

2009 No. 662 (S. 1)

INSOLVENCY, SCOTLAND

COMPANIES

The Insolvency (Scotland) Amendment Rules 2009

<i>Made</i> - - - -	<i>12th March 2009</i>
<i>Laid before Parliament</i>	<i>13th March 2009</i>
<i>Coming into force</i> - -	<i>6th April 2009</i>

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

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Insolvency (Scotland) Amendment Rules 2009 and come into force on 6th April 2009.

(2) In these Rules—

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

Amendments to the principal Rules

2. The principal Rules shall be amended in the manner provided for in the Schedule.

Transitional provisions

3. The amendments to the principal Rules contained in the Schedule shall not apply—

(a) where a moratorium under a company voluntary arrangement comes into force; or

(b) in an administration, where the company enters administration;

before 6th April 2009.

Pat McFadden
Minister of State for Employment Relations and Postal Affairs
Department for Business, Enterprise and Regulatory Reform

12th March 2009

(a) 1986 c.45. Section 411 was relevantly amended by S.I. 2002/2194.
(b) S.I. 1986/1915, relevant amending instruments are S.I. 2002/2709, 2003/2111 and 2006/734.

AMENDMENTS TO THE PRINCIPAL RULES

PART 1

1. In Part 1 (Company Voluntary Arrangements) of the Rules, wherever “forthwith” appears, substitute with “as soon as is reasonably practicable”.

2. For Rule 1.30(2) substitute—

“On receipt of the copies of the schedule pursuant to paragraph (1), the nominee—

- (a) as soon as is reasonably practicable, shall advertise the coming into force of the moratorium once in the Edinburgh Gazette; and
- (b) may advertise the coming into force of the moratorium in such other manner as the nominee thinks fit.”

3. For Rule 1.32(1) substitute—

“After the moratorium comes to an end, the nominee—

- (a) as soon as is reasonably practicable, shall advertise its coming to an end once in the Edinburgh Gazette; and
- (b) may advertise its coming to an end in such other manner as the nominee thinks fit;

and such notice shall specify the date on which the moratorium came to an end.”

4. For Rule 2.19(1) substitute—

“The notice of appointment, which an administrator must publish as soon as is reasonably practicable after his appointment by virtue of paragraph 46(2)(b), shall be advertised in the Edinburgh Gazette and may be advertised in such other manner as the administrator thinks fit.”

5. For Rule 2.25(6) substitute—

“Where the administrator wishes to publish a notice under paragraph 49(6), the notice shall be advertised in such manner as the administrator thinks fit.”

6. After Rule 2.25(6) insert—

“(6A) A notice published under Rule 2.25(6) shall—

- (a) state the full name of the company;
- (b) state the full name and address of the administrator;
- (c) give details of the administrator’s appointment; and
- (d) specify an address to which any member of the company can write to request that a copy of the statement of proposals be provided free of charge.”

7. After Rule 2.26 insert—

“Notice of meetings

2.26A.—(1) The administrator shall publish notice of an initial creditors’ meeting under paragraph 51 in the Edinburgh Gazette and the notice may be advertised in such other manner as the administrator thinks fit.

(2) An administrator may publish notice of any other meeting, in such manner as the administrator thinks fit to ensure the meeting comes to the notice of any persons who are entitled to attend.

- (3) A notice published under paragraphs (1) or (2) shall include—
- (a) the name, registered number and address of the registered office of the company in administration;
 - (b) the venue fixed for the meeting;
 - (c) the date and time of the meeting; and
 - (d) the full name and address of the administrator.
- (4) Rule 7.3(3) (notice of meeting) shall not apply to a meeting of creditors summoned by the administrator.”

8. For Rule 2.34(3) substitute—

“Where the administrator wishes to publish a notice under paragraph 54(3), the notice shall be advertised in such manner as the administrator thinks fit.”

9. After Rule 2.34(3) insert—

- “(4) The notice referred to in paragraph (3) shall—
- (a) state the full name of the company;
 - (b) state the name and address of the administrator;
 - (c) specify an address to which any member of the company can write to request that a copy of the statement be provided free of charge; and
 - (d) be published as soon as is reasonably practicable after the administrator sends the statement to the creditors.”

10. For Rule 2.45(3) substitute—

“Where the administrator wishes to publish a notice under paragraph 80(5), the notice

- (a) shall be published in the Edinburgh Gazette; and
- (b) may be advertised in such other manner as the administrator thinks fit.”

11. For Rule 2.45(4) substitute—

“A notice published under Rule 2.45(3) shall—

- (a) state the full name of the company;
- (b) state the name and address of the administrator;
- (c) state the date when the administrator’s appointment ceased to have effect;
- (d) specify an address to which any creditor of the company can write to request that a copy of the notice be provided; and
- (e) be published within five business days of filing the notice of the end of administration with the court.”

12. In Rule 7.3(3) omit the words “In the case of a creditors’ meeting” to “shall publish such a notice.”.

13. In Rule 7.3(3A) after the words “this paragraph” insert—

“or Rule 2.26A (1) or (2)”.

14. For Form 1.10 (Scot) (Advertisement of coming into force or ending of moratorium) in Schedule 5, Part 1, substitute Form 1.10 (Scot) set out in Part 2 of the Schedule to these Rules.

15. For Form 2.10B (Scot) (Notification of appointment of administrator) in Schedule 5, Part 2, substitute Form 2.10B (Scot) set out in Part 2 of the Schedule to these Rules.

PART 2

Forms for Insertion into Schedule 5 to the Principal Rules

Rule 1.30/1.32

Form 1.10 (Scot)

Advertisement of coming into force or ending of moratorium (for Edinburgh Gazette and other advertising)

The Insolvency Act 1986

(a) Insert full name of company

In the matter of (a) _____

_____ Limited

(b) Give details of nature of business carried on by the company

Nature of business (b)

A moratorium under section 1A of the Insolvency Act 1986 came into force

(c) Insert date

on (c) _____

(d) Delete as applicable

OR (d)

The moratorium under section 1A of the Insolvency Act 1986 which came into force on (c) _____ came to an end on (c) _____

Signed _____ Nominee

Notification of appointment of administrator (for Edinburgh Gazette and other advertising)

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
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Nature of business _____

Registered office of company _____

(a) Insert date

Appointment of administrator made on (a) _____ 20

*Delete as applicable

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) _____)

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Insolvency (Scotland) Rules 1986 (“the principal Rules”). The amendments to the principal Rules do not apply to a company, if, on 6 April 2009, a moratorium under a company voluntary arrangement is in force or a company has entered administration. The amendments to the principal Rules are contained in the Schedule.

Paragraph 1 amends Part 1 of the principal Rules to substitute “forthwith” with “as soon as is reasonably practicable”.

Paragraph 2 amends Rule 1.30(2) so that, as soon as is reasonably practicable after the nominee in a company voluntary arrangement receives copies of the schedule under Rule 1.30(1), the nominee must advertise the coming into force of the moratorium in the Edinburgh Gazette, and may advertise in any other manner the nominee thinks fit.

Paragraph 3 amends Rule 1.32(1) so the nominee must advertise the end of a moratorium in a company voluntary arrangement in the Edinburgh Gazette, and may advertise in any other manner the nominee thinks fit. The notice must specify the date when the moratorium comes to an end.

Paragraph 4 amends Rule 2.19(1) so the administrator must advertise his or her notice of appointment by virtue of paragraph 46(2)(b) of Schedule B1 to the Insolvency Act 1986 (“the 1986 Act”), in the Edinburgh Gazette, and may advertise in any other manner the administrator thinks fit.

Paragraph 5 amends Rule 2.25(6) so when the administrator publishes a notice under paragraph 49(6) of Schedule B1 to the 1986 Act, it shall be advertised in such manner the administrator thinks fit.

Paragraph 6 inserts new Rule 2.25(6A) which details what a notice published under Rule 2.25(6) must contain.

Paragraph 7 inserts new Rule 2.26A, which provides that the administrator must publish notice of an initial creditors meeting under paragraph 51 of Schedule B1 to the 1986 Act, in the Edinburgh Gazette, and may advertise in any other manner the administrator thinks fit. The administrator may publish notice of any other meeting in such manner as the administrator thinks fit. Paragraph 3 of Rule 2.26A details what such a notice must contain, and paragraph 4 provides that Rule 7.3(3) does not apply to a creditors meeting summoned by the administrator.

Paragraph 8 amends Rule 2.43(3) so a notice published by the administrator under paragraph 54(3) of Schedule B1 to the 1986 Act shall be advertised in such manner as the administrator thinks fit.

Paragraph 9 inserts new Rule 2.34(4) which details what a notice published under Rule 2.34(3) must contain.

Paragraph 10 amends Rule 2.45(3) so when the administrator publishes a notice under paragraph 80(5) of Schedule B1 to the 1986 Act, it must be advertised in the Edinburgh Gazette, and may be advertised in any other manner the administrator thinks fit.

Paragraph 11 amends Rule 2.45(4) to detail what a notice published under Rule 2.45(3) must contain.

Paragraph 12 amends Rule 7.3(3) to remove the reference to an initial creditors meeting from that Rule.

Paragraph 13 amends Rule 7.3(3A) to insert reference to Rule 2.26A (1) and (2) to apply the time limits in Rule 7.3(3A) to notices of meetings summoned by the administrator.

Paragraphs 14 and 15 substitute new Forms 1.10 (Scot) and 2.10B (Scot), as set out in Part 2 of the Schedule.

No Regulatory Impact Assessment has been prepared in relation to these Rules, as they will not impose any significant burdens on business.

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STATUTORY INSTRUMENTS

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£5.00