
EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make a number of changes to the Insolvency Rules 1986 (S.I. 1986/1925) (“the 1986 Rules”).

The changes to the 1986 Rules, the majority of which are set out in Schedule 1 of these Rules, are generally consequential on amendments made to the Insolvency Act 1986 (c. 45) by the Enterprise Act 2002 (c. 40).

The main amendment is the substitution of Part 2 of the 1986 Rules by the provisions set out in Part 2 of Schedule 1. This Part of the Schedule sets out the detailed rules for the administration procedure that was introduced as Schedule B1 to the Insolvency Act 1986 by section 248 of the Enterprise Act 2002 in substitution for Part II of the Insolvency Act 1986. The substituted Part 2 of the 1986 Rules draws substantially on the existing rules but makes new provisions in consequence of the revised and extended administration procedures introduced by the Enterprise Act 2002. In particular, under Schedule B1:

- Entry into administration will include two new without court order entry routes into administration for companies and their directors and for holders of qualifying floating charges, in addition to the existing procedure for entry by court order.
- Administration will be subject to new time limits to ensure that the process is conducted quickly and efficiently. Administrators will have to send copies of their proposals to creditors within 8 weeks, and hold a creditors' meeting within 10. There will also be a time limit of 12 months as the initial maximum duration of the whole administration procedure and the administrator must fulfil his duties as soon as reasonably practicable. The administrator will be able to extend any of the time limits with the permission of the court, or with the consent of creditors.
- The administrator will be required to rescue the company, as a going concern, wherever this is reasonably practicable. In those cases where it is not possible, the objective will be to provide a better result for the creditors of the company as a whole than would be achieved in an immediate winding up and only where this is not possible will he or she realise property to make a distribution to secured or preferential creditors.
- The administrator will have powers to make payments to preferential and secured creditors in all circumstances, and to unsecured creditors with the permission of the court.
- The administrator will, on the filing of an appropriate notice, be able to move the company from administration into creditors' voluntary liquidation so that payments can be made to unsecured creditors without the leave of the court or, alternatively, to move from administration to dissolution in those cases where there are no further assets to be distributed.

Parts 1, 3, 4, 9 and 10 of Schedule 1 make a number of amendments to the provisions in the 1986 Rules that relate to company voluntary arrangements, receiverships and liquidations, and rules of general application. These changes are consequential on the introduction of a share of assets for unsecured creditors known as the “prescribed part” by the Enterprise Act 2002. These amendments concern the provision of information for creditors, the powers for receivers to deal with the “prescribed part” and applications to disapply the “prescribed part”. There are a number of minor amendments that are consequential on the introduction of the new administration procedure and the abolition of Crown preference by the Enterprise Act 2002.

Part 5 of Schedule 1 makes a number of amendments to the provisions of the 1986 Rules, which relate to individual voluntary arrangements. In particular, a number of amendments are made as a

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consequence of substituting a new section 261 and the introduction of sections 263A to 263G into the Insolvency Act 1986. These principally relate to the introduction of a new 'fast-track' individual voluntary arrangement, which will be available only to undischarged bankrupts and in which only the Official Receiver will act as nominee or supervisor. It also contains more detailed rules of applications for annulment in cases where an individual voluntary arrangement has been approved and implemented.

Part 6 of Schedule 1 makes a number of amendments to the provisions of the 1986 Rules, which relate to bankruptcy. In particular—

- Rules and references to summary administration are omitted;
- Rules in relation to income payments agreements are included;
- Rules relating to discharge from bankruptcy are amended;
- Rules to deal with a bankrupt's interest in a dwelling-house are revised; and
- Rules are introduced to implement the provisions on bankruptcy restrictions orders (including interim bankruptcy restrictions orders) and bankruptcy restrictions undertakings.

Part 7 of Schedule 1 introduces Part 6A into the 1986 Rules which relate to the individual insolvency registers which record individual voluntary arrangements, bankruptcy orders and bankruptcy restrictions orders matters. They replace existing rules for individual insolvency registers.

Part 8 of Schedule 1 makes a number of amendments to the 1986 Rules which relate to court procedure and practice.

Schedule 2 makes a number of amendments to Schedule 4 to the principal Rules. New forms are introduced and other forms are revised in consequence of the matters set out in Schedule 1. Minor amendments are made to a few forms unrelated to the changes made by the Enterprise Act 2002.

The costs to business of the commencement of the provisions of the Enterprise Act 2002 are set out in the Regulatory Impact Assessment prepared for that Act. Copies of the assessment are available from the Policy Unit, The Insolvency Service, 21 Bloomsbury Street, London, WC1B 3QW.