STATUTORY INSTRUMENTS

2021 No. 1178

FINANCIAL SERVICES AND MARKETS INSOLVENCY

The Payment and Electronic Money Institution Insolvency (England and Wales) Rules 2021

Made - - - -	*21st October 2021*
Laid before Parliament	*22nd October 2021*
Coming into force - -	*12th November 2021*

The Lord Chancellor makes the following Rules, in exercise of the powers conferred by section 411(1A)(a), (2), (2C) and (3) of the Insolvency Act 1986(**1**), as applied by the Payment and Electronic Money Institution Insolvency Regulations 2021(**2**).

The Treasury concur in the making of these Rules.

The Chancellor of the High Court (by the authority of the Lord Chief Justice under section 411(7) of the Insolvency Act 1986) concurs in the making of these Rules in so far as they affect court procedure.

Before making these Rules, the Lord Chancellor consulted the committee existing for the purposes of section 413 of the Insolvency Act 1986.

PART 1

Introductory Provisions

Citation

1. These Rules may be cited as the Payment and Electronic Money Institution Insolvency (England and Wales) Rules 2021.

Commencement

2. These Rules come into force on 12th November 2021.

(**1**) 1986 c. 45.
(**2**) S.I. 2021/716.

Extent

3. These Rules extend to England and Wales only.

Interpretation

4.—(1) The following definitions apply to these Rules or may be seen at the places indicated—

Word or expression	*Meaning*
asset pool	together (a) the asset pool as defined in the Regulations and (b) any funds properly transferred into a relevant funds account following the commencement of the special administration
authenticate	to authenticate in accordance with rule 256
business address	the place where a person works
business day	any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of England and Wales or Scotland under or by virtue of the Banking and Financial Dealings Act 1971(**3**)
contact details	a postal address, an email address or a telephone number through which a customer may be contacted
CPR	Civil Procedure Rules 1998(**4**) and "CPR" followed by a Part or a rule number means the Part or rule with that number in those rules
customer	(a) user, which has the meaning set out in regulation 6, or (b) holder, which has the meaning set out in regulation 6
file with the court	deliver to the court for filing
the Gazette	the London Gazette
gazetted	advertised once in the Gazette
IP number	the number assigned to an office-holder as an insolvency practitioner by the Secretary of State
means of contacting	being able to contact that person specifically
practice direction	a direction as to the practice and procedure of any court within the scope of the CPR
prescribed part	has the same meaning as it does in section 176A(2)(a) of the IA 1986(**5**) and the

(**3**) 1971 c. 80.
(**4**) S.I. 1998/3132.
(**5**) Section 176A was inserted by Enterprise Act 2002 (c. 40).

Word or expression	*Meaning*
	Insolvency Act 1986 (Prescribed Part) Order 2003(**6**)
progress report	a report which complies with rule 87
registered number	has the meaning set out in section 1066 of the CA 2006(**7**)
the registrar	an Insolvency and Companies Court Judge and unless the context otherwise requires includes a District Judge in a District Registry of the High Court
registrar of companies	the registrar of companies for England and Wales
the Regulations	the Payment and Electronic Money Institution Insolvency Regulations 2021(**8**)
Payment Systems Regulator	the body established under section 40 of the Financial Services (Banking Reform) Act 2013(**9**)
requisitioned meeting	a meeting requested under paragraph 56(1)
shortfall claim	that part of a relevant funds claim which will not be met from the asset pool because of a shortfall in the amount available in the asset pool to settle relevant funds claims, including where the shortfall arises as a result of any deduction from the relevant funds of costs under rule 99 or amounts that the court orders be paid from the asset pool or from the relevant funds
standard contents	(a) in relation to a notice to be gazetted, the contents specified in rules 266 and 267, and (b) in relation to a notice to be advertised in any other way, the contents specified in rules 270 and 271
statement of concurrence	a statement, verified by a statement of truth, that that person concurs in the statement of affairs submitted by a nominated person
statement of truth	a statement of truth in accordance with CPR Part 22
witness statement	a witness statement verified by a statement of truth in accordance with CPR Part 22

(2) A fee or remuneration is charged when the work to which it relates is done.

(**6**) S.I. 2003/2097.
(**7**) 2006 c. 46.
(**8**) S.I. 2021/716.
(**9**) 2013 c. 33.

(3) Reference to a notice or other document being given, delivered or sent under these Rules or in the Regulations shall be interpreted in accordance with Chapters 2 to 4 of Part 12 of these Rules.

(4) Expressions used both in these Rules and in the Regulations (including expressions used in the provisions of the IA 1986 applied by the Regulations) have, unless otherwise stated, the meaning set out in the Regulations.

(5) A reference to a numbered paragraph in these Rules shall, unless—

(a) it is a reference to a paragraph within the same Rule, or

(b) otherwise stated,

be to the paragraph so numbered in Schedule B1 to the IA 1986, as applied by regulation 37.

(6) A reference to a provision of the IA 1986, if that provision is listed in the Table in regulation 37, is a reference to that provision as applied and modified by the Regulations.

(7) A reference to a numbered regulation shall, unless otherwise stated, be to the regulation so numbered in the Regulations.

(8) For the purposes of these Rules:

(a) references to a customer, and

(b) references to relevant funds,

do not include a customer of, or relevant funds received by:

(i) a small payment institution, or

(ii) in the case of funds received for the execution of payment transactions that are not related to the issuance of electronic money, a small electronic money institution,

where the institution had not chosen to voluntarily safeguard the funds when it entered special administration.

(9) To the extent that a customer claims a shortfall as a creditor, that shortfall claim is to be treated as a debt owed to the customer by the institution arising before the institution entered special administration.

(10) A relevant funds claim which is held jointly by one or more customers shall be treated as a single relevant funds claim under these Rules.

Application of Rules

5. These Rules apply in respect of a special administration.

PART 2

Application for special administration order

Content of application

6.—(1) An application for a special administration order must be made in writing and authenticated by the applicant.

(2) The application must state—

(a) the full name and registered number of the institution,

(b) any other trading names of the institution,

(c) the institution's date of incorporation,

(d) the institution's nominal capital and the amount of capital paid up,

(e) the address of the institution's registered office,

(f) an email address for the institution,

(g) the identity of the person (or persons) nominated for appointment as administrator, and

(h) a statement setting out which of the grounds in regulation 9(1) the applicant is relying on in making the application.

Statement of proposed administrator

7. An application for a special administration order must be accompanied by a statement by the proposed administrator—

(a) specifying the name and business address of the person (or each person) proposed to be appointed,

(b) giving that person's (or each person's) consent to act,

(c) giving details of the person's (or each person's) qualification to act as an insolvency practitioner, and

(d) giving details of any prior professional relationship that the person (or any of them) has had with the institution.

Witness statement in support of application

8.—(1) An application for a special administration order must be accompanied by a witness statement.

(2) If the application is made by—

(a) the institution or one of its directors, the witness statement must be made by one of its directors or the company secretary of the institution, stating that they make it on behalf of the institution or, as the case may be, on behalf of the directors,

(b) a creditor or a contributory of the institution, the witness statement must be made by a person acting under the authority of all the creditors, or, as the case may be, all the contributories, making the application,

(c) the FCA, the witness statement must identify the person making the statement and must include the capacity in which that person makes the statement and the basis for that person's knowledge of the matters set out in the statement, or

(d) a combination of the persons listed in regulation 8(1)(a) to (e), the witness statement must be made by a person acting under the authority of all the applicants.

(3) The witness statement must—

(a) set out the reasons by which the applicant believes the ground in regulation 9(1) on which the application is based is satisfied,

(b) state the institution's current financial position, specifying (to the best of the applicant's knowledge and belief) the institution's assets and liabilities, including contingent and prospective liabilities,

(c) specify any security known or believed to be held by the creditors of the institution,

(d) specify the amount of relevant funds held by the institution to the best of the applicant's knowledge and belief,

(e) specify how functions are going to be allocated where more than one person is to be appointed as administrator (stating in particular whether functions are to be exercisable jointly or by any or all of the persons appointed), and

(f) specify any other matters which the applicant thinks will assist the court in deciding whether to make the special administration order.

Filing of application

9.—(1) The application and its accompanying documents must be filed with the court together with enough copies of the application and accompanying documents for service and proof of service under rule 10.

(2) The court must fix a venue for the hearing of the application.

(3) In fixing the venue the court must have regard to—

(a) the desirability of the application being heard as soon as is reasonably practicable, and

(b) the need for the institution's representatives to be able to reach the venue in time for the hearing.

(4) Each of the copies filed—

(a) must have the seal of the court applied to it,

(b) must be endorsed with the date and time of filing, and

(c) must be endorsed with the venue for the hearing of the application.

Service of application

10.—(1) The application must be served on—

(a) the institution (if neither the institution nor its directors are the applicant),

(b) the person (or each of the persons) nominated for appointment as administrator,

(c) any person who has given notice to the FCA in respect of the institution under regulation 11(6), and

(d) if there is in force for the institution a voluntary arrangement under Part 1 of the IA 1986, the supervisor of that arrangement.

(2) Service under paragraph (1) must be service of a sealed and endorsed copy of the application and its accompanying documents issued under rule 9.

(3) Service of the application must be effected by the applicant, or their solicitor, or by a person instructed by the applicant or the solicitor, as soon as is reasonably practicable before the hearing.

(4) Service must be effected as follows—

(a) on the institution (subject to paragraph (5)), by delivering the documents to its registered office, and

(b) on any other person (subject to paragraph (6)) by delivering the documents to that person's proper address.

(5) If delivery to the institution's registered office is not practicable, service may be effected by delivery to its last known principal place of business in England and Wales.

(6) For the purposes of paragraph (4)(b), a person's proper address is any which that person has previously notified to the applicant as their address for service, but if no address has been notified, service may be effected by delivery to that person's usual or last known address.

(7) Delivery or service of documents to any place or address under paragraph (4) or paragraph (5) may be made by leaving them there or by electronic delivery in accordance with rule 257, and where the document is sent electronically, it must be sent with a read receipt and the message shall be deemed to be delivered when the message is read.

Proof of service

11.—(1) Service of the application must be verified by a witness statement specifying the date and time on which, and the manner in which, service was effected.

(2) The witness statement, with a sealed copy of the application exhibited to it, must be filed with the court—

(a) as soon as is reasonably practicable, and

(b) in any event, before the hearing of the application.

Further notification

12. As soon as is reasonably practicable after filing the application, the applicant must notify—

(a) any enforcement officer or other officer whom the applicant knows to be charged with effecting an execution or other legal process against the institution or its property,

(b) any person whom the applicant knows to have distrained against the institution or its property, and

(c) the FCA (if not the applicant).

The hearing

13. At the hearing of the application, any of the following may appear or be represented—

(a) the applicant,

(b) the institution,

(c) one or more of the directors,

(d) the person (or a person) nominated for appointment as administrator,

(e) any supervisor of a voluntary arrangement under Part 1 of the IA 1986,

(f) any person who has given notice to the FCA in respect of the institution under regulation 11(6),

(g) the FCA, and

(h) with the permission of the court, any other person who appears to have an interest.

The special administration order

14. If the court makes a special administration order, the order must state—

(a) the name and address of the applicant,

(b) the name, registered address and registered number of the institution to which the order refers,

(c) details of any other parties appearing at the hearing,

(d) the name of any administrator appointed by the order,

(e) the date and time from which their appointment shall take effect,

(f) the terms for costs of the application, and

(g) any further particulars that the court thinks fit.

Costs

15. If the court makes a special administration order, the following are payable as an expense of the special administration—

(a) costs of the applicant, and

(b) any other costs allowed by the court.

Notice of special administration order

16.—(1) If the court makes a special administration order, it must, as soon as is reasonably practicable, deliver 3 sealed copies to the applicant.

(2) The applicant must as soon as is reasonably practicable, deliver a sealed copy to—

(a) the administrator, and

(b) the FCA (if not the applicant).

(3) If the court makes an order under regulation 10(1)(d) or regulation 10(1)(f), it must give directions as to the persons to whom and how notice of that order is to be given.

PART 3

Process of Special Administration

CHAPTER 1

Notice of appointment and statement of affairs

Notification and advertisement of administrator's appointment

17.—(1) The notice of appointment under paragraph 46(2)(b) to be given by the administrator as soon as is reasonably practicable after appointment—

(a) must be gazetted, and

(b) may be advertised in such other manner as the administrator thinks fit.

(2) In addition to the standard contents, the notice must state that an administrator has been appointed and the date of the appointment.

(3) The administrator must as soon as is practicable after appointment give notice of the appointment to—

(a) any enforcement officer who, to the administrator's knowledge, is charged with execution or other legal process against the institution,

(b) any person who, to the administrator's knowledge, has distrained against the institution, and

(c) any supervisor of a voluntary arrangement under Part 1 of the IA 1986.

(4) The administrator shall send the notice of appointment to the registrar of companies within seven days of the date of the order appointing them.

(5) Any notice required to be sent by the administrator under these Rules or under Schedule B1 must—

(a) contain details of the court where the proceedings are and the relevant court reference number,

(b) contain the full name, registered address, registered number, all trading names and principal trading office of the institution,

(c) contain the name, business address and IP number of the person or persons appointed as administrator and the date of their appointment, and

(d) be authenticated and dated by the administrator.

Notice requiring statement of affairs

18.—(1) In this Part, "relevant person" has the meaning given to it in paragraph 47(3) and "nominated person" is the relevant person who has been required by the administrator to make out and deliver a statement of affairs to the administrator.

(2) The administrator must deliver notice to each relevant person who the administrator deems appropriate requiring that relevant person to make out and deliver a statement of the institution's affairs.

(3) The notice must be headed "notice requiring statement of affairs" and must inform each of the nominated persons—

(a) that the proceedings are being held in the court and the court reference number,

(b) of the full name, registered address and registered number of the institution,

(c) of the name and the business address of the administrator,

(d) of the name and addresses of all others (if any) to whom the same notice has been sent,

(e) of the date by which the statement must be delivered to the administrator, being before the end of the period of eleven days beginning with the day on which the nominated person receives notice of the requirement,

(f) of the effect of paragraph 48(4), and

(g) of the application to that nominated person, and to each other relevant person, of section 235 of the IA 1986(**10**).

(4) The administrator must, on request, provide details to the nominated person as to how the statement should be prepared.

Statement of affairs: content

19.—(1) The statement of the institution's affairs must be headed "Statement of affairs" and must—

(a) identify the institution immediately below the heading, and

(b) state that it is a statement of the affairs of the institution on a specified date, being the date on which it entered special administration.

(2) The statement of affairs must contain (in addition to the matters required by paragraph 47(2)) —

(a) a summary of the assets of the institution, setting out the book value and the estimated realisable value of—

(i) any assets subject to a fixed charge,

(ii) any assets subject to a floating charge,

(iii) any uncharged assets, and

(iv) the total value of all the assets available for preferential creditors,

(b) a summary of the liabilities of the institution, setting out—

(i) the amount of preferential debts,

(ii) an estimate of the deficiency with respect to preferential debts or the surplus available after paying the preferential debts,

(iii) an estimate of the prescribed part, if applicable,

(iv) an estimate of the total assets available to pay debts secured by floating charges,

(**10**) Section 235 was amended by S.I. 2011/245. There are other amending instruments but none is relevant.

(v) the amount of debts secured by floating charges,

(vi) an estimate of the deficiency with respect to debts secured by floating charges or the surplus available after paying the debts secured by fixed or floating charges,

(vii) the amount of unsecured debts (excluding preferential debts),

(viii) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts,

(ix) any issued and called-up capital, and

(x) an estimate of the deficiency with respect to, or surplus available to, members of the institution,

(c) a list of the institution's creditors with the further particulars required by paragraph (3) indicating—

(i) any creditors under hire-purchase, chattel leasing or conditional sales agreements, and

(ii) any creditors claiming retention of title over property in the institution's possession, and

(d) the name and address of each member of the institution and the number, nominal value and other details of the shares held by each member.

(3) Subject to paragraphs (4) and (5), the list of creditors required by paragraph 47(2) and paragraph (2)(c) of this rule must contain the following details—

(a) the name and postal address of the creditor,

(b) the amount of the debt owed to the creditor,

(c) details of any security held by the creditor,

(d) the date on which the security was given, and

(e) the value of any such security.

(4) Paragraph (5) applies where the particulars required by paragraph (3) relate to creditors who are either-

(a) employees or former employees of the institution, or

(b) consumers claiming amounts paid in advance for the supply of goods or services.

(5) Where this paragraph applies—

(a) the statement of affairs itself must state—

(i) the number of employees or former employees of the institution and the total of the debts owed to them, and

(ii) the number of consumers claiming amounts paid in advance for the supply of goods or services and the total of the debts owed to them, and

(b) the particulars required by paragraph (3) must be set out in a separate schedule to the statement of affairs for each of the employees, former employees and consumers referred to in paragraphs (4)(a) and (b).

(6) Subject to paragraph (7), the administrator must not—

(a) disclose to any person any schedule or any of the details contained in any schedule provided under paragraph (5)(b),

(b) send or deliver to any person (including the registrar of companies) any schedule provided under paragraph (5)(b) at the same time as sending or delivering the statement of affairs, or

(c) include a schedule or any of the details contained in any schedule provided under paragraph (5)(b) in a statement of proposals or revised statement of proposals under rule 26 or rule 32.

(7) Following a written request from the FCA, the administrator must, as soon as is reasonably practicable, send or deliver to the FCA a copy of any schedule provided under paragraph (5)(b).

Details of the asset pool, safeguarding measures and reconciliation

20.—(1) In addition to the matters required by paragraph 47(2) and under rule 19, the statement of affairs must include particulars of the asset pool including the relevant funds held by the institution.

(2) The particulars must include—

(a) subject to paragraph (3), the names and contact details of each customer of the institution and each such customer's relevant funds claim,

(b) details of the asset pool including details of—

(i) the safeguarding measures employed by the institution and the amount of relevant funds safeguarded in accordance with each of such measures,

(ii) any relevant funds invested (in the case of a payment institution) in secure, liquid assets approved by the FCA in accordance with regulation 23(6) of the PSR 2017(**11**) or (in the case of an electronic money institution) in secure, liquid low-risk assets in accordance with regulation 21(2) of the EMR 2011(**12**),

(iii) any insurance policy covering relevant funds,

(iv) the accounts in which relevant funds are held,

(v) any guarantee given by an authorised insurer or authorised credit institution covering relevant funds, and

(c) details as to any security interest held by the institution or another person in respect of the asset pool.

(3) Where the particulars required by paragraph (2)(a) relate to customers who are individuals—

(a) the particulars must be set out in a separate schedule from the statement of affairs, and

(b) the statement of affairs must state the number of customers who are individuals and the total of the debts owed to them.

(4) Subject to paragraph (5), the administrator must not—

(a) disclose to any person any schedule or any of the details contained in any schedule provided under paragraph (3)(a),

(b) send or deliver to any person (including the registrar of companies) any schedule provided under paragraph (3)(a) at the same time as sending or delivering the statement of affairs, or

(c) include any schedule or any of the details contained in any schedule provided under paragraph (3)(a) in a statement of proposals or revised statement of proposals under rule 26 or rule 32.

(5) Following a written request from the FCA, the administrator must, as soon as is reasonably practicable, send or deliver to the FCA a copy of any schedule provided under paragraph (3)(a).

Verification, filing and statement of concurrence

21.—(1) The statement of affairs must be verified by a statement of truth by the nominated person.

(**11**) S.I. 2017/752, amended by S.I. 2017/1173, 2018/1021. There are other amending instruments but none is relevant.
(**12**) S.I. 2011/99, amended by S.I. 2013/3115, 2015/575, 2017/252, 2017/1173, 2018/1021. There are other amending instruments but none is relevant.

(2) The administrator may require any relevant person to submit a statement of concurrence.

(3) Where the administrator requires a statement of concurrence, the nominated person making the statement of affairs must be informed of that fact.

(4) The nominated person must deliver the statement of affairs together with the statement of truth, together with a copy, to the administrator.

(5) The nominated person must also deliver a copy of the statement of affairs to every person who has been required to submit a statement of concurrence.

(6) The relevant person required to submit a statement of concurrence must deliver the statement of concurrence together with a copy before the end of the period of five business days (or such other period as the administrator may agree) beginning on the day on which the statement of affairs being concurred with is received by that relevant person.

(7) A statement of concurrence—

(a) must identify the institution, and

(b) may be qualified in respect of matters dealt with by the statement of affairs, where the relevant person making the statement of concurrence-

(i) is not in agreement with the nominated person,

(ii) considers the statement of affairs to be erroneous or misleading, or

(iii) is without the direct knowledge necessary for concurring with it.

(8) Subject to paragraph (9) and rule 22, the administrator must as soon as is reasonably practicable deliver a copy of the statement of affairs and any statement of concurrence to the registrar of companies and file them with the court.

(9) The administrator must not deliver to the registrar of companies with the statement of affairs and any statement of concurrence any schedule required by rule 19(5)(b) or rule 20(3)(a).

Limited disclosure

22.—(1) Where the administrator thinks that it would prejudice the conduct of the special administration (or might reasonably be expected to lead to violence against any person) for the whole or part of a statement of affairs or a statement of concurrence to be disclosed, the administrator may apply to the court for an order of limited disclosure in respect of the whole or any part of a statement of affairs or a statement of concurrence.

(2) The court may, on such application, order that the statement of affairs or any statement of concurrence or, as the case may be, a specified part of either must not be filed with the registrar of companies.

(3) The administrator must, as soon as is reasonably practicable, deliver a copy of the order, the statement of affairs and any statement of concurrence (to the extent provided by the order) to the registrar of companies.

(4) If a creditor or a customer seeks disclosure of a statement of affairs, a statement of concurrence or a specified part of either in relation to which an order has been made under this rule, that person may apply to the court for an order that the administrator disclose it or a specified part of it.

(5) An application under paragraph (4) must be supported by written evidence in the form of a witness statement.

(6) The applicant must give the administrator notice of the application at least three business days before the hearing.

(7) The court may make any order for disclosure subject to any conditions as to:

(a) confidentiality,

(b) duration,

(c) the scope of the order in the event of any change of circumstances, or

(d) other matters as it thinks just.

(8) If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the administrator must, as soon as is reasonably practicable after the change, apply to the court for the order or any part of it to be rescinded.

(9) The administrator must, as soon as is reasonably practicable after the making of an order under paragraph (8), file a copy of the statement of affairs and any statement of concurrence to the extent provided by the order with the registrar of companies.

(10) When the statement of affairs or a statement of concurrence is filed in accordance with paragraph (9), the administrator must, where they have sent a statement of proposals under paragraph 49, provide the creditors and the customers with a copy or summary of the statement of affairs and any statement of concurrence as filed.

(11) The provisions of CPR Part 31(**13**) do not apply to an application under this rule.

Release from duty to submit statement of affairs

23.—(1) The power of the administrator under paragraph 48(2) to revoke a requirement to submit a statement of affairs or to extend the period within which it must be submitted may be exercised at the administrator's own discretion, or at the request of any nominated person who has been required to provide the statement of affairs.

(2) The nominated person may, if they request a revocation or extension and it is refused by the administrator, apply to the court for it and when such an application is made, the period referred to in paragraph 48(1) and rule 18(3)(e) is suspended pending the court's decision.

(3) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it without giving notice to any other party other than the applicant.

(4) If the application is not dismissed under paragraph (3), the court must fix a venue for it to be heard, and give notice to the relevant person and to the FCA accordingly.

(5) Where an application has been made under paragraph (2), the FCA may appear and be heard at the hearing or may make written representations.

(6) The applicant must, at least fourteen days before the hearing, deliver to the administrator a notice stating the venue and accompanied by a copy of the application and of any evidence on which the applicant intends to rely.

(7) The administrator may appear and be heard on the application and, whether or not they appear, the administrator may file a written report of any matters which they consider ought to be drawn to the court's attention.

(8) If a report is filed under paragraph (7), a copy of it must be delivered by the administrator to the applicant not later than five business days before the hearing.

(9) Sealed copies of any order made on the application must be delivered by the court to the applicant and the administrator.

(10) On any application under this rule, the applicant's costs must be paid in any event by the applicant and, unless the court otherwise orders, no allowance towards them must be made as an expense of the special administration.

(**13**) Part 31 was substituted by S.I. 2008/2178.

Expenses of statement of affairs

24.—(1) A nominated person making the statement of affairs or a relevant person making a statement of concurrence must be allowed, and paid by the administrator as an expense of the special administration, any expenses incurred by the nominated person or relevant person in so doing which the administrator considers reasonable.

(2) Any decision by the administrator under this rule is subject to appeal to the court.

(3) Nothing in this rule relieves a nominated person or a relevant person from any obligation with respect to:

(a) the preparation, verification and submission of the statement of affairs or a statement of concurrence, or

(b) the provision of information to the administrator.

Submission of accounts

25.—(1) Any of the persons specified in section 235(3) of the IA 1986 must, at the request of the administrator, provide the administrator with the institution's accounts as at such date and for such period as the administrator may specify.

(2) The period specified may begin from a date up to 3 years preceding the date the institution entered special administration, or from an earlier date to which the audited accounts of the institution were last prepared.

(3) The court may, on the administrator's application, require accounts for an earlier period.

(4) Rule 24 applies (with the necessary modification) in relation to the accounts to be provided under this rule as it applies to the statement of affairs.

(5) The accounts must (if the administrator so requires) be verified by a statement of truth and (whether or not so verified) be delivered within twenty-one days of the request under paragraph (1) (or such longer period as the administrator may allow).

CHAPTER 2

Statement of proposals

Administrator's proposals

26.—(1) The administrator must under paragraph 49 (or regulation 39 where the FCA has given a direction under regulation 38 which has not been withdrawn) make a statement of proposals, which is required by paragraph 49(4) to be delivered to the registrar of companies, creditors, every customer of whose claim the administrator is aware and who the administrator has a means of contacting, the FCA and members.

(2) In addition to the information required by paragraph 49 (or regulation 39, if applicable), the statement of proposals must include—

(a) a statement that the proceedings are being held in the court and the court reference number,

(b) the full name, any other trading names, the registered address and registered number of the institution,

(c) details of the administrator's appointment (including the date of appointment and details of who applied for the appointment),

(d) in the case of joint administrators, details of the apportionment of functions,

(e) the names of the directors and secretary of the institution and details of any shareholdings in the institution they have,

(f) an account of the circumstances giving rise to the application for the appointment of the administrator,

(g) if a statement of affairs has been submitted:

(i) a copy or summary of it, except so far as an order under rule 22 limits disclosure of it, and excluding any schedule referred to in rule 19(5)(b) or rule 20(3)(a) or the particulars relating to creditors or customers contained in any such schedule, and

(ii) any comments which the administrator may have on the statement of affairs,

(h) if an order limiting the disclosure of the statement of affairs has been made under rule 22, a statement of that fact, as well as—

(i) details of who submitted the statement of affairs,

(ii) the date of the order for limited disclosure, and

(iii) the details or a summary of the details that are not subject to that order,

(i) subject to sub-paragraphs (j) and (k), if a full statement of affairs is not submitted, or if no statement of affairs is submitted, the name, postal address and the amount of the debt owing to each creditor of the institution including details of any security held and the value of any such security,

(j) sub-paragraph (k) applies where the particulars required by sub-paragraph (i) relate to creditors who are either—

(i) employees or former employees of the institution, or

(ii) consumers claiming amounts paid in advance for the supply of goods or services,

(k) where this paragraph applies—

(i) the particulars required under sub-paragraph (i) must state separately for each of sub-paragraphs (j)(i) and (ii) the number of such creditors and the total of the debts owed to them, and

(ii) the particulars required by sub-paragraph (i) in respect of such creditors under sub-paragraph (j)(i) and (ii) must be set out in separate schedules,

(l) subject to sub-paragraph (m), if a full statement of affairs is not submitted, or if no statement of affairs is submitted, the name and (to the extent known to the administrator after making all reasonable enquiries) the contact details of each customer of the institution and each customer's relevant funds claim together with:

(i) details as to any security interest held by the institution or another person in respect of the asset pool, and

(ii) details of the asset pool and the measures used by the institution to safeguard relevant funds,

(m) where customers are individuals—

(i) the particulars required under sub-paragraph (l) must state separately the number of such customers and the total of the debts owed to them, and

(ii) the remaining details required under sub-paragraph (l) in relation to such customers must be set out in a separate schedule,

(n) if no statement of affairs is submitted, details of the financial position of the institution at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the institution entered special administration), and an explanation as to why there is no statement of affairs,

(o) the basis upon which it is proposed that the administrator's remuneration should be fixed under rule 163, and, if this basis has already been set, details as to what has been set and any proposals for this to be changed,

(p) a statement complying with paragraph (4) of any pre-administration costs charged or incurred by the administrator or, to the administrator's knowledge, by any other person qualified to act as an insolvency practitioner,

(q) details of whether (and why) the administrator proposes to apply to the court under section 176A(5) of the IA 1986 (unless the administrator intends to propose a company voluntary arrangement),

(r) an estimate of the value of the prescribed part for the purposes of section 176A of the IA 1986 (unless the institution intends to propose a company voluntary arrangement) certified as being made to the best of the administrator's knowledge and belief,

(s) an estimate of the value of the institution's net property (unless the administrator intends to propose a company voluntary arrangement) certified as being made to the best of the administrator's knowledge and belief,

(t) an explanation of the priority that has been given since the commencement of special administration to the special administration objectives (and where the FCA has given a direction under regulation 38, an explanation as to how this has dictated the priority given to a particular objective),

(u) the manner in which the affairs and business of the institution have been managed and financed since the date of the administrator's appointment (including the reasons for and terms of any disposal of assets),

(v) details as to the order in which the administrator aims to pursue the special administration objectives and the manner in which the affairs and business of the institution will be managed and financed if the administrator's proposals are approved,

(w) details of any reconciliation undertaken by the administrator (whether under regulation 13 or otherwise),

(x) details of the steps taken by the administrator to constitute any asset pool,

(y) whether the administrator expects a dividend to be paid to creditors and an estimate of the amount of this dividend,

(z) how it is proposed that the special administration shall end, in accordance with Objective 3 as set out in regulation 12(4), and

(aa) any other information which the administrator thinks necessary to enable creditors and customers to decide whether or not to approve the statement of proposals.

(3) Subject to paragraph (4), the administrator must not—

(a) disclose any schedule or any of the details contained in any schedule provided under paragraph (2)(k)(ii) or paragraph (2)(m)(ii) to any person,

(b) send or deliver any schedule provided under paragraph (2)(k)(ii) or paragraph (2)(m)(ii) with a statement of proposals or revised statement of proposals to any person (including the registrar of companies).

(4) Following a written request from the FCA, the administrator must, as soon as is reasonably practicable, send or deliver to the FCA a copy of any schedule provided under paragraph (2)(k)(ii) or paragraph (2)(m)(ii).

(5) In this Part—

(a) "pre-administration costs" are—

(i) fees charged, and

(ii) expenses incurred,

by the administrator, or another person qualified to act as an insolvency practitioner, before the institution entered special administration but with a view to its doing so, and

(b) "unpaid pre-administration costs" are pre-administration costs which had not been paid when the institution entered special administration.

(6) A statement of pre-administration costs complies with this paragraph if it includes—

(a) details of any agreement under which the fees were charged and expenses incurred, including the parties to the agreement and the date on which the agreement was made,

(b) details of the work done for which the fees were charged and expenses incurred,

(c) an explanation of why the work was done before the institution entered special administration and how it would further the achievement of the special administration objectives,

(d) a statement of the amount of the pre-administration costs, setting out separately—

(i) the costs incurred in connection with the pursuit of Objective 1,

(ii) the costs incurred in connection with the pursuit of Objectives 2 and 3,

(iii) the fees charged by the administrator,

(iv) the expenses incurred by the administrator,

(v) the fees charged (to the administrator's knowledge) by any other person qualified to act as an insolvency practitioner (and, if more than one, by each separately), and

(vi) the expenses incurred (to the administrator's knowledge) by any other person qualified to act as an insolvency practitioner (and, if more than one, by each separately),

(e) a statement of the amounts of pre-administration costs which have already been paid (set out separately as under sub-paragraph (d)),

(f) the identity of the person who made the payment or, if more than one person made the payment, the identity of each such person and of the amounts paid by each such person set out separately as under sub-paragraph (d),

(g) a statement of the amounts of unpaid pre-administration costs (set out separately as under sub-paragraph (d)), and

(h) a statement that the payment of unpaid pre-administration costs as an expense of the special administration is—

(i) subject to approval under rule 100, and

(ii) not part of the proposals subject to approval under paragraph 53.

(7) The statement of proposals—

(a) may exclude information the disclosure of which could seriously prejudice the commercial interests of the institution, and

(b) must include a statement of any exclusion.

(8) In addition to the standard contents, a notice published by the administrator under paragraph 49(6) must:

(a) identify the proceedings,

(b) be advertised in such manner as the administrator thinks fit, and

(c) be published as soon as is reasonably practicable after the administrator has delivered the statement of proposals to the institution's creditors and customers but no later than eight

weeks (or such other period as may be agreed by the creditors and customers or as the court may order) from the date on which the institution entered special administration.

(9) In addition to the standard contents, a notice published by the administrator under paragraph 49 that the statement of proposals is to be provided free of charge to a payment system operator must:

(a) identify the proceedings,

(b) include a statement confirming that a copy of the statement of proposals will also be provided free of charge to the Payment Systems Regulator if it applies in writing to a specified address,

(c) be advertised in such a manner as the administrator thinks fit, and

(d) be published as soon as is reasonably practicable after the administrator has delivered the statement of proposals to the institution's creditors and customers but no later than eight weeks (or such other period as may be agreed by the creditors and customers or as the court may order) from the date on which the institution entered special administration.

(10) Following an application by the administrator under paragraph 107, where the court orders an extension of the period of time in paragraph 49(5), the administrator must as soon as is possible after the order has been made deliver a notice of the extension to—

(a) every creditor of the institution of whose address the administrator is aware,

(b) every customer of the institution who the administrator has a means of contacting and of whose relevant funds claim the administrator is aware,

(c) the members of the institution of whose address the administrator is aware,

(d) any relevant payment system operator,

(e) the registrar of companies, and

(f) the FCA.

(11) A notice under paragraph (10) must:

(a) identify the proceedings,

(b) state the date to which the court has ordered an extension, and

(c) contain the registered office of the institution.

(12) The administrator is taken to have complied with paragraph (10)(c) if the administrator publishes a notice which:

(a) contains the standard contents,

(b) contains the information in paragraph (9),

(c) is advertised in such a manner as the administrator thinks fit,

(d) states that the member may request in writing a copy of the notice of the extension, and states the address to which to write, and

(e) is published as soon as is reasonably practicable after the administrator has delivered the notice of the extension to the institution's creditors and customers.

(13) The administrator is taken to have complied with paragraph (10)(d) if the administrator publishes a notice which:

(a) contains the standard contents,

(b) contains the information in paragraph 9,

(c) is advertised in such a manner as the administrator thinks fit,

(d) states that the payment system operator may request in writing a copy of the notice of the extension free of charge, and states the address to which to write, and

(e) is published as soon as is reasonably practicable after the administrator has delivered the notice of the extension to the institution's creditors and customers.

Limited disclosure of the statement of proposals

27.—(1) Where the administrator thinks that it would prejudice the conduct of the special administration (or might reasonably be expected to lead to violence against any person) for any of the matters specified in rule 26(2)(i) to (n) to be disclosed, the administrator may apply to the court for an order of limited disclosure in respect of any specified part of the statement of proposals.

(2) The court may, on such application, order that some or all of the specified part of the statement must not be sent to the registrar of companies or to creditors, customers or members of the company as otherwise required by paragraph 49(4) or to a payment system operator or to the Payment Systems Regulator.

(3) The administrator must as soon as is reasonably practicable deliver to the persons specified in paragraph (2) the statement of proposals (to the extent provided by the order) and an indication of the nature of the matter in relation to which the order was made.

(4) The administrator must also deliver a copy of the order to the registrar of companies.

(5) A creditor who seeks disclosure of a part of the statement of proposals in relation to which an order has been made under this rule may apply to the court for an order that the administrator disclose it, and the application must be supported by written evidence in the form of a witness statement.

(6) The applicant must give the administrator notice of the application at least three business days before the hearing.

(7) The court may make any order for disclosure subject to any conditions as to:

(a) confidentiality,

(b) duration,

(c) the scope of the order in the event of any change of circumstances, or

(d) other matters as it thinks just.

(8) If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the administrator must, as soon as is reasonably practicable after the change, apply to the court for the order or any part of it to be rescinded.

(9) The administrator must, as soon as is reasonably practicable after the making of an order under paragraph (7), deliver to the persons specified in paragraph (2) a copy of the statement of proposals to the extent provided by the order.

(10) The provisions of CPR Part 31 do not apply to an application under this rule.

CHAPTER 3

Initial meeting to consider proposals

Initial meeting

28.—(1) As soon as is reasonably practicable after an invitation to the initial meeting has been sent out in accordance with paragraph 51(1), the administrator must have gazetted—

(a) that an initial meeting of creditors and customers is to take place,

(b) the venue fixed for the meeting, and

(c) the full name and business address of the administrator.

(2) The information required to be gazetted under paragraph (1) may also be advertised in such other manner as the administrator thinks fit.

(3) Where the court orders an extension to the period set out in paragraph 51(2)(b), the administrator must notify each person who was sent notice in accordance with paragraph 49(4).

(4) This rule does not apply where the FCA has given a direction under regulation 38 and the direction has not been withdrawn.

Notice to officers

29.—(1) Where rule 28 applies, notice to attend the meeting must be given to every present or former officer of the institution whose presence the administrator thinks is required at the same time that notice is sent to creditors and customers.

(2) That notice must contain—

(a) a statement that the proceedings are being held in the court and the court reference number,

(b) the full name, registered address, registered number and any other trading names of the institution,

(c) the full name and business address of the administrator, and

(d) details of the venue of the meeting.

(3) Every person who receives a notice under paragraph (1) must attend.

Business of the initial meeting

30.—(1) At the initial meeting of creditors and customers—

(a) a creditors' committee may be established in accordance with Chapter 8 of this Part, and

(b) the statement of proposals must be approved as follows.

(2) Creditors and customers must vote as separate classes on whether to approve the proposals.

(3) The proposals must not be approved unless both classes of voter have voted to approve them.

(4) If the proposals are approved by a class of voter subject to a modification, the proposals will not be considered approved by the other class unless that other class has approved the proposals as modified.

(5) Where the administrator is unable to get the requisite majority of a class of voter for approval of the statement of proposals (with or without any modifications), rule 31 applies.

(6) This rule does not apply where the FCA has given a direction under regulation 38 and the direction has not been withdrawn.

Adjournment of meeting to approve the statement of proposals

31.—(1) If, at the initial meeting of creditors and customers, there is not the requisite majority for approval of the statement of proposals (with or without any modifications) for each class of voter, the administrator may, and must if a resolution is passed to that effect, adjourn the meeting for not more than fourteen days (subject to any direction by the court).

(2) If there are subsequently further adjournments, the final adjournment must not be to a day later than fourteen days after the date on which the meeting was originally held, (subject to any direction by the court).

(3) Where a meeting is adjourned under this rule, proofs and proxies may be used if lodged at any time up to 12.00 hours on the business day immediately before the adjourned meeting.

(4) Where at the initial meeting, the proposals were approved (whether or not with modifications) by one class of voter but not the other, that approval must no longer stand at the adjourned meeting unless the version of the proposals to be voted on has not been modified from the version that was approved.

(5) If the administrator is unable to get the requisite majority of creditors or customers for approval of the statement of proposals, the administrator may apply to the court for directions under paragraph 63.

Revision of the statement of proposals

32.—(1) The administrator must under paragraph 54 (or regulation 40 where the FCA has given a direction under regulation 38 which has not been withdrawn) make a statement setting out the proposed revisions to the statement of proposals ("the revised statement").

(2) The revised statement, which must be delivered in accordance with paragraph 54(2)(b) and (c), must include—

(a) a statement that the proceedings are being held in the court and the court reference number,

(b) the full name, registered address, registered number and any other trading names of the institution,

(c) details of the administrator's appointment (including the date of appointment),

(d) in the case of joint administrators, details of the apportionment of functions,

(e) the names of the directors and secretary of the institution and details of any shareholdings in the institution they have,

(f) a summary of the initial proposals and the reasons for proposing a revision,

(g) details of the proposed revision including details of the administrator's assessment of the likely impact of the proposed revision upon the creditors generally or upon each class of creditor or upon the customers (as the case may be), and

(h) any other information that the administrator thinks necessary to enable creditors and customers (where applicable) to decide whether or not to approve the proposed revisions.

(3) A copy of the revised statement must be delivered to the FCA at the same time as the revised statement is delivered to others in accordance with paragraph 54(2).

(4) Where the administrator considers that the revision proposed will only affect creditors or, as the case may be, customers, the notice of the meeting to consider the revised statement must be sent to both creditors and customers, but will state who is invited to the meeting.

(5) Subject to paragraph 54(3), within five business days of delivering the revised statement the administrator must deliver a copy of the statement to every member of the institution of whose address the administrator is aware.

(6) Any notice to be published under paragraph 54(3) must be advertised in such a manner as the administrator thinks fit.

(7) The notice must be published as soon as is reasonably practicable after the administrator delivers the revised statement in accordance with paragraph 54(2) and, in addition to the standard contents, must—

(a) state that members can write for a copy of the statement of revised proposals and

(b) state the address to which to write.

(8) Paragraph (4) shall not apply where the FCA has given a direction under regulation 38 which has not been withdrawn at the time the administrator proposes a revision to the statement of proposals.

(9) In this rule, a reference to—

"paragraph 54(2)" also includes a reference to regulation 40(4), and

"paragraph 54(3)" also includes a reference to regulation 40(5).

Meeting to approve the revised statement of proposals

33.—(1) This rule applies to a meeting of creditors, a meeting of customers or a meeting of creditors and customers to approve the revisions to the statement of proposals.

(2) Where the revisions are being approved by a meeting of creditors and customers—

(a) creditors and customers must vote as separate classes on whether to approve the revisions,

(b) the revisions shall not be approved unless both classes of voter have voted to approve them, and

(c) where the revisions are approved by a class of voter subject to a modification, the proposals will not be considered approved by the other class unless that other class has approved the proposals as modified.

(3) If the administrator is unable to get the requisite majority of creditors or customers for approval of the revised statement of proposals, the administrator may apply to the court for directions under paragraph 55.

(4) Where the FCA has given a direction under regulation 38 and has not withdrawn its direction at the time that the administrator proposes a revision to the statement of proposals, this rule shall not apply.

Notice to creditors and customers

34.—(1) As soon as is reasonably practicable after the conclusion of a meeting of creditors, of customers, or of creditors and customers to consider the administrator's proposals or revised proposals, the administrator must—

(a) deliver notice of the result of the meeting to every person who received a copy of the original proposals,

(b) deliver notice of the result of the meeting to the Payment Systems Regulator and any payment system operator,

(c) attach a copy of the proposals considered at the meeting to the notice sent to each creditor and each customer who did not receive notice of the meeting but of whose claim the administrator has subsequently become aware, and

(d) file with the court a copy of the proposals considered at the meeting and notice of the result of the meeting.

(2) The administrator is taken to have complied with paragraph (1)(b) if the administrator publishes a notice which:

(a) contains the standard contents,

(b) identifies the proceedings,

(c) contains the registered office of the institution,

(d) is advertised in such a manners as the administrator thinks fit,

(e) states that the payment system operator may request in writing a copy of the notice of the result of the meeting free of charge, and states the address to which to write, and

(f) is published as soon as is reasonably practicable after the administrator has delivered the notice of the result of the meeting to those who received a copy of the original proposals.

CHAPTER 4

Meetings generally

Meetings generally

35. Except where different provision is made in the Regulations or these Rules, this Chapter applies to meetings summoned by the administrator under—

(a) paragraph 51;

(b) paragraph 54(2);

(c) paragraph 62;

or following a request or a direction from the court under paragraph 56.

Venue

36.—(1) In fixing the venue for a meeting, the convener must have regard to the convenience of those attending.

(2) Meetings must be summoned for commencement between 10.00 and 16.00 hours on a business day (subject to any direction by the court).

(3) In this rule, "meeting" includes an adjourned meeting.

Notice of meeting by individual notice: when and where sent

37.—(1) This rule applies except where the court orders under rule 39 that notice of a meeting be given by advertisement only.

(2) Notice summoning a meeting must be delivered at least fourteen days before the day fixed for the meeting as provided in paragraph (3).

(3) Notice must be sent—

(a) for a meeting involving the creditors, to all the creditors of whose address the administrator is aware and who had claims against the institution at the date when it entered special administration (except for those who have subsequently been paid in full);

(b) for a meeting involving the customers, to all customers of whose relevant funds claim the administrator is aware and has a means of contacting (except for those who have no outstanding relevant funds claims);

(c) for a meeting of contributories, to every person appearing (by the institution's books or otherwise) to be a contributory of the institution and of whose address the administrator is aware.

(4) The FCA must also be notified of any such meeting.

Notice of meeting by individual notice: content and accompanying documents

38.—(1) This rule applies except where the court orders under rule 39 that notice of a meeting be given by advertisement only.

(2) Notice summoning a meeting must specify the purpose of and venue for the meeting and state that a creditor or customer wishing to vote at the meeting must lodge claims (including relevant funds claims) or proofs and (if applicable) proxies at a specified place not later than 12.00 hours on the business day before the date fixed for the meeting.

(3) A blank proxy complying with rule 90 must be sent out with every notice summoning a meeting.

Notice of meeting by advertisement only

39.—(1) The court may order that notice of any meeting under these Rules be given by advertisement and not by individual notice to the persons concerned.

(2) In considering whether so to order, the court must have regard to:

(a) the cost of advertisement,

(b) the amount of assets available, and

(c) the extent of the interest of creditors, customers, members and contributories or any particular class of them.

Content of notice for meetings

40.—(1) Notice of a meeting of the creditors, the customers or a meeting of creditors and customers, must contain the following information—

(a) a statement that the proceedings are being held in the court and the court reference number;

(b) the full name, registered address, registered number and any other trading names of the institution;

(c) the full name and business address of the administrator;

(d) details of the venue of the meeting;

(e) whether the meeting is—

(i) an initial creditors' and customers' meeting under paragraph 51,

(ii) to consider revisions to the administrator's proposals under paragraph 54(2),

(iii) a further creditors', or creditors and customers', or customers' meeting under paragraph 56, or

(iv) a meeting under paragraph 62,

unless the court orders that it be given by advertisement only in accordance with rule 39.

(2) Where the court orders an extension to the period set out in paragraph 51(2)(b), the administrator must notify each person who was sent notice in accordance with paragraph 49(4).

Gazetting and advertisement of meetings

41.—(1) The administrator, in convening a meeting under these Rules, must have gazetted a notice which, in addition to the standard contents, must state—

(a) that a meeting of:

(i) creditors,

(ii) customers,

(iii) creditors and customers,

(iv) members, or

(v) contributories

is to take place,

(b) the venue fixed for the meeting,

(c) the purpose of the meeting, and

(d) the time and date by which, and place at which, those attending who wish to vote must lodge proxies and (in the case of a meeting of creditors, customers or both) claims or proofs.

(2) Notice under this rule must be gazetted before or as soon as is reasonably practicable after notice is given to those attending.

(3) Information to be gazetted under this rule may also be advertised in such other manner as the administrator thinks fit.

Non-receipt of notice of meeting

42. Where, in accordance with the Regulations or these Rules, a meeting is summoned by notice, the meeting is presumed to have been duly summoned and held, even if not all those to whom the notice is to be given have received it.

Requisition of meetings

43.—(1) A request for a requisitioned meeting must contain the following information—

(a) a statement that the proceedings are being held in the court and the court reference number,

(b) the full name, registered address and registered number of the institution,

(c) the full name and address of the creditor requesting the meeting, and

(d) the full amount of that creditor's claim.

(2) The request for a requisitioned meeting must include a statement of the purpose of the proposed meeting and—

(a) either—

(i) a list of the creditors concurring with the request and of the amounts of their respective claims, and

(ii) written confirmation of concurrence from each creditor concurring, or

(b) a statement that the requesting creditor's debt alone is sufficient without the concurrence of other creditors.

(3) A requisitioned meeting must be held within twenty-eight days of the date of the administrator's receipt of the notice.

(4) The administrator—

(a) must notify the FCA of the details and purpose of the requisitioned meeting, and

(b) may, if the administrator thinks appropriate, also summon customers to the requisitioned meeting.

Expenses of requisitioned meetings

44.—(1) The expenses of summoning and holding a requisitioned meeting must be paid by the person who makes the request, who must deposit with the administrator security for their payment.

(2) The security to be deposited must be such sum as the administrator may determine, and the administrator must not act without the security having been deposited.

(3) The meeting may resolve that the expenses of summoning and holding it are to be payable out of the assets of the institution as an expense of the special administration.

(4) To the extent that any deposit made under this rule is not required for the payment of expenses of summoning and holding the meeting, it must be repaid to the person who made it.

Quorum at meetings

45.—(1) A meeting of creditors, customers, creditors and customers or contributories is not competent to act unless a quorum is present.

(2) A quorum is—

(a) in the case of a meeting of creditors, at least one creditor entitled to vote;

(b) in the case of a meeting of customers, at least one customer entitled to vote;

(c) in the case of a meeting of creditors and customers, at least one creditor and one customer who are each entitled to vote;

(d) in the case of a meeting of contributories, at least two contributories so entitled, or all the contributories, if their number does not exceed two.

(3) Where—

(a) the provisions of this rule as to a quorum being present are satisfied by the attendance of—

(i) the chair alone, or

(ii) one other person in addition to the chair, and

(b) the chair is aware, by virtue of claims or proofs and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote,

the meeting must not commence until at least the expiry of 15 minutes after the time appointed for its commencement.

Chair at meetings

46.—(1) At any meeting of the creditors, the customers, or creditors and customers summoned by the administrator, either the administrator must be the chair, or a person nominated by the administrator in writing to act in the administrator's place.

(2) A person so nominated must be either—

(a) one who is qualified to act as an insolvency practitioner in relation to the institution, or

(b) an employee of the administrator or the administrator's firm who is experienced in insolvency matters.

(3) Where the chair holds a proxy which includes a requirement to vote for a particular resolution and no other person proposes that resolution—

(a) the chair must propose it unless the chair considers that there is good reason for not doing so, and

(b) if the chair does not propose it, the chair must as soon as is reasonably practicable after the meeting notify the principal of the reason why not.

Adjournment by chair

47.—(1) The chair may, and must if the meeting so resolves, adjourn the meeting to such time and place as seems to the chair to be appropriate in the circumstances.

(2) An adjournment under this rule must not be for a period of more than fourteen days, subject to any direction by the court.

(3) If there are further adjournments, the final adjournment must not be to a day later than fourteen days after the date on which the meeting was originally held.

(4) Rule 36 applies with regard to the venue fixed for a meeting adjourned under this rule.

(5) This rule does not apply to the initial meeting of creditors and customers.

Adjournment in absence of chair

48.—(1) If within 30 minutes from the time fixed for commencement of a meeting there is no person present to act as chair, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(2) If within 30 minutes from the time fixed for the commencement of the meeting those persons attending the meeting do not constitute a quorum, the chair may adjourn the meeting to such time and place as the chair may appoint.

Claims, proofs and proxies in adjournment

49. Where a meeting under these Rules is adjourned, claims, proofs and proxies may be used if lodged at any time up to 12.00 hours on the business day immediately before the adjourned meeting.

Suspension

50. Once only in the course of a meeting, the chair may, without an adjournment, declare it suspended for any period up to one hour.

Venue and conduct of company meetings

51.—(1) Where the administrator summons a meeting of members of the institution, the administrator must fix a venue for it having regard to their convenience.

(2) The chair of the meeting must be the administrator or a person nominated by the administrator in writing to act in the administrator's place.

(3) A person so nominated must be—

(a) one who is qualified to act as an insolvency practitioner in relation to the institution, or

(b) an employee of the administrator or the administrator's firm who is experienced in insolvency matters.

(4) If within 30 minutes from the time fixed for commencement of the meeting there is no person present to act as chair, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(5) Subject to anything to the contrary in the Regulations and these Rules, the meeting must be summoned and conducted in accordance with the law of England and Wales, including any applicable provision in or made under CA 2006.

(6) The chair of the meeting must ensure that minutes of its proceedings are entered in the company's minute book.

CHAPTER 5

Entitlement to vote at meetings

Entitlement to vote (creditors)

52.—(1) A creditor is entitled to vote at a meeting of creditors, or at a meeting of creditors and customers, only if—

(a) the administrator has been given written details of the debt which is claimed as due to that person from the institution, including any calculation for the purposes of rule 53 or rule 54,

(b) the details were given to the administrator—

(i) not later than 12.00 hours on the business day before the day fixed for the meeting, or

(ii) later than that time but the chair of the meeting is satisfied that that was due to circumstances beyond that person's control,

(c) the claim has been admitted for the purposes of entitlement to vote, and

(d) there has been lodged with the administrator any proxy intended to be used on behalf of that person.

(2) Where under rule 56(4) the administrator has become aware that a customer has a shortfall claim:

(a) the administrator shall treat the customer as having provided details of the shortfall claim under paragraphs (1)(a) and (b);

(b) the claim shall be admitted under paragraph 1(c) for the purposes of entitlement to vote, and

(c) the customer does not need to submit a separate claim under paragraph (1) in order to be entitled to vote as a creditor at a meeting of creditors and customers in respect of its shortfall claim but a customer should if relevant lodge a proxy in accordance with paragraph (1)(d).

(3) For the purposes of this Chapter, written details of a claim, once lodged or given in accordance with this rule, need not be lodged or given again.

(4) The chair of a meeting of creditors, or of a meeting of creditors and customers, may call for any document or other evidence to be produced if the chair thinks it necessary for the purpose of substantiating the whole or any part of a claim.

Calculation of voting rights (creditors)

53.—(1) Votes are calculated according to the amount of each creditor's claim as at the date on which the institution entered special administration, less any payments that have been made to the creditor after that date in respect of the claim and any adjustment by way of set-off in accordance with rule 132 as if that rule were applied on the date on which the votes are counted.

(2) A creditor may vote in respect of a debt which is for an unliquidated amount or the value of which is not ascertained if the chair decides to put upon it an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.

(3) Paragraph (2) does not apply to a shortfall claim.

(4) A creditor may not vote in respect of any claim or part of a claim—

(a) where the claim or part is secured, except where the vote is cast in respect of the balance (if any) of the debt after deduction of the value of the security as estimated by the creditor, or

(b) where the claim is in respect of a debt wholly or partly on, or secured by, a current bill of exchange or promissory note, unless the creditor is willing—

(i) to treat as a security in the creditor's hands the liability on the bill or note of every person who is liable on it antecedently to the institution, and—

(aa) in the case of a company, has not gone into liquidation, or

(bb) in the case of an individual, against whom a bankruptcy order has not been made or whose estate has not been sequestrated, and

(ii) to estimate the value of the security and for the purposes of voting (but not otherwise) to deduct it from the claim.

Calculation of voting rights: special cases (creditors)

54.—(1) An owner of goods under a hire-purchase or chattel leasing agreement, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt due and payable by the institution on the date on which it entered special administration.

(2) In calculating the amount of any debt for the purpose of paragraph (1), no account is to be taken of any amount attributable to the exercise of any right under the relevant agreement so far as the right has become exercisable solely by virtue of—

(a) the making of a special administration application, or

(b) the institution entering special administration.

Procedure for admitting creditors' claims for voting

55.—(1) At a meeting of creditors, the chair must ascertain the entitlement of persons wishing to vote as creditors and admit or reject their claims accordingly.

(2) The chair may admit or reject a claim in whole or in part.

(3) If the chair is in any doubt whether a claim should be admitted or rejected, the claim must be marked as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

Entitlement to vote (customers)

56.—(1) A customer is entitled to vote at a meeting of creditors and customers, or customers only if—

(a) the administrator has been given written details of the customer's relevant funds claim in accordance with rule 102,

(b) the details were given to the administrator—

(i) not later than 12.00 hours on the business day before the day fixed for the meeting, or

(ii) later than that time but the chair of the meeting is satisfied that the delay was due to circumstances beyond that customer's control,

(c) the relevant funds claim has been admitted for the purposes of entitlement to vote, and

(d) there has been lodged with the administrator any proxy intended to be used on behalf of that person.

(2) Subject to paragraph (4), for the purposes of this Chapter, written details of a relevant funds claim, once lodged or given in accordance with this rule, need not be lodged or given again.

(3) The chair at a meeting of customers, or creditors and customers, may call for any document or other evidence to be produced if the chair thinks it necessary for the purpose of substantiating the whole or any part of a relevant funds claim.

(4) If at any time prior to the initial meeting or to a meeting of creditors and customers, or customers only, the administrator has become aware that a customer has a shortfall claim, the administrator must—

(a) adjust the relevant funds claim submitted under paragraph (1), subtracting the value of the shortfall claim from that relevant funds claim,

(b) submit a claim under rule 52(1)(c) on behalf of the customer as to the shortfall claim,

(c) take this shortfall into account in calculating the customer's entitlement to vote, and

(d) as soon as is reasonably practicable, notify the customer—

(i) of the amended relevant funds claim and the shortfall claim, and

(ii) that a claim for the shortfall claim has been submitted under rule 52.

(5) For the purposes of this Chapter, a customer's voting rights are calculated according to the value of the customer's relevant funds claim submitted under this rule, taking into account any shortfall claim identified prior to the meeting.

Procedure for admitting customers' relevant funds claims for voting

57.—(1) At a meeting of creditors and customers, or customers only, the chair must ascertain the entitlement of persons wishing to vote as customers and admit or reject their relevant funds claims accordingly.

(2) The chair may admit or reject a relevant funds claim in whole or in part.

(3) If the chair is in any doubt whether a relevant funds claim should be admitted or rejected, the relevant funds claim must be marked as objected to and votes allowed to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the relevant funds claim is sustained.

Voting at meetings of creditors and customers

58.—(1) This rule applies to meetings of creditors and customers.

(2) If the administrator thinks it appropriate, the creditors and customers may vote on the same resolution at the meeting, however the creditors and the customers must vote in separate classes on the resolution.

Requisite majorities

59.—(1) Subject to paragraph (2), at a meeting of creditors or customers, or of creditors and customers, a resolution is passed when a majority (in value) of those present and voting in each class, in person or by proxy, have voted at the relevant meeting in favour of it.

(2) Any resolution is invalid if those voting against it include more than half in value of the creditors, or, as the case may be, customers, to whom notice of the meeting was sent and who are not, to the best of the chair's belief, persons connected with the institution.

(3) "Persons connected with the institution" has the same meaning in respect of the institution as a person connected with a company in accordance with section 249 of the IA 1986.

Requisite majorities at contributories' meetings

60. At a meeting of contributories, voting rights are as at a general meeting of the institution, subject to any provision of the articles affecting entitlement to vote, either generally or at a time when the institution is in liquidation.

Appeals against decisions under this Chapter

61.—(1) The chair's decisions under this Chapter are subject to appeal to the court by any creditor, customer, contributory or member.

(2) If the chair's decision is reversed or varied, or votes are declared invalid, the court may order another meeting to be summoned or make such order as it thinks just.

(3) An appeal under this rule may not be made later than twenty-one days after the date of the meeting.

(4) The chair is not personally liable for costs incurred by any person in respect of an appeal under this rule unless the court makes an order to that effect.

CHAPTER 6

Correspondence and remote attendance

Correspondence instead of meetings

62.—(1) The administrator may seek to obtain the passing by creditors, customers, or contributories of a written resolution by delivering a notice to that effect to every creditor, customer, or contributory (as the case may be) who would be entitled to be notified of a meeting at which the resolution could be passed.

(2) Notice under paragraph (1) must contain the following information—

(a) a statement that the proceedings are being held in the court and the court reference number,

(b) the full name, registered address and registered number of the institution,

(c) the full name and business address of the administrator,

(d) the resolution to be voted on, and

(e) the closing date by which the recipient must respond to the administrator.

(3) In order to be counted, votes must—

(a) be received by the administrator by 12.00 hours on the closing date specified in the notice, and

(b) in the case of a vote cast by a creditor or by a customer, be accompanied by a statement of entitlement to vote on the resolution unless one has already been lodged with or given to the administrator.

(4) A statement of entitlement is written details of the creditor's claim or the customer's relevant funds claim.

(5) The closing date is to be set at the discretion of the administrator, but must be not less than fourteen days from the date of issue of the notice.

(6) Votes must be disregarded if—

(a) the requisite statement of entitlement had not accompanied them or previously been lodged with or given to the administrator, or

(b) in the application of Chapter 5 of this Part, the administrator decides that the creditor or customer is not entitled to cast the votes.

(7) For the resolution to be passed, the administrator must receive at least one valid vote in favour by the closing date specified in the notice or where the resolution is one which were it to be passed at a meeting of creditors and customers would require approval by each class voting separately, at least one valid vote from each class.

(8) If no valid vote is received by the closing date, the administrator must call a meeting of creditors, creditors and customers, customers or contributories (as the case may be) to consider the resolution.

(9) Creditors whose debts amount to at least ten per cent of the total debts of the institution may, within five business days from the date of issue of the notice, require the administrator to call a meeting of creditors and customers (if relevant) to consider the resolution.

(10) Customers whose relevant funds claims amount to at least ten per cent of the total relevant funds claims may, within five business days from the date of issue of the notice, require the administrator to call a meeting of customers and creditors (if relevant) to consider the resolution.

(11) Contributories representing at least ten per cent of the total voting rights of all contributories having the right to vote a at meeting of contributories may, within five business days from the date

of issue of the notice, require the administrator to call a meeting of contributories to consider the resolution.

(12) A reference in these Rules to anything done or required to be done at, or in connection with, or in consequence of, a meeting of creditors, customers or contributories extends to anything done in the course of correspondence in accordance with this rule.

Remote attendance at meetings conducted in accordance with section 246A

63.—(1) This rule applies to a request for the administrator under section 246A(9) of the IA 1986(**14**) to specify a place for the meeting.

(2) The request must be accompanied by—

(a) in the case of a request by creditors, a list of the creditors making or concurring with the request and the amounts of their respective debts in the special administration,

(b) in the case of a request by customers, a list of the customers making or concurring with the request and the amounts of their respective relevant funds claims in the special administration,

(c) in the case of a request by contributories, a list of the contributories making or concurring with the request and their respective values (being the amounts for which they may vote at the meeting),

(d) in the case of a request by members, a list of the members making or concurring with the request and their voting rights, and

(e) from each person concurring, written confirmation of that person's concurrence.

(3) The request must be made within seven business days of the date on which the administrator sent the notice of the meeting in question.

(4) Where the administrator considers that the request has been properly made in accordance with the Regulations and this rule, the administrator must—

(a) give notice to all those previously given notice of the meeting—

(i) that it is to be held at a specified place, and

(ii) as to whether the date and time are to remain the same or not,

(b) set a venue (including specification of a place) for the meeting, the date of which must be not later than twenty-eight days after the original date for the meeting, and

(c) give at least fourteen days' notice of that venue to all those previously given notice of the meeting,

and the notices required by sub-paragraphs (a) and (c) may be given at the same or different times.

(5) Where the administrator has specified a place for the meeting in response to a request to which this rule applies, the chair of the meeting must attend the meeting by being present in person at that place.

(6) Rule 44 does not apply to the summoning and holding of a meeting at a place specified in accordance with section 246A(9).

Action where person excluded

64.—(1) In this rule and rules 65 and 66, an "excluded person" means a person who-

(a) has taken all steps necessary to attend a meeting under the arrangements put in place to do so by the administrator under section 246A(6) of the IA 1986, and

(**14**) Section 246A was inserted by S.I. 2010/18.

(b) is not permitted by those arrangements to attend the whole or part of that meeting.

(2) Where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may—

(a) continue the meeting,

(b) declare the meeting void and convene the meeting again, or

(c) declare the meeting valid up to the point where the person was excluded and adjourn the meeting.

(3) Where the chair continues the meeting, the meeting is valid unless—

(a) the chair decides in consequence of a complaint under rule 66 to declare the meeting void and hold the meeting again, or

(b) the court directs otherwise.

(4) Without prejudice to paragraph (2), where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may, without an adjournment, declare the meeting suspended for any period up to 1 hour.

Indication to excluded person

65.—(1) A person who claims to be an excluded person may request an indication of what occurred during the period of that person's claimed exclusion (an "indication").

(2) A request under paragraph (1) must be made as soon as is reasonably practicable and, in any event, no later than 16.00 hours on the business day following the day on which the exclusion is claimed to have occurred.

(3) A request under paragraph (1) must be made to—

(a) the chair, where it is made during the course of the business of the meeting, or

(b) the administrator where it is made after the conclusion of the business of the meeting.

(4) Where satisfied that the person making the request is an excluded person, the person to whom the request is made under paragraph (3) must give the indication as soon as is reasonably practicable and, in any event, no later than 16.00 hours on the business day following the day on which the request was made under paragraph (1).

Complaint

66.—(1) Any person who—

(a) is, or claims to be, an excluded person, or

(b) attends the meeting (in person or by proxy) and considers that they have been adversely affected by a person's actual, apparent or claimed exclusion,

("the complainant") may make a complaint.

(2) The person to whom the complaint must be made ("the relevant person") is—

(a) the chair, where it is made during the course of the meeting, or

(b) the administrator where it is made after the meeting.

(3) The relevant person must—

(a) consider whether there is an excluded person, and

(b) where satisfied that there is an excluded person, consider the complaint,

and, where satisfied that there has been prejudice, take such action as the relevant person considers fit to remedy the prejudice.

(4) Paragraph (5) applies where—

(a) the relevant person is satisfied that the complainant is an excluded person,

(b) during the period of the person's exclusion, a resolution was put to the meeting and was voted on, and

(c) the excluded person asserts how the excluded person intended to vote on the resolution.

(5) Subject to paragraph (6), where satisfied that the effect of the intended vote in paragraph (4), if cast, would have changed the result of the resolution, the relevant person must—

(a) count the intended vote as being cast in accordance with the complainant's stated intention,

(b) amend the record of the result of the resolution, and

(c) where those entitled to attend the meeting have been notified of the result of the resolution, notify them of the change.

(6) Where satisfied that more than one complainant in paragraph (4) is an excluded person, the relevant person must have regard to the combined effect of the intended votes.

(7) The relevant person must notify the complainant in writing of any decision.

(8) A complaint must be made as soon as is reasonably practicable and, in any event, no later than 16.00 hours on the business day following—

(a) the day on which the person was, appeared or claimed to be excluded, or

(b) where an indication is sought under rule 65, the day on which the complainant received the indication.

(9) A complainant who is not satisfied by the action of the relevant person may apply to the court for directions and any application must be made within two business days of the date of receiving the decision of the relevant person.

CHAPTER 7

Records, returns and reports

Minutes

67.—(1) The chair of any meeting under the Regulations or these Rules, other than a company meeting (for which see rule 51(6)), must ensure minutes of its proceedings are kept.

(2) The minutes must be authenticated by the chair, and be retained by the chair as part of the records of the special administration.

(3) The minutes must include—

(a) a list of the names of creditors who attended a meeting of creditors or a meeting of both creditors and customers (personally, by proxy or by corporate representative) and their claims,

(b) a list of the names of customers who attended a meeting of customers or a meeting of both creditors and customers (personally, by proxy or by corporate representative) and their relevant funds claims,

(c) a list of the names of contributories who attended a meeting of contributories,

(d) if a creditors' committee has been established, the names and addresses of those elected to be members of the creditors' committee, and

(e) a record of every resolution passed.

Returns or reports of meetings

68. In addition to the information required by rule 274, the notification of a return or a report of a meeting must specify—

(a) the purpose of the meeting including the regulation or rule under which it was convened,

(b) the venue fixed for the meeting,

(c) whether a required quorum was present for the meeting to take place, and

(d) if the meeting took place, the outcome of the meeting (including any resolutions passed at the meeting).

CHAPTER 8

The creditors' committee

Constitution of creditors' committee

69.—(1) Where it is resolved by a meeting of creditors and customers to establish a creditors' committee for the purposes of the special administration, the creditors' committee must consist of at least three and not more than five persons elected at the meeting.

(2) Where paragraph (1) applies, before receiving nominations for members of the creditors' committee, the administrator will set out the maximum number of members to be elected onto the creditors' committee by each class of voter so as to ensure that the make-up of the creditors' committee is a reflection of all parties with an interest in the achievement of the special administration objectives.

(3) The classes of voters mentioned in paragraph (2) are—

(a) creditors, and

(b) customers.

(4) A person claiming to be a creditor is entitled to be a member of the committee provided that—

(a) that person's claim has neither been wholly disallowed for voting purposes, nor wholly rejected for the purpose of distribution or dividend, and

(b) the claim mentioned in sub-paragraph (a) is not fully secured.

(5) A person claiming to be a customer is entitled to be a member of the creditors' committee provided that that person's relevant funds claim has neither been wholly disallowed for voting purposes, nor wholly rejected for the purpose of settling relevant funds claims.

(6) A body corporate may be a member of the creditors' committee, but it cannot act as such otherwise than by a representative appointed under rule 74.

Formalities of establishment

70.—(1) The creditors' committee does not come into being and accordingly cannot act until the administrator has issued a certificate of its due constitution.

(2) The certificate must state that the creditors' committee of the institution has been duly constituted and must include the following—

(a) a statement that the proceedings are being held in the court and the court reference number,

(b) the full name, registered address and registered number of the institution,

(c) the full name and business address of the administrator, and

(d) the full name and address of each member of the creditors' committee.

(3) If the chair of the meeting of creditors and customers which resolves to establish the creditors' committee is not the administrator, the chair must as soon as is reasonably practicable give notice of the resolution to the administrator and inform the administrator of the names and addresses of the persons elected to be members of the creditors' committee.

(4) No person may act as a member of the creditors' committee unless and until they have agreed to do so and, unless the relevant proxy or authorisation contains a statement to the contrary, such agreement may be given by their proxy-holder present at the meeting establishing the creditors' committee or, in the case of a corporation, by its duly appointed representative.

(5) The administrator's certificate of the creditors' committee's due constitution must not be issued before the persons elected to be members of the creditors' committee in accordance with rule 69 have agreed to act and must be issued as soon as is reasonably practicable thereafter.

(6) If any further members are elected onto the creditors' committee at a later date, the administrator must issue an amended certificate as and when those persons have agreed to act.

(7) A copy of the certificate, and of any amended certificate, must be sent to the registrar of companies by the administrator, as soon as is reasonably practicable.

(8) If after the establishment of the creditors' committee there is any change in its membership, the administrator must as soon as is reasonably practicable report the change to the registrar of companies by filing a copy of the amended certificate.

Functions and meetings of the creditors' committee

71.—(1) In addition to any functions conferred on the creditors' committee by any provision of the Regulations, the creditors' committee must assist the administrator in discharging the administrator's functions, and act in relation to the administrator in such manner as may be agreed from time to time.

(2) Subject to paragraphs (3) to (7), meetings of the creditors' committee must be held at a time and place determined by the administrator.

(3) The administrator must call a first meeting of the creditors' committee to take place within six weeks of the creditors' committee's establishment.

(4) After the calling of the first meeting, the administrator must call a meeting—

(a) if so requested by a member of the creditors' committee or the member's representative (the meeting then to be held within twenty-one days of the request being received by the administrator), and

(b) for a specified date, if the creditors' committee has previously resolved that a meeting be held on that date.

(5) Subject to paragraph (7), the administrator must give five business days' written notice of the venue of any meeting to every member of the creditors' committee (or their representative designated for that purpose) unless in any case the requirement of notice has been waived by or on behalf of any member. Waiver may be signified either at or before the meeting.

(6) The FCA must also be given the notice in paragraph (5).

(7) Where the administrator has determined that a meeting should be conducted and held in the manner referred to in rule 80, the notice period mentioned in paragraph (5) is seven business days.

The chair at meetings

72.—(1) The chair at any meeting of the creditors' committee must be the administrator, or a person appointed by the administrator in writing to act.

(2) A person so appointed must be—

(a) one who is qualified to act as an insolvency practitioner in relation to the institution, or

(b) an employee of the administrator or the administrator's firm who is experienced in insolvency matters.

Quorum

73. A meeting of the creditors' committee is duly constituted if due notice of it has been given to all the members, and at least two members are present or represented.

Creditors' committee members' representatives

74.—(1) A member of the creditors' committee may, in relation to the business of the creditors' committee, be represented by another person duly authorised by the member for that purpose.

(2) A person acting as a representative of a creditors' committee member must hold a letter of authority entitling them so to act (either generally or specially) and authenticated by or on behalf of the creditors' committee-member.

(3) For the purpose of paragraph (2), any proxy in relation to any meeting of creditors, or customers, or creditors and customers must, unless it contains a statement to the contrary, be treated as a letter of authority to act generally, authenticated by or on behalf of the creditors' committee-member.

(4) The chair at any meeting of the creditors' committee may call on a person claiming to act as a creditors' committee-member's representative to produce the letter of authority, and may exclude that person if it appears that their authority is deficient.

(5) No member may be represented by—

(a) another member of the creditors' committee,

(b) a person who is at the same time representing another creditors' committee member,

(c) a body corporate,

(d) an undischarged bankrupt,

(e) a disqualified director, or

(f) a person who is subject to a bankruptcy restrictions order (including an interim order), a bankruptcy restrictions undertaking, a debt relief restrictions order (including an interim order) or a debt relief restrictions undertaking.

(6) Where a member's representative authenticates any document on the member's behalf, the fact that the representative so authenticates must be stated below the authentication.

Resignation

75. A member of the creditors' committee may resign by notice in writing delivered to the administrator.

Termination of membership

76.—(1) Membership of the creditors' committee is automatically terminated if the member—

(a) becomes bankrupt,

(b) at three consecutive meetings of the creditors' committee is neither present nor represented (unless at the third of those meetings it is resolved that this rule is not to apply in that member's case),

(c) subject to paragraph (3), if voted onto the creditors' committee under rule 69 by the creditors of the institution, ceases to be a creditor and a period of three months has elapsed from the date that that member ceased to be a creditor or is found never to have been a creditor, or

(d) subject to paragraph (4), if voted onto the creditors' committee under rule 69 by the customers of the institution, has had all relevant funds claims settled (subject to there being an identified shortfall claim or any amounts being retained by the administrator under rule 112(2)(d)), or is found never to have been a customer.

(2) If the cause of termination is the member's bankruptcy, their trustee in bankruptcy must replace them as a member of the creditors' committee.

(3) A person to whom paragraph (1)(c) applies must not have their membership terminated if—

(a) that person is also a customer of the institution, and

(b) that person has not had all relevant funds claims settled (subject to there being an identified shortfall claim or any amount being retained by the administrator under rule 112(2)(d)),

but the administrator may require that person to resign if the administrator thinks that the make-up of the creditors' committee does not reflect all parties with an interest in the achievement of the special administration objectives.

(4) A person to whom paragraph (1)(d) applies must not have their membership terminated if they are also a creditor of the institution but the administrator may require them to resign if the administrator thinks that the make-up of the creditors' committee does not reflect all parties with an interest in the achievement of the special administration objectives.

Removal

77.—(1) A member of the creditors' committee may be removed by resolution at a meeting of creditors and customers, at least fourteen days' notice having been given of the intention to move that resolution.

(2) The resolution in paragraph (1) will be voted on only by the relevant class of voter in respect of the member to be removed.

Vacancies

78.—(1) The following applies if there is a vacancy in the membership of the creditors' committee.

(2) The vacancy need not be filled if the administrator and a majority of the remaining members of the creditors' committee so agree, provided that—

(a) the total number of members does not fall below three, and

(b) the administrator thinks that the make-up of the creditors' committee will continue to reflect all parties with an interest in the achievement of the special administration objectives.

(3) The administrator may appoint a person (being qualified under these Rules to be a member of the creditors' committee) from the same class of voters as the previous member to fill the vacancy, if—

(a) a majority of the other members of the creditors' committee who are from the same class of voters agree to the appointment, and

(b) the person concerned consents to act.

Procedure at meetings

79.—(1) At any meeting of the creditors' committee, each member of it (whether present or represented) has one vote, and a resolution is passed when a majority of the members present or represented have voted in favour of it.

(2) Every resolution passed must be recorded in writing and authenticated by the chair, either separately or as part of the minutes of the meeting, and the record must be kept with the records of the proceedings.

Remote attendance at meetings of creditors' committee

80.—(1) This rule applies to any meeting of a creditors' committee held under these Rules.

(2) Where the administrator considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(3) Where a meeting is conducted and held in the manner referred to in paragraph (2), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(4) For the purposes of this rule—

(a) a person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting, and

(b) a person is able to exercise the right to vote at a meeting when—

(i) that person is able to vote, during the meeting, on resolutions or determinations put to the vote at the meeting, and

(ii) that person's vote can be taken into account in determining whether or not such resolutions or determinations are passed at the same time as the votes of all the other persons attending the meeting.

(5) Where a meeting is to be conducted and held in the manner referred to in paragraph (2), the administrator must make whatever arrangements the administrator considers appropriate to—

(a) enable those attending the meeting to exercise their rights to speak or vote, and

(b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

(6) Any requirement under these Rules to specify a venue for the meeting may be satisfied by specifying the arrangements the administrator proposes to enable persons to exercise their rights to speak or vote where in the reasonable opinion of the administrator—

(a) a meeting will be attended by persons who will not be present together at the same place, and

(b) it is unnecessary or inexpedient to specify a venue for the meeting.

(7) In making the arrangements referred to in paragraph (5) and in forming the opinion referred to in paragraph (6)(b), the administrator must have regard to the legitimate interests of the creditors' committee members or their representatives attending the meeting in the efficient despatch of the business of the meeting.

(8) The administrator must specify a place for the meeting if—

(a) the notice of a meeting does not specify a place for the meeting,

(b) the administrator is requested in accordance with rule 81 to specify a place for the meeting, and

(c) that request is made by at least one member of the creditors' committee.

Procedure for requests that a place for a meeting should be specified

81.—(1) This rule applies to a request to the administrator of a meeting under rule 80 to specify a place for the meeting.

(2) The request must be made within five business days of the date on which the administrator sent the notice of the meeting in question.

(3) Where the administrator considers that the request has been properly made in accordance with this rule, the administrator must—

(a) give notice to all those previously given notice of the meeting—

(i) that it is to be held at a specified place, and

(ii) as to whether the date and time are to remain the same or not,

(b) set a venue (including specification of a place) for the meeting, the date of which must be not later than seven business days after the original date for the meeting, and

(c) give five business days' notice of the venue to all those previously given notice of the meeting.

(4) The notices required by paragraphs (3)(a) and (c) may be given at the same or different times.

(5) Where the administrator has specified a place for the meeting in response to a request to which this rule applies, the chair of the meeting must attend the meeting by being present in person at that place.

Resolutions of creditors' committees by post

82.—(1) The administrator may seek to obtain the agreement of members of the creditors' committee to a resolution by delivering to every member of the creditors' committee (or designated representative) a copy of the proposed resolution.

(2) Where the administrator makes use of this procedure, the administrator must notify each member or their representative of each proposed resolution on which a decision is sought.

(3) The FCA must also be notified of each proposed resolution under this rule.

(4) Any member of the creditors' committee may, within seven business days of the date of the administrator notifying them of a resolution, require the administrator to summon a meeting of the creditors' committee to consider matters raised by the resolution.

(5) In the absence of such a request, the resolution is deemed to have been passed by the creditors' committee if and when the administrator is notified in writing by a majority of the members that they agree with the resolution.

(6) A copy of every resolution passed under this rule, and a note that the creditors' committee's concurrence was obtained, must be kept with the records of the proceedings.

Information from administrator

83.—(1) Where the creditors' committee resolves to require the attendance of the administrator under paragraph 57(3)(a), the notice to the administrator must be in writing, authenticated by the majority of the members of the creditors' committee for the time being.

(2) A member's authentication under paragraph (1) may be made by that member's representative.

(3) The meeting at which the administrator's attendance is required must be fixed by the creditors' committee for a business day, and must be held at such time and place as the administrator determines.

(4) The administrator must notify the FCA of the time and place of the meeting.

(5) Where the administrator so attends, the members of the creditors' committee may elect any one of their number to be chair of the meeting, in place of the administrator or the administrator's nominee.

Expenses of members

84.—(1) The administrator must pay any reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in relation to their attendance at the creditors' committee's meetings, or otherwise on the creditors' committee's business.

(2) Where the expenses referred to in paragraph (1) are incurred by a customer member of the creditors' committee, the expenses will be paid out of the relevant funds as an expense of the special administration in the order of priority of payments laid down by rule 99.

(3) Where the expenses referred to in paragraph (1) are incurred by a creditor member of the creditors' committee, the expenses will be paid out of assets of the institution as an expense of the special administration in the order of priority of payments laid down by rule 98.

(4) Paragraph (1) does not apply to any meeting of the creditors' committee held within six weeks of a previous meeting, unless the meeting in question is summoned at the instance of the administrator.

Members dealing with the institution

85.—(1) Membership of the creditors' committee does not prevent a person from dealing with the institution while it is in special administration, provided that any transactions in the course of such dealings are in good faith and for value.

(2) The court may, on the application of any person interested, set aside any transaction which appears to it to be contrary to the requirements of this rule, and may give such consequential directions as it thinks just for compensating the institution for any loss which it may have incurred in consequence of the transaction.

Formal defects

86. The acts of the creditors' committee established for a special administration are valid despite any defect in the appointment, election or qualifications of any member of the creditors' committee or any creditors' committee-member's representative or in the formalities of its establishment.

CHAPTER 9

Progress reports

Content of progress report

87.—(1) A progress report must include—

(a) a statement that the proceedings are being held in the court and the court reference number,

(b) the full name, registered address and registered number of the institution,

(c) the full name and business address of the administrator,

(d) the date of appointment of the administrator and (subject to paragraph (8)) details of any changes in the administrator since the previous report,

(e) where there are joint administrators, details of the apportionment of functions,

(f) details of the basis fixed for the remuneration of the administrator under rule 163 (or if not fixed at the date of the report, the steps taken during the period of the report to fix it),

(g) if the basis of remuneration has been fixed, a statement of—

(i) the remuneration charged by the administrator during the period of the report (subject to paragraph (3), and

(ii) where the report is the first to be made after the basis has been fixed, the remuneration charged by the administrator during the periods covered by the previous reports (subject to paragraph (3)), together with a description of the things done by the administrator during those periods in respect of which the remuneration was charged,

irrespective in either case of whether payment was made in respect of that remuneration during the period of the report,

(h) a statement of the expenses incurred by the administrator during the period of the report, irrespective of whether payment was made in respect of them during that period: the statement to contain a breakdown of expenses incurred in respect of the administrator pursuing Objective 1 of the special administration objectives,

(i) whether the FCA have given a direction under regulation 38 and whether that direction has been withdrawn,

(j) details of progress during the period of the report, including a receipts and payments account (as detailed in paragraph (2) below),

(k) details of any assets of the institution that remain to be realised,

(l) details of whether a bar date has been set and progress made in pursuit of Objective 1 of the special administration objectives,

(m) where no distribution plan has been approved by the court, how the administrator proposes that the expenses of the special administration, to be paid out of the relevant funds in accordance with Part 4, are to be allocated where the institution has more than one asset pool,

(n) a statement of the creditors' right to request information under rule 166 and their right to challenge the administrator's remuneration and expenses under rule 167, and

(o) any other relevant information for the creditors or the customers.

(2) A receipts and payments account must be in the form of an abstract showing receipts and payments during the period of the report and, must also include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A of the IA 1986.

(3) Where the basis for the remuneration is a set amount under rule 163(2)(c), it may be shown as that amount without any apportionment to the period of the report.

(4) Where the administrator has made a statement of pre-administration costs under rule 26(2)(p)—

(a) if they are approved under rule 100 the first progress report after the approval must include a statement setting out the date of the approval and the amounts approved,

(b) each successive report, so long as any of the costs remain unapproved, must include a statement either—

(i) of any steps taken to get approval, or

(ii) that the administrator has decided, or (as the case may be) another insolvency practitioner entitled to seek approval has told the administrator of that practitioner's decision, not to seek approval.

(5) The progress report must cover the period of six months commencing on the date on which the institution entered special administration and every subsequent period of six months.

(6) The periods for which progress reports are required under paragraph (5) are unaffected by any change in the administrator.

(7) However, where an administrator ceases to act the succeeding administrator must, as soon as is reasonably practicable after being appointed, deliver a notice to the creditors of any matters about which the succeeding administrator thinks the creditors should be informed.

(8) Where the current administrator is seeking repayment of pre-administration expenses from a former administrator, the change in office-holder must be noted in each report until the claim is settled.

Delivering a progress report

88.—(1) The administrator must, within one month of the end of the period covered by the report, deliver—

(a) a copy to the creditors and to the customers, and

(b) a copy to the registrar of companies,

but this paragraph does not apply when the period covered by the report is that of a final progress report under rule 182.

(2) The copy sent under paragraph (1)(a) must be accompanied by a statement setting out—

(a) that the proceedings are being held in the court and the court reference number,

(b) the full name, registered address and registered number of the institution,

(c) the full name and business address of the administrator,

(d) the period covered by the progress report.

(3) The court may, on the administrator's application, extend the period of one month mentioned in paragraph (1), or make such other order in respect of the content of the report as it thinks just.

(4) If the administrator makes default in complying with this rule, the administrator is liable to a fine and, for continued contravention, to a daily default fine in each case as set out in the Schedule to these Rules.

CHAPTER 10

Proxies and corporate representation

Definition of proxy

89.—(1) For the purposes of these Rules, a "proxy" is a document made by a creditor, customer, member or contributory (the "principal") which directs or authorises another person ("the proxy-holder") to act as the representative of the principal at one or more meetings by speaking, voting on, abstaining from, or proposing resolutions.

(2) A proxy-holder must be an individual aged 18 or over.

(3) Proxies are for use at meetings summoned or called under the Regulations or these Rules.

(4) Only one proxy-holder may be appointed by a principal for any one meeting at which the principal wants to be represented, but the principal may specify one or more proxy-holders in the alternative, in the order in which they are named in the proxy.

(5) Without prejudice to paragraph (4), a proxy for a particular meeting may be given to whoever is to be the chair of the meeting.

(6) Where a proxy appoints the chair (howsoever described in the proxy) as proxy-holder, the chair may not refuse to be the proxy-holder.

(7) A proxy may be either—

(a) a specific proxy which relates to a specific meeting, or

(b) a continuing proxy for the duration of the special administration.

(8) A proxy is to be treated as a specific proxy for the meeting which is identified in the proxy unless it states that it is a continuing proxy for the duration of the special administration.

(9) A specific proxy must—

(a) direct the proxy-holder how to act at the meeting by giving specific instructions,

(b) authorise the proxy-holder to act at the meeting without specific instructions, or

(c) contain both direction and authorisation.

(10) A continuing proxy must authorise the proxy-holder to attend, speak, vote on or abstain from voting on, or propose resolutions without giving the proxy-holder any specific instructions how to do so.

(11) A continuing proxy may be superseded by a proxy for a specific meeting or withdrawn by a written notice to the administrator.

Issue and use of forms

90.—(1) When notice is given of a meeting to be held in the course of the special administration and a form of proxy is sent out with the notice, such form must be a "blank proxy".

(2) A "blank proxy" is a document which—

(a) complies with the requirements in this rule, and

(b) when completed with the details specified in paragraph (4) will be a proxy as described in rule 89.

(3) A blank proxy must state that the principal named in the document (when completed) appoints a person who is named or identified as the proxy-holder of the principal.

(4) The specified details are—

(a) the name and address of the creditor, customer, member or contributory,

(b) either the name of the proxy-holder or the identification of the proxy-holder (such as the chair of the meeting or the administrator),

(c) a statement that the proxy is either—

(i) for a specific meeting, which is identified in the proxy, or

(ii) a continuing proxy for the proceedings, and

(d) if the proxy is for a specific meeting, instructions as to the extent to which the proxy-holder is directed to vote in a particular way, to abstain or to propose any resolution.

(5) When it is delivered to the principal, a blank proxy must not contain the name or description of any person as proxy-holder, or instructions as to how a proxy-holder is to act.

(6) A blank proxy must have a note to the effect that the proxy may be completed with the name of the person or the chair of the meeting who is to be proxy-holder.

(7) A form of proxy must be authenticated by the principal, or by some person authorised by that principal (either generally or with reference to a particular meeting).

(8) If the form is authenticated by a person other than the principal, the nature of the person's authority must be stated.

Use of proxies at meetings

91.—(1) A proxy for a specific meeting must be delivered to the chair before the meeting.

(2) A continuing proxy must be delivered to the administrator and may be exercised by the proxy-holder at any meeting which begins after the proxy is delivered.

(3) A proxy given for a particular meeting may be used at any adjournment of that meeting but if a different proxy is given for use at a resumed meeting, that proxy must be delivered to the chair before the start of the resumed meeting.

(4) Where the administrator holds proxies to be used by the administrator as chair of a meeting, and some other person acts as chair, the other person may use the administrator's proxies as if that person was the proxy-holder.

(5) Where a proxy directs a proxy-holder to vote for or against a resolution for the nomination or appointment of a person as the administrator, the proxy-holder may, unless the proxy states otherwise, vote for or against (as they think fit) any resolution for the nomination or appointment of that person jointly with another or others.

(6) A proxy-holder may propose any resolution which, if proposed by another, would be a resolution in favour of which by virtue of the proxy they would be entitled to vote.

(7) Where a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, preclude the proxy-holder from voting at their discretion on resolutions put to the meeting which are not dealt with in the proxy.

Retention of proxies

92.—(1) Subject to paragraph (2), proxies used for voting at any meeting must be retained by the chair of the meeting.

(2) The chair must deliver the proxies, as soon as is reasonably practicable after the meeting, to the administrator (where the administrator is someone other than the chair).

Right of inspection

93.—(1) So long as proxies lodged with the administrator are in the administrator's hands, the administrator must allow them to be inspected, at all reasonable times on any business day, by—

(a) the creditors, in the case of proxies used at a meeting of creditors or at a meeting of creditors and customers;

(b) the customers, in the case of proxies used at a meeting of customers or at a meeting of creditors and customers, and

(c) the institution's members or contributories, in the case of proxies used at a meeting of the institution or of its contributories.

(2) The reference in paragraph (1) to creditors or to customers is to persons who have submitted in writing a claim to be creditors or, as the case may be, customers of the institution, but does not include a person whose proof or claim has been wholly rejected for purposes of voting, dividend or otherwise.

(3) The right of inspection given by this rule is also exercisable by the directors of the institution in special administration.

(4) Any person attending a meeting in the course of the special administration is entitled, immediately before or during the meeting, to inspect proxies and associated documents (including proofs) sent or given, in accordance with directions contained in any notice convening the meeting, to the chair of that meeting or to any other person by a creditor, customer, member or contributory for the purpose of that meeting.

(5) This rule is subject to rule 281.

Proxy-holder with financial interest

94.—(1) A proxy-holder ('P') must not vote in favour of any resolution which would directly or indirectly place P, or any associate of P's, in a position to receive any remuneration out of the insolvent estate or the asset pool, unless the proxy specifically directs P to vote in that way.

(2) Where P has authenticated the proxy as being authorised to do so by P's principal and the proxy specifically directs P to vote in the way mentioned in paragraph (1), P must nevertheless not vote in that way unless P produces to the chair of the meeting written authorisation from P's principal sufficient to show that P was entitled so to authenticate the proxy.

(3) This rule applies also to any person acting as chair of a meeting and using proxies in that capacity under rule 89 and in its application to the chair, P is deemed an associate of that person.

Corporate representation

95.—(1) Where a person is authorised to represent a corporation (other than as proxy-holder) at a meeting held under the Regulations or these Rules, that person must produce to the chair of the meeting a copy of the resolution from which that person's authority is derived.

(2) The copy resolution must be under the seal of the corporation, or certified by the secretary or a director of the corporation to be a true copy.

(3) Nothing in this rule requires the authority of a person to authenticate a proxy on behalf of a principal which is a corporation to be in the form of a resolution of that corporation.

CHAPTER 11

Disposal of charged property

Application to dispose of charged property

96.—(1) This rule applies where the administrator applies to the court under paragraph 71 or 72 for authority to dispose of property which is subject to a security (other than a floating charge), or goods in the possession of the institution under a hire purchase agreement.

(2) The court must fix a venue for the hearing of the application, and the administrator must as soon as is reasonably practicable give notice of the venue to the person who is the holder of the security or the owner of the goods.

(3) If an order is made under paragraph 71 or 72 the court must deliver 2 sealed copies to the administrator.

(4) The administrator must deliver—

(a) one of the sealed copies to the person who is the holder of the security or owner of the goods under the agreement, and

(b) a copy of the sealed order to the registrar of companies.

PART 4

Expenses of the special administration

Expenses of voluntary arrangement

97. Where a special administration order is made and a voluntary arrangement under Part 1 of the IA 1986 is in force for the institution, any expenses properly incurred as expenses of the administration of the arrangement in question are payable in priority to any expenses in rule 98.

Expenses to be paid out of the institution's assets

98.—(1) Subject to rule 99, the expenses of the special administration to be paid out of the assets of the institution are payable in the following order of priority—

(a) expenses properly incurred by the administrator in performing the administrator's functions in the special administration (other than unpaid pre-administration costs approved under rule 100 for work done in pursuit of Objectives 2 and 3),

(b) failure-related costs approved under regulation 42,

(c) the cost of any security provided by the administrator,

(d) where a special administration order was made, the costs of the applicant and any person appearing on the hearing of the application,

(e) any amount payable to a person employed or authorised, under Chapter 1 of Part 3 of these Rules, to assist in the preparation of a statement of affairs or statement of concurrence,

(f) any allowance made, by order of the court, towards costs on an application for release from the obligation to submit a statement of affairs or statement of concurrence,

(g) any necessary disbursements incurred by the administrator in the course of the special administration (including any expenses incurred by members of the creditors' committee or their representatives and allowed for by the administrator under rule 84, but not including any payment of corporation tax in circumstances referred to in sub-paragraph (h) below),

(h) the remuneration or emoluments of any person who has been employed by the administrator to perform any services for the institution, as required or authorised under the Regulations or these Rules,

(i) the administrator's remuneration for services in pursuit of Objectives 2 and 3 the basis of which has been fixed under Chapter 2 of Part 9 of these Rules, and unpaid pre-administration costs approved under rule 100 for work done in pursuit of Objectives 2 and 3, and

(j) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the institution (without regard to who the realisation is effected by).

(2) The priorities laid down by paragraph (1) of this rule are subject to the power of the court to make orders under paragraph (3) of this rule where the assets are insufficient to satisfy the liabilities.

(3) The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the special administration in such order of priority as the court thinks just.

(4) For the purposes of paragraph 99(3) and subject to rule 99, the former administrator's remuneration and expenses shall comprise all those items set out in paragraph (1) of this rule.

Expenses to be paid out of the relevant funds

99.—(1) The expenses of the special administration to be paid out of the relevant funds held by the institution are payable in the following order of priority—

(a) expenses properly incurred by the administrator in pursuing Objective 1 (other than unpaid pre-administration costs approved under rule 100 for work done in pursuit of Objective 1),

(b) any failure-related costs approved under regulation 42 to the extent that the institution's assets are insufficient to satisfy such liabilities,

(c) any necessary disbursements incurred by the administrator in the course of the special administration specific to the achievement of Objective 1 (including any expenses incurred by customer members of the creditors' committee or their representatives and allowed for

by the administrator under rule 84 but not including any payment of corporation tax in circumstances referred to in rule 98(1)(j)),

(d) the remuneration or emoluments of any person who has been employed by the administrator to perform any services for the institution specific to the achievement of Objective 1, as required or authorised under the Regulations or these Rules, and

(e) the administrator's remuneration the basis of which has been fixed under rule 163 and unpaid pre-administration costs approved under rule 100 in respect of the work done in pursuance of Objective 1.

(2) The priorities laid down by paragraph (1) of this rule are subject to the power of the court to make orders under paragraph (3) of this rule where there are insufficient relevant funds to satisfy the liabilities.

(3) The court may, in the event of the relevant funds being insufficient to satisfy the liabilities, make an order as to the payment out of the relevant funds of the expenses incurred in the special administration in such order of priority as the court thinks just.

(4) For the purposes of paragraph 99(3) the former administrator's remuneration and expenses incurred in respect of the pursuit of Objective 1 shall comprise all those items set out in paragraph (1) of this rule.

(5) The "costs of distribution" referred to in regulation 18 comprise the expenses set out in this rule 99.

Pre-administration costs

100.—(1) Where the administrator has made a statement of pre-administration costs under rule 26(2)(p), the creditors' committee may determine whether and to what extent the unpaid pre-administration costs set out in the statement are approved for payment.

(2) Paragraph (3) applies if—

(a) there is no creditors' committee, or

(b) the creditors' committee does not make the necessary determination, or

(c) the creditors' committee makes the necessary determination but the administrator or other insolvency practitioner who has charged fees or incurred expenses as pre-administration costs considers the amount determined to be insufficient.

(3) When this paragraph applies, determination of whether and to what extent the unpaid pre-administration costs are approved for payment must be by resolution of—

(a) a meeting of customers where the pre-administration costs were incurred wholly in pursuance of Objective 1,

(b) a meeting of creditors where the pre-administration costs were incurred in pursuance of Objectives 2 and 3, or

(c) a meeting of creditors and customers where the pre-administration costs were incurred in pursuance of Objective 1, Objective 2 and Objective 3.

(4) The administrator must call a meeting of the creditors' committee or a meeting under paragraph (3) if so requested for the purposes of paragraphs (1) to (3) by another insolvency practitioner who has charged fees or incurred expenses as pre-administration costs, and the administrator must give notice of the meeting within twenty-eight days of receipt of the request.

(5) The administrator (where the fees were charged or expenses incurred by the administrator) or other insolvency practitioner (where the fees were charged or expenses incurred by that practitioner) may apply to the court for a determination of whether and to what extent the unpaid pre-administration costs are approved for payment if—

(a) there is no determination under paragraph (1) or (3), or

(b) there is such a determination but the administrator or other insolvency practitioner who has charged fees or incurred expenses as pre-administration costs considers the amount determined to be insufficient.

(6) Paragraphs (2) to (4) of rule 165 apply to an application under paragraph (5) of this rule as they do to an application under paragraph (1) of that rule (references to the administrator being read as references to the insolvency practitioner who has charged fees or incurred expenses as pre-administration costs).

(7) Where the administrator fails to call a meeting of the creditors' committee or a meeting under paragraph (3) in accordance with paragraph (4), the other insolvency practitioner may apply to the court for an order requiring the administrator to do so.

Allocation of expenses to be paid from the relevant funds

101. The administrator must set out, in the distribution plan under rule 112, how the administrator proposes that the expenses of the special administration, to be paid out of the relevant funds in accordance with this Chapter, are to be allocated where the institution has more than one asset pool.

PART 5

Relevant funds claims

Content of relevant funds claim

102.—(1) This rule applies to the submission of relevant funds claims.

(2) A person submitting a relevant funds claim must submit that claim in writing to the administrator.

(3) The relevant funds claim must—

(a) be made out by, or under the direction of, the claimant and must be authenticated by the claimant or a person authorised on its behalf,

(b) contain the claimant's name and address, and

(c) state the name, address and authority of the person authenticating the claim, if not the claimant.

(4) The relevant funds claim must include the following information to the extent that the information is known by the claimant—

(a) the amount of the relevant funds claim as at the time the institution entered special administration less any payments made after that date in relation to the relevant funds claim,

(b) details of how and when the debt was incurred by the institution including details of all PS or EMI contracts the claimant has entered into under which, at the time the relevant funds claim is submitted, liabilities are still owed from either the institution to the claimant or vice versa, and

(c) details of any security granted by the claimant in respect of its relevant funds claim.

(5) Where a relevant funds claim does not include the information set out in paragraph (4)(a) or where such information differs from the information held by the institution, the administrator shall be entitled to rely on their and the institution's own records to assess the amount of the relevant funds claim.

(6) The relevant funds claim must specify details of any documents by reference to which the relevant funds claim can be substantiated but, subject to paragraph (7), it is not essential that such documents be attached to the relevant funds claim or submitted with it.

(7) Where the administrator thinks it necessary for the purpose of substantiating the whole or any part of a relevant funds claim submitted, the administrator may—

(a) call for any document or other evidence to be produced, or

(b) send a request in writing for further information from the claimant.

Debt in a foreign currency

103.—(1) A relevant funds claim payable in a foreign currency must state the amount of the relevant funds claim in that currency.

(2) The administrator must convert all such relevant funds claims into sterling at a single rate for each currency determined by the administrator by reference to the exchange rates prevailing on the date the institution entered special administration.

(3) On the next occasion when the administrator communicates with the customers the administrator must advise them of any rate so determined.

(4) A customer who considers that the rate determined by the administrator is unreasonable may apply to the court.

(5) If on hearing the application the court finds that the rate is unreasonable it may itself determine the rate.

Costs of making a claim

104. Unless the court orders otherwise, every claimant under rule 102 bears the cost of making a relevant funds claim, including costs incurred in providing documents or evidence or responding to requests for further information.

New administrator appointed

105.—(1) If a new administrator is appointed in place of another, the former administrator must as soon as is reasonably practicable transmit to the new administrator all relevant funds claims received, together with an itemised list of them.

(2) The new administrator must authenticate the list by way of receipt for the relevant funds claims and return it to the former administrator.

(3) From then on, all relevant funds claims submitted under rule 102 must be sent to and retained by the new administrator.

Admission and rejection of relevant funds claim

106.—(1) The administrator may admit or reject a relevant funds claim in whole or in part.

(2) If the administrator rejects a relevant funds claim in whole or in part, the administrator must prepare a written statement of reasons for doing so, and deliver it as soon as is reasonably practicable to the claimant.

Appeal against decision on relevant funds claim

107.—(1) If a claimant is dissatisfied with the administrator's decision with respect to their relevant funds claim, that claimant may apply to the court for the decision to be reversed or varied.

(2) An application under paragraph (1) must be made within twenty-one days (or such other period as the administrator or the court may agree) of the claimant receiving the statement sent under rule 106.

(3) The applicant must give notice of an application under paragraph (1) to the FCA.

(4) Where application is made to the court under this rule, the court must fix a venue for the application to be heard.

(5) The applicant must send notice of the venue fixed by the court under paragraph (4) to—

(a) the administrator, and

(b) the FCA.

(6) The administrator must, on receipt of the notice, file with the court the relevant funds claim, together (if relevant) with a copy of the statement sent under rule 106.

(7) After the application has been heard and determined, the documentation relating to the relevant funds claim must, unless the relevant funds claim has been wholly disallowed, be returned by the court to the administrator.

(8) The administrator is not personally liable for costs incurred by any person in respect of an application under this rule unless the court otherwise orders.

(9) Except with the permission of the court, the administrator must not make a distribution out of the asset pool so long as there is pending any application to the court to reverse or vary the administrator's decision on a relevant funds claim, or to exclude a proof or to reduce the amount claimed.

(10) If the court gives permission under paragraph (9), the administrator must make such provision in respect of the relevant funds claim in question as the court directs.

Withdrawal or variation of relevant funds claim

108. A relevant funds claim may at any time, with the agreement of the administrator, be withdrawn or varied as to the amount claimed.

Exclusion of relevant funds claim by the court

109.—(1) The court may exclude a relevant funds claim or reduce the amount claimed—

(a) on the administrator's application, where the administrator thinks that the relevant funds claim has been improperly admitted, or ought to be reduced, or

(b) on the application of a creditor or customer, if the administrator declines to interfere in the matter.

(2) Where an application is made to the court under this rule, the court must fix a venue for the application to be heard.

(3) The applicant must send notice of the venue fixed by the court under paragraph (2)—

(a) in the case of an application by the administrator, to the claimant who made the relevant funds claim, or

(b) in the case of an application by a customer or creditor, to the administrator and to the claimant who made the relevant funds claim (if the applicant is not the same customer).

(4) Except with the permission of the court, the administrator must not make a distribution out of the asset pool so long as there is pending any application to the court to reverse or vary the administrator's decision on a relevant funds claim, or to reduce the amount claimed.

(5) If the court gives permission under paragraph (3), the administrator must make such provision in respect of the relevant funds claim in question as the court directs.

PART 6

Objective 1

CHAPTER 1

Setting a bar date and further notifications

Notice of the bar date

110.—(1) This Part applies where the administrator sets a bar date for the submission of relevant funds claims as set out in regulations 20(1) and 21(1).

(2) The administrator must give notice of the bar date—

(a) to each customer of whose relevant funds claim the administrator is aware and whom the administrator has a means of contacting, and

(b) to each person whom the administrator believes has a right to assert a security interest or other entitlement over the asset pool and whom the administrator has a means of contacting.

(3) Notice of the bar date must also be sent to the FCA.

(4) Notice of the bar date—

(a) must be gazetted, and

(b) may be advertised in such other manner as the administrator thinks fit.

(5) In advertising the date under paragraph (4), the administrator must aim to ensure that the bar date comes to the attention of as many of those persons who are eligible to submit a relevant funds claim as the administrator considers practicable.

Notifying potential claimants after bar date has passed

111.—(1) This rule applies where, after the bar date under regulation 20 has passed—

(a) there is evidence from either—

(i) the records of the institution, or

(ii) information received by the administrator

that there is a customer who is eligible to make a relevant funds claim but that the administrator has not received a relevant funds claim from that customer, and

(b) the administrator has a means of contacting that customer.

(2) The administrator must send notice to that customer in writing stating that the administrator believes that customer is eligible to submit a relevant funds claim.

(3) The notice under paragraph (2) must state that—

(a) the administrator believes that that customer has a relevant funds claim, and

(b) in making the distribution plan under rule 112, the administrator intends to calculate that customer's relevant funds claim according to the information available to the administrator unless—

(i) that customer advises the administrator that it is not owed any relevant funds within fourteen business days of receipt of the notice or such longer period as may be agreed by the administrator,

(ii) that customer submits a relevant funds claim in accordance with rule 102 within fourteen business days of receipt of the notice or such longer period as may be agreed by the administrator, or

(iii) the court directs otherwise following an application made in accordance with rule 109.

CHAPTER 2

Distribution plan

Distribution plan

112.—(1) This rule applies where after setting a bar date under regulation 20, the administrator proposes to make a distribution from the asset pool.

(2) The administrator must draw up a distribution plan setting out—

(a) subject to paragraph (3), a schedule of dates on which a distribution is to be made from the asset pool ("a distribution");

(b) the identity of the customers to whom a distribution is to be made;

(c) how each relevant funds claim is to be calculated ("the net relevant funds claim"), taking into account—

(i) any liabilities owed by the customer to the institution in respect of fees and expenses as set out in regulation 24 of EMR 2011 or regulation 23(14) of PSR 2017,

(ii) any liabilities owed to the customer by the institution under a PS or EMI contract, and

(iii) any shortfall claim of the customer;

(d) the amount to be retained by the administrator from the relevant funds to pay the expenses of the special administration in accordance with rules 99 and 101 and how the retention of these amounts will affect the amount paid to settle relevant funds claims.

(3) In setting out the schedule of dates for distributions, no date must be earlier than three months after the bar date.

(4) For the purpose of calculating the customer's relevant funds claim so that the claim can be paid out (or partly paid out) before the contingency occurs or the dispute is resolved, the distribution plan must also set out—

(a) where any liabilities under paragraph (2)(c) are contingent, how the administrator intends to value the liability, and

(b) where any liabilities are disputed, whether the administrator intends to make an assumption as to the outcome of the dispute.

(5) Where an institution has more than one asset pool, the administrator must draw up a distribution plan for each asset pool.

Approval by the creditors' committee

113.—(1) Where there is a creditors' committee, the administrator must summon a meeting of that committee to approve the distribution plan.

(2) The administrator must send the proposed distribution plan to each member of the creditors' committee when sending out notice of the meeting.

(3) The creditors' committee may approve the distribution plan with or without modification.

Approval by the court

114.—(1) This rule applies where a meeting of the creditors' committee has taken place in accordance with rule 113 or where there is no creditors' committee.

(2) The administrator must apply to the court for approval of the distribution plan.

(3) The administrator must send a copy of the distribution plan to—

(a) all persons who have submitted a relevant funds claim,

(b) any customer notified under rule 111, and

(c) the FCA,

and details as to how to find out the venue for the hearing must be sent out with the copy of the distribution plan.

(4) The court, on receiving an application under paragraph (2) must fix the venue for the hearing and in fixing the venue must have regard to the desirability of the application being heard as soon as is reasonably practicable subject to the persons notified under paragraph (3) and the members of the creditors' committee being able to attend and make representations at the hearing.

(5) On hearing the application under paragraph (2) the court may—

(a) make an order approving the distribution plan with or without modification if satisfied that:

(i) where rule 111 applies, the administrator has made the necessary notifications in accordance with that rule, and

(ii) where there is a creditors' committee, either that the committee has approved the distribution plan with or without modification or where the committee has been unable to approve the plan, the court has heard from the members of the committee or has given them an opportunity to explain why the committee were unable to approve the plan,

(b) dismiss the application,

(c) adjourn the hearing (generally or to a specified date), or

(d) make any other order which the court thinks appropriate.

Treatment of late claimants

115.—(1) This rule applies where the administrator receives a relevant funds claim after the bar date set under regulation 20.

(2) Where the relevant funds claim is not submitted in accordance with rule 102, the administrator must notify the claimant accordingly and ask them to resubmit their relevant funds claim in accordance with the relevant rule.

(3) Where the relevant funds claim is submitted in accordance with rule 102 after the bar date set under regulation 20 but before a distribution either under regulation 20 or a distribution plan, the administrator must, so far as is reasonably practicable, include within the distribution any such relevant funds claim in accordance with regulation 20(5).

(4) Where the relevant funds claim is submitted in accordance with rule 102 after a distribution either under regulation 20 or a distribution plan, the administrator must, so far as is reasonably practicable include within any subsequent distribution any such relevant funds claim in accordance with regulation 20(9).

(5) The administrator may amend the distribution plan to reflect distributions under this rule without the need for the plan to be approved again by either the court or the creditors' committee.

PART 7

Distributions to creditors

CHAPTER 1

Application

Distribution to creditors

116.—(1) This Chapter applies where the administrator makes, or proposes to make, a distribution to any class of creditors other than secured creditors.

(2) Where the distribution is to a particular class of creditors, references in this Chapter to creditors shall be a reference to that class of creditors only.

(3) The administrator must give notice to the creditors of their intention to declare and distribute a dividend in accordance with rule 142.

(4) Where it is intended that the distribution is to be a sole or final dividend, the administrator must, after the date specified in the notice referred to in paragraph (3)—

(a) pay any outstanding expenses of a voluntary arrangement that immediately preceded the special administration in accordance with rule 97,

(b) pay any items payable in accordance with rules 98 and 100,

(c) pay any amounts (including any debts or liabilities and the administrator's own remuneration and expenses) which would, if the administrator were to cease to be the administrator of the institution, be payable out of the property of which the administrator had custody or control in accordance with paragraph 99, and

(d) declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved.

(5) The court may, on the application of any person, postpone the date specified in the notice.

Debts of institution to rank equally

117. Debts, other than preferential debts, rank equally between themselves in the special administration and, after the preferential debts, must be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

Supplementary provisions as to dividend

118.—(1) In the calculation and distribution of a dividend the administrator must make provision for—

(a) any debts which are the subject of claims which have not yet been determined, and

(b) disputed proofs and claims.

(2) A creditor who has not proved their debt before the declaration of any dividend is not entitled to disturb, by reason that they have not participated in it, the distribution of that dividend or any other dividend declared before their debt was proved, but—

(a) when the creditor has proved that debt, they are entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which the creditor has failed to receive, and

(b) any dividends payable under sub-paragraph (a) must be paid before the money is applied to the payment of any such further dividend.

(3) No action lies against the administrator for a dividend, but if the administrator refuses to pay a dividend the court may, if it thinks just, order the administrator to pay it and also to pay, out of the administrator's own money—

(a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838(**15**), from the time when it was withheld, and

(b) the costs of the proceedings in which the order to pay is made.

Division of unsold assets

119.—(1) The administrator may, with the permission of the creditors' committee, or if there is no creditors' committee, the creditors, divide in its existing form amongst the institution's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(2) The administrator must—

(a) in the receipts and payments account included in the final progress report under rule 182, state the estimated value of the property divided amongst the creditors of the investment during the period to which the report relates, and

(b) as a note to the account, provide details of the basis of the valuation.

CHAPTER 2

Proofs of debt

Proving a debt

120.—(1) Subject to paragraph (7), a person claiming to be a creditor of the institution and wishing to recover their debt in whole or in part must (subject to any order of the court to the contrary) submit their claim in writing to the administrator.

(2) A creditor who claims is referred to as "proving" for their debt and a document by which that creditor seeks to establish their claim is their "proof".

(3) Subject to paragraph (4) and paragraph (6), a proof must—

(a) be made out by, or under the direction of, the creditor and authenticated by the creditor or a person authorised in that behalf, and

(b) state the following matters—

(i) the creditor's name and address,

(ii) if the creditor is a company, its registered number,

(iii) the total amount of the creditor's claim (including value added tax) as at the date on which the institution entered special administration, less any payments made after that date in respect of the claim, any deduction under rule 131 and any adjustment by way of set-off in accordance with rule 132,

(iv) whether or not the claim includes outstanding uncapitalised interest,

(v) particulars of how and when the debt was incurred by the institution,

(vi) particulars of any security held, the date on which it was given and the value which the creditor puts on it,

(vii) details of any reservation of title in respect of goods to which the debt refers, and

(**15**) 1838 c. 110, amended by S.I. 1998/2940, S.I. 1993/564.

(viii) the name, address and authority of the person authenticating the proof (if not the creditor).

(4) There must be specified in the proof details of any documents by reference to which the debt can be substantiated but, subject to paragraph (5), it is not essential that such document be attached to the proof or submitted with it.

(5) The administrator may call for any document or other evidence to be produced, where the administrator thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the proof.

(6) Where the administrator has become aware that a customer has a shortfall claim, the administrator must—

(a) keep a record of the shortfall claim, including the details set out in paragraph (3)(b) to the extent relevant,

(b) treat each record under sub-paragraph (a) as if it were a proof submitted by a customer in respect of its shortfall claim and references to "proofs" and to "proving" shall include all records prepared under sub-paragraph (a), and

(c) notify the customer that a proof for the shortfall claim has been submitted under this rule as soon as is reasonably practicable.

(7) Where paragraph (6) applies, a customer does not need to submit a separate proof under paragraph (1) for a shortfall claim.

Costs of proving

121. Unless the court otherwise orders—

(a) every creditor bears the cost of proving their own debt, including costs incurred in providing documents or evidence under rule 120, except where the administrator has proved a debt in relation to a customer's shortfall claim under rule 120(6), and

(b) costs incurred by the administrator in estimating the quantum of a debt under rule 128 are payable out of the institution's assets as an expense of the special administration.

Administrator to allow inspection of proofs

122. The administrator must, so long as proofs lodged are in the administrator's hands, allow them to be inspected, at all reasonable times on any business day, by—

(a) any creditor who has submitted a proof of debt (unless that proof has been wholly rejected for purposes of dividend or otherwise),

(b) any contributory of the company, or

(c) any person acting on behalf of either of the above.

New administrator appointed

123.—(1) If a new administrator is appointed in place of another, the former administrator must as soon as is reasonably practicable transmit to the new administrator all proofs received, together with an itemised list of them.

(2) The new administrator must authenticate the list by way of receipt for the proofs, and return it to the former administrator.

(3) From then on, all proofs of debt must be sent to and retained by the new administrator.

Admission and rejection of proofs for dividend

124.—(1) The administrator may admit or reject a proof in whole or in part.

(2) If the administrator rejects a proof in whole or in part, the administrator must prepare a written statement of reasons for doing so, and send it as soon as is reasonably practicable to the creditor.

Appeal against decision on proof

125.—(1) If a creditor is dissatisfied with the administrator's decision with respect to their proof (including any decision on the question of preference), that creditor may apply to the court for the decision to be reversed or varied.

(2) An application under paragraph (1) must be made within twenty-one days of the creditor receiving the statement sent under rule 124.

(3) A member or any other creditor may, if dissatisfied with the administrator's decision admitting or rejecting the whole or any part of a proof, make an application to the court for the decision to be reversed or varied within twenty-one days of becoming aware of the administrator's decision.

(4) The applicant must give notice of an application under paragraph (1) or (3) to the FCA

(5) Where an application is made to the court under this rule, the court must fix a venue for the application to be heard.

(6) The applicant must send notice of the venue set by the court under paragraph (5) to—

(a) the creditor who lodged the proof in question (if the applicant is not that creditor),

(b) the administrator, and

(c) the FCA.

(7) The administrator must, on receipt of the notice, file with the court the relevant proof, together (if relevant) with a copy of the statement sent under rule 124.

(8) Where the application is made by a member, the court must not disallow the proof (in whole or in part) unless the member shows that there is (or would be but for the amount claimed in the proof), or that it is likely that there will be (or would be but for the amount claimed in the proof), a surplus of assets to which the institution would be entitled.

(9) After the application has been heard and determined, the proof must, unless it has been wholly disallowed, be returned by the court to the administrator.

(10) The administrator is not personally liable for costs incurred by any person in respect of an application under this rule unless the court otherwise orders.

Withdrawal or variation of proof

126. A creditor's proof may at any time, by agreement with the administrator, be withdrawn or varied as to the amount claimed.

Exclusion of proof by the court

127.—(1) The court may exclude a proof or reduce the amount claimed—

(a) on the administrator's application, where the administrator thinks that the proof has been improperly admitted, or ought to be reduced, or

(b) on the application of a creditor, if the administrator declines to interfere in the matter.

(2) Where application is made to the court under this rule, the court must fix a venue for the application to be heard, notice of which must be sent by the applicant—

(a) in the case of an application by the administrator, to the creditor who made the proof, and

(b) in the case of an application by a creditor, to the administrator and to the creditor who made the proof (if the applicant is not the same creditor).

CHAPTER 3

Quantification of claims

Estimate of quantum

128.—(1) The administrator must estimate the value of any debt which, by reason of it being subject to any contingency or for any other reason, does not bear a certain value, and a previous estimation may be revised, if the administrator thinks fit, by reference to any change of circumstances or to information becoming available to the administrator.

(2) The creditors must be informed of the estimation and any revision of it.

(3) Where the value of a debt is estimated under this rule, the amount provable in the special administration in the case of that debt is that of the estimate for the time being.

Negotiable instruments

129. Unless the administrator allows, a proof in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security cannot be admitted unless there is produced the instrument or security itself or a copy of it, certified by the creditor or the creditor's authorised representative to be a true copy.

Secured creditors

130.—(1) If a secured creditor realises their security, the creditor may prove for the balance of their debt, after deducting the amount realised.

(2) If a secured creditor voluntarily surrenders their security for the general benefit of creditors, they may prove for their whole debt, as if it were unsecured.

Discounts

131. All trade and other discounts, except any discount for immediate, early or cash settlement, which would have been available to the institution but for it going into special administration, must in every case be deducted from the claim.

Mutual credit and set-off

132.—(1) This rule applies where the administrator has, under rule 142, given notice of a proposal to make a distribution.

(2) In this rule, "mutual dealings" means mutual credits, mutual debts or other mutual dealings between the institution and a creditor of the institution proving or claiming to prove for a debt in the special administration, but does not include any of the following—

(a) any debt arising out of an obligation incurred after the institution entered special administration,

(b) any debt arising out of an obligation incurred at a time when the creditor had notice that an application for a special administration order was pending, or

(c) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into—

(i) after the institution entered special administration, or

(ii) at a time when the creditor had notice that an application for a special administration order was pending.

(3) An account must be taken as at the date of the notice referred to in paragraph (1) of what is due from each party to the other in respect of the mutual dealings and the sums due from one party must be set off against the sums due from the other.

(4) A sum must be regarded as being due to or from the institution for the purposes of paragraph (3) whether—

(a) it is payable at present or in the future,

(b) the obligation by virtue of which it is payable is certain or contingent, or

(c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

(5) Rule 128 shall apply for the purposes of this rule to any obligation to or from the institution which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value.

(6) Rules 133 to 135 shall apply for the purposes of this rule in relation to any sums due to the institution which—

(a) are payable in a currency other than sterling,

(b) are of a periodical nature, or

(c) bear interest.

(7) Rule 153 shall apply for the purposes of this rule to any sum due to or from the institution which is payable in the future.

(8) Only the balance (if any) of the account owed to the creditor is provable in the special administration. Alternatively the balance (if any) owed to the institution must be paid to the administrator as part of the assets except where all or part of the balance results from a contingent or prospective debt owed by the creditor and in such a case the balance (or that part of it which results from the contingent or prospective debt) must be paid if and when that debt becomes due and payable.

(9) In this rule, "obligation" means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise.

Debt in a foreign currency

133.—(1) A proof for a debt incurred or payable in a foreign currency must state the amount of the debt in that currency.

(2) The administrator must convert all such debts into sterling at a single rate for each currency determined by the administrator by reference to the exchange rates prevailing on the date the institution entered special administration.

(3) On the next occasion when the administrator communicates with the creditors the administrator must advise them of any rate so determined.

(4) A creditor who considers that the rate determined by the administrator is unreasonable may apply to the court.

(5) If on hearing the application the court finds that the rate is unreasonable it may itself determine the rate.

Payments of a periodical nature

134.—(1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the date when the institution entered special administration.

(2) Where at that date any payment was accruing due, the creditor may prove for so much as would have fallen due at that date, if accruing from day to day.

Interest

135.—(1) In this rule, "the relevant date" means the date on which the institution entered special administration.

(2) Where a debt proved in the special administration bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the relevant date.

(3) In the following circumstances the creditor's claim may include interest on the debt for periods before the relevant date, although not previously reserved or agreed.

(4) If the debt is due by virtue of a written instrument and payable at a certain time, interest may be claimed for the period from that time to the relevant date.

(5) If the debt is due otherwise, interest may only be claimed if, before the relevant date, a demand for payment of the debt was made in writing by or on behalf of the creditor, and notice given that interest would be payable from the date of the demand to the date of payment.

(6) Interest under paragraph (5) may only be claimed for the period from the date of the demand to the relevant date and for all the purposes of the Regulations and these Rules must be chargeable at a rate not exceeding that mentioned in paragraph (7).

(7) The rate of interest to be claimed under paragraphs (4) and (5) is the rate specified in section 17 of the Judgments Act 1838 on the relevant date.

(8) Any surplus remaining after payment of the debts proved must, before being applied for any purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the relevant date.

(9) All interest payable under paragraph (8) ranks equally whether or not the debts on which it is payable rank equally.

(10) The rate of interest payable under paragraph (8) is whichever is the greater of the rate specified under paragraph (7) and the rate applicable to the debt apart from the special administration.

Debt payable at a future time

136. Subject to rule 153, a creditor may prove for a debt of which payment was not yet due on the date when the institution entered special administration.

Value of security

137.—(1) Subject to paragraph (2), a secured creditor may, with the agreement of the administrator or the permission of the court, at any time alter the value which that creditor has, in their proof of debt, put upon their security.

(2) A secured creditor may re-value their security only with the permission of the court if that secured creditor—

(a) being the applicant for a special administration order, has in the application put a value on their security, or

(b) has voted in respect of the unsecured balance of their debt.

Surrender for non-disclosure

138.—(1) If a secured creditor omits to disclose their security in their proof of debt, the creditor must surrender their security for the general benefit of creditors, unless the court, on application by that creditor, relieves them from the effect of this rule on the ground that the omission was inadvertent or the result of honest mistake.

(2) If the court grants that relief, it may require or allow the creditor's proof of debt to be amended, on such terms as it thinks just.

Redemption by administrator

139.—(1) The administrator may at any time give notice to a creditor whose debt is secured that it is proposed, at the expiration of twenty-eight days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof.

(2) The creditor then has twenty-one days (or such longer period as the administrator may allow) in which, if the creditor so wishes, to exercise their right to revalue their security (with the permission of the court, where rule 137 applies). If the creditor re-values their security, the administrator may only redeem at the new value.

(3) If the administrator redeems the security, the cost of transferring it is payable out of the assets of the institution.

(4) A secured creditor may at any time, by a notice in writing, call on the administrator to elect whether the administrator will or will not exercise their power to redeem the security at the value then placed on it, and the administrator then has three months in which to exercise the power or determine not to exercise it.

Test of security's value

140.—(1) Subject to paragraphs (2) and (3), the administrator may require any property comprised in the security to be offered for sale, if dissatisfied with the value which a secured creditor puts on their security (whether in their proof or by way of re-valuation under rule 137).

(2) The terms of sale must be such as may be agreed, or as the court may direct, and if the sale is by auction, the administrator on behalf of the institution, and the creditor on their own behalf, may appear and bid.

(3) This rule does not apply if the security has been revalued and the revaluation has been approved by the court.

Realisation of security by creditor

141. If a creditor who has valued their security subsequently realises it (whether or not at the instance of the administrator)—

(a) the net amount realised must be substituted for the value previously put by the creditor on the security, and

(b) that amount must be treated in all respects as an amended valuation made by the creditor.

Notice of proposed distribution

142.—(1) Where an administrator is proposing to make a distribution to creditors, the administrator must give notice of that fact.

(2) The notice in paragraph (1) must—

(a) state whether the distribution is to preferential creditors or to preferential creditors and unsecured creditors, and

(b) where the administrator proposes to make a distribution to unsecured creditors, state the value of the prescribed part, except where the court has made an order under section 176A(5) of the IA 1986.

(3) The notice in paragraph (1) must be given to—

(a) all creditors whose addresses are known to the administrator, and

(b) the FCA.

(4) Subject to paragraph (5)(b), before declaring a dividend the administrator must by notice invite the creditors to prove their debts. Such notice—

(a) must be gazetted, and

(b) may be advertised in such other manner as the administrator thinks fit.

(5) A notice under paragraph (1) must, in addition to the standard contents—

(a) state that it is the intention of the administrator to make a distribution to creditors within the period of two months from the last date for proving,

(b) specify whether the proposed dividend is interim or final, and

(c) specify a date up to which proofs may be lodged being a date which—

(i) is the same date for all creditors, and

(ii) is not less than twenty-one days from that of the notice.

(6) Where a dividend is to be declared for preferential creditors—

(a) the notice under paragraph (1) need only to be given to those creditors in whose case the administrator has reason to believe that their debts are preferential, and

(b) the notice under paragraph (3) need only be given if the administrator thinks fit.

Admission or rejection of proofs

143.—(1) Unless the administrator has already dealt with them, within fourteen days of the last date for proving, the administrator must—

(a) admit or reject (in whole or in part) proofs that have been submitted, or

(b) make such provision in respect of them as the administrator thinks fit.

(2) The administrator is not obliged to deal with proofs lodged after the last date for proving, but may do so, if the administrator thinks fit.

(3) In the declaration of a dividend no payment must be made more than once by virtue of the same debt.

Postponement or cancellation of dividend

144.—(1) The administrator may postpone or cancel the dividend if in the period of two months referred to in rule 142(5)—

(a) the administrator has rejected a proof in whole or in part and application is made to the court for that decision to be reversed or varied, or

(b) an application is made to the court for the administrator's decision on a proof to be reversed or varied, or for a proof to be excluded, or for a reduction of the amount claimed.

(2) Where in that same period the administrator considers that, due to the nature of the business of the institution, there is significant complexity in admitting or rejecting proofs of claims submitted, or that the quantum of claims may be affected by any shortfall claims, the administrator may postpone the dividend.

Declaration of a dividend

145.—(1) Where rule 144(2) does not apply and subject to paragraph (2), within the two month period referred to in rule 142(5)(a) the administrator must proceed to declare the dividend to one or more classes of creditor who have been given notice under that rule.

(2) Except with the permission of the court, the administrator must not declare a dividend so long as there is pending any application to the court to reverse or vary the administrator's decision on a proof, or to exclude a proof or to reduce the amount claimed.

(3) If the court gives permission under paragraph (2), the administrator must make such provision in respect of the proof in question as the court directs.

Notice of declaration of a dividend

146.—(1) Where the administrator declares a dividend, the administrator must give notice of such declaration to—

(a) all creditors who have proved their debts, and

(b) the FCA.

(2) A notice under paragraph (1) must include the following particulars—

(a) amounts raised from the sale of assets, indicating (so far as practicable) amounts raised by the sale of particular assets,

(b) payments made by the administrator when acting as such,

(c) where the administrator proposed to make a distribution to unsecured creditors, the value of the prescribed part, except where the court has made an order under section 176A(5) of the IA 1986,

(d) provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes,

(e) the total amount of dividend and the rate of dividend, and

(f) whether, and if so when, any further dividend is expected to be declared.

Payments of dividend and related matters

147.—(1) The dividend may be distributed simultaneously with the notice declaring it.

(2) Payment of dividend may be made by post, or arrangements may be made with any creditor for it to be paid in another way, or held for collection.

(3) Where a dividend is paid on a bill of exchange or other negotiable instrument, the amount of the dividend must be endorsed on the instrument, or on a certified copy of it, if required to be produced by the holder for that purpose.

Notice of no dividend or no further dividend

148.—(1) If the administrator gives notice to creditors that no dividend (or as the case may be, no further dividend) can be declared, the notice must contain a statement to the effect either—

(a) that no funds have been realised, or

(b) that the funds realised have already been distributed or used or allocated for paying the expenses of the special administration.

(2) The notice to creditors in paragraph (1) must also be given to the FCA.

Proof altered after payment of dividend

149.—(1) If after payment of dividend the amount claimed by a creditor in their proof is increased, the creditor is not entitled to disturb the distribution of the dividend, but is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which that creditor has failed to receive.

(2) Any dividend or dividends payable under paragraph (1) must be paid before the money there referred to is applied to the payment of any such further dividend.

(3) If, after a creditor's proof has been admitted, the proof is withdrawn or excluded, or the amount is reduced, the creditor is liable to repay to the administrator any amount overpaid by way of dividend.

Secured creditors

150.—(1) This rule applies where a creditor re-values their security at a time when a dividend has been declared.

(2) If the revaluation results in a reduction of the creditor's unsecured claim ranking for dividend, the creditor must, as soon as is reasonably practicable, repay to the administrator, for the credit of the special administration, any amount received by the creditor as dividend in excess of that to which that creditor would be entitled having regard to the revaluation of the security.

(3) If the revaluation results in an increase of the creditor's unsecured claim, the creditor is entitled to receive from the administrator, out of any money for the time being available for the payment of a further dividend and before any such further dividend is paid, any dividend or dividends which the creditor has failed to receive, having regard to the revaluation of the security.

(4) However, the creditor is not entitled to disturb any dividend declared (whether or not distributed) before the date of the revaluation.

Disqualification from dividend

151.—(1) If a creditor contravenes any provision of the Regulations or these Rules relating to the valuation of securities, the court may, on the application of the administrator, order that the creditor be wholly or partly disqualified from participation in any dividend.

(2) Notice of an application under paragraph (1) must be given by the administrator to the FCA and the FCA has the right to appear and be heard at the hearing of the application.

Assignment of right to dividend

152.—(1) If a person who is entitled to a dividend gives notice to the administrator that they wish the dividend to be paid to another person, or that they have assigned that entitlement to another person, the administrator shall pay the dividend to that other person accordingly.

(2) A notice given under this rule must specify the name and address of the person to whom payment is to be made.

Debt payable at a future time

153.—(1) Subject to paragraph (2), where a creditor has proved for a debt of which payment is not due at the date of the declaration of dividend, that creditor is entitled to dividend equally with other creditors.

(2) For the purpose of dividend (and no other purpose) the amount of the creditor's admitted proof (or, if a distribution has previously been made to that creditor, the amount remaining outstanding in respect of their admitted proof) must be reduced by applying the following formula—

where—

(a) "X" is the value of the admitted proof, and

(b) "n" is the period beginning with the relevant date and ending with the date on which the payment of the creditor's debt would otherwise be due expressed in years and months in a decimalised form.

(3) In paragraph (2) "relevant date" means the date that the institution entered special administration.

PART 8

The Administrator

CHAPTER 1

Powers of the administrator

General powers

154.—(1) Any permission given by the creditors' committee (or if there is no such committee, a meeting of the institution's creditors and customers or the court under these Rules), must not be a general permission but must relate to a particular proposed exercise of one or more of the administrator's powers in Schedule 1 to the IA 1986.

(2) A person dealing with the administrator in good faith and for value is not concerned to enquire whether any such permission has been given.

(3) Where the administrator has done anything without that permission, the court or the creditors' committee may, for the purpose of enabling the administrator to meet the administrator's expenses, ratify what the administrator has done, but neither shall do so unless it is satisfied that the administrator has acted in a case of urgency and has sought ratification without undue delay.

Powers of disclaimer

155.—(1) Where the administrator disclaims property under section 178 of the IA 1986(**16**), the notice of disclaimer must contain such particulars of the property disclaimed as enable it to be easily identified.

(2) The notice of disclaimer must be authenticated and dated by the administrator.

(3) As soon as is reasonably practicable after authenticating the notice of disclaimer, the administrator must—

(a) send a copy of the notice to the registrar of companies, and

(b) in any case where the disclaimer is of registered land as defined in section 132(1) of the Land Registration Act 2002(**17**), send a copy of the notice to the Chief Land Registrar.

(4) For the purposes of section 178 of the IA 1986, the date of the prescribed notice is that on which the administrator authenticated it.

(**16**) Section 178 was amended by Banking Act 2009 c. 1, S.I. 2011/245. There are other amending instruments but none is relevant.
(**17**) 2002 c. 9.

Communication of disclaimer to persons interested

156.—(1) Within seven business days after the date of the notice of disclaimer, the administrator must send or give copies of the notice to every person who, to the administrator's knowledge—

(a) claims under the institution as underlessee or mortgagee, where the property disclaimed is of a leasehold nature,

(b) claims an interest in the disclaimed property,

(c) is under any liability in respect of the property, not being a liability discharged by the disclaimer, or

(d) who is party to the contract or has an interest under it where the disclaimer is of an unprofitable contract.

(2) If subsequently it comes to the administrator's knowledge, in the case of any person 'P', that P has such an interest in the disclaimed property as would have entitled P to receive a copy of the notice of disclaimer under paragraph (1), the administrator must then, as soon as is reasonably practicable, send or give to P a copy of the notice.

(3) Compliance with paragraph (2) is not required if—

(a) the administrator is satisfied that P has already been made aware of the disclaimer and its date, or

(b) the court, on the administrator's application, orders that compliance is not required in that particular case.

Additional notices

157.—(1) The administrator disclaiming property may at any time send or give copies of the notice of the disclaimer to any persons who in the administrator's opinion ought, in the public interest or otherwise, to be informed of the disclaimer.

(2) Paragraph (1) is without prejudice to the administrator's obligations under sections 178, 179 and 180 of the IA 1986(**18**) and rules 155 and 156.

Records

158. The administrator must include in the administrator's records of the special administration a record of—

(a) the persons to whom that administrator has sent or given copies of the notice of disclaimer under rules 156 and 157, showing their names and addresses, and the nature of their respective interests,

(b) the dates on which the copies of the notice of disclaimer were sent or given to those persons,

(c) the date on which, as required by rule 155, a copy of the notice of disclaimer was sent to the registrar of companies, and

(d) (where applicable) the date on which, as required by rule 155, a copy of the notice was sent to the Chief Land Registrar.

Application by interested party

159.—(1) The following applies where, in the case of any property, application is made to the administrator by an interested party under section 178(5) of the IA 1986.

(**18**) Sections 178 to 180 were amended by Banking Act 2009 (c. 1) and S.I. 2011/245. There are other amending instruments but none is relevant.

(2) The application must be delivered to the administrator—

(a) personally,

(b) by electronic means in accordance with Part 12, or

(c) by any other means of delivery which enables proof of receipt of the application by the administrator to be provided, if requested.

Interest in property to be declared on request

160.—(1) If, in the case of property which the administrator has the right to disclaim, it appears to the administrator that there is some person 'P' who claims, or may claim, to have an interest in the property, the administrator may give notice to P calling on that person to declare within fourteen days whether P claims any such interest and, if so, the nature and extent of it.

(2) If P fails to comply with the notice, the administrator is entitled to assume that P has no such interest in the property as will prevent or impede its disclaimer.

Disclaimer presumed valid and effective

161. Any disclaimer of property by the administrator is presumed valid and effective, unless it is proved that the administrator has been in breach of their duty with respect to the giving of notice of disclaimer, or otherwise, under sections 178 to 180 of the IA 1986 or under this Chapter of these Rules.

Application for the exercise of court's powers under section 181

162.—(1) This rule applies with respect to an application by any person under section 181 of the IA 1986 for an order of the court to vest or deliver disclaimed property.

(2) The application must be made within three months of the applicant becoming aware of the disclaimer, or of the applicant receiving a copy of the administrator's notice of disclaimer sent under rule 156, whichever is the earlier.

(3) The applicant must with the application file a witness statement—

(a) stating whether the application is made under—

(i) paragraph (a) of section 181(2), or

(ii) paragraph (b) of section 181(2),

(b) specifying the date on which the applicant received a copy of the administrator's notice of disclaimer, or otherwise became aware of the disclaimer, and

(c) specifying the grounds of the application and the order which the applicant desires the court to make under section 181.

(4) The court must fix a venue for the hearing of the application, and the applicant must, not later than five business days before the date fixed, give to the administrator notice of the venue, accompanied by copies of the application and the witness statement required by paragraph (3).

(5) On the hearing of the application, the court may give directions as to other persons (if any) who should be sent or given notice of the application and the grounds on which it is made.

(6) Sealed copies of any order made on the application must be sent by the court to the applicant and the administrator.

(7) In a case where the property disclaimed is of a leasehold nature, and section 179 of the IA 1986 applies to suspend the effect of the disclaimer, there must be included in the court's order a direction giving effect to the disclaimer.

(8) Paragraph (7) does not apply if, at the time when the order is issued, other applications under section 181 are pending in respect of the same property.

CHAPTER 2

Fixing of remuneration

Fixing of remuneration

163.—(1) The administrator is entitled to receive remuneration—

(a) to be paid out of the estate of the institution for services given—

(i) in respect of the pursuit of Objectives 2 and 3, and

(ii) as a consequence of a failure by the institution to safeguard relevant funds, and

(b) to be paid out of relevant funds for services given in respect of the pursuit of Objective 1.

(2) The basis of remuneration in both cases in paragraph (1) must be fixed—

(a) as a percentage of the value of the property with which the administrator has to deal,

(b) by reference to the time properly given by the insolvency practitioner (as administrator) and their staff in attending to matters arising in the special administration, or

(c) as a set amount.

(3) The basis of remuneration may be fixed as any one or more of the bases set out in paragraph (2), and different bases may be fixed in respect of different things done by the administrator.

(4) Where the basis of remuneration is fixed as set out in paragraph (2)(a), different percentages may be fixed in respect of different things done by the administrator.

(5) It is for the creditors' committee (if there is one) to determine for each case—

(a) which of the bases set out in paragraph (2) are to be fixed and (where appropriate) in what combination under paragraph (3), and

(b) the percentage or percentages (if any) to be fixed under paragraphs (2)(a) and (4) and the amount (if any) to be set under paragraph (2)(c).

(6) In making the determinations, the creditors' committee must have regard to the following matters—

(a) the complexity (or otherwise) of the case,

(b) any respects in which, in connection with the pursuit of either Objective 1, 2 or 3, there falls on the administrator any responsibility of an exceptional kind or degree,

(c) the effectiveness with which the administrator appears to be carrying out, or to have carried out, their duties as such, and

(d) the value and nature in each case of the property with which the administrator has to deal.

(7) If there is no creditors' committee, or the committee does not make the requisite determinations, the basis of the administrator's remuneration in each case may be fixed (in accordance with paragraphs (2) to (5)) by resolutions of a meeting of creditors and customers, or in respect of the administrator's remuneration for the purpose outlined in rule 163(1)(b), a meeting of customers and paragraph (6) applies to them as it does to the creditors' committee.

(8) If not fixed in accordance with paragraphs (5) or (7), the basis of the administrator's remuneration must, on the administrator's application, be fixed by the court and the provisions above apply as they do to the fixing of the basis of remuneration by the creditors' committee.

(9) An application under paragraph (8) may not be made by the administrator unless the administrator has first sought to fix the basis in accordance with paragraph (5) or (7), and in any event may not be made more than eighteen months after the date of the administrator's appointment.

(10) Where there are joint administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred—

(a) to the court, for settlement by order, or

(b) to the creditors' committee or a meeting of creditors and customers, for settlement by resolution.

(11) If the administrator is a solicitor and employs their own firm, or any partner in it, to act on behalf of the institution, profit costs must not be paid unless this is authorised by the creditors' committee, the meeting of the creditors and customers, or the court.

Recourse to meeting of creditors and customers

164. If the basis of the administrator's remuneration for either case in rule 163(1) has been fixed by the creditors' committee, and the administrator considers, in either or in both cases, the rate or amount to be insufficient, or the basis to be inappropriate, the administrator may request that the rate or amount be increased or the basis changed by resolution of the creditors and the customers.

Recourse to the court

165.—(1) If the administrator considers that the basis of remuneration for either case in rule 163(1) fixed for the administrator by—

(a) the creditors' committee, or

(b) by resolution of the creditors and customers, or as the case may be, a meeting of customers,

is insufficient or inappropriate, the administrator may apply to the court for an order changing it or increasing its amount or rate.

(2) The administrator must give at least fourteen days' notice of the application under paragraph (1) to the members of the creditors' committee, and the creditors' 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 notice of the application must be sent to such one or more of the institution's creditors or customers as the court may direct and those creditors or customers must nominate one or more of their number to appear or be represented and be heard on the application.

(4) Notice of the application must also be given to the FCA and the FCA may nominate a person to appear and be heard on the application.

(5) The court may, if it appears to be a proper case, order the costs of the administrator's application, including the costs of any member of the creditors' committee appearing or being represented on it, or any creditor or customer so appearing or being represented, to be paid as an expense of the special administration.

Creditors' and customers' request for further information

166.—(1) If—

(a) within twenty-one days of receipt of a progress report under rule 87—

(i) a secured creditor,

(ii) an unsecured creditor with the concurrence of at least five per cent in value of the unsecured creditors (including the creditor in question), or

(iii) a customer with the concurrence of customers whose relevant funds claims represent at least five per cent of all relevant funds claims (including the customer in question), or

(b) with the permission of the court upon an application made within that period of twenty-one days, any unsecured creditor or any customer,

makes a request in writing to the administrator for further information about remuneration or expenses (other than pre-administration costs) set out in a statement required by rule 87(1)(h) or (i), the administrator must, within fourteen days of receipt of the request, comply with paragraph (2).

(2) The administrator complies with this paragraph by either—

(a) providing all of the information asked for, or

(b) so far as the administrator considers that—

(i) the time or cost of preparation of the information would be excessive,

(ii) disclosure of the information would be prejudicial to the conduct of the special administration or might reasonably be expected to lead to violence against any person, or

(iii) the administrator is subject to an obligation of confidentiality in respect of the information,

giving reasons for not providing all of the information.

(3) Any creditor or customer, who need not be the same as the person who requested further information under paragraph (1), may apply to the court within twenty-one days of—

(a) the giving by the administrator of reasons for not providing all of the information asked for, or

(b) the expiry of the fourteen days provided for in paragraph (1),

and the court may make such order as it thinks just.

(4) Without prejudice to the generality of paragraph (3), the order of the court under that paragraph may extend the period of eight weeks provided for in rule 167(4) by such further period as the court thinks just.

Claim that remuneration is excessive

167.—(1) The following persons may apply to the court for one or more of the orders in paragraph (7) in respect of the administrator's remuneration for services set out in rule 163(1)(a)—

(a) a secured creditor,

(b) an unsecured creditor with either the concurrence of at least ten per cent in value of the unsecured creditors (including that creditor) or the permission of the court,

(c) a customer with the concurrence of customers whose relevant funds claims represent at least ten per cent of all relevant funds claims or with the permission of the court, or

(d) the FCA.

(2) A customer, with the concurrence of customers whose relevant funds claims represent at least ten per cent of the total relevant funds claims, or with the permission of the court, may apply to the court for one or more of the orders in paragraph (7) in respect of the administrator's remuneration for services set out in rule 163(1)(b).

(3) An application under paragraphs (1) and (2) may be made on the grounds that—

(a) the remuneration charged by the administrator is, or the expenses incurred by the administrator are, in all the circumstances, excessive, or

(b) the basis fixed for the administrator's remuneration is in all the circumstances excessive or inappropriate.

(4) The application must, subject to any order of the court under rule 166(4), be made no later than eight weeks after receipt by the applicant of the progress report which first reports the charging of the remuneration or the incurring of the expenses in question ("the relevant report").

(5) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application without a hearing but it must not do so without giving the applicant at least five business days' notice.

(6) Upon receipt of notice under paragraph (5), the applicant may require the court to list the application for a without notice hearing.

(7) If the application is not dismissed, the court must fix a venue for it to be heard, and give notice to the applicant accordingly.

(8) The applicant must, at least fourteen days before the hearing, send to the administrator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to provide in support of the application.

(9) If the court considers the application to be well-founded, it may make one or more of the following orders—

(a) an order reducing the amount of remuneration which the administrator was entitled to charge,

(b) an order fixing the basis of remuneration at a reduced rate or amount,

(c) an order changing the basis of remuneration,

(d) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the special administration, or

(e) an order that the administrator or the administrator's personal representative pay to the institution the amount of the excess of remuneration or expenses or such part of the excess as the court may specify,

and may make any other order that it thinks just, but an order under sub-paragraph (b) or (c) may be made only in respect of periods after the period covered by the relevant report.

(10) Unless the court orders otherwise, the costs of the application must be paid by the applicant, and are not payable as an expense of the special administration.

Review of remuneration

168.—(1) Where, after the basis of the administrator's remuneration has been fixed, there is a material and substantial change in the circumstances which were taken into account in fixing it, the administrator may request that it be changed.

(2) The request must be made—

(a) where the creditors' committee fixed the basis, to the committee;

(b) where the creditors and customers fixed the basis, to the creditors and customers;

(c) where the court fixed the basis, by application to the court;

and this Chapter applies as appropriate.

(3) Any change in the basis for remuneration applies from the date of the request under paragraph (1) and not for any earlier period.

Remuneration of new administrator

169. If a new administrator is appointed in place of another, any determination, resolution or court order in effect under the preceding provisions of this Chapter immediately before the former administrator ceased to hold office continues to apply in respect of the remuneration of the new administrator until a further determination, resolution or court order is made in accordance with those provisions.

Apportionment of set fee remuneration

170.—(1) In a case in which the basis of the administrator's remuneration is a set amount under rule 163(2)(c)and the administrator ("the former administrator") ceases (for whatever reason) to hold office before the time has elapsed or the work has been completed in respect of which the amount was set, application may be made for determination of what portion of the amount should be paid to the former administrator or the former administrator's personal representative in respect of the time which has actually elapsed or the work which has actually been done.

(2) An application under paragraph (1) may be made—

(a) by the former administrator or the former administrator's personal representative within the period of twenty-eight days beginning with the date upon which the former administrator ceased to hold office, or

(b) by the administrator for the time being in office if the former administrator or the former administrator's personal representative has not applied by the end of that period.

(3) Application must be made—

(a) where the creditors' committee fixed the basis, to that committee for a resolution determining the portion;

(b) where the creditors and customers fixed the basis, to the creditors and customers for a resolution determining the portion;

(c) where the court fixed the basis, to the court for an order determining the portion;

(4) The applicant must give a copy of the application to the administrator for the time being in office or to the former administrator or the former administrator's personal representative, as the case may be ("the recipient").

(5) The recipient may within twenty-one days of receipt of the copy of the application give notice of intent to make representations to the creditors' committee or to the creditors and customers, or to appear or be represented before the court, as the case may be.

(6) No determination may be made upon the application until expiry of the twenty-one days referred to in paragraph (5) or, if the recipient does give notice of intent in accordance with that paragraph, until the recipient has been afforded the opportunity to make representations or to appear or be represented on the application, as the case may be.

(7) If the former administrator or the former administrator's personal representative (whether or not the original applicant) considers that the portion determined upon application to the creditors' committee or the creditors and customers is insufficient, that person may apply—

(a) in the case of a determination by the creditors' committee, to the creditors and customers for a resolution increasing the portion;

(b) in the case of a resolution of the creditors and customers (whether under paragraph (1) or under sub-paragraph (a)), to the court for an order increasing the portion;

and paragraphs (4) to (6) apply as appropriate.

CHAPTER 3

Replacing the administrator

Grounds for resignation

171.—(1) The administrator may resign in the following circumstances—

(a) on grounds of ill health,

(b) that the administrator intends ceasing to be in practice as an insolvency practitioner, or

(c) that there is some conflict of interest, or change of personal circumstances, which precludes or makes impracticable the further discharge by that person of the duties of administrator.

(2) The administrator may, with the permission of the court, resign on grounds other than those specified in paragraph (1).

Notice of intention to resign

172.—(1) The administrator must in all cases give at least five business days' notice of their intention to resign, or their intention to apply for the court's permission to do so, to the following persons—

(a) if there is a continuing administrator of the institution, to that person, and

(b) if there is a creditors' committee, to it.

(2) If there is no continuing administrator and no creditors' committee, the administrator must give at least five business days' notice of their intention to resign, or their intention to apply for the court's permission to do so, to the institution and its creditors and customers of whose claim the administrator is aware and whom the administrator has a means of contacting.

(3) Where the administrator was appointed on the application of the FCA or the Secretary of State, notice under paragraph (1) or paragraph (2) must also be given to the applicant.

(4) Notice under paragraph (1) or paragraph (2) must set out—

(a) a statement that the proceedings are being held in the court and the court reference number;

(b) the full name, registered address, registered number of the institution;

(c) the full name and business address of the administrator;

(d) either—

(i) the date on which the administrator's resignation shall take effect, or

(ii) the date upon which the administrator intends to apply to the court for leave to resign.

Notice of resignation

173.—(1) The notice of resignation must set out—

(a) a statement that the proceedings are being held in the court and the court reference number,

(b) the full name, registered address and registered number of the institution,

(c) the full name and business address of the administrator,

(d) whether or not the person resigning is the sole administrator of the institution, and

(e) a statement that either—

(i) the administrator resigns from office with effect from a specified date, or

(ii) the court gave the administrator leave to resign (and the statement must include the date of the court's permission) and that the administrator therefore resigns with effect from a specified date.

(2) The notice must be filed with the court and a copy of the notice of resignation must be sent not more than five business days after it has been filed with the court to all those to whom the notice of intention to resign was sent.

(3) The administrator must notify the registrar of companies of their resignation.

Application to court to remove administrator from office

174.—(1) Any application under paragraph 88 must state the grounds on which it is requested that the administrator should be removed from office.

(2) Notice of the application must be served on—

(a) the administrator,

(b) the person who made the application for the special administration order,

(c) the creditors' committee (if any),

(d) the joint administrator (if any),

(e) where there is neither a creditors' committee or joint administrator, the institution and all the creditors and customers of whose claim the administrator is aware and of whom they have a means of contacting, and

(f) the FCA.

(3) Where a court makes an order removing the administrator it must give a copy of the order to the applicant who as soon as is reasonably practicable must send a copy to the administrator.

(4) The applicant must also within five business days of the order being made send a copy of the order to all those to whom notice of the application was sent.

(5) The applicant must send notice of the order to the registrar of companies within five business days of the order being made.

Notice of vacation of office when administrator ceases to be qualified

175. Where the administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the institution gives notice in accordance with paragraph 89, notice must also be given to—

(a) the registrar of companies, and

(b) where the administrator was appointed on the application of the FCA or the Secretary of State, the applicant.

Administrator deceased

176.—(1) Subject to paragraphs (2) to (4), where the administrator has died, it is the duty of the administrator's personal representatives to give notice of the fact to the court, specifying the date of the death. This does not apply if notice has been given under either paragraph (3) or (4) of this rule.

(2) Notice of the death must also be sent to the registrar of companies.

(3) If the deceased administrator was a partner in or an employee of a firm, notice to the court may be given by a partner in the firm who is qualified to act as an insolvency practitioner, or is a member of any body recognised by the Secretary of State or the Department for the Economy for Northern Ireland for the authorisation of insolvency practitioners.

(4) Notice of the death may be given to the court by any person producing to the court the relevant death certificate or a copy of it.

Application to replace

177.—(1) Where an application is made to court under paragraph 91(1) to appoint a replacement administrator, the application must be accompanied by a written statement by the person proposed to be the replacement administrator.

(2) The written statement must be in accordance with rule 7.

(3) A copy of the application must be served on—

(a) the person who made the application for a special administration order,

(b) the institution (if neither the institution nor its directors are the applicant),

(c) on the person nominated for appointment as administrator, and

(d) the FCA (if not the applicant).

(4) Rule 10 shall apply to the service of an application under paragraph 91(1) as it applies to service of the application for a special administration order.

(5) Rules 11 and 13 apply to an application under this rule and rule 16(1) and (2) shall apply to the notice of appointment under paragraph 91(1) as it applies to notice of a special administration order.

Notification and advertisement of appointment of replacement administrator

178.—(1) Subject to rule 180, where a replacement administrator is appointed, the same provisions apply in respect of giving notice of, and advertising, the replacement appointment as in the case of the initial appointment.

(2) All statements, consents and notices as are required for the initial appointment are also required in the case of the appointment of a replacement administrator.

(3) All notices must clearly identify that the appointment is of a replacement administrator.

Notification and advertisement of appointment of joint administrator

179. Subject to rule 180, where, after an initial appointment has been made, an additional person or persons are to be appointed as joint administrator, the same rules apply in respect of giving notice of and advertising the appointment as applied in relation to the initial appointment.

Notification of new administrator

180.—(1) The replacement or additional administrator must send notice of the appointment to the registrar of companies.

(2) The notice in paragraph (1) must contain—

(a) the name and business address of the administrator appointed,

(b) the name, registered address and registered number of the institution in respect of which the appointment is made,

(c) whether the administrator is appointed to replace an existing administrator or in addition to a previously appointed administrator, and

(d) the date from which the administrator's appointment will take effect.

Administrator's duties on vacating office

181.—(1) Where the administrator ('A') ceases to be in office in consequence of this Chapter, A is under obligation as soon as is reasonably practicable to deliver up to the person succeeding A as administrator ('B')—

(a) the assets (after deduction of any expenses properly incurred and distributions made by A),

(b) the records of the special administration, including correspondence, proofs and other related papers appertaining to the special administration while it was within A's responsibility, and

(c) the institution's books, papers and other records.

(2) If A makes default in complying with this rule, A is liable to a fine and, for continued contravention, to a daily default fine in each case as set out in the Schedule to these Rules.

PART 9

End of special administration

Final progress reports

182.—(1) In this Part, reference to a progress report is to a report in the form specified in rule 87.

(2) The final progress report means a progress report which includes a summary of—

(a) the administrator's proposals (including whether the FCA has given a direction under regulation 38 and whether that direction has been withdrawn),

(b) any major amendments to, or deviations from, those proposals,

(c) the steps taken during the special administration, and

(d) the outcome.

Application to court by administrator

183.—(1) An application to court under paragraph 79 for an order ending a special administration must have attached to it—

(a) a progress report for the period since the last progress report (if any) or the date the institution entered special administration, and

(b) a statement indicating what the administrator thinks should be the next steps for the institution (if applicable).

(2) Before making the application under paragraph (1), the administrator must—

(a) give notice in writing to—

(i) the applicant for the special administration order under which the administrator was appointed,

(ii) the creditors and customers, and

(iii) the FCA, and

(b) attach to the application a statement that the creditors and customers have been notified of the application and copies of any response to that notification.

(3) Notice under paragraph (2)(a) must be given at least five business days before the date that the administrator intends to make the application.

(4) The administrator—

(a) must send a copy of the application under paragraph (1) to the FCA,

(b) must, within five business days of filing the application, gazette a notice undertaking to provide a copy of the application to any person who so requests it (and an address to which they can write), and

(c) advertise the notice in such other manner as the administrator thinks fit.

Application to court by creditor

184.—(1) Where a creditor applies to the court to end the special administration a copy of the application must be served on—

(a) the administrator,

(b) the person who made the application for the special administration order, and

(c) the FCA.

(2) Service must be effected not less than five business days before the date fixed for the hearing.

(3) The persons in paragraph (1) may appear at the hearing of the application.

(4) Where the court makes an order to end the special administration, the court must send a copy of the order to the administrator.

Notification by administrator of court order

185. Where the court makes an order to end the special administration, the administrator must send—

(a) a copy of the court order to the registrar of companies within the period of fourteen days beginning with the date of the order,

(b) a copy of the final progress report to the registrar of companies as soon as is reasonably practicable, and

(c) a copy of the court order and a copy of the final progress report to all other persons to whom notice of the administrator's appointment was delivered as soon as is reasonably practicable.

Moving from special administration to dissolution

186.—(1) Where, for the purposes of paragraph 84(1), the administrator sends a notice of moving from special administration to dissolution to the registrar of companies, the administrator must attach to that notice a copy of the final progress report.

(2) As soon as is reasonably practicable, a copy of the notice and the attached document must be sent to all other persons who received notice of the administrator's appointment.

(3) Where a court makes an order under paragraph 84(7) it must, where the applicant is not the administrator, give a copy of the order to the administrator.

PART 10

Court procedure and practice

CHAPTER 1

Application of the CPR

Principal court rules and practice to apply

187.—(1) The provisions of the CPR in the first column of the table in this rule (including any related practice direction) apply to special administration by virtue of the provisions of these Rules set out in the second column with any necessary modifications, except so far as inconsistent with these Rules.

Provision of CPR	***Provisions of these Rules***
CPR Part 6 (service of documents)	Chapter 4 of Part 10
CPR Part 18 (further information)	Rules 192 and 213(c)(ii)
CPR Part 31 (disclosure and inspection of documents)	Rules 192 and 213
CPR Part 37(**19**) (miscellaneous provisions about payments into court)	Rule 191
CPR Parts 44 (general rules about costs) and 47 (procedure for assessment of costs and default provisions)	Chapter 10 of Part 10
CPR Part 52(**20**) (appeals)	Chapter 12 of Part 10

(2) Subject to paragraph (3), the provisions of the CPR (including any related practice direction) not referred to in the table apply to proceedings under the Regulations and these Rules with any necessary modifications, except so far as inconsistent with these Rules.

(3) Proceedings in a special administration must be allocated to the multi-track for which CPR Part 29 makes provision, and accordingly those provisions of the CPR which provide for allocation questionnaires and track allocation do not apply.

(4) CPR Part 32 applies to a false statement in a document verified by a statement of truth made under these Rules as it applies to a false statement in a document verified by a statement of truth made under CPR Part 22.

CHAPTER 2

The Court

Shorthand writers — nomination, appointment, remuneration and costs

188.—(1) The judge or registrar may in writing nominate one or more persons to be official shorthand writers to the court.

(**19**) Part 37 was substituted by S.I. 2006/3435.
(**20**) Part 52 was inserted by S.I. 2000/221.

(2) The court may, at any time in the course of the special administration appoint a shorthand writer to take down evidence of a person examined under section 236 of the IA 1986(**21**).

(3) The remuneration of a shorthand writer appointed under this rule must be paid by the party at whose instance the appointment was made, or out of the insolvent estate, or otherwise, as the court may direct.

(4) Any question arising as to the rates of remuneration payable under this rule must be determined by the court.

Court file

189.—(1) The court must open and maintain a file in any case where documents are filed with it under the Regulations or these Rules.

(2) Any documents which are filed with the court under the Regulations or these Rules must be placed on the file opened in accordance with paragraph (1).

(3) The following persons may inspect or obtain from the court a copy of, or a copy of any document or documents contained in, the file opened in accordance with paragraph (1)—

(a) the administrator,

(b) the Secretary of State,

(c) the FCA,

(d) any person who is a creditor of the institution if that person provides the court with a statement in writing confirming that that person is a creditor, and

(e) any person who is a customer of the institution if that person provides the court with a statement in writing confirming that that person is a customer.

(4) The same right to inspect or obtain a copy of, or a copy of any document or documents contained in, the file opened in accordance with paragraph (1) is exercisable by—

(a) an officer or former officer of the institution in special administration, or

(b) a member of the institution or a contributory in the special administration.

(5) A person's right to inspect or obtain a copy of, or a copy of any document or documents contained in, the file opened in accordance with paragraph (1) may be exercised on that person's behalf by someone authorised to do so by that person.

(6) Any person who is not otherwise entitled to inspect or obtain a copy of, or a copy of any document or documents contained in, the file opened in accordance with paragraph (1) may do so if that person has the permission of the court.

(7) The court may direct that the file, a document (or part of it) or a copy of a document (or part of it) must not be made available under paragraph (3), (4) or (5) without the permission of the court.

(8) An application for a direction under paragraph (7) may be made by—

(a) the administrator,

(b) the FCA, or

(c) any person appearing to the court to have an interest.

(9) Where any person wishes to exercise the right to inspect the file under paragraph (3), (4), (5) or (6), that person—

(a) if the permission of the court is required, must file with the court an application notice in accordance with these Rules, or

(**21**) Section 236 was amended by Banking Act 2009 (c. 1) and S.I. 2011/245. There are other amending instruments but none is relevant.

(b) if the permission of the court is not required, may inspect the file at any reasonable time.

(10) Where any person wishes to exercise the right to obtain a copy of, or a copy of any document or documents contained in, the file under paragraph (3), (4), (5) or (6), that person must pay any prescribed fee and—

(a) if the permission of the court is required, file with the court an application notice in accordance with these Rules, or

(b) if the permission of the court is not required, file with the court a written request for the document.

(11) An application for—

(a) permission to inspect the file or obtain a copy of a document under paragraph (6), or

(b) a direction under paragraph (7),

may be made without notice to any other party, but the court may direct that notice must be given to any person who would be affected by its decision.

(12) If for the purposes of powers conferred by the Regulations or these Rules, the Secretary of State makes a request to inspect or requests the transmission of the file of any insolvency proceedings, the court must comply with the request (unless the file is for the time being in use for the court's own purposes).

Office copies of documents

190.—(1) The court must provide an office copy of any document from the court file of the special administration to any person who under these Rules has the right to inspect the court file where that person has requested such a copy.

(2) A person's rights under this rule may be exercised on that person's behalf by that person's solicitor.

(3) An office copy provided by the court under this rule must be in such form as the registrar thinks appropriate, and must bear the court's seal.

Payments into court

191. CPR Part 37 (miscellaneous provisions about payments into court) applies to money lodged in court under these Rules.

CHAPTER 3

Obtaining information and evidence

Further information and disclosure

192.—(1) Any party to the special administration may apply to the court for an order—

(a) that any other party—

(i) clarify any matter that is in dispute in the proceedings, or

(ii) give additional information in relation to any such matter, in accordance with CPR Part 18 (further information), or

(b) to obtain disclosure from any other party in accordance with CPR Part 31 (disclosure and inspection of documents).

(2) An application under this rule may be made without notice being served on any other party.

Witness statements — general

193.—(1) Where evidence is required by the Regulations or these Rules as to any matter, such evidence may be provided in the form of a witness statement unless—

(a) in any specific case a rule (including rule 195) or the Regulations makes different provision, or

(b) the court otherwise directs.

(2) The court may, on the application of any party to the matter in question order the attendance for cross-examination of the person making the witness statement.

(3) Where, after such an order has been made, the person in question does not attend, that person's witness statement must not be used in evidence without the leave of the court.

Filing and service of witness statements

194. Unless the provision of the Regulations or Rules under which the application is made provides otherwise, or the court otherwise allows—

(a) if the applicant intends to rely at the first hearing on evidence in a witness statement, the applicant must file that witness statement with the court and serve a copy of it on the respondent not less than fourteen days before the date fixed for the hearing, and

(b) where the respondent to an application intends to oppose it and rely for that purpose on evidence contained in a witness statement, the respondent must file the witness statement with the court and serve a copy on the applicant not less than five business days before the date fixed for the hearing.

Evidence provided by the administrator

195.—(1) Where in the special administration a witness statement is made by the administrator, the witness statement must state—

(a) the capacity in which that person makes the statement, and

(b) the person's business address.

(2) The administrator may file a report with the court instead of a witness statement unless the application involves other parties or the court otherwise orders.

(3) In any case where a report is filed instead of a witness statement, the report must be treated for the purpose of rule 194 and any hearing before the court as if it were a witness statement.

CHAPTER 4

Service of court documents

Application of Chapter

196.—(1) Subject to paragraph (2), this Chapter applies in relation to the service of—

(a) applications,

(b) documents relating to applications, and

(c) court orders,

which are required to be served by any provision of the Regulations or these Rules ("court documents").

(2) For the purpose of the application by this Chapter of CPR Part 6 to the service of court documents, an application within the special administration against a respondent is to be treated as a claim form.

Service of court documents within the jurisdiction

197. Except where different provision is made in the Regulations or these Rules, CPR Part 6 applies in relation to the service of court documents with such modifications as the court may direct.

Service of court documents outside jurisdiction

198. CPR Part 6 applies to the service of court documents outside the jurisdiction with such modifications as the court may direct.

Service of orders staying proceedings

199. Where the court makes an order staying any action, execution or other legal process against the property of the institution, the order may be served within the jurisdiction by serving a sealed copy of the order on the address for service of the claimant or other party having the carriage of the proceedings to be stayed.

Service on joint office-holders

200. Where there are joint administrators, service of court documents on one of them is to be treated as service on all of them.

CHAPTER 5

Applications to court – general

Application of Chapter

201. This Chapter applies to any application made to the court under the Regulations or these Rules except an application for a special administration order under regulation 8.

Form and contents of application

202.—(1) Each application must be in writing and must state—

(a) that the application is made under the Regulations or these Rules,

(b) the names of the parties,

(c) the name of the institution which is in special administration,

(d) that the proceedings are being held in the court and the court reference number,

(e) where the court has previously allocated a number to the insolvency proceedings within which the application is made, that number,

(f) the nature of the remedy or order applied for or the directions sought from the court,

(g) the names and addresses of the persons on whom it is intended to serve the application or that no person is intended to be served,

(h) where the Regulations or Rules require that notice of the application is to be given to specified persons, the names and addresses of all those persons (so far as known to the applicant), and

(i) the applicant's address for service.

(2) The application must be authenticated by the applicant if the applicant is acting in person or, when the applicant is not so acting, by or on behalf of the applicant's solicitor.

Filing and service of application

203.—(1) An application must be filed with the court accompanied by one copy and a number of additional copies equal to the number of persons who are to be served with the application.

(2) Where an application is filed with the court in accordance with paragraph (1), the court must fix a venue for the application to be heard unless—

(a) it considers it is not appropriate to do so,

(b) the rule or regulation under which the application is brought provides otherwise, or

(c) the case is one to which rule 205 applies.

(3) Unless the court otherwise directs, the applicant must serve a sealed copy of the application, endorsed with the venue for the hearing, on the respondent named in the application (or on each respondent, if more than one).

(4) The court may give any of the following directions—

(a) that the application be served upon persons other than those specified by the relevant provision of the Regulations or Rules,

(b) that the giving of notice to any person may be dispensed with, or

(c) that the notice may be given in some way other than that specified in paragraph (3).

(5) An application must be served at least fourteen days before the date fixed for its hearing unless—

(a) the provision of the Regulations or these Rules under which the application is made makes different provision, or

(b) the case is one of urgency, to which paragraph (6) applies.

(6) Where the case is one of urgency, the court may (without prejudice to its general power to extend or abridge time limits)—

(a) hear the application immediately, either with or without notice to, or the attendance of, other parties, or

(b) authorise a shorter period of service than that provided for by paragraph (5),

and any such application may be heard on terms providing for the filing or service of documents, or the carrying out of other formalities, as the court thinks just.

Directions

204. The court may at any time give such directions as it thinks just as to—

(a) service or notice of the application on or to any person,

(b) whether particulars of claim and defence are to be delivered and generally as to the procedure on the application including whether a hearing is necessary, and

(c) the matters to be dealt with in evidence.

Hearings without notice

205. Where the relevant provisions of the Regulations or these Rules do not require service of the application on, or notice of it to be given to, any person—

(a) the court may hear the application as soon as is reasonably practicable without fixing a venue as required by rule 203(2), or

(b) it may fix a venue for the application to be heard in which case rule 203 will apply to the extent that it is relevant,

but nothing in those provisions is to be taken as prohibiting the applicant from giving such notice if the applicant wishes to do so.

Hearing of application

206.—(1) Unless the court otherwise directs, the hearing of an application must be in open court.

(2) In the court, the jurisdiction of the court to hear and determine an application may be exercised by the registrar (to whom the application must be made in the first instance) unless—

(a) a direction to the contrary has been given, or

(b) it is not within the registrar's power to make the order required.

(3) Where the application is made to the registrar in the court, the registrar may refer to the judge any matter which the registrar thinks should properly be decided by the judge, and the judge may either dispose of the matter or refer it back to the registrar with such directions as that judge thinks just.

(4) Nothing in this rule precludes an application being made directly to the judge in a proper case.

Adjournment of the hearing of an application

207.—(1) The court may adjourn the hearing of an application on such terms as it thinks just.

(2) The court may give directions as to the manner in which any evidence is to be provided at a resumed hearing and in particular as to—

(a) the taking of evidence wholly or partly by witness statement or orally,

(b) the cross-examination of the maker of a witness statement, or

(c) any report to be made by the administrator.

CHAPTER 6

Applications to the court under section 176A of the IA 1986

Application of Chapter

208. The rules in this Chapter apply to applications in connection with section 176A of the IA 1986.

Applications under section 176A(5) to disapply section 176A

209.—(1) An application under section 176A(5) must be accompanied by a witness statement by the administrator.

(2) The witness statement must state—

(a) that the institution is in special administration,

(b) a summary of the financial position of the institution, and

(c) the information substantiating the administrator's view that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.

Notice of application under section 176A(5)

210. An application under section 176A(5) may be made without the application being served upon, or notice being given to any other party.

Notice of an order under section 176A(5)

211.—(1) Where the court makes an order under section 176A(5), it must as soon as is reasonably practicable deliver 2 sealed copies of the order to the applicant.

(2) Where the court has made an order under section 176A(5), the administrator must as soon as is reasonably practicable give notice to each creditor of whose address the administrator is aware.

(3) Paragraph (2) does not apply where the court directs otherwise.

(4) The court may direct that the requirement in paragraph (2) is complied with if a notice has been published by the administrator which, in addition to containing the standard contents, states that the court has made an order disapplying the requirement to set aside the prescribed part. As soon as is reasonably practicable the notice—

(a) must be gazetted, and

(b) may be advertised in such other manner as the administrator thinks fit.

(5) The administrator must send a copy of the order to the registrar of companies as soon as is reasonably practicable after the making of the order.

CHAPTER 7

Applications for an order under section 236 of the IA 1986

Application of section 236 of the IA 1986

212.—(1) This Chapter applies to applications to the court for an order under section 236 of the IA 1986.

(2) In this Chapter, "the respondent" means the person in respect of whom an order is applied for.

Form and contents of application

213. An application to which this Chapter applies—

(a) must be in writing and specify the grounds on which it is made,

(b) must specify the name of the respondent,

(c) must state whether the application is for—

(i) the respondent to be ordered to appear before the court,

(ii) the respondent to be ordered to clarify any matter which is in dispute in the proceedings or to give additional information in relation to any such matter (in which case CPR Part 18 (further information) shall apply to any such order),

(iii) the respondent to submit witness statements (if so, particulars must be given of the matters to be included),

(iv) the respondent to produce books, papers or other records (if so, the items in question must be specified), or

(v) any two or more of those purposes, and

(d) may be made without notice to any other party.

Order for examination etc.

214.—(1) The court may, whatever the purpose of the application, make any order which it has power to make under section 236 of the IA 1986.

(2) The court, if it orders the respondent to appear before it, must specify a venue for the respondent's appearance, which must not be less than fourteen days from the date of the order.

(3) If the respondent is ordered to submit witness statements, the order must specify—

(a) the matters which are to be dealt with in the respondent's witness statements, and

(b) the time within which they are to be submitted to the court.

(4) If the order is to produce books, papers or other records, the time and manner of compliance must be specified.

(5) The order must be served as soon as is reasonably practicable on the respondent.

Procedure for examination

215.—(1) At any examination of the respondent, the administrator may attend in person, or be represented by a solicitor with or without counsel, and may put such questions to the respondent as the court may allow.

(2) Unless the administrator objects, the following persons may attend the examination with the permission of the court and may put questions to the respondent (but only through the administrator) —

(a) any person who could have applied for an order under section 236 of the IA 1986, and

(b) any creditor or customer who has provided information on which the application was made under that section.

(3) If the respondent is ordered to clarify any matter or to give additional information, the court must direct the respondent as to the questions which the respondent is required to answer, and as to whether the respondent's answers (if any) are to be made in a witness statement.

(4) The respondent may, at the respondent's own expense, employ a solicitor with or without counsel, who may put to the respondent such questions as the court may allow for the purpose of enabling the respondent to explain or qualify any answers given by the respondent, and may make representations on the respondent's behalf.

(5) Such written record of the examination must be made as the court thinks proper and such record must be read over either to or by the respondent and authenticated by the respondent at a venue fixed by the court.

(6) The written record may, in any proceedings (whether under the Regulations, these Rules or otherwise), be used as evidence against the respondent of any statement made by the respondent in the course of the respondent's examination.

Record of examination

216.—(1) Unless the court otherwise directs, the written record of questions put to the respondent and the respondent's answers, and any witness statements submitted by the respondent in compliance with an order of the court under section 236 of the IA 1986, are not to be filed with the court.

(2) The documents set out in paragraph (3) are not open to inspection without an order of the court, by any person other than the administrator.

(3) The documents to which paragraph (2) applies are—

(a) the written record of the respondent's examination,

(b) copies of questions put to the respondent or proposed to be put to the respondent and answers to questions given by the respondent,

(c) any witness statement made by the respondent, and

(d) any document on the court file as shows grounds for the application for the order.

(4) The court may from time to time give directions as to the custody and inspection of any documents to which this rule applies, and as to the furnishing of copies of, or extracts from, such documents.

Costs of proceedings under section 236 of the IA 1986

217.—(1) Where the court has ordered an examination of any person under section 236 of the IA 1986 and it appears to it that the examination was made necessary because information had been unjustifiably refused by the respondent, it may order that the costs of the examination be paid by the respondent.

(2) Where the court makes an order against a person under—

(a) section 237(1)(**22**) of the IA 1986, or

(b) section 237(2) of the IA 1986,

the costs of the application for the order may be ordered by the court to be paid by the respondent.

(3) Subject to paragraphs (1) and (2), the administrator's costs will, unless the court otherwise orders, be paid as an expense of the special administration.

(4) A person summoned to attend for examination under this Chapter must be tendered a reasonable sum in respect of travelling expenses incurred in connection with that person's attendance but any other costs falling on that person are at the court's discretion.

CHAPTER 8

People who lack capacity to manage their affairs etc.

Application of Chapter 8

218.—(1) The rules in this Chapter apply where in a special administration it appears to the court that a person affected by the proceedings is unable to manage and administer that person's own property and affairs by reason of:

(a) lacking capacity within the meaning of the Mental Capacity Act 2005(**23**),

(b) suffering from a physical affliction, or

(c) disability.

(2) Such a person is referred to in this Chapter as "the incapacitated person".

Appointment of another person to act

219.—(1) The court may appoint such person as it thinks just to appear for, represent or act for the incapacitated person.

(2) An appointment made under paragraph (1) may be made either generally or for the purpose of any particular application or proceeding, or for the exercise of particular rights or powers which the incapacitated person might have exercised but for that person's incapacity.

(3) The court may make the appointment either of its own motion or on application by—

(a) a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the incapacitated person,

(b) any person who appears to the court to be a suitable person to make the application, or

(c) the administrator.

(**22**) Section 237 was amended by Banking Act 2009 (c. 1), S.I. 2011/245, S.I. 2013/1388 and the Financial Services (Banking Reform) Act 2013 (c. 33). There are other amending instruments but none is relevant.
(**23**) 2005 c. 9.

(4) An application under paragraph (3) may be made without notice to any other party. However, the court may require such notice of the application as it thinks necessary to be given to the incapacitated person or any other person, and may adjourn the hearing of the application to enable the notice to be given.

Witness statement in support of application

220. An application under rule 219(3) must be supported by a witness statement made by a registered medical practitioner as to the mental or physical condition of the incapacitated person.

Service of notices following appointment

221. Any notice served on, or sent to, a person appointed under rule 219 has the same effect as if it had been served on, or given to, the incapacitated person.

CHAPTER 9

Formal defects

Formal defects

222. No special administration proceedings shall be invalidated by any formal defect or by any irregularity unless the court before which an objection is made considers that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court.

CHAPTER 10

Costs

Application of Chapter 10

223.—(1) This Chapter applies in relation to costs in connection with the special administration.

(2) In this Chapter, a reference to costs includes charges and expenses.

Requirement to assess costs by the detailed procedure

224.—(1) Where the costs of any person are payable as an expense out of the institution's estate the amount payable must be decided by detailed assessment unless agreed between the administrator and the person entitled to payment.

(2) Where the costs of any person are payable as an expense out of the relevant funds, the amount payable must be decided by detailed assessment unless agreed between a meeting of customers and the person entitled to payment.

(3) In the absence of such agreement as is mentioned in paragraph (1) or (2), the administrator—

(a) may serve notice requiring the person entitled to payment to commence detailed assessment proceedings in accordance with CPR Part 47, and

(b) must serve such notice where the creditors' committee resolves that the amount of the costs in either case must be decided by detailed assessment.

(4) Detailed assessment proceedings must be commenced in the court.

(5) Where the costs of any person employed by the administrator in the special administration are required to be decided by detailed assessment or fixed by order of the court, the administrator may make payments on account to such person in respect of those costs provided that person undertakes in writing—

(a) to repay as soon as is reasonably practicable any money which may, when detailed assessment is made, prove to have been overpaid, and

(b) to pay interest on any such sum as is mentioned in sub-paragraph (a) at the rate specified in section 17 of the Judgments Act 1838 on the date payment was made and for the period beginning with the date of payment and ending with the date of repayment.

(6) In any proceedings before the court, the court may order costs to be decided by detailed assessment.

(7) Unless otherwise directed or authorised, the costs of the administrator are to be allowed on the standard basis for which provision is made in—

(a) CPR rule 44.3 (basis of assessment), and

(b) CPR rule 44.4 (factors to be taken into account when deciding the amount of costs).

Procedure where detailed assessment is required

225.—(1) Before making a detailed assessment of the costs of any person employed in the special administration by the administrator, the costs officer must require a certificate of employment, which must be endorsed on the bill and authenticated by the administrator.

(2) The certificate must include—

(a) the name and address of the person employed,

(b) details of the functions to be carried out under the employment, and

(c) a note of any special terms of remuneration which have been agreed.

(3) Every person whose costs in the special administration are required to be decided by detailed assessment must, on being required in writing to do so by the administrator, commence detailed assessment proceedings in accordance with CPR Part 47.

(4) If the person whose costs in the special administration are required to be decided by detailed assessment does not commence detailed assessment proceedings within three months of the requirement under paragraph (3), or within such further time as the court, on application, may permit—

(a) the administrator may deal with the institution's estate (or the asset pool, as applicable) without regard to any claim by that person, and

(b) that person's claim is forfeited by such failure to commence proceedings.

(5) Where in any such case such a claim lies additionally against the administrator in the administrator's personal capacity, that claim is also forfeited by such failure to commence proceedings.

Costs of officers charged with execution of writs or other process

226.—(1) This rule applies where an enforcement officer, or other officer charged with execution of the writ or other person—

(a) is required under section 184(2)(**24**) of the IA 1986 to deliver up goods or money, or

(b) has under section 184(3) of the IA 1986 deducted costs from the proceeds of an execution or money paid to that officer or that person (as the case may be).

(2) The administrator may require in writing that the amount of the enforcement officer's or other officer's bill of costs be decided by detailed assessment and where such a requirement is made, rule 225(4) applies.

(**24**) Section 184 was amended by Courts Act 2003 (c. 39).

(3) Where, in the case of a deduction of the kind mentioned in paragraph (1)(b), any amount deducted is disallowed at the conclusion of the detailed assessment proceedings, the enforcement officer must as soon as is reasonably practicable pay a sum equal to that disallowed to the administrator for the benefit of the institution's estate.

Costs paid otherwise than out of the institution's estate

227. Where the amount of costs is decided by detailed assessment under an order of the court directing that those costs are to be paid otherwise than out of the institution's estate or out of the asset pool, the costs officer must note on the final costs certificate by whom, or the manner in which, the costs are to be paid.

Award of costs against the administrator

228. Without prejudice to any provision of the Regulations or these Rules by virtue of which the administrator is not in any event to be liable for costs and expenses, where the administrator is made a party to any proceedings on the application of another party to the proceedings, the administrator is not to be personally liable for the costs unless the court otherwise directs.

Applications for costs

229.—(1) This rule applies where a party to, or person affected by, any proceedings in the special administration applies to the court for an order allowing their costs, or part of them, incidental to the proceedings, and that application is not made at the time of the proceedings.

(2) The person concerned must serve a sealed copy of the application on the administrator.

(3) The administrator may appear on an application.

(4) No costs of or incidental to the application are to be allowed to the applicant unless the court is satisfied that the application could not have been made at the time of the proceedings.

(5) The court must specify in the order whether such costs are to be paid out of the institution's estate or out of the asset pool.

Costs and expenses of witnesses

230. Except as directed by the court, no allowance as a witness in any examination or other proceedings before the court is to be made to an officer of the institution to which the proceedings relate.

Final costs certificate

231.—(1) A final costs certificate of the costs officer is final and conclusive as to all matters which have not been objected to in the manner provided for under the rules of the court.

(2) Where it is proved to the satisfaction of a costs officer that a final costs certificate has been lost or destroyed, the costs officer may issue a duplicate.

CHAPTER 11

Enforcement procedures

Enforcement of court orders

232. In a special administration, orders of the court may be enforced in the same manner as a judgment to the same effect.

Orders enforcing compliance with these Rules

233.—(1) The court may, on application by the administrator, make such orders as it thinks necessary for the enforcement of obligations falling on any person in accordance with—

(a) paragraph 47, or

(b) section 235 of the IA 1986 (duty of various persons to co-operate with administrator).

(2) An order of the court under this rule may provide that all costs of and incidental to the application for it must be borne by the person against whom the order is made.

Warrants (general provisions)

234.—(1) A warrant issued by the court under any provision of the Regulations must be addressed to such officer of the court as the warrant specifies, or to any constable.

(2) The persons referred to in section 236(5) of the IA 1986 as the prescribed officer of the court are the tipstaff and the tipstaff's assistants of the court.

(3) In this Chapter, references to property include books, papers and records.

Warrants under section 236

235.—(1) When a person ('P') is arrested under a warrant issued under section 236 of the IA 1986, the officer arresting P must as soon as is reasonably practicable bring P before the court issuing the warrant in order that P may be examined.

(2) If P cannot immediately be brought up for examination, the officer must deliver P into the custody of the governor of the prison named in the warrant (or where that prison is not able to accommodate P, the governor of such other prison with appropriate facilities which is able to accommodate P), who must keep that person in custody and produce P before the court as it may from time to time direct.

(3) After arresting P, the officer must as soon as is reasonably practicable report to the court the arrest or delivery into custody (as the case may be) of P and apply to the court to fix a venue for P's examination.

(4) The court must appoint the earliest practicable time for the examination, and must—

(a) direct the governor of the prison to produce P for examination at the time and place appointed, and

(b) as soon as is reasonably practicable give notice of the venue to the person who applied for the warrant.

(5) Any property in P's possession which may be seized must be—

(a) lodged with, or otherwise dealt with as instructed by, whoever is specified in the warrant as authorised to receive it, or

(b) kept by the officer seizing it pending the receipt of written orders from the court as to its disposal,

as may be directed by the court.

CHAPTER 12

Appeals

Application of Chapter 12

236. This Chapter applies in relation to decisions of the court under the Regulations or these Rules.

Appeals and reviews of court orders

237.—(1) The court may review, rescind or vary any order made by it in the exercise of its jurisdiction under the Regulations or these Rules.

(2) Appeals in special administration proceedings are to the Civil Division of the Court of Appeal from a decision of a single judge of the court.

Procedure on appeal

238.—(1) An appeal against a decision at first instance may only be brought with either the permission of the court which made the decision or the permission of the court which has jurisdiction to hear the appeal.

(2) An appellant must file an appellant's notice (within the meaning of CPR Part 52) within twenty-one days after the date of the decision of the court that the appellant wishes to appeal.

(3) The procedure set out in CPR Part 52 applies to any appeal to which this Chapter applies.

Appeal against decision of the Secretary of State

239. An appeal under the Regulations against a decision of the Secretary of State must be brought within twenty-eight days of the notification of the decision.

PART 11

Prohibited names

Preliminary

240. The rules in this Part—

(a) relate to the permission required under section 216 of the IA 1986(**25**) for a person to act in all or any of the ways specified in section 216(3) in relation to an institution with a prohibited name, and

(b) prescribe the cases excepted from section 216, that is to say, those in which a person to whom that section applies may so act without that permission.

Application for permission under section 216(3)

241.—(1) At least fourteen days' notice of any application for permission to act in all or any of the ways specified in section 216(3) must be given by the applicant to the Secretary of State, who may—

(a) appear at the hearing of the application, and

(b) whether or not appearing at the hearing, make representations.

(2) When considering an application for permission under section 216, the court may call on the administrator, or any former administrator, of the institution for a report of the circumstances in which that institution became insolvent and the extent (if any) of the applicant's apparent responsibility for the institution becoming insolvent.

First excepted case

242.—(1) This rule applies where—

(**25**) Section 216 was amended by Banking Act 2009 (c. 1) and S.I. 2011/245. There are other amending instruments but none is relevant.

(a) a person ("P") was within the period mentioned in section 216(1) a director, or shadow director, of an institution that has gone into special administration by virtue of Ground A in regulation 9 being satisfied, and

(b) P acts in all or any of the ways specified in section 216(3) in connection with, or for the purposes of, the carrying on (or proposed carrying on) of the whole or substantially the whole of the business of the institution where that business (or substantially the whole of it) is (or is to be) acquired from the institution under arrangements—

(i) made by the administrator, or

(ii) made before the institution entered into special administration by an office-holder acting in relation to it as supervisor of a voluntary arrangement under Part 1 of the IA 1986.

(2) P will not be taken to have contravened section 216 if prior to P's acting in the circumstances set out in paragraph (1) a notice is, in accordance with the requirements of paragraph (3)—

(a) given by P to every creditor and customer of the institution whose name and address—

(i) is known by P, or

(ii) is ascertainable by P on the making of such enquiries as are reasonable in the circumstances, and

(b) published in the Gazette.

(3) The notice referred to in paragraph (2)—

(a) may be given and published before the completion of the arrangements referred to in paragraph (1)(b) but must be given and published no later than twenty-eight days after that completion, and

(b) must contain—

(i) the name and registered number of the institution,

(ii) the date that the institution went into special administration,

(iii) P's name,

(iv) a statement that P was a director of the institution during the period of twelve months ending with the day before the institution entered special administration,

(v) a statement that it is P's intention to act (or, where the institution has not entered into special administration, to act or continue to act) in all or any of the ways specified in section 216(3) in connection with, or for the purposes of, the carrying on of the whole or substantially the whole of the business of the institution,

(vi) the prohibited name or, where the institution has not entered into special administration, the name under which the business is being, or is to be, carried on which would be a prohibited name in respect of P in the event of the institution entering special administration,

(vii) a statement that P would not otherwise be permitted to act in all or any of the ways specified in section 216(3) without the leave of the court or the application of an exception created by these Rules,

(viii) a statement that contravention of the prohibition created by section 216 is a criminal offence, and

(ix) a statement as set out in paragraph (6) of the effect of issuing the notice under this paragraph.

(4) Notice may in particular be given under this rule—

(a) prior to the institution entering special administration where the business (or substantially the whole of the business) is, or is to be, acquired by another company under arrangements made by an office-holder acting in relation to the institution as supervisor of a voluntary arrangement (whether or not at the time of the giving of the notice P is a director of that other company), or

(b) at a time where P is a director of another company where—

(i) the other company has acquired, or is to acquire, the whole, or substantially the whole, of the business of the institution under arrangements made by the administrator, and

(ii) it is proposed that after the giving of the notice a prohibited name should be adopted by the other company.

(5) Notice may not be given under this rule by a person who has already acted in contravention of section 216.

(6) The statement as to the effect of the notice under rule 242(2) must be as set out below—

"Section 216(3) of the Insolvency Act 1986 lists the activities that a director of an institution that has gone into special administration may not undertake unless the court gives permission or there is an exception in the Payment and Electronic Money Institution Insolvency (England and Wales) Rules 2021. This includes the exceptions in Part 11 of those Rules. These activities are—

(a) being a director of another company that is known by a name which is either the same as a name used by the institution in special administration during the period of twelve months ending with the day before the institution entered special administration or is so similar as to suggest an association with that institution,

(b) directly or indirectly being concerned or taking part in the promotion, formation or management of any such company, or

(c) directly or indirectly being concerned or taking part in the carrying on of a business otherwise than through a company under a name of the kind mentioned in (a) above.

This notice is given under Rule 242 of the Payment and Electronic Money Institution Insolvency (England and Wales) Rules 2021 because the business of an institution which is in, or may go into, special administration is, or is to be, carried on otherwise than by the institution in special administration with the involvement of a director of that institution and under the same or a similar name to that of that institution.

The purpose of giving this notice is to permit the director to act in these circumstances where the institution enters (or has entered) special administration without the director committing a criminal offence and, in the case of the carrying on of the business through another company, being personally liable for that company's debts.

Notice may be given where the person giving the notice is already the director of a company which proposes to adopt a prohibited name."

Second excepted case

243.—(1) Where a person ("P") to whom section 216 applies, applies for permission of the court under that section not later than seven business days from the date on which the institution went into special administration, P may, during the period specified in paragraph (2), act in any of the ways mentioned in section 216(3), notwithstanding that P has not the permission of the court under that section.

(2) The period referred to in paragraph (1) begins with the day on which the institution goes into special administration and ends either on the day falling six weeks after that date or on the day on which the court disposes of the application for permission under section 216, whichever of those days occurs first.

Third excepted case

244. The court's permission under section 216(3) is not required where the company there referred to, though known by a prohibited name—

(a) has been known by that name for the whole of the period of twelve months ending with the day before the institution went into special administration, and

(b) has not at any time in those twelve months been dormant within the meaning of section 1169(1), (2) and (3)(a) of the CA 2006.

PART 12

Provisions of general effect

CHAPTER 1

Miscellaneous and general

Costs, expenses etc

245.—(1) All fees, costs, charges and other expenses incurred in the course of the special administration are, unless otherwise stated, to be regarded as expenses of the special administration.

(2) The costs associated with the prescribed part must be paid out of the prescribed part.

Provable debts

246.—(1) Except as provided in this rule, all claims by creditors are provable as debts against the institution whether they are present or future, certain or contingent, ascertained or sounding only in damages.

(2) Obligations arising under Part 2, 3 or 4 of the Proceeds of Crime Act 2002(**26**) are not provable.

(3) The following claims are not provable until all other claims of creditors have been paid in full with interest under rule 135:

(a) any claim arising by virtue of section 382(1)(a) of the FSMA 2000(**27**), unless it is also a claim arising by virtue of section 382(1)(b) of that Act;

(b) any claim which by virtue of the IA 1986 or any other enactment is a claim the payment of which in a special administration is to be postponed.

(4) Nothing in this rule prejudices any enactment or rule of law under which a particular kind of debt is not provable.

False representation of status for purpose of inspecting documents

247.—(1) It is an offence for a person who does not have a right under these Rules to inspect a relevant document falsely to claim to be a creditor, customer, member of the institution or contributory of the institution with the intention of gaining sight of the relevant document.

(2) A relevant document is one which is on the court file or in the hands of the administrator or any other person and which a creditor, customer, member of the institution or contributory of the institution has a right to inspect under these Rules.

(**26**) 2002 c. 9.
(**27**) 2000 c. 8.

(3) A person guilty of an offence under this rule is liable to imprisonment or a fine, or both, as set out in the Schedule.

Punishment of offences

248. The Schedule has effect with respect to the ways in which certain contraventions of the Rules are punishable.

CHAPTER 2

The giving of notice and the supply of documents

Application

249.—(1) Subject to paragraphs (2) and (3), this Chapter applies where a notice or other document is required to be given, delivered or sent under the Regulations or these Rules by any person, including the administrator.

(2) This Chapter does not apply to the service of—

(a) any application to the court,

(b) any evidence in support of that application, or

(c) any order of the court.

(3) This Chapter does not apply to the submission of documents to the registrar of companies.

Personal delivery

250.—(1) Personal delivery of a notice or other document is permissible in any case.

(2) A document is personally delivered if it is delivered in accordance with the rules for personal service in CPR Part 6.

Postal delivery of documents

251.—(1) A notice or other document may be sent by post in accordance with the provisions of this rule unless in any particular case some other form of delivery is required by the Regulations or these Rules or an order of the court.

(2) First class or second class post may be used to deliver a notice or other document except where these Rules require first class post to be used.

(3) Unless the contrary is shown—

(a) a notice or other document sent by first class post is treated as delivered on the second business day after the day on which it is posted;

(b) a notice or other document sent by second class post is treated as delivered on the fourth business day after the day on which it is posted;

(c) where a post-mark appears on the envelope in which a notice or other document was posted, the date of that post-mark is to be treated as the date on which the notice or other document was posted.

(4) In this rule "post-mark" means a mark applied by a postal operator which records the date on which a letter entered the postal system of the postal operator.

Notice etc to authorised recipients

252. Where a notice or other document is to be given, delivered or sent to a person under the Regulations or these Rules, it may be given, delivered or sent instead to any other person authorised in writing to accept delivery on behalf of the first-mentioned person.

CHAPTER 3

The giving of notice and the supply of documents to or by the administrator

Application

253.—(1) Subject to paragraphs (2) and (3), this Chapter applies where a notice or other document is required to be given, delivered or sent under the Regulations or these Rules.

(2) This Chapter does not apply to the submission of notices or other documents to the registrar of companies.

(3) Rules 257 to 260 do not apply to the filing of any notice or other document with the court.

The form

254. Subject to any order of the court, any notice or other document required to be given, delivered or sent must be in writing and where electronic delivery is permitted a notice or other document in electronic form is treated as being in writing if it is capable of being—

(a) read by the recipient in electronic form, and

(b) reproduced by the recipient in hard-copy form.

Proof of sending

255.—(1) Where a notice or other document is required to be given, delivered or sent by the administrator, the giving, delivering or sending of it may be proved by means of a certificate that the notice or other document was duly given, delivered or sent.

(2) A certificate under paragraph (1) may be given by—

(a) the administrator,

(b) the administrator's solicitor, or

(c) a partner or an employee of either of them.

(3) Where a notice or other document is required to be given, delivered or sent by a person other than the administrator, the giving, delivering or sending of it may be proved by means of a certificate by that person—

(a) that the notice or document was given, delivered or sent by that person, or

(b) that another person (named in the certificate) was instructed to give, deliver or send it.

(4) A certificate under this rule may be endorsed on a copy or specimen of the notice or document to which it relates.

Authentication

256.—(1) A notice, other document or information given, delivered, sent or supplied in hard copy form is sufficiently authenticated if it is signed by the person giving, delivering, sending or supplying it.

(2) A notice, other document or information given, delivered or sent in electronic form is sufficiently authenticated—

(a) if the identity of the sender is confirmed in a manner specified by the recipient, or

(b) where no such manner has been specified by the recipient, if the communication contains or is accompanied by a statement of the identity of the sender and the recipient has no reason to doubt the truth of that statement.

(3) If a notice, other document or information is authenticated by the signature of an individual on behalf of—

(a) a body of persons, the document must also state the position of that individual in relation to the body;

(b) a body corporate of which the individual is the sole member, the document must also state that fact.

Electronic delivery — general

257.—(1) A notice or other document may be given, delivered or sent by electronic means unless in any particular case some other form of delivery is required by the Regulations or these Rules or an order of the court, provided that the intended recipient of the notice or other document has—

(a) given actual consent (whether in the specific case or generally) to electronic delivery and has—

(i) not revoked that consent, and

(ii) provided an electronic address for delivery;

(b) given deemed consent in accordance with paragraph (2) (in which case the electronic address for delivery shall be the address used by the institution for communications with the intended recipient before the special administration commenced) and has not revoked that consent.

(2) For the purposes of paragraph (1) an intended recipient is deemed to have consented to the electronic delivery of a notice or other document by the administrator where the intended recipient and the institution had customarily communicated with each other by electronic means before the special administration commenced.

(3) In the absence of evidence to the contrary, a notice or other document is presumed to have been delivered by electronic means where the sender can produce a copy of the electronic communication which—

(a) contains the notice or other document, or to which the notice or other document was attached, and

(b) shows the time and date the electronic communication was sent and the electronic address to which it was sent.

(4) A document sent electronically is deemed to have been delivered to the recipient at 9.00am on the next business day after it was sent.

(5) Paragraph (4) does not apply in respect of notices or other documents sent electronically under Part 2.

Electronic delivery by administrator

258.—(1) Where the administrator 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—

(a) that the recipient may request a hard copy of the notice or document, and

(b) specifying a telephone number, e-mail address and postal address which may be used to make that request.

(2) Where a hard copy of the notice or other document is requested, it must be sent free of charge within five business days of receipt of the request by the administrator.

Use of websites by administrator

259.—(1) This rule applies for the purposes of section 246B.

(2) Where the administrator is required to give, deliver or send a notice or other document to any person (other than in a case where personal service is required), the administrator may satisfy that requirement by sending that person a notice which contains—

(a) a statement that the notice or other document is available for viewing and downloading on a website,

(b) the address of that website together with any password necessary to view and download the notice or other document from that site, and

(c) a statement that the person to whom the notice is given, delivered or sent may request a hard copy of the notice or other document and specifying a telephone number, e-mail address and postal address which may be used to make that request.

(3) Where a notice to which this rule applies is sent, the notice or other document to which it relates must—

(a) be available on the website for a period of not less than two months after the end of the special administration or (if later) the release of the last person to hold office as administrator in the special administration, and

(b) be in a format that enables it to be downloaded from the website within a reasonable time of a request being made for it to be downloaded.

(4) Where a hard copy of the document is requested it must be sent free of charge within five business days of the receipt of the request by the administrator.

(5) Where a document is given, delivered or sent to a person by means of a website in accordance with this rule, it is deemed to have been delivered—

(a) when the document was first made available on the website, or

(b) if later, when the notice under paragraph (2) was delivered to that person.

General use of websites to deliver notices and other documents

260.—(1) The administrator may deliver a notice to each person to whom a notice or other document will be required to be given, delivered or sent in the special administration which contains—

(a) a statement that—

(i) future notices or other documents in the special administration other than those mentioned in paragraph (2) will be made available for viewing and downloading on a website without notice to the recipient, and

(ii) the administrator will not be obliged to deliver, give or send any such notices or other documents to the recipient of the notice unless it is requested by that person,

(b) a statement that the recipient of the notice may at any time request a hard copy of any or all of the following—

(i) all notices and other documents currently available for viewing on the website,

(ii) all future documents which may be made available there,

(c) a telephone number, email address and postal address which may be used to make a request for a hard copy of a notice or other document, and

(d) the address of the website, any password required to view and download a relevant document from that site.

(2) A statement under paragraph (1)(a) does not apply to the following notices or other documents—

(a) a notice or other document for which personal delivery is required,

(b) a notice under rule 116 of intention to declare a dividend, and

(c) a notice or other document which is not delivered, given or sent generally.

(3) A notice or other document is delivered, given or sent generally if it is delivered, given or sent to some or all of the following classes of persons—

(a) members;

(b) contributories;

(c) creditors;

(d) customers;

(e) any class of members, contributories, customers or creditors.

(4) An administrator who has delivered a notice under paragraph (1) is under no obligation—

(a) to notify a person to whom the notice has been delivered when a notice or other document to which the notice applies has been made available on the website, or

(b) to deliver a hard copy of such a notice or other document unless a request is received under paragraph (1)(b).

(5) An administrator who receives a request under paragraph (1)(b)—

(a) in respect of a notice or other document which is already available on the website must deliver a hard copy of the notice or other document to the recipient free of charge within five business days of receipt of the request, and

(b) in respect of all future notices or other documents must deliver each such notice or other document in accordance with the requirements for delivery of such a notice or other document in the Regulations and these Rules.

(6) A document to which a statement under paragraph (1)(a) applies must—

(a) remain available on the website for a period of not less than two months after the end of the special administration or (if later) the release of the last person to hold office as administrator in the special administration, and

(b) must be in a format that enables it to be downloaded within a reasonable time of a request being made for it to be downloaded.

(7) A notice or other document which is delivered to a person by means of a website in accordance with this rule, is deemed to have been delivered—

(a) when that notice or other document was first made available on the website, or

(b) if later, when the notice under paragraph (1) was delivered to that person.

(8) Paragraph (7) does not apply in respect of a person who has made a request under paragraph (1)(b)(ii) for hard copies of all future documents.

Electronic delivery of special administration documents to court

261.—(1) A notice or other document may not be delivered to a court by electronic means unless expressly permitted by the CPR, a practice direction, or these Rules.

(2) A document delivered to the court by electronic means is to be treated as delivered to the court at the time it is recorded by the court as having been received or otherwise as the CPR, a practice direction or these Rules provide.

Notice etc to joint administrators

262. Where there are joint office-holders in a special administration, delivery of a document to one of them is to be treated as delivery to all of them.

Execution overtaken by judgment debtor's insolvency

263.—(1) This rule applies where execution has been taken out against property of a judgment debtor, and notice is given to the enforcement officer or other officer charged with the execution that the judgment debtor has entered special administration.

(2) Subject to rule 264, the notice must be delivered to the office of the enforcement officer or of the officer charged with the execution—

(a) by hand, or

(b) by any other means of delivery which enables proof of receipt of the document at the relevant address.

Notice to enforcement officers

264.—(1) This rule applies in relation to any provision of the Regulations or these Rules which makes provision for the giving of notice to an enforcement officer.

(2) Any notice under paragraph (1) may be given by electronic means to any person who has been authorised to receive such notice on behalf of a specified enforcement officer or on behalf of enforcement officers generally.

Electronic submission of information

265.—(1) A requirement under these Rules for prescribed information to be sent by any person to the Secretary of State, the Chief Land Registrar or the administrator shall be treated as having been satisfied where—

(a) the information is submitted electronically with the agreement of the person to whom the information is sent,

(b) the form in which the electronic submission is made satisfies the requirements of the person to whom the information is sent,

(c) all the prescribed information is provided in the electronic submission, and

(d) the person to whom the information is sent can provide in legible form the information so submitted.

(2) Where prescribed information is permitted to be sent electronically under paragraph (1), any requirement that the information be accompanied by a signature is taken to be satisfied—

(a) if the identity of the person who is supplying the information and whose signature is required is confirmed in a manner specified by the recipient, or

(b) where no such manner has been specified by the recipient, if the communication contains or is accompanied by a statement of the identity of the person who is providing the information, and the recipient has no reason to doubt the truth of that statement.

(3) Where prescribed information has been supplied to a person, whether or not it has been supplied electronically in accordance with paragraph (2), and a copy of that information is required

to be supplied to another person falling within paragraph (1), the requirements contained in paragraph (2) apply in respect of the supply of the copy to that other person, as they apply in respect of the original.

Contents of notices to be gazetted

266.—(1) Subject to rule 268, where under the Regulations or these Rules a notice is gazetted, in addition to any content specifically required by the Regulations or any other provision of these Rules, the content of such a notice must be as set out in paragraph (2) and rule 267.

(2) All gazetted notices must specify insofar as it is applicable in relation to the particular notice—

(a) a statement that the proceedings are being held in the court and the court reference number,

(b) the name, business address and date of appointment of the administrator,

(c) either an e-mail address, or a telephone number, through which the administrator may be contacted,

(d) the name of any person other than the administrator (if any) who may be contacted regarding the proceedings, and

(e) the IP number of the administrator.

Gazette notices relating to an institution that is a company

267. In addition to the information required by rule 266 a notice relating to an institution that is a company must specify—

(a) the registered name of the institution,

(b) its registered number,

(c) its registered office,

(d) any principal trading address if this is different from its registered office,

(e) any name under which it was registered in the twelve months prior to the date on which the institution entered special administration, and

(f) any name or style (other than its registered name) under which—

(i) the institution carried on business,

(ii) the institution received relevant funds from a customer, or

(iii) any debt owed to a creditor was incurred.

Omission of unobtainable information

268. Information required under rule 266 or 267 to be included in a notice to be gazetted may be omitted if it is not reasonably practicable to obtain it.

The Gazette — general

269.—(1) A copy of the Gazette containing any notice required by the Regulations or these Rules to be gazetted is evidence of any facts stated in the notice.

(2) In the case of an order of the court notice of which is required by the Regulations or these Rules to be gazetted, a copy of the Gazette containing the notice may in any proceedings be produced as conclusive evidence that the order was made on the date specified in the notice.

(3) Where—

(a) an order of the court which is gazetted has been varied, or

(b) any matter has been erroneously or inaccurately gazetted,

the person whose responsibility it was to procure the requisite entry in the Gazette must as soon as is reasonably practicable cause the variation of the order to be gazetted or a further entry to be made in the Gazette for the purpose of correcting the error or inaccuracy.

Content of notices advertised other than in the Gazette

270.—(1) Subject to rule 272, where under the Regulations or these Rules a notice may be advertised otherwise than in the Gazette, in addition to any content specifically required by the Regulations or any other provision of these Rules, the content of such a notice must be as set out in paragraph and rule 271.

(2) All notices published must specify insofar as it is applicable in relation to the particular notice—

(a) the name and business address of the administrator acting in the special administration to which the notice relates, and

(b) either an e-mail address, or a telephone number, through which the administrator may be contacted.

Non-Gazette notice relating to an institution that is a company

271. In addition to the information required by rule 270, a notice relating to an institution that is a company must state—

(a) the registered name of the institution,

(b) its registered number,

(c) any name under which it was registered in the twelve months prior to the date on which the institution entered special administration, and

(d) any name or style (other than its registered name) under which—

(i) the institution carried on business,

(ii) the institution received relevant funds from a customer, or

(iii) any debt owed to a creditor was incurred.

Non-Gazette notices — other provisions

272.—(1) The information required to be contained in a notice to which rules 270 and 271 apply must be included in the advertisement of that notice in a manner that is reasonably likely to ensure, in relation to the form of the advertising used, that a person reading, hearing or seeing the advertisement will be able to read, hear or see that information.

(2) Information required under rule 270 or 271 to be included in a notice may be omitted if it is not reasonably practicable to obtain it.

CHAPTER 4

Notifications to the registrar of companies

Application of Chapter 4

273. This Chapter applies where a return, notice, document or other information is to be sent or delivered to the registrar of companies under the Regulations or these Rules. For the purposes of this Chapter, "notification" means any return, notice, document or other information which is to be sent or delivered to the registrar of companies,

Information to be contained in all notifications to the registrar of companies

274.—(1) A notification to be sent to the registrar of companies under the Regulations or these Rules must specify—

(a) the registered name of the institution;

(b) its registered number;

(c) the nature of the notification;

(d) the regulation or the rule under which the notification is made;

(e) the date of the notification;

(f) the name and postal address of the person sending or delivering the notification;

(g) the capacity in which that person is acting in respect of the institution.

(2) The notification must be authenticated by the person sending or delivering the notification.

Notification relating to the administrator

275. In addition to the information required by rule 274, a notification relating to the office of the administrator must also specify—

(a) the name and business address of the administrator,

(b) the date of the event notified,

(c) where the notification relates to an appointment, the person, body or court making the appointment, and

(d) where the notification relates to the termination of an appointment, the reason for that termination (for example, resignation).

Notifications relating to documents

276. In addition to the information required by rule 274, a notification relating to a document other than a court order must also specify—

(a) the nature of the document, and

(b) either—

(i) the date of the document, or

(ii) where the document relates to a period of time, the period of time to which the document relates.

Notifications relating to court orders

277. In addition to the information required by rule 274, a notification relating to a court order must also specify—

(a) the nature of the court order, and

(b) the date of the order.

Notifications relating to other events

278. In addition to the information required by rule 274, a notification relating to any other event (for example the coming into force of a moratorium) must specify—

(a) the nature of the event including the regulation or rule under which it took place, and

(b) the date the event occurred.

Notifications of more than one nature

279. A notification which includes two or more of the types of notification set out in rules 274 to 278 must satisfy the requirements applying in respect of each of those notifications.

Notifications made to other persons at the same time

280.—(1) Where under the Regulations or these Rules a notification is to be sent to another person at the same time that it is to be sent to the registrar of companies, that requirement may be satisfied by sending to that other person a copy of the notification sent to the registrar of companies.

(2) Paragraph (1) does not apply—

(a) where additional information is prescribed for the notification to the other person, or

(b) where the notification to the registrar of companies is incomplete.

CHAPTER 5

Further provisions concerning documents

Confidentiality of documents — grounds for refusing inspection

281.—(1) The administrator may refuse inspection of a document which forms part of the records of the special administration by a person who would otherwise be entitled to inspect it where the administrator considers that the document—

(a) should be treated as confidential, or

(b) is of such a nature that its disclosure would be prejudicial to the conduct of the special administration or might reasonably be expected to lead to violence against any person.

(2) The persons to whom the administrator may refuse inspection under this rule include members of the creditors' committee.

(3) Where under this rule the administrator determines to refuse inspection of a document, the person wishing to inspect it may apply to the court for that determination to be overruled and the court may either overrule it altogether or sustain it subject to such conditions (if any) as it thinks just.

Right to copy documents

282. Where the Regulations or these Rules confer a right for any person to inspect documents, the right includes that of obtaining copies of those documents, on payment—

(a) in the case of documents on the court's file of proceedings, of the fee chargeable under any order made under section 92 of the Courts Act 2003(**28**), and

(b) in any other case, of the appropriate fee.

Charges for copy documents

283. Except where prohibited by these Rules, the administrator is entitled to require the payment of the appropriate fee for the supply of documents requested by a creditor, customer, member, contributory or member of the creditors' committee.

Right to have list of creditors

284.—(1) A creditor has the right to require the administrator to provide a list of the creditors and the amounts of their respective debts unless paragraph (5) applies.

(**28**) 2003 c. 39.

(2) The administrator on being required to furnish the list under paragraph (1)—

(a) must send it to the person requiring the list to be furnished as soon as is reasonably practicable, and

(b) may charge the appropriate fee for doing so.

(3) Where any of the creditors of the institution are either—

(a) employees or former employees of the institution, or

(b) consumers claiming amounts paid in advance for the supply of goods or services,

the list furnished under paragraph (2) shall state the number of employees or former employees of the institution and the total of the debts owed to them, and the number of consumers claiming amounts paid in advance for the supply of goods or services and the total of the debts owed to them, but shall not include the names and addresses of such creditors.

(4) The name and address of any creditor may be omitted from the list furnished under paragraph (2) where the administrator is of the view that its disclosure would be prejudicial to the conduct of the proceedings or might reasonably be expected to lead to violence against any person provided that—

(a) the amount of the debt in question is shown in the list, and

(b) a statement is included in the list that the name and address of the creditor has been omitted in respect of that debt.

(5) Paragraph (1) does not apply where a statement of affairs has been delivered to the registrar of companies.

CHAPTER 6

Time limits and security

Time limits

285.—(1) The provisions of CPR rule 2.8(**29**) apply, as regards computation of time, to anything required or authorised to be done by these Rules.

(2) The provisions of CPR rule 3.1(2)(a) apply so as to enable the court to extend or shorten the time for compliance with anything required or authorised to be done by these Rules.

Administrator's security

286.—(1) Wherever under these Rules any person has to appoint or certify the appointment of an administrator, that person must, before making or certifying the appointment, be satisfied that the person appointed or to be appointed has security for the proper performance of that office.

(2) It is the duty of the creditors' committee to review from time to time the adequacy of the administrator's security.

(3) The cost of the administrator's security must be paid as an expense of the proceedings.

CHAPTER 7

Transfer of proceedings

Proceedings commenced in the wrong court

287. Where a special administration is commenced in a court other than the High Court, that court may order the transfer of the proceedings to the High Court.

(**29**) CPR rule 2.8 was amended by S.I. 2009/3390.

Proceedings other than special administration commenced

288.—(1) The FCA may apply to the court to order that the proceedings be converted to a special administration where—

(a) a winding up order or an administration order has been made in respect of an institution, or

(b) a resolution has been made for the winding up of or for the appointment of an administrator of an institution.

(2) In making an order under paragraph (1) the court may give such directions as it sees fit, including directions as to the former officer-holder's remuneration and expenses.

(3) An application under paragraph (1) may be made without notice.

(4) Without prejudice to the generality of the court's power in paragraph (2), where the person appointed as office-holder under the original proceedings ("P") is not the same person as the administrator in the special administration, the court may direct that—

(a) P be sent a copy of the order under paragraph (1) by the administrator,

(b) P hand over—

(i) the records of the original proceedings, including correspondence, proofs and other related papers appertaining to those proceedings while they were within P's responsibility,

(ii) the institution's books, papers and other records, and

(iii) all the assets of the institution and the relevant funds held by the institution in P's possession.

(5) In this rule –

(a) "office-holder" means provisional liquidator, liquidator or administrator as the case may be, and

(b) "original proceedings" means the proceedings following the making of the winding up order, the administration order or the resolution referred to in paragraph (1).

PART 13

General interpretation and application

Introduction

289. Any definition given in this Part applies except and in so far as the context otherwise requires.

"The court" and "the registrar"

290.—(1) Anything to be done under or by virtue of the Regulations or these Rules by, to or before the court may be done by, to or before a judge or the registrar.

(2) The registrar may authorise any act of a formal or administrative character which is not by statute the registrar's responsibility to be carried out by the chief clerk or any other officer of the court acting on the registrar's behalf, in accordance with directions given by the Lord Chancellor.

Remote attendance at meetings and venue

291.—(1) This rule applies to any meeting held under these Rules.

(a) Where the administrator considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(b) Where a meeting is conducted and held in the manner referred to in sub-paragraph (a), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(c) For the purposes of this rule –

(i) a person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting, and

(ii) a person is able to exercise the right to vote at a meeting when—

(aa) that person is able to vote, during the meeting, on resolutions or determinations put to the vote at the meeting, and

(bb) that person's vote can be taken into account in determining whether or not such resolutions or determinations are passed at the same time as the votes of all the other persons attending the meeting.

(d) Where a meeting is to be conducted and held in the manner referred to in sub-paragraph (a), the administrator must make whatever arrangements the administrator considers appropriate to—

(i) enable those attending the meeting to exercise their rights to speak or vote, and

(ii) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

(e) Where in the reasonable opinion of the administrator—

(i) a meeting will be attended by persons who will not be present together at the same place, and

(ii) it is unnecessary or inexpedient to specify a venue for the meeting,

any requirement under these Rules to specify a venue for the meeting may be satisfied by specifying the arrangements the administrator proposes to enable persons to exercise their rights to speak or vote.

(f) In making the arrangements referred to in sub-paragraph (e) and in forming the opinion referred to in sub-paragraph (e)(ii), the administrator must have regard to the legitimate interests of the creditors or customers or their representatives attending the meeting in the efficient despatch of the business of the meeting.

(g) If—

(i) the notice of a meeting does not specify a place for the meeting,

(ii) the administrator is requested in accordance with sub-paragraph (h) to specify a place for the meeting, and

(iii) that request is made by at least one creditor (in the case of a meeting of creditors) or customer (in the case of a meeting of customers) or one creditor or one customer (in the case of a meeting of creditors and customers),

the administrator must specify a place for the meeting.

(h) A request made under sub-paragraph (g) must be made within five business days of the date on which the administrator sent the notice of the meeting in question.

(i) Where the administrator considers that a request under sub-paragraph (g) has been properly made in accordance with this rule, the administrator must—

(i) give notice to all those previously given notice of the meeting—

(aa) that it is to be held at a specified place, and

(bb) as to whether the date and time are to remain the same or not,

(ii) set a venue (including specification of a place) for the meeting, the date of which must be not later than seven business days after the original date for the meeting, and

(iii) give five business days' notice of the venue to all those previously given notice of the meeting,

and the notices required by sub-paragraphs (i) and (ii) may be given at the same or different times.

(j) Where the administrator has specified a place for the meeting in response to a request to which this rule applies, the chair of the meeting must attend the meeting by being present in person at that place.

(2) Reference to a "venue"—

(a) in relation to any proceeding or attendance before the court is to the time, date and place or platform for the proceeding or attendance,

(b) in relation to an examination under rule 235 is to the time, date and place for the examination, and

(c) in relation to a meeting—

(i) is to the time, date and place for the meeting, or

(ii) conducted and held in accordance with rule 80(2) or paragraph (1)(a) is to the time and date for a meeting and the arrangements the administrator proposes to enable persons to exercise their rights to speak or vote at the meeting, or

(iii) is to the time and date for a meeting which is held in accordance with section 246A of the IA 1986 without any place being specified for it.

Insolvent estate

292. References to "the insolvent estate" are to the institution's assets.

The appropriate fee

293. "The appropriate fee" means 15 pence per A4 or A5 page, and 30 pence per A3 page.

"Debt" and "liability"

294.—(1) Subject to paragraph (2), "debt" means any of the following—

(a) any debt or liability to which the institution is subject on the date on which the institution entered special administration,

(b) any debt or liability to which the institution may become subject after that date by reason of any obligation incurred before that date, and

(c) any interest provable as mentioned in rule 135.

(2) In paragraph (1)(a), the reference to debt or liability includes a shortfall claim even if the shortfall claim is incurred after the date on which the institution entered special administration.

(3) For the purposes of any provision of the Regulations or these Rules, any liability in tort is a debt provable in the special administration, if either—

(a) the cause of action has accrued at the date on which the institution went into special administration, or

(b) all the elements necessary to establish the cause of action exist at that date except for actionable damage.

(4) For the purposes of references in any provision of the Regulations or these Rules to a debt or liability, it is immaterial whether the debt or liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion, and references in any such provision to owing a debt are to be read accordingly.

(5) In any provision of the Regulations or these Rules, except in so far as the context otherwise requires, "liability" means (subject to paragraph (3)) a liability to pay money or money's worth, including any liability under an enactment, any liability for breach of trust, any liability in contract, tort or bailment, and any liability arising out of an obligation to make restitution.

Application of the IA 1986 and the Company Directors Disqualification Act

295. For the purposes of these Rules, any reference in IA 1986 or the Company Directors Disqualification Act 1986(**30**) to "leave" of the court is to be construed as meaning "permission" of the court.

Signed by authority of the Lord Chancellor

Wolfson of Tredegar
Parliamentary Under Secretary of State
Ministry of Justice
19th October 2021

We concur

Rebecca Harris
Alan Mak
Two of the Lords Commissioners of Her Majesty's Treasury
21st October 2021

I concur

Sir Julian Flaux
The Chancellor of the High Court
15th October 2021

(**30**) 1986 c. 46.

SCHEDULE

Rule 248

Punishment of offences

Rule creating offence	*General nature of offence*	*Mode of prosecution*	*Punishment*	*Daily default fine (where applicable)*
Rule 88	Administrator failing to send a progress report	Summary	Level 3 on the standard scale	One-tenth of level 3 on the standard scale
Rule 181	Failure to comply with administrator's duties on vacating office	Summary	Level 3 on the standard scale	One-tenth of level 3 on the standard scale
Rule 247	False representation of status for purpose of inspecting documents	1. On indictment	2 years imprisonment or a fine, or both	
		2. Summary	6 months imprisonment, or a fine, or both	

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules set out the procedure for the payment institution special administration process or electronic money institution special administration process (as the case may be) under the Payment and Electronic Money Institution Insolvency Regulations 2021 ("the Regulations").

The main features of the special administration process in each case are that:

(a) an administrator is appointed, and the institution enters special administration, by court order;

(b) special administration objectives and procedures apply;

(c) specific provision is made about how those procedures apply to small institutions;

(d) the administrator is to pursue the special administration objectives in accordance with the statement of proposals; and

in other respects the procedure is the same as for administration under Schedule B1 to the Insolvency Act 1986, subject to modifications and the inclusion of certain liquidation provisions of that Act. Part 2 of the Rules sets out the procedure for applying for a special administration order.

Part 3 of the Rules sets out the process of the special administration.

Part 4 of the Rules provides for the expenses of the special administration.

Part 5 of the Rules sets out the rules concerning relevant funds claims.

Part 6 of the Rules provides for the pursuit of Objective 1.

Part 7 of the Rules provides for distributions to creditors.

Part 8 of the Rules sets out rules concerning the administrator.

Part 9 of the Rules provides for the end of the special administration.

Part 10 of the Rules sets out court procedure and practice.

Part 11 of the Rules provides for the application of section 216 of the Insolvency Act 1986(prohibited names).

Part 12 of the Rules contains provisions of general effect.

Part 13 of the Rules provides for general interpretation and application.

The Rules apply to institutions incorporated as companies as well as to institutions that are:

(a) limited liability partnerships by virtue of paragraph 5 of Schedule 1 of the Regulations which applies the Rules with such modifications as the context requires for giving effect to the Regulations; or

(b) partnerships by virtue of paragraph 9 of Schedule 2 to the Regulations which applies Article 18 of and Schedule 10 to the Insolvent Partnerships Order 1994 (S.I. 1994/2421).

A de minimis impact assessment of the effect these Rules will have on business and the voluntary sector is available from HM Treasury, 1 Horseguards Road, London SW1A 2HQ or on www.gov.uk and is published alongside these Rules on www.legislation.gov.uk.