
STATUTORY INSTRUMENTS

2022 No. 1239

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

PART 8

The Administrator

CHAPTER 2

Replacing the administrator

Grounds for resignation

132.—(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

133.—(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,
- (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.
- (5) The notice must be accompanied by a summary of the administrator's receipts and payments.

Notice of resignation

134.—(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,
- (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 lodged with the court and a copy of the notice of resignation must be sent not more than five business days after it has been lodged 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

135.—(1) Any application for an order 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 the following—

- (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 nor a 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,
- (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

136. 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—

- (a) to the registrar of companies,

- (b) where the administrator was appointed on the application of the FCA or the Secretary of State, to the applicant.

Administrator deceased

137.—(1) Subject to paragraphs (2) to (4), where the administrator has died, it is the duty of the administrator’s executors 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.

Application to replace

138.—(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 the following—

- (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) the person nominated for appointment as administrator,
- (d) the FCA (if not the applicant),
- (e) the Keeper of the Register of Inhibitions and Adjudications for recording in that register.

(4) Service of the application under this rule shall be the same as service of an application for a special administration order.

(5) Rule 14 shall apply to the notice of appointment of a replacement administrator as it applies to notice of a special administration order.

Notification and advertisement of appointment of replacement administrator

139.—(1) Subject to rule 141, 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 notices must clearly identify that the appointment is of a replacement administrator.

Notification and advertisement of appointment of joint administrator

140. Subject to rule 141, where a person is to be appointed in accordance with paragraph 100 to act as administrator, jointly or concurrently with the person or persons then acting, the same provisions apply, subject to this rule and to such other modification as may be necessary, in respect of the making of this appointment, in the case of the original appointment of an administrator.

Notification of new administrator

141.—(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,
- (d) the date from which the administrator’s appointment will take effect.

Administrator’s duties on vacating office

142.—(1) Where the administrator (‘A’) ceases to be in office in consequence of this Chapter, A is under an 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, statements of claim and other related papers appertaining to the special administration while it was within A’s responsibility,
- (c) the institution’s books, papers and other records.

(2) If A makes default in complying with this rule, A is guilty of an offence.