

2008 No. 662 (S. 4)

INSOLVENCY, SCOTLAND

COMPANIES

The Insolvency (Scotland) Amendment Rules 2008

<i>Made</i> - - - -	<i>9th March 2008</i>
<i>Laid before Parliament</i>	<i>12th March 2008</i>
<i>Coming into force</i> - -	<i>6th April 2008</i>

The Secretary of State makes the following Rules in exercise of the powers conferred by section 411 of the Insolvency Act 1986(a):

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Insolvency (Scotland) Amendment Rules 2008 and shall come into force on 6th April 2008 (“the commencement date”).

(2) In these Rules “the 1986 Rules” means the Insolvency (Scotland) Rules 1986(b) and, unless the context otherwise requires, references to numbered Rules are to the Rules so numbered in the 1986 Rules.

Transitional provision

2. The provisions of Rules 4 to 6 of these Rules shall not apply, and the provisions of the 1986 Rules shall continue to apply without the amendments made by those Rules, in any case where a company has entered administration before the commencement date.

Amendments to the Insolvency (Scotland) Rules 1986

3. The 1986 Rules shall be amended in accordance with the following Rules.

Amendment of Rule 2.1

4. In Rule 2.1(1)(d), after the entry “-Chapter 8: Functions and Remuneration of administrator;” there is inserted—

“-Chapter 8A: Expenses of the administration;”.

(a) 1986 c.45. Section 411 was amended by S.I. 2002/1037 and the Constitutional Reform Act 2005 (c.4), Schedule 1, paragraph 188.
(b) S.I. 1986/1915; amended by S.I. 1987/1921, 1999/1820, 2002/2709, 2003/2108, 2003/2109, 2003/2111, 2006/734 and 2007/2537.

Insertion of new Chapter 8A of Part 2

5. After Rule 2.39A(a) there is inserted the following chapter—

“CHAPTER 8A EXPENSES OF THE ADMINISTRATION

Expenses of the administration

2.39B.—(1) This Rule applies for the purposes of determining the order of priority of the expenses of the administration.

(2) Paragraphs (1) and (3) of Rule 4.67 shall apply with regard to the expenses of the administration as they do to a company in liquidation, subject to the modifications specified below.

(3) In Rule 4.67(1) and (3) as applied by paragraph (2)—

(a) in paragraph (1)—

- (i) omit the words “Subject to section 156 and paragraph (2),”;
- (ii) for any reference to liquidator there is substituted a reference to administrator;
- (iii) for any reference to liquidation there is substituted a reference to administration;
- (iv) omit the words “provisional liquidator or” in sub-paragraph (a) and the words “provisional liquidator,” in sub-paragraph (b);
- (v) omit the words “or special manager” in sub-paragraph (b);
- (vi) omit sub-paragraphs (c) and (e);
- (vii) for the words “Rule 4.9(1)” in sub-paragraph (f) there is substituted “Rule 2.24(1)”; and
- (viii) for the words “Rule 4.32” in sub-paragraph (h) there is substituted “Rule 2.39”; and

(b) in paragraph (3) for the reference to liquidator there is substituted a reference to administrator.

(4) The priorities laid down by virtue of paragraph (2) are subject to the power of the court to make orders under paragraph (5) where the assets are insufficient to satisfy the liabilities.

(5) 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 administration in such order of priority as the court thinks just.

(6) For the purposes of paragraph 99(3), the former administrator’s remuneration and expenses shall comprise all those items set out in Rule 4.67(1) as applied by paragraph (2).”.

(a) Rule 2.39A was inserted by S.I 2006/734.

Amendment of Rule 2.41

6. In Rule 2.41(1) after “liquidator)” there is inserted “(except Rule 4.67)”.

Pat McFadden
Minister of State for Employment Relations and Postal Affairs
Department for Business, Enterprise and Regulatory Reform

9th March 2008

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Insolvency (Scotland) Rules 1986 (“the 1986 Rules”) by inserting a new Chapter 8A: Expenses of the administration. The new Chapter contains rules which determine the order of priority of expenses in an administration.

Rule 2 contains transitional provision so that the amendments to the 1986 Rules do not apply where a company has entered administration before the commencement date.

Rule 4 inserts a reference to the new Chapter 8A in the Preliminary Chapter of the 1986 Rules.

Rule 5 inserts the new Chapter 8A into the 1986 Rules. Paragraphs (2) and (3) of the new Chapter 8A apply paragraphs (1) and (3) of Rule 4.67 of the 1986 Rules (which relates to the order of priority of expenses of a liquidation), with modifications, to expenses of an administration. Paragraph (1) of Rule 4.67 lists the order of priority in which expenses are to be paid. Paragraph (3) of Rule 4.67 provides that nothing in the Rule affects the power of the court in proceedings by or against the company to order expenses to be paid by the company, nor does it affect the rights of any person to whom such expenses are to be paid.

Paragraphs (4) and (5) provide that if the assets of the company are insufficient to satisfy its liabilities, the court may order payment of the expenses in whatever order of priority it thinks fit, notwithstanding the order of priority referred to in paragraph (2).

Paragraph (6) provides that for the purposes of paragraph 99(3) of Schedule B1 to the Insolvency Act 1986, the former administrator’s remuneration and expenses shall comprise all the items set out at Rule 4.67(1). Paragraph 99(3) makes provision for the payment of a former administrator’s remuneration and expenses when he has ceased to hold the office of administrator.

Rule 6 amends Rule 2.41(1) of the 1986 Rules. Rule 2.41(1) applies Chapters 5 (claims in liquidation) and 9 (distribution of company’s assets by liquidator) of Part 4, with modifications, to claims to a dividend out of the assets of a company in administration as they do to a company in liquidation. The amendment made excludes Rule 4.67 from this application.

No Regulatory Impact Assessment has been prepared in relation to these Rules, as they will not impose any significant burdens on business.

£3.00

© Crown Copyright 2008

Published and printed in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament