceedings:

(e) Give details of any current or outstanding insolvency proceedings

(e) _____

*Delete as applicable

7. The company *is/is not *an insurance undertaking/a credit institution/an investment undertaking providing services involving the holding of funds or securities for third parties/a collective investment undertaking under Article 1.2 of the EC Regulation.

(f) Insert whether main, secondary or territorial proceedings

8. For the following reasons it is considered that the EC Regulation*will/will not apply. If it does, these proceedings will be (f) _____ proceedings as defined in Article 3 of the Regulation: _____

9. The appointment is in accordance with Schedule B1 to the Insolvency Act 1986

10. Where there are joint administrators, a statement for the purposes of paragraph 100(2) of Schedule B1 to the Insolvency Act 1986 is in the possession of the appointor.

(g) Insert name and address of court in which notice to be lodged

11. This notice and accompanying documents are to be lodged in (g) _____

to which any application for orders in relation to the administration should be made. Any enquiries in connection with this notice should be addressed not to the court but to the administrator at the address stated in this form.

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Form 2.6B(Scot) continued

(h) Insert full name and address of person making declaration **12. I(h)** _____

(If making the declaration on behalf of appointor indicate capacity e.g. director/solicitor)

do solemnly and sincerely declare that the information provided in this notice is, to the best of my knowledge and belief, true, and that the appointor has in his possession all documents and information needed to support his appointment,

AND I making this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared at _____

Signed _____

This _____ day of _____ 20

before me _____

A Notary Public or Justice of the Peace or Solicitor

Endorsement to be completed by the court

(i) Insert date and time shown on fax transmission report

The fax transmission report indicates that this notice was lodged in court at

(i) _____

(j) Insert date form delivered to court

This notice with supporting documents was delivered to the court on

(j) _____

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Rule 2.13

The Insolvency Act 1986

Form 2.7B(Scot)

Notice of appointment of an administrator by holder of qualifying floating charge

Pursuant to paragraph 26 of Schedule B1 to the Insolvency Act 1986 and Rule 2.13 of the Insolvency (Scotland) Rules 1986

Name of Company	Company number
-----------------	----------------

(a) Insert name and address of registered office of company

1. Notice is given that, in respect of (a) _____ (“the company”)

*Delete as applicable

*the company/the directors of the company (“the appointor”) intend to appoint

(b) Give name(s) and address(es) of proposed administrator(s)

(b) _____
as administrator(s) of the company.

2. The amount of the company’s share capital paid up or credited as paid up is £ _____

3. This notice is being given to the following person(s), being person(s) who is/are or may be entitled to appoint an administrative receiver of the company or an administrator of the company under paragraph 14 of Schedule B1 to the Insolvency Act 1986:

(c) Insert name and address of each person to whom notice is given

(c) _____

4. The company has not, within the last twelve months–

- (i) been in administration;
- (ii) been the subject of a moratorium under Schedule A1 to the Insolvency Act 1986 which has ended on a date when no voluntary arrangement was in force; or
- (iii) been the subject of a voluntary arrangement which was made during a moratorium for the company under Schedule A1 to the Insolvency Act 1986 and which ended prematurely within the meaning of section 7B of the Insolvency Act 1986.

5. In relation to the company there is no–

- (i) petition for winding up which has been presented but not yet disposed of;
- (ii) administration application which has not yet been disposed of; or
- (iii) administrative receiver in office,

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 2.7B(Scot) continued

*Delete as applicable

6. The company *is/is not *an insurance undertaking/a credit institution/an investment undertaking providing services involving the holding of funds or securities for third parties/a collective investment undertaking under Article 1.2 of the EC Regulation.

(d) Insert whether main, secondary or territorial proceedings

7. For the following reasons it is considered that the EC Regulation*will/will not apply. If it does, these proceedings will be (d) _____ proceedings as defined in Article 3 of the Regulation: _____

8. Attached to this notice is *a copy of the resolution of the company to appoint an administrator/a record of the decision of the directors to appoint an administrator.

(e) Insert full name of court

9. This notice is to be lodged in (e) _____

Any enquiries should be addressed not to the court but to the appointor at the address stated in this form.

(f) Insert name and address of person making declaration

10. I(f) _____

(If making the declaration on behalf of appointor indicate capacity e.g. director/solicitor)

hereby do solemnly and sincerely declare that:

- (i) the company is or is likely to become unable to pay its debts;
- (ii) the company is not in liquidation; and
- (iii) the statements in paragraphs 4 and 5 are, so far as I am able to ascertain, true,

and that the information provided in this notice is to the best of my knowledge and belief true,

AND I making this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared at _____

Signed _____

This _____ day of _____ 20

before me _____

Note: this form now to be sent to all those required to be sent the forms by Rule 2.13(2)

A Notary Public or Justice of the Peace or Solicitor

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 2.7B(Scot) continued

Consent of Floating Charge Holder to Appointment of Administrator

(Do not detach this part of the form)

If, having read this notice, you have no objection to the making of this appointment you should complete the details in the box below and return a copy of this notice as soon as possible, and within five business days from receipt of this notice, to the appointor at the following address:

(g) Appointor to insert address

(g) _____

If your consent has not been given within five business days the appointor may make the appointment notwithstanding that you have not notified your consent to the appointment.

(h) Insert name and address

(h) _____

being the holder of the following floating charge over the company's property:

(i) Give details of charge, date registered and financial limit (if any)

(i) _____

consents to the appointment of the administrator(s) in accordance with the details of this notice.

Signed _____
(If signing on behalf of a firm or company state position or office held)

Dated _____

Endorsement to be completed by the court

(j) Insert date and time

This notice was lodged on (j) _____

Rule 2.16

The Insolvency Act 1986

Form 2.8B(Scot)

Notice of appointment of an administrator by company or director(s)

(Where a notice of intention to appoint has been issued)

Pursuant to paragraphs 22 and 29 of Schedule B1 to the Insolvency Act 1986 and Rule 2.16 of the Insolvency (Scotland) Rules 1986

Name of Company	Company number
-----------------	----------------

(a) Name and address of holder of registered office of the company

1. Notice is given that, in respect of (a) _____
_____ (“the company”)

*Delete as applicable

*the company/directors of the company (“the appointor”) hereby appoints

(b) Give name(s) and address(es) of administrator(s)

(b) _____

as administrator(s) of the company.

*Delete as applicable

2. The amount of the company’s share capital paid up or credited as paid up is £ _____

3. The statement(s) of the proposed administrator(s) *is/are attached.

4. The appointor is entitled to make an appointment under paragraph 22 of Schedule B1 to the Insolvency Act 1986.

5. The appointment is in accordance with Schedule B1 to the Insolvency Act 1986.

*Delete as applicable

6. The company *is/is not *an insurance undertaking/a credit institution/an investment undertaking providing services involving the holding of funds or securities for third parties/a collective investment undertaking under Article 1.2 of the EC Regulation.

(c) State whether main, secondary or territorial proceedings

7. For the following reasons it is considered that the EC Regulation*will/will not apply. If it does, these proceedings will be (c) _____ proceedings as defined in Article 3 of the Regulation: _____

8. Where there are joint administrators, a statement for the purposes of paragraph 100(2) of Schedule B1 to the Insolvency Act 1986 is attached.

9. The appointor has given at least five business days’ written notice of the intention to appoint in accordance with paragraph 26(1) of Schedule B1 to the Insolvency Act 1986 and a copy of that notice was lodged in _____ (court) on

(d) Insert date

(d) _____

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Form 2.8B(Scot) continued

(e) Insert name and address of person making declaration

10. I(e) _____

(If making the declaration on behalf of appointor indicate capacity e.g. director/solicitor)

do solemnly and sincerely declare that—

- (i) the information provided in this notice; and
- (ii) the statement made and information given in the notice of intention to appoint,

are, and remain, to the best of my knowledge and belief, true,

AND I making this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared at _____

Signed _____

This _____ day of _____ 20

before me _____

A Notary Public or Justice of the Peace or Solicitor

(f) Insert date and time

Endorsement to be completed by the court
This notice was lodged on (f) _____

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Rule 2.16

The Insolvency Act 1986

Form 2.9B(Scot)

Notice of appointment of an administrator by company or director(s)

(Where a notice of intention to appoint has not been issued)

Pursuant to paragraphs 22 and 29 of Schedule B1 to the Insolvency Act 1986 and Rule 2.16 of the Insolvency (Scotland) Rules 1986

Name of Company	Company number
-----------------	----------------

(a) Insert name and address of registered office of company

1. Notice is given that, in respect of (a) _____ ("the company")

*Delete as applicable

*the company/the directors of the company ("the appointor") hereby appoints

(b) Give name(s) and address(es) of administrator(s)

(b) _____

as administrator(s) of the company.

2. The amount of the company's share capital paid up or credited as paid up is £ _____

3. The statement(s) of the proposed administrator(s) *is/are attached.

4. The appointor is entitled to make an appointment under paragraph 22 of Schedule B1 to the Insolvency Act 1986.

5. This appointment is in accordance with Schedule B1 to the Insolvency Act 1986.

6. The company has not, within the last twelve months—

- (i) been in administration;
- (ii) been the subject of a moratorium under Schedule A1 to the Insolvency Act 1986 which has ended on a date when no voluntary arrangement was in force; or
- (iii) been the subject of a voluntary arrangement which was made during a moratorium for the company under Schedule A1 to the Insolvency Act 1986 and which ended prematurely within the meaning of section 7B of the Insolvency Act 1986.

7. In relation to the company there is no—

- (i) petition for winding up which has been presented but not yet disposed of;
- (ii) administration application which has not yet been disposed of; or
- (iii) administrative receiver in office.

*Delete as applicable

8. The company *is/is not *an insurance undertaking/a credit institution/an investment undertaking providing services involving the holding of funds or securities for third parties/or a collective investment undertaking under Article 1.2 of the EC Regulation.

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Form 2.9B(Scot) continued

*Delete as applicable
(c) State whether main, secondary or territorial proceedings

9. For the following reasons it is considered that the EC Regulation*will/will not apply. If it does, these proceedings will be (c) _____

_____ proceedings as defined in

Article 3 of the Regulation: _____

*Delete as applicable

10. Attached to this notice is *a copy of the resolution of the company to appoint an administrator/a record of the decision of the directors to appoint an administrator.

11. Where there are joint administrators, a statement for the purposes of paragraph 100(2) of Schedule B1 to the Insolvency Act 1986 is attached.

(d) Insert name and address of court in which notice is to be lodged

12. This notice and accompanying documents are to be lodged in (d) _____

to which any application for orders in relation to the administration should be made. Any enquiries in connection with this notice should be addressed not to the court but to the administrator at the address stated in this form.

(e) Insert name and address of person making declaration

13. I(e) _____

(If making the declaration on behalf of appointor indicate capacity e.g. director/solicitor)

hereby do solemnly and sincerely declare that:

- (i) the company is or is likely to become unable to pay its debts;
- (ii) the company is not in liquidation; and
- (iii) the statements in paragraphs 6 and 7 are, so far as I am able to ascertain, true,

and do solemnly and sincerely declare that the information provided in this notice is, to the best of my knowledge and belief, true,

AND I making this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared at _____

Signed _____

This _____ day of _____ 20

before me _____

A Notary Public or Justice of the Peace or Solicitor

Endorsement to be completed by the court

(f) Insert date and time

This notice was lodged on (f) _____

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Rule 2.19

The Insolvency Act 1986

Form 2.10B(Scot)

Notification of appointment of administrator (for newspaper or Edinburgh Gazette)

Pursuant to paragraph 46(2)(b) of Schedule B1 to the Insolvency Act 1986 and Rule 2.19 of the Insolvency (Scotland) Rules 1986

Name of Company	Company number
-----------------	----------------

Nature of business _____

Registered office of company _____

(a) Insert date

*Delete as applicable

Appointment of administrator made on (a) _____ 20

by *order of/*notice of appointment lodged in (b) _____

(b) Insert full name of court

Name(s) and address(es) of administrator(s) _____

Administrator/Joint administrator (IP No(s) _____)

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Rule 2.20

The Insolvency Act 1986

Form 2.12B(Scot)

Notice requiring submission of a statement of affairs

Pursuant to paragraph 47(1) of Schedule B1 to the Insolvency Act 1986 and Rule 2.20 of the Insolvency (Scotland) Rules 1986

Name of Company	Company number
-----------------	----------------

(a) Insert full name of each person required to submit statement

The Administrator requires a statement of affairs to be prepared and submitted by

(a) _____

(b) Insert full name of company

as to the affairs of (b) _____ ("the company")

(c) Insert full name and address of each person sent this notice

A notice requiring submission of a statement of affairs has been sent to each of the following persons (c) _____

(d) Insert name of administrator

The statement of affairs must be submitted within 11 days of receipt of this notice to

(d) _____ ("the administrator")

at (e) _____

(e) Insert full address

Signed _____
Joint/Administrator(s)

Dated _____

WARNING

It is an offence under paragraph 48(4) of Schedule B1 to the Insolvency Act 1986 if you fail without reasonable excuse to comply with this requirement.

(f) Delete words in brackets if not applicable

Section 235 of the Insolvency Act 1986 places a duty on you (f) (as an officer of the company) to provide the administrator with information and attend upon him if required. I have to warn you that failure to submit the statement of affairs as required by this notice, or to co-operate with the administrator under section 235 of the Insolvency Act 1986, may make you liable to a fine and, for continued contravention, to a daily default fine.

Under paragraph 10 of Schedule 1 to the Company Directors Disqualification Act 1986 failure to submit a statement of affairs or to co-operate with the administrator under section 235 of the Insolvency Act 1986 are matters which may be taken into account by the court in determining whether a person is unfit to be an officer of or to be involved in the management of a company. Unfit conduct may result in a disqualification under the Company Directors Disqualification Act 1986.

Note: Forms for the preparation of the statement of affairs are enclosed. Under Rule 2.24 expenses incurred in making the statement of affairs which the administrator considers to be reasonable can be claimed out of the company's assets

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PART 2

STATEMENT as to the affairs of the Company on the _____

Please do not write in this margin

Please complete legibly, preferably in black type, or bold block lettering

		Estimated Realisable Values £
ASSETS		
Assets not specifically secured (as per List "A") _____		
Assets specifically secured (as per List "B")	£	
Estimated realisable value		
Less: Amount due to secured creditors		
Estimated Surplus _____		
Estimated Total Assets available for preferential creditors, holders of floating charges and unsecured creditors _____		
LIABILITIES		
Preferential creditors (as per List "C") _____		
Estimated balance of assets available for holders of floating charges and unsecured creditors _____		
Estimated prescribed part of net property where applicable (to carry forward) _____		
Holders of floating charges (as per List "D") _____		
Estimated surplus/deficiency as regards holders of floating charges _____		
Estimated prescribed part of net property where applicable (brought down) _____		
Unsecured Creditors		£
Trade accounts (as per List "E") _____		
Bills payable (as per List "F") _____		
Contingent or other liabilities (as per List "G") _____		
Total unsecured creditors (excluding any shortfall to floating charge holders) _____		
Estimated Surplus/Deficiency as regards creditors unsecured creditors (excluding any shortfall to floating charge holders)		
Estimated deficiency after floating charge where applicable (brought down)		
Estimated Surplus/Deficiency as regards creditors		
Issued and Called-up Capital _____		
Estimated Surplus/Deficiency as regards members		

These figures must be read subject to the following:-

*delete as appropriate

*[(a) There is no unpaid capital liable to be called up]

*[(b) The nominal amount of unpaid capital liable to be called up is £ _____ estimated to produce £ _____ which is/is not charged in favour of the holder of the floating charges(s)]

The estimates are subject to the expenses of the liquidation and to any surplus or deficiency on trading pending realisation of the Assets.

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Please do not write in this margin

Please complete legibly, preferable in black type, or bold block lettering

LIST 'E' (consisting of _____ pages)

Statement of affairs

Unsecured creditors – trade accounts.

Identify separately on this list customers claiming amounts paid in advance of the supply of goods and services

Names to be arranged in alphabetical order and numbered consecutively

No	Name of and address of creditor	Amount of the debt £

Signed

Date

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make changes to the Insolvency (Scotland) Rules 1986 ([S.I. 1986/1915](#)).

Rule 2.39 of the Insolvency (Scotland) Rules is replaced to clarify that in circumstances where an administrator had made a statement under paragraph 52(1)(b) of Schedule B1 to the Insolvency Act 1986, if it falls to the creditors to fix or increase the administrator's remuneration, those creditors comprise the secured creditors (with the inclusion of more than 50 per cent of the preferential creditors where a distribution is made etc. to preferential creditors); to state expressly that the expenses of the administration per Rule 4.67(1), as applied by Rule 2.41, are expenses of the former administration for the purposes of paragraph 99(3) of Schedule B1 to the Insolvency Act 1986; to provide for remuneration to be set by the creditors rather than the court in certain cases; and for the removal of the obligation to have legal expenses subject to taxation.

As a result of the changes made to the law on administration by the Enterprise Act 2002 ([c. 40](#)) a company can move between liquidation and administration. This procedure enables creditors to make their claim as at the date of the liquidation. By way of clarification of the existing rules, the amendments provide that the relevant date is the date of the commencement of the winding up. Rules 11 and 12 make minor consequential clarification of Rules 2.57 and 2.58.

Rule 13 provides that in public interest winding-up petitions the provisional liquidator may only be removed by the court on the application of either the provisional liquidator or the Secretary of State.

Rule 7.34 is amended to make provision for when the Secretary of State can require information from an administrator and the circumstances in which an administrator can dispose of a company's records.

Rule 15 inserts a new Rule 7.35 into the Insolvency (Scotland) Rules 1986. This provides that an insolvency practitioner can be required to provide a statement of the number of hours spent on a case (other than a liquidation or receivership) 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.

Minor amendments are made to the following Forms—

2.4B(Scot), 2.5B(Scot), 2.6B(Scot), 2.8B(Scot) and 2.9B(Scot) – Amendment to side-note in relation to EC Regulation proceedings to include reference to secondary proceedings.

2.7B(Scot) –

- (i) to clarify that notice is to be sent to the persons listed in Rule 2.13(2);
- (ii) amendment to side-note in relation to EC Regulation proceedings to include reference to secondary proceedings.

2.10B(Scot) – Revised to remove reference to the company's trade classification number.

2.12B(Scot) –

- (i) Revised wording to reflect requirement of paragraph 48(1) of Schedule B1 that statement of affairs must be submitted within 11 days of receipt of the notice: reference to a final date for submission is deleted;
- (ii) revised wording of the Note at the foot of the form to reflect the requirements of Rules 2.24(1) – administrator having to form a view as to the reasonableness of the expenses

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incurred in preparing the statement of affairs prior to payment – and Rule 2.20(4) – no requirement for instructions to be sent with the forms for the statement of affairs.

2.13B(Scot) – page 2 is substituted with a revised statement of affairs to reflect how the prescribed part should be applied to unsecured creditors and floating charge holders and page 13 is substituted to correct a typographical error.