

## SCHEDULE 2

Introductory rule 4

### Transitional and savings provisions

#### General

**1.** In this Schedule—

“the 1986 Rules” means the Insolvency (Scotland) Rules 1986 as they had effect immediately before the commencement date and a reference to “1986 rule” followed by a rule number is a reference to a rule in the 1986 Rules; and

“the commencement date” means the date these Rules come into force.

#### Requirement for office-holder to provide information to creditors on opting out

**2.—(1)** Rule 1.35, which requires an office-holder to provide information to a creditor on the right to opt out under rule 1.34 in the first communication to the creditor, does not apply to an office-holder who has delivered the first communication before the commencement date.

(2) However, such an office-holder may choose to deliver information on the right to opt out in which case the communication to the creditor must contain the information required by rule 1.35.

#### Electronic communication

**3.—(1)** Rule 1.41(4) does not apply where the relevant proceedings commenced before the commencement date.

(2) In this paragraph, relevant proceedings are commenced on—

- (a) the appointment of a receiver;
- (b) the passing or deemed passing of a resolution to wind up a company; or
- (c) the making of a winding-up order.

#### Statements of affairs

**4.—(1)** The provisions of these Rules relating to statements of affairs in receivership and company winding up do not apply and the following rules in the 1986 Rules continue to apply where relevant proceedings commenced before the commencement date and a person is required to provide a statement of affairs:—

- (a) 1986 rules 3.2 to 3.3 (receivership); and
- (b) 1986 rules 4.7 to 4.9 (company winding up).

(2) In this paragraph, “commenced” means—

- (a) the appointment of a receiver;
- (b) the passing or deemed passing of a resolution to wind up a company; or
- (c) the making of a winding-up order.

#### Savings in respect of meetings taking place on or after the commencement date and resolutions by post

**5.—(1)** This paragraph applies where on or after the commencement date—

- (a) a creditors’ or contributories’ meeting is to be held as a result of a notice issued before that date in relation to a meeting for which provision is made by the 1986 Rules or the Act;

*Status: This is the original version (as it was originally made).*

- (b) a meeting is to be held as a result of a requisition by a creditor or contributory made before that date;
- (c) a meeting at year's end is required by section 105(1) in the winding up of a company where the resolution to wind up was passed before the commencement date.

(2) Where paragraph (1) applies, Part 8 of these Rules does not apply and the 1986 Rules relating to the following continue to apply:—

- (a) the requirement to hold the meeting;
- (b) notice and advertisement of the meeting;
- (c) governance of the meeting;
- (d) recording and taking minutes of the meeting;
- (e) the report or return of the meeting;
- (f) membership and formalities of establishment of liquidation and creditors' committees where the resolution to form the committee is passed at the meeting;
- (g) the office-holder's resignation or removal at the meeting;
- (h) the office-holder's release;
- (i) fixing the office-holder's remuneration;
- (j) requests for further information from creditors;
- (k) claims that remuneration is or that other expenses are excessive; and
- (l) complaints about exclusion at the meeting.

(3) Where, before the commencement date, the office-holder sought to obtain a resolution by correspondence under 1986 rule 4.55, the 1986 Rules relating to resolutions by correspondence continue to apply and sub-paragraph (2) applies to any meeting that those rules require the office-holder to summon.

### **Savings in respect of final meetings taking place on or after the commencement date**

6.—(1) This paragraph applies where—

- (a) before the commencement date—
  - (i) a final report to creditors has been sent under 1986 rule 4.31 (final report to creditors in liquidation),
  - (ii) a meeting has been called under section 94, 106(2) or 146(3) of the Act (final meeting)(4); and
- (b) a meeting under section 94, 106 or 146 of the Act is held on or after the commencement date.

(2) Where a meeting is held to which this paragraph applies, Part 8 of these Rules does not apply and the 1986 Rules relating to the following continue to apply:—

- (a) the requirement to hold the meeting;
- (b) notice and advertisement of the meeting;
- (c) governance of the meeting;

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(1) 1986 c.45. Section 105 was amended by article 6(4) of S.I. 2010/18, prospectively amended by paragraph 28 of Schedule 9 of the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act"), and repealed by article 6 of the Public Services Reform (Insolvency) Order 2016 (S.S.I. 2016/141).

(2) A new section 106 is prospectively substituted by paragraph 29 of schedule 9 of the 2015 Act.

(3) Section 146 is prospectively substituted by paragraph 38 of schedule 9 of the 2015 Act.

(4) A new section 94 is prospectively inserted by paragraph 18 of schedule 9 of the 2015 Act.

- (d) recording and taking minutes of the meeting;
- (e) the form and content of the final report;
- (f) the office-holder's resignation or removal;
- (g) the office-holder's release;
- (h) fixing the office-holder's remuneration;
- (i) requests for further information from creditors;
- (j) claims that remuneration is or other expenses are excessive; and
- (k) complaints about exclusion at the meeting.

### **Progress reports and statements to the registrar of companies**

7.—(1) Where an obligation to prepare a progress report arises before the commencement date but has not yet been fulfilled 1986 rules 4.10 (information to creditors and contributories), 4.11 (information to register of companies) and 4.56 (liquidator's reports) continue to apply.

(2) The provisions of these Rules relating to progress reporting do not apply where the winding-up order was made on a petition presented before the commencement date.

### **Foreign currency**

8.—(1) Where, before the commencement date an amount stated in a foreign currency on an application, statement of claim or evidence of debt (according to the nature of the debt claimed) is converted into sterling by the office-holder under 1986 rule 4.17, the office-holder and any successor to the office-holder must continue to use that exchange rate for subsequent conversions of that currency into sterling for the purpose of distributing the insolvent estate.

(2) However when an office-holder, convener, appointed person or chair uses an exchange rate to convert an application, claim or proof in a foreign currency into sterling solely for voting purposes before the commencement date, it does not prevent the office-holder from using an alternative rate for subsequent conversions.

### **General powers of liquidator**

9. 1986 rule 4.58 (dealings by committee-members and others) continues to apply in respect of the power of the court or the liquidation committee to ratify anything done by the liquidator without sanction, or leave of the court, before the amendments made to sections 165 and 167 of the Act by section 120(2) and (3) of the Small Business, Enterprise and Employment Act 2015<sup>(5)</sup> (which removed the requirements for the liquidator to obtain such sanction) came into force.

### **Accounting periods**

10.—(1) 1986 rule 4.68(2) (estate to be distributed in respect of accounting periods) continues to apply where the date of appointment of any provisional liquidator or liquidator in the winding up under the 1986 Rules fell before the commencement date.

(2) Rules 7.31(2) and (3) relating to the distribution of estate in respect of accounting periods do not apply where paragraph (1) applies.

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(5) 2015 c.26.

### **Applications before the court**

**11.** Where an application to court is lodged or a petition is presented under the Act or under the 1986 Rules before the commencement date and the application or petition has not been determined or withdrawn, the 1986 Rules continue to apply to that application or petition.

### **Forms**

**12.** A form contained in schedule 5 of the 1986 Rules may be used on or after the commencement date if—

- (a) the form is used to provide a statement of affairs pursuant to paragraph 4 of this schedule;
- (b) the form relates to a meeting held under the 1986 Rules to which paragraph 5(1) of this schedule applies;
- (c) the form is required because before the commencement date, the office-holder sought to obtain the passing of a resolution by post; or
- (d) the form relates to any application to the court or petition presented before the commencement date.

### **Insolvency registers**

**13.—(1)** The AiB must maintain on the register of insolvencies information which is on the register immediately before the commencement date.

(2) The AiB must also enter on that register information received (but not yet entered on the register) before the commencement date.

(3) The court's power under rules 2.11, 4.6 and 5.16 to order that information must not be entered in those registers where there is a risk of violence applies equally to information received by AiB before the commencement date but not yet entered on a register.

### **Savings in respect of special insolvency rules: limited liability partnerships**

**14.** The 1986 Rules, insofar as they apply to insolvency proceedings under the Limited Liability Partnerships Regulations 2001<sup>(6)</sup> and the Limited Liability Partnerships (Scotland) Regulations 2001<sup>(7)</sup> continue to have effect for the purposes of the application of those Regulations.

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<sup>(6)</sup> S.I. 2001/1090 as prospectively amended by S.S.I. 2016/141.

<sup>(7)</sup> S.S.I. 2001/128 as amended by S.S.I. 2009/310 and prospectively by S.S.I. 2016/141.