
STATUTORY INSTRUMENTS

2022 No. 1239

**The Payment and Electronic Money
Institution Insolvency (Scotland) Rules 2022**

PART 7

Claims by and distributions to creditors

Application and Interpretation of Part

113.—(1) This Part applies where the administrator proposes to make a distribution to creditors or any class of creditors.

(2) Where the distribution is to a particular class of creditors, references in this Part to creditors shall be a reference to that class of creditors only.

Payments of dividends

114.—(1) On the final determination of the remuneration under Chapter 1 of Part 8 the administrator must, subject to rule 128, pay to the creditors their dividends in accordance with the scheme of division.

(2) Any dividend—

- (a) allocated to a creditor which is not cashed or uplifted, or
- (b) dependent on a claim in respect of which an amount has been set aside under rule 128(6) or rule 128(7)

must be held by the administrator in an appropriate bank or institution in the name of the Accountant of Court and the deposit receipts transmitted to the Accountant of Court.

(3) If a creditor's claim is revalued, the administrator may—

- (a) in paying any dividend to that creditor, make such adjustment to it as the administrator considers necessary to take account of that revaluation, or
- (b) require the creditor to repay to the administrator the whole or part of a dividend already paid to the creditor.

(4) The administrator must insert in the sederunt book the audited accounts, scheme of division and the final determination in relation to the administrator's outlays and remuneration.

New administrator appointed

115.—(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 the creditors' claims which the former administrator has received, together with an itemised list of them.

(2) The new administrator must authenticate the list by way of receipt for the creditors' claims and return it to the former administrator.

(3) From then on, all creditors' claims must be sent to and retained by the new administrator.

Submission of claims

116.—(1) A creditor, in order to obtain an adjudication as to the creditor's entitlement to a dividend (so far as funds are available) out of the assets of the institution in respect of any accounting period, must submit the creditor's claim to the administrator not later than eight weeks before the end of the accounting period.

(2) A creditor must submit a claim by producing to the administrator the following—

- (a) a statement of claim as described in paragraph (3),
- (b) documentary evidence of debt,

but the administrator may dispense with the requirement of sub-paragraph (b) in respect of any debt or any class of debt.

(3) The statement of claim must—

- (a) be made out by, or under the direction of, the creditor and dated and authenticated by the creditor or a person authorised on the creditor's behalf,
- (b) state the creditor's name and address,
- (c) if the creditor is a company, identify the company,
- (d) state the name and address of any person authorised to act on behalf of the creditor,
- (e) state the total amount claimed in respect of all debts as at the date on which the institution entered special administration,
- (f) state whether or not the claim includes any outstanding uncapitalised interest,
- (g) contain particulars of how and when the debt was incurred by the institution,
- (h) contain particulars of any security held, the date on which it was given and the value which the creditor puts on it,
- (i) include details of any retention of title in relation to goods to which the debt relates,
- (j) state the nature and amount of any preference under Schedule 6 to the IA 1986(1) claimed in respect of the debt,
- (k) include any details of any document by reference to which the debt can be substantiated,
- (l) state the name, postal address and authority of the person authenticating the statement of claim and documentary evidence of debt (if someone other than the creditor).

(4) A claim submitted by a creditor, which has been accepted in whole or in part by the administrator for the purpose of drawing a dividend in respect of any accounting period, is to be deemed to have been resubmitted for the purpose of obtaining an adjudication as to the creditor's entitlement to a dividend in respect of an accounting period or, as the case may be, any subsequent accounting period.

(5) A creditor who has submitted a claim may at any time submit a further claim specifying a different amount for the claim, provided that a secured creditor is not entitled to produce a further claim specifying a different value for the security at any time after the administrator has required the creditor to discharge, or convey or assign, the security under Rule 124.

(6) Where the administrator becomes 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 paragraphs (3)(b) to (3)(l) to the extent relevant,
- (b) treat each record under sub-paragraph (a) as if it were a statement of claim submitted by a customer in respect of its shortfall claim,

(1) Amendments have been made to Schedule 6 of the IA 1986 which are not relevant to this instrument.

- (c) notify the customer that a statement of claim 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 statement of claim under paragraph (1) for the shortfall claim.

False claims or evidence

117. If a creditor produces under rule 116 a statement of claim or documentary evidence of debt or other evidence which is false—

- (a) the creditor is guilty of an offence unless the creditor shows that the creditor neither knew nor had reason to believe that the statement of claim or documentary evidence of debt or other evidence was false,
- (b) the institution is guilty of an offence if the institution—
 - (i) knew or became aware that the statement of claim or documentary evidence of debt or other evidence was false,
 - (ii) failed as soon as is reasonably practicable after acquiring such knowledge to report it to the administrator.

Evidence of Claims

118.—(1) The administrator, for the purpose of being satisfied as to the validity or amount of a claim submitted by a creditor under rule 116, may require—

- (a) the creditor to produce further evidence, or
 - (b) any other person who the administrator believes can produce relevant evidence, to produce such evidence.
- (2) If the creditor or other person refuses or delays to produce such evidence as required under paragraph (1), the administrator may apply to the court for an order requiring the creditor or other person to attend for private examination before the court.
- (3) On an application to it under paragraph (2) above the court may make an order requiring the creditor or other person to attend for private examination before it on a date (being not earlier than eight days nor later than sixteen days after the date of the order) and at a time specified in the order.
- (4) If a creditor or other person is for any good reason prevented from attending for examination, the court may grant a commission to take the examination (the commissioner being in this rule referred to as an “examining commissioner”).
- (5) At any private examination under paragraph (2) or where the court grants a commission to take the examination under paragraph (4), a solicitor or counsel may act on behalf of the administrator, or the administrator may appear on the administrator’s own behalf.
- (6) The examination, whether before the court or an examining commissioner, must be taken on oath.
- (7) A person who fails without reasonable excuse to comply with an order made under paragraph (2) is guilty of an offence.
- (8) References in this rule to a creditor in a case where the creditor is one of the following entities—
- (a) a trust,
 - (b) a partnership (including a dissolved partnership),
 - (c) a body corporate or an unincorporated body,

- (d) a limited partnership (including a dissolved partnership) within the meaning of the Limited Partnerships Act 1907(2),

are to be construed, unless the context otherwise requires, as references to a person representing the entity.

Adjudication of Claims

119.—(1) Where funds are available for payment of a dividend out of the institution’s assets in respect of an accounting period, the administrator for the purpose of determining who is entitled to such a dividend must—

- (a) not later than four weeks before the end of the period, accept or reject every claim submitted or deemed to have been re-submitted under rule 116,
- (b) at the same time make a decision on any matter requiring to be specified under paragraph (4)(a) or (4)(b).

(2) On accepting or rejecting, under paragraph (1), every claim submitted or deemed to have been re-submitted, the administrator must, as soon as is reasonably practicable, send a list of every claim so accepted or rejected (including the amount of each claim and whether it has been accepted or rejected) to the following—

- (a) every creditor known to the administrator,
- (b) the FCA.

(3) Where the administrator rejects a claim, the administrator must without delay notify the creditor giving reasons for the rejection.

(4) the administrator must include the following information in the sederunt book—

- (a) details of the decision whether to accept a claim including—
 - (i) the amount of the claim accepted,
 - (ii) the category of debt, and the value of any security, as decided by the administrator,
- (b) if the administrator is rejecting the claim, the administrator’s reasons for doing so,
- (c) any decision of the court on an appeal under paragraph (5).

(5) Any member of the institution or any creditor may, if dissatisfied with the acceptance or rejection of any claim (or, in relation to such acceptance or rejection with a decision in respect of any matter requiring to be recorded under paragraph (4)(a) or (4)(b)) appeal to the court not later than 14 days before the end of the accounting period, and the applicant must give notice of an application under this paragraph to the FCA.

(6) Any reference in this rule to the acceptance or rejection of a claim is to be construed as a reference to the acceptance or rejection of the claim in whole or in part.

Entitlement to draw a dividend

120.—(1) A creditor who has had a claim accepted in whole or in part by the administrator under rule 119(1) or on appeal under rule 119(5) is entitled to payment out of the institution’s assets of a dividend in respect of the accounting period for the purposes of which the claim is accepted.

(2) Such entitlement to payment arises only in so far as the institution has funds available to make that payment, having regard to rule 127.

Liabilities and rights of obligants

121.—(1) Where a creditor has an obligant bound to the creditor along with the institution for the whole or part of the debt, the obligant is not freed or discharged from liability for the debt by reason of the dissolution of the institution or the creditor’s voting or drawing a dividend or assenting to or not opposing—

- (a) the dissolution of the institution, or
- (b) any composition with creditors.

(2) Paragraph (3) applies where—

- (a) a creditor has had a claim accepted in whole or in part,
- (b) the obligant holds a security over any part of the institution’s assets.

(3) The obligant must account to the administrator so as to put the institution’s assets in the same position as if the obligant had paid the debt to the creditor and subsequently had had the obligant’s claim accepted in whole or in part in the special administration after deduction of the value of the security.

(4) The obligant may require and obtain at the obligant’s own expense from the creditor an assignation of the debt on payment of the amount of the debt, and on that being done may in respect of the debt submit a claim, and vote and draw a dividend, if otherwise legally entitled to do so.

(5) Paragraph (4) is without prejudice to any right, under any rule of law, of an obligant who has paid the debt.

(6) In this rule an “obligant” includes a cautioner.

Amount which may be claimed generally

122.—(1) Subject to the provisions of this rule and rules 123 and 124 a creditor is entitled to claim the accumulated sum of principal and any interest which is due on the debt as at the date on which the institution entered special administration.

(2) If a debt does not depend on a contingency but would not be payable but for the special administration until after the date on which the institution entered special administration, the amount of the claim is to be calculated as if the debt were payable on the date on which the institution entered special administration but subject to the deduction of interest at the rate specified in paragraph (4) from that date until the date for payment of the debt.

(3) In calculating the amount of a creditor’s claim, the creditor must deduct any discount (other than any discount for immediate or early settlement) which is allowable by contract or course of dealing between the creditor and the institution or by the usage of trade.

(4) The rate of interest referred to in paragraph (2) is to be whichever is the greater of—

- (a) the official rate at the date the institution entered special administration, or
- (b) the rate applicable to that debt apart from the special administration.

Debts depending on contingency

123.—(1) Subject to paragraph (2), the amount which a creditor is entitled to claim is not to include a debt in so far as its existence or amount depends on a contingency.

(2) On an application by the creditor—

- (a) to the administrator, or
- (b) if there is no administrator, to the court,

the administrator or court must put a value on the debt in so far as it is contingent.

- (3) Where under paragraph (2) a value is put on the debt—
 - (a) the amount in respect of which the creditor is then entitled to claim is to be that value but no more,
 - (b) where the contingent debt is an annuity, a cautioner may not then be sued for more than that value.
- (4) Any interested person may appeal to the court against a valuation under paragraph (2) by the administrator, and the court may affirm or vary that valuation.

Secured debts

124.—(1) In calculating the amount of a secured creditor's claim the secured creditor is to deduct the value of any security as estimated by the secured creditor.

(2) If the secured creditor surrenders, or undertakes in writing to surrender, a security for the benefit of the institution's assets, the secured creditor is not required to deduct the value of that security.

(3) The administrator may, at any time after the expiry of twelve weeks from the date on which the institution entered special administration, require a secured creditor at the expense of the institution's assets to discharge the security or convey or assign it to the administrator on payment to the creditor of the value specified by the creditor.

(4) Where under paragraph (3) the administrator makes payment to the creditor, the amount in respect of which the creditor is then entitled to claim is to be any balance of the creditor's debt remaining after receipt of such payment.

(5) In calculating the amount of the claim of a creditor whose security has been realised, the creditor must deduct the amount (less the expenses of realisation) which the creditor has received, or is entitled to receive, from the realisation.

Claims in a foreign currency

125.—(1) A creditor may state the amount of their claim in a currency other than sterling where—

- (a) the creditor's claim is constituted by decree or other order made by a court ordering the institution to pay to the creditor a sum expressed in a currency other than sterling, or
- (b) where it is not so constituted, the creditor's claim arises from a contract or bill of exchange in terms of which payment is or may be required to be made by the institution to the creditor in a currency other than sterling.

(2) Where under paragraph (1) a claim is stated in a currency other than sterling the administrator must convert it into sterling at a single rate for each currency determined by the administrator by reference to the exchange rates prevailing in the London market at the close of business on the date on which 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.

(6) The administrator must place a copy of any court order granted under paragraph (5) in the sederunt book.

Administrator to allow inspection of statements of claim

126. The administrator must, so long as submitted claims are in the administrator’s hands, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—

- (a) any creditor who has submitted a claim (unless that claim has been wholly rejected for purposes of dividend or otherwise),
- (b) any contributory of the institution,
- (c) any person acting on behalf of either of the above.

Order of priority in distribution

127.—(1) The funds of the institution’s assets must be distributed by the administrator to meet the following expenses and debts in the order in which they are mentioned—

- (a) the expenses of the special administration,
- (b) any preferential debts within the meaning of section 386(1) of the IA 1986⁽³⁾ (excluding any interest which has been accrued to the date on which the institution entered special administration),
- (c) ordinary debts, that is to say, a debt which is neither a secured debt nor a debt mentioned in any other sub-paragraph of this paragraph,
- (d) interest at the official rate, between the date on which the institution entered special administration and the date of payment, on—
 - (i) the preferential debts,
 - (ii) the ordinary debts,
- (e) any postponed debt.

(2) In paragraph **(1)**—

- (a) “postponed debt” means—
 - (i) a creditor’s right to any alienation which has been reduced or restored to the institution’s assets under section 242 of the IA 1986⁽⁴⁾ or to the proceeds of the sale of such an alienation,
 - (ii) a claim arising by virtue of section 382(1)(a) of the Financial Services and Markets Act 2000⁽⁵⁾ (restitution orders), unless it is also a claim arising by virtue of sub-paragraph (b) of that section (a person who has suffered loss etc.), or
 - (iii) in special administration, a claim which by virtue of the IA 1986 (as applied by Regulation 37) or any other enactment is a claim the payment of which is to be postponed.

(3) The expenses of the special administration mentioned in paragraph **(1)(a)** are payable in the order of priority mentioned in rule 95.

(4) Subject to section 175 of the IA 1986⁽⁶⁾ (as applied by paragraph 65(2))—

- (a) any debt falling within either of sub-paragraphs **(1)(b)** or **(1)(c)** is to have the same priority as any other debt falling within the same sub-paragraph,
- (b) where the funds of the institution’s assets are inadequate to enable such debts to be paid in full, they are to abate in equal proportions.

⁽³⁾ Section 386(1) was amended by section 251(3) of the Enterprise Act 2002 (c. 40), section 13(2) of the Financial Services (Banking Reform) Act 2013 (c. 33), section 98(1)(a) of the Finance Act 2020 (c. 14), S.I. 2014/3486 and S.I. 2015/486.

⁽⁴⁾ Section 242 was amended by section 248(3) of the Enterprise Act 2002 and S.I. 2016/1034.

⁽⁵⁾ 2000 c. 8; section 382(1) was amended by Schedule 9 to the Financial Services Act 2012 (c. 21), paragraph 21(2).

⁽⁶⁾ Section 175 was amended by section 2(1) of the Corporate Insolvency and Governance Act 2020 (c. 12) and S.I. 2014/3486.

(5) Any surplus remaining, after all expenses and debts mentioned in paragraph have been paid in full, must (unless the articles of the institution provide otherwise) be distributed among the members according to their rights and interests in the institution.

(6) Nothing in this rule affects—

- (a) the right of a secured creditor which is preferable to the rights of the administrator, or
- (b) any preference of the holder of a lien over a title deed or other document which the administrator has taken into their custody or control in accordance with paragraph 67.

Assets to be distributed in respect of the accounting periods

128.—(1) The administrator must make up accounts of the administrator’s intromissions with the institution’s assets in respect of each accounting period.

(2) In this rule, “accounting period” is to be construed as follows—

- (a) the first accounting period is the period of six months beginning with the date on which the institution entered special administration,
- (b) any subsequent accounting period is the period of six months beginning with the end of the last accounting period except that—
 - (i) where the administrator and the creditors’ committee agree, or
 - (ii) where there is no creditors’ committee, the court determines,

the accounting period is to be such other period beginning with the end of the last accounting period as may be agreed or, as the case may be determined, it is to be that other period.

(3) An agreement or determination under paragraph (2)(b)—

- (a) may be made in respect of one or more than one accounting period,
- (b) may be made before the beginning of the accounting period in relation to which it has effect and, in any event, is not to have effect unless made before the day on which such accounting period would, but for the agreement or determination, have ended,
- (c) may provide for different accounting periods to be of different durations.

(4) The administrator may pay a dividend to secured or preferential creditors or, where the administrator has the permission of the court, to unsecured creditors only if the following conditions are met—

- (a) the administrator has sufficient funds for the purpose,
- (b) the administrator’s statement of proposals, as approved by the creditors under Chapter 3 of Part 3, contains a proposal to make a distribution to the class of creditors in question,
- (c) the payment of a dividend is consistent with the functions and duties of the administrator and any proposals made by the administrator or which the administrator intends to make.

(5) The administrator may pay—

- (a) the expenses of the special administration mentioned in rule 95, other than the administrator’s remuneration, at any time,
- (b) the preferential debts within the meaning of section 386 of IA 1986 at any time but only with the consent of the creditors’ committee or, if there is no creditors’ committee, of the court.

(6) If the administrator—

- (a) is not ready to pay a dividend in respect of an accounting period, or
- (b) considers it would be inappropriate to pay such a dividend because the expenses of doing so would be disproportionate to the amount of the dividend,

the administrator may postpone such payment to a date not later than the time for payment of a dividend in respect of the next accounting period.

(7) Where an appeal is taken under rule 119(5) against the acceptance or rejection of a creditor's claim, the administrator must at the time of payment of dividends and until the appeal is determined, set aside an amount which would be sufficient, if the determination in the appeal were to provide for the claim being accepted in full, to pay a dividend in respect of that claim.

(8) Where a creditor—

(a) has failed to produce evidence in support of a claim earlier than eight weeks before the end of an accounting period on being required by the administrator to do so under rule 118,

(b) has given a reason for such failure which is acceptable to the administrator,

the administrator must set aside, for such time as is reasonable to enable the creditor to produce that evidence or any other evidence that will enable the administrator to be satisfied under rule 118, an amount which would be sufficient, if the claim were accepted in full, to pay a dividend in respect of that claim.

(9) Where a creditor submits a claim to the administrator later than eight weeks before the end of an accounting period but more than eight weeks before the end of a subsequent accounting period in respect of which, after making allowance for contingencies, funds are available for the payment of a dividend, the administrator must, if accepting the claim in whole or in part, pay to the creditor—

(a) the same dividend or dividends as has or have already been paid to creditors of the same class in respect of any accounting period or periods,

(b) whatever dividend may be payable to that creditor in respect of the said subsequent accounting period,

provided that paragraph (a) is without prejudice to any dividend which has already been paid.

(10) In the declaration of and payment of a dividend, no payments are to be made more than once by virtue of the same debt.

(11) Where the administrator pays a dividend under this rule, notice of the dividend must be given to the FCA.

(12) Where the administrator postpones payment of a dividend in accordance with paragraph (6), the administrator must notify the FCA.

(13) Details of any agreement reached under paragraph (2)(b)(i) and of any determination made under paragraph (2)(b)(ii) must be inserted in the sederunt book.