

This Statutory Instrument has been made in part as a consequence of defects in SI 2018/1082 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2019 No. 1059 (S. 3)

INSOLVENCY, SCOTLAND

COMPANIES, SCOTLAND

**The Insolvency (Scotland) Rules 2018 (Miscellaneous
Amendments) Rules 2019**

<i>Made</i> - - - -	<i>26th June 2019</i>
<i>Laid before Parliament</i>	<i>1st July 2019</i>
<i>Coming into force</i> - -	<i>23rd July 2019</i>

The Secretary of State makes the following Rules in exercise of the powers conferred by section 411(1)(b), (2) and (2A) of the Insolvency Act 1986(a) and section 379(1)(b) and (2)(b) of the Financial Services and Markets Act 2000(b).

The Scottish Ministers have consented to these Rules in accordance with article 5(2) of the Scotland Act 1998 (Insolvency Functions) Order 2018(c).

Citation and commencement

1. These Rules may be cited as the Insolvency (Scotland) Rules 2018 (Miscellaneous Amendments) Rules 2019 and come into force on 23rd July 2019.

Extent

2. These Rules extend to Scotland only.

The Insurers (Winding Up) (Scotland) Rules 2001

3.—(1) The Insurers (Winding Up) (Scotland) Rules 2001(d) are amended as follows.

(a) 1986 c.45. Section 411 was amended by S.I. 2002/1037, S.I. 2007/2194 and S.I. 2017/702. There are other amendments which are not relevant to this instrument.
(b) 2000 c.8.
(c) S.I. 2018/174. Rules 5 and 8 include provision that relates to winding up and which therefore requires the consent of the Scottish Ministers in accordance with article 5(2), as read with article 5(3)(a), of S.I. 2018/174.
(d) S.I. 2001/4040 as amended by S.I. 2003/1102. There are other amendments which are not relevant to this instrument.

(2) In rule 2(1) (interpretation), in the definition of “the principal rules”, for “the Insolvency (Scotland) Rules 1986(a)” substitute “the Insolvency (Scotland) (Receivership and Winding up) Rules 2018(b)”.

(3) In rule 18 (caution for long-term and other business), for “rule 4.70” substitute “rule 5.42”.

(4) For rule 22(2) (dividends to creditors) substitute—

“(2) Chapter 6 of Part 7 of the principal rules (distribution of company’s assets by the liquidator) applies as though—

(a) the assets of the company which are available for meeting the liabilities of the company attributable to its long-term business and those liabilities, and

(b) the assets of the company which are available for meeting the liabilities of the company attributable to its other business and those liabilities,

were the assets and liabilities of separate companies.”.

(5) In rule 24(1) (apportionment of expenses of liquidation), for “rule 4.67 of the principal rules (appointment and remuneration)” substitute “rule 7.28 of the principal rules (order of priority of expenses of liquidation)”.

The Insolvency Practitioners Regulations 2005

4. For paragraph 12(1) of Schedule 2 to the Insolvency Practitioners Regulations 2005(c) (inspection and retention requirements relating to the cover schedule - Scotland) substitute—

“(1) Where an insolvency practitioner is appointed to act in relation to a company which is in administration, or for which there is a proposal for a company voluntary arrangement, the practitioner shall retain in the sederunt book kept under rule 1.54 of the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018 (sederunt book), the principal copy of any cover schedule containing entries in relation to the insolvency practitioner so acting.

(1A) Where an insolvency practitioner is appointed to act in relation to a company which is subject to proceedings for winding up, the practitioner shall retain in the sederunt book kept under rule 1.54 of the Insolvency (Scotland) (Receivership and Winding Up) Rules 2018 (sederunt book) the principal copy of any cover schedule containing entries in relation to the insolvency practitioner so acting.”.

The European Grouping of Territorial Cooperation Regulations 2015

5. In regulation 2(1) of the European Grouping of Territorial Cooperation Regulations 2015(d) (interpretation), in the definition of “the Insolvency Rules”, for “the Insolvency (Scotland) Rules 1986” substitute “Parts 3 to 7, 11 and 12 in their entirety, and Parts 1 and 8 to 10 insofar as they apply to winding up, of the Insolvency (Scotland) (Receivership and Winding up) Rules 2018”.

The Bankruptcy (Scotland) Act 2016

6. In section 14B(3) of the Bankruptcy (Scotland) Act 2016(e) (main proceedings in another member state: approval of undertaking offered by member state insolvency practitioner to local creditors in the UK), for “Rules 1.12 to 1.16E of the Insolvency (Scotland) Rules 1986” substitute “rules 2.24, 2.29, 2.33, 2.34, 5.2 to 5.4, 5.6, 5.7, 5.14, 5.20, 5.22, 5.25 to 5.28, 5.30 to 5.35, 5.40 to 5.42, 6.4 and 6.5 of the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018”.

(a) S.I. 1986/1915 as amended by S.I. 1987/1921, S.I. 1999/1820, S.I. 2002/270, 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, S.I. 2012/2404, S.I. 2017/702, S.S.I. 2008/393 and S.I. 2012/114 and revoked by S.I. 2018/1082 and S.S.I. 2018/347.

(b) S.S.I. 2018/347.

(c) S.I. 2005/524. There are no relevant amendments to this instrument.

(d) S.I. 2015/1493. There are no relevant amendments to this instrument.

(e) 2016 asp 21. Section 14B was inserted by S.I. 2017/210.

The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018

7.—(1) The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018(a) are amended as follows.

(2) In rule 2.7(3)(d) (additional disclosure for assistance of nominee where nominee is not the liquidator or administrator), after “trust deed” insert “for the benefit of creditors”.

(3) In rule 3.35(1)(f)(i) (administrator’s proposals: additional content), for “rule 3.44 or 3.45” substitute “rule 3.45 or 3.46”.

(4) In rule 3.41(1)(a) (notice of the creditors’ decision on the administrator’s proposals), for the words “with the statement required by rule 3.35(10)(a), if it has” substitute “including the statements required by rule 3.35(10)(a) and (b), if they have”.

(5) In rule 3.67(2)(d) (deceased administrator), for “the” where it first occurs substitute “an”.

(6) In rule 3.115(4)(a) (order of priority in distribution), for “either of paragraphs (1)(b) or (c)” substitute “any of sub-paragraphs (b) to (e) of paragraph (1)”.

The Insolvency (Scotland) (Receivership and Winding up) Rules 2018

8.—(1) The Insolvency (Scotland) (Receivership and Winding up) Rules 2018(b) are amended as follows.

(2) In rule 3.11(3) (delivery of draft final account to members (section 94)) for “do not intend to make any such request or application” substitute “are content with the draft final account”.

(3) In paragraph 7 (progress reports and statements to the registrar of companies) of Schedule 2—

(a) at the end of sub-paragraph (1) insert “and the provisions of these Rules relating to progress reporting do not apply”; and

(b) omit sub-paragraph (2).

26th June 2019

Kelly Tolhurst
Minister for Small Business, Consumers and Corporate Responsibility
Department for Business, Energy and Industrial Strategy

(a) S.I. 2018/1082.
(b) S.S.I. 2018/347.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make miscellaneous amendments to allow for the proper operation of the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018 (S.I. 2018/1082) (“the 2018 SI”), and the Insolvency (Scotland) (Receivership and Winding up) Rules 2018 (S.S.I. 2018/347) (“the 2018 SSI”).

The 2018 SI updated processes and procedures relating to company voluntary arrangements and administration. It also revoked the parts of the Insolvency (Scotland) Rules 1986 (S.I. 1986/1915) (“the 1986 Rules”) which related to company voluntary arrangements and administration.

The 2018 SSI updated processes and procedures relating to receivership and winding up. It also revoked the parts of the 1986 Rules which related to receivership and winding up.

Rules 3 to 6 make amendments to references in primary and subordinate legislation to the 1986 Rules to adjust these so as to provide the appropriate references to the 2018 SI or the 2018 SSI.

Rule 7 makes amendments to the 2018 SI and rule 8 makes amendments to the 2018 SSI. The purpose of these amendments is to effect minor corrections and clarifications.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

An Explanatory Memorandum has been prepared and is available alongside these Rules at www.legislation.gov.uk. Hard copies of the Explanatory Memorandum are available from Insolvency Service, 4 Abbey Orchard Street, London, SW1P 2HT.

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£4.90

UK201906271004 07/2019 19585

<http://www.legislation.gov.uk/id/uksi/2019/1059>

ISBN 978-0-11-118798-2



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