
STATUTORY INSTRUMENTS

2022 No. 1239

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

PART 12

Provisions of general effect

CHAPTER 1

Miscellaneous and general

Costs, expenses etc

158.—(1) All fees, costs, charges and other expenses incurred in the course of the special administration are, unless otherwise stated, to be regarded as expenses of the special administration.

(2) The costs associated with the prescribed part must be paid out of the prescribed part.

False representation of status for purpose of inspecting documents

159.—(1) It is an offence for a person who does not have a right under these Rules to inspect a relevant document falsely to claim to be a creditor, customer, member of the institution or contributory of the institution with the intention of gaining sight of the relevant document.

(2) A relevant document is one which is on the court file or in the hands of the administrator or any other person and which a creditor, customer, member of the institution or contributory of the institution has a right to inspect under these Rules.

Punishment of offences

160. The Schedule sets out the maximum penalties for offences under the Rules.

CHAPTER 2

The giving of notice and the supply of documents

Application

161.—(1) Subject to paragraphs (2) and (3), this Chapter applies where a notice or other document is required to be given, delivered or sent under the Regulations or these Rules by any person, including the administrator.

(2) This Chapter does not apply to —

- (a) the lodging of any application, or other document, with the court,
- (b) the service of any application, or other document, lodged with the court,
- (c) the service of any order of the court.

(3) This Chapter does not apply to the submission of documents to the registrar of companies.

Personal delivery

- 162.**—(1) Personal delivery of a notice or other document is permissible in any case.
- (2) A document is personally delivered—
- (a) in the case of an individual, if it is left with that individual,
 - (b) in the case of a legal person, if it is left with an individual at the registered office, official address or place of business of that legal person.

Postal delivery of documents

163.—(1) A notice or other document may be sent by post in accordance with the provisions of this rule unless in any particular case some other form of delivery is required by the Regulations or these Rules or an order of the court.

- (2) A document delivered by post may be delivered to the last known address of a person.
- (3) First class or second class post may be used to deliver a notice or other document.
- (4) Unless the contrary is shown—
- (a) a notice or other document sent by first class post is treated as delivered on the second business day after the day on which it is posted,
 - (b) a notice or other document sent by second class post is treated as delivered on the fourth business day after the day on which it is posted,
 - (c) where a post-mark appears on the envelope in which a notice or other document was posted, the date of that post-mark is to be treated as the date on which the notice or other document was posted.
- (5) In this rule “post-mark” means a mark applied by a postal operator which records the date on which a letter entered the postal system of the postal operator.

Notice etc to authorised recipients

164. Where a notice or other document is to be given, delivered or sent to a person under the Regulations or these Rules, it may be given, delivered or sent instead to any other person authorised in writing to accept delivery on behalf of the first-mentioned person.

CHAPTER 3

The giving of notice and the supply of documents to or by the administrator

Application

- 165.**—(1) Subject to paragraphs (2) and (3), this Chapter applies where a notice or other document is required to be given, delivered or sent under the Regulations or these Rules.
- (2) This Chapter does not apply to the submission of notices or other documents to the registrar of companies.
- (3) Rules 169 to 172 do not apply to the filing of any notice or other document with the court.

The form

- 166.** Subject to any order of the court, any notice or other document required to be given, delivered or sent must be in writing, and where electronic delivery is permitted a notice or other document in electronic form is treated as being in writing if it is capable of being—
- (a) read by the recipient in electronic form,

- (b) reproduced by the recipient in hard-copy form.

Proof of sending

167.—(1) Where a notice or other document is required to be given, delivered or sent by the administrator, the giving, delivering or sending of it may be proved by means of a certificate that the notice or other document was duly given, delivered or sent.

(2) A certificate must state the method of delivery and the date of the sending, posting or delivering (as the case may be).

(3) A certificate under paragraph (1) may be given by any of the following—

- (a) the administrator,
- (b) the administrator’s solicitor,
- (c) a partner or an employee of either of them.

(4) Where a notice or other document is required to be given, delivered or sent by a person other than the administrator, the giving, delivering or sending of it may be proved by means of a certificate by that person—

- (a) that the notice or document was given, delivered or sent by that person, or
- (b) that another person (named in the certificate) was instructed to give, deliver or send it.

(5) A certificate under this rule may be endorsed on a copy or specimen of the notice or document to which it relates.

Authentication

168.—(1) A notice, other document or information given, delivered, sent or supplied in hard copy form is sufficiently authenticated if it is signed by the person giving, delivering, sending or supplying it.

(2) A notice, other document or information given, delivered or sent in electronic form is sufficiently authenticated—

- (a) if the identity of the sender is confirmed in a manner specified by the recipient, or
- (b) where no such manner has been specified by the recipient, if the communication contains or is accompanied by a statement of the identity of the sender and the recipient has no reason to doubt the truth of that statement.

(3) If a notice, other document or information is authenticated by the signature of an individual on behalf of—

- (a) a body of persons, the document must also state the position of that individual in relation to the body,
- (b) a body corporate of which the individual is the sole member, the document must also state that fact.

Electronic delivery — general

169.—(1) A notice or other document may be given, delivered or sent by electronic means unless in any particular case some other form of delivery is required by the Regulations or these Rules or an order of the court, provided that the intended recipient of the notice or other document has—

- (a) given actual consent (whether in the specific case or generally) to electronic delivery and has—
 - (i) not revoked that consent,

- (ii) provided an electronic address for delivery,
 - (b) given deemed consent in accordance with paragraph (2) (in which case the electronic address for delivery shall be the address used by the institution for communications with the intended recipient before the special administration commenced) and has not revoked that consent.
- (2) For the purposes of paragraph (1) an intended recipient is deemed to have consented to the electronic delivery of a notice or other document by the administrator where the intended recipient and the institution had customarily communicated with each other by electronic means before the special administration commenced.
- (3) In the absence of evidence to the contrary, a notice or other document is presumed to have been delivered by electronic means where the sender can produce a copy of the electronic communication which—
- (a) contains the notice or other document, or to which the notice or other document was attached,
 - (b) shows the time and date the electronic communication was sent and the electronic address to which it was sent.
- (4) Unless the contrary is shown, a document sent electronically is deemed to have been delivered to the recipient at 9.00am on the next business day after it was sent.
- (5) Paragraph (4) does not apply in respect of notices or other documents sent electronically under Part 2.

Electronic delivery by administrator

- 170.**—(1) Where the administrator gives, sends or delivers a notice or other document to any person by electronic means, the notice or document must contain or be accompanied by a statement—
- (a) that the recipient may request a hard copy of the notice or document,
 - (b) specifying a telephone number, email address and postal address which may be used to make that request.
- (2) Where a hard copy of the notice or other document is requested, it must be sent free of charge within five business days of receipt of the request by the administrator.

Use of websites by administrator

- 171.**—(1) This rule applies for the purposes of section 246B of the IA 1986.
- (2) Where the administrator is required to give, deliver or send a notice or other document to any person (other than in a case where personal service is required), the administrator may satisfy that requirement by sending that person a notice which contains—
- (a) a statement that the notice or other document is available for viewing and downloading on a website,
 - (b) the address of that website together with any password necessary to view and download the notice or other document from that site,
 - (c) a statement that the person to whom the notice is given, delivered or sent may request a hard copy of the notice or other document and specifying a telephone number, email address and postal address which may be used to make that request.
- (3) Where a notice to which this rule applies is sent, the notice or other document to which it relates must—

- (a) be available on the website for a period of not less than two months after the end of the special administration or (if later) the release of the last person to hold office as administrator in the special administration,
 - (b) be in a format that enables it to be downloaded from the website within a reasonable time of a request being made for it to be downloaded.
- (4) Where a hard copy of the document is requested it must be sent free of charge within five business days of the receipt of the request by the administrator.
- (5) Where a document is given, delivered or sent to a person by means of a website in accordance with this rule, it is deemed to have been delivered—
- (a) when the document was first made available on the website, or
 - (b) if later, when the notice under paragraph (2) was delivered to that person.

General use of websites to deliver notices and other documents

172.—(1) The administrator may deliver a notice to each person to whom a notice or other document will be required to be given, delivered or sent in the special administration which contains—

- (a) a statement that—
 - (i) future notices or other documents in the special administration other than those mentioned in paragraph (2) will be made available for viewing and downloading on a website without notice to the recipient,
 - (ii) the administrator will not be obliged to deliver, give or send any such notices or other documents to the recipient of the notice unless it is requested by that person,
 - (b) a statement that the recipient of the notice may at any time request a hard copy of any or all of the following—
 - (i) all notices and other documents currently available for viewing on the website,
 - (ii) all future documents which may be made available there,
 - (c) a telephone number, email address and postal address which may be used to make a request for a hard copy of a notice or other document, and
 - (d) the address of the website and any password required to view and download a relevant document from that site.
- (2) A statement under paragraph (1)(a) does not apply to the following notices or other documents—
- (a) a notice or other document for which personal delivery is required,
 - (b) a notice or other document which is not delivered, given or sent generally.
- (3) A notice or other document is delivered, given or sent generally if it is delivered, given or sent to some or all of the following classes of persons—
- (a) members,
 - (b) contributories,
 - (c) creditors,
 - (d) customers,
 - (e) any class of members, contributories, customers or creditors.
- (4) An administrator who has delivered a notice under paragraph (1) is under no obligation—
- (a) to notify a person to whom the notice has been delivered when a notice or other document to which the notice applies has been made available on the website,

- (b) to deliver a hard copy of such a notice or other document unless a request is received under paragraph (1)(b).
- (5) An administrator who receives a request under paragraph (1)(b)—
 - (a) in respect of a notice or other document which is already available on the website must deliver a hard copy of the notice or other document to the recipient free of charge within five business days of receipt of the request,
 - (b) in respect of all future notices or other documents must deliver each such notice or other document in accordance with the requirements for delivery of such a notice or other document in the Regulations and these Rules.
- (6) A document to which a statement under paragraph (1)(a) applies must—
 - (a) remain available on the website for a period of not less than two months after the end of the special administration or (if later) the release of the last person to hold office as administrator in the special administration,
 - (b) must be in a format that enables it to be downloaded within a reasonable time of a request being made for it to be downloaded.
- (7) A notice or other document which is delivered to a person by means of a website in accordance with this rule, is deemed to have been delivered—
 - (a) when that notice or other document was first made available on the website, or
 - (b) if later, when the notice under paragraph (1) was delivered to that person.
- (8) Paragraph (7) does not apply in respect of a person who has made a request under paragraph (1)(b)(ii) for hard copies of all future documents.

Electronic delivery of special administration documents to court

173.—(1) A document may not be delivered to the court by electronic means unless this is expressly permitted by Rules of Court.

(2) A document delivered by electronic means is to be treated as delivered to the court at the time it is recorded by the court as having been received or otherwise as the Rules of Court provide.

Notice etc to joint administrators

174. Where there are joint office-holders in a special administration, delivery of a document to one of them is to be treated as delivery to all of them.

Delivery of statements of claim and documentary evidence of debt

175.—(1) Once a statement of claim or documentary evidence of debt has been delivered to an administrator in accordance with these Rules it need not be delivered again.

(2) Where these Rules require such delivery by a certain time, that requirement is satisfied if that statement or evidence has already been delivered.

Electronic submission of information

176.—(1) A requirement under these Rules for information to be sent by any person to the Secretary of State or the administrator shall be treated as having been satisfied where—

- (a) the information is submitted electronically with the agreement of the person to whom the information is sent,
- (b) the form in which the electronic submission is made satisfies the requirements of the person to whom the information is sent,

- (c) all the information required is provided in the electronic submission,
 - (d) the person to whom the information is sent can produce in legible form the information so submitted.
- (2) Where information is permitted to be sent electronically under paragraph (1), any requirement that the information be accompanied by a signature is taken to be satisfied—
- (a) if the identity of the person who is supplying the information and whose signature is required is confirmed in a manner specified by the recipient, or
 - (b) where no such manner has been specified by the recipient, if the communication contains or is accompanied by a statement of the identity of the person who is providing the information, and the recipient has no reason to doubt the truth of that statement.
- (3) Where information has been supplied to a person, whether or not it has been supplied electronically in accordance with paragraph (2), and a copy of that information is required to be supplied to another person falling within paragraph (1), the requirements contained in paragraph (2) apply in respect of the supply of the copy to that other person, as they apply in respect of the original.

Contents of notices to be gazetted

177.—(1) Subject to rule 178, where under the Regulations or these Rules a notice is gazetted, in addition to any content specifically required by the Regulations or any other provision of these Rules, the content of such a notice must be as set out in paragraph (2) and rule (3).

- (2) All gazetted notices must specify insofar as it is applicable in relation to the particular notice—
- (a) a statement that the proceedings are being held in the court and the court reference number,
 - (b) the name, business address and date of appointment of the administrator,
 - (c) either an email address, or a telephone number, through which the administrator may be contacted,
 - (d) the name of any person other than the administrator (if any) who may be contacted regarding the proceedings,
 - (e) the IP number of the administrator,
 - (f) the court name and any number assigned to the special administration by the court.
- (3) All notices published must specify as regards the institution to which the notice relates—
- (a) the registered name of the institution,
 - (b) its registered number,
 - (c) its registered office,
 - (d) any principal trading address if this is different from its registered office,
 - (e) any name under which it was registered in the twelve months prior to the date of commencement of the special administration,
 - (f) any name or style (other than its registered name) under which—
 - (i) the institution carried on business,
 - (ii) the institution received relevant funds from a customer, or
 - (iii) any debt owed to a creditor was incurred.

Omission of unobtainable information

178. Information required under rule 177 to be included in a notice to be gazetted may be omitted if it is not reasonably practicable to obtain it.

The Gazette — general

179.—(1) A copy of the Gazette containing any notice required by the Regulations or these Rules to be gazetted is evidence of any facts stated in the notice.

(2) In the case of an order of the court notice of which is required by the Regulations or these Rules to be gazetted, a copy of the Gazette containing the notice may in any proceedings be produced as conclusive evidence that the order was made on the date specified in the notice.

(3) Where—

- (a) an order of the court which is gazetted has been varied, or
- (b) any matter has been erroneously or inaccurately gazetted,

the person whose responsibility it was to procure the requisite entry in the Gazette must as soon as is reasonably practicable cause the variation of the order to be gazetted or a further entry to be made in the Gazette for the purpose of correcting the error or inaccuracy.

(4) A Gazette notice, variation or correction is taken to be gazetted or published on the date it first appears in either electronic or hard copy form.

Content of notices advertised other than in the Gazette

180.—(1) Subject to rule 181, where under the Regulations or these Rules a notice may be advertised otherwise than in the Gazette, in addition to any content specifically required by the Regulations or any other provision of these Rules, the content of such a notice must be as set out in this rule.

(2) All notices published must specify insofar as it is applicable in relation to the particular notice—

- (a) the name and business address of the administrator acting in the special administration to which the notice relates,
- (b) either an email address, or a telephone number, through which the administrator may be contacted.

(3) All notices published must specify as regards the institution to which the notice relates—

- (a) the registered name of the institution,
- (b) its registered number,
- (c) any name under which it was registered in the twelve months prior to the date on which the institution entered special administration,
- (d) any name or style (other than its registered name) under which—
 - (i) the institution carried on business,
 - (ii) the institution received relevant funds from a customer, or
 - (iii) any debt owed to a creditor was incurred.

Non-Gazette notices — other provisions

181.—(1) The information required to be contained in a notice to which rule 180 applies must be included in the advertisement of that notice in a manner that is reasonably likely to ensure, in relation to the form of the advertising used, that a person reading, hearing or seeing the advertisement will be able to read, hear or see that information.

(2) Information required under rule 180 to be included in a notice may be omitted if it is not reasonably practicable to obtain it.

CHAPTER 4

Notifications to the registrar of companies

Application of Chapter 4

182. This Chapter applies where a return, notice, document or other information is to be sent or delivered to the registrar of companies under the Regulations or these Rules. For the purposes of this Chapter, “notification” means any return, notice, document or other information which is to be sent or delivered to the registrar of companies.

Information to be contained in all notifications to the registrar of companies

183.—(1) A notification to be sent to the registrar of companies under the Regulations or these Rules must specify—

- (a) the registered name of the institution,
 - (b) its registered number,
 - (c) the nature of the notification,
 - (d) the regulation or the rule under which the notification is made,
 - (e) the date of the notification,
 - (f) the name and postal address of the person sending or delivering the notification,
 - (g) the capacity in which that person is acting in respect of the institution.
- (2) The notification must be authenticated by the person sending or delivering the notification.

Notification relating to the administrator

184. In addition to the information required by rule 183, a notification relating to the office of the administrator must also specify—

- (a) the name and business address of the administrator,
- (b) the date of the event notified,
- (c) where the notification relates to an appointment, the person, body or court making the appointment,
- (d) where the notification relates to the termination of an appointment, the reason for that termination (for example, resignation).

Notifications relating to documents

185. In addition to the information required by rule 183, a notification relating to a document other than a court order must also specify the nature of the document, and either—

- (a) the date of the document, or
- (b) where the document relates to a period of time, the period of time to which the document relates.

Notifications relating to court orders

186. In addition to the information required by rule 183, a notification relating to a court order must also specify the following—

- (a) the nature of the court order,
- (b) the name of the court,

- (c) the date of the order.

Notifications relating to other events

187. In addition to the information required by rule 183, a notification relating to any other event (for example the coming into force of a moratorium) must specify the following—

- (a) the nature of the event including the regulation or rule under which it took place,
- (b) the date the event occurred.

Notifications of more than one nature

188. A notification which includes two or more of the types of notification set out in rules 183 to 187 must satisfy the requirements applying in respect of each of those notifications.

Notifications made to other persons at the same time

189.—(1) Where under the Regulations or these Rules a notification is to be sent to another person at the same time that it is to be sent to the registrar of companies, that requirement may be satisfied by sending to that other person a copy of the notification sent to the registrar of companies.

(2) Paragraph (1) does not apply—

- (a) where additional information is prescribed for the notification to the other person, or
- (b) where the notification to the registrar of companies is incomplete.

CHAPTER 5

Further provisions concerning documents

Confidentiality of documents — grounds for refusing inspection

190.—(1) The administrator may refuse inspection of a document which forms part of the records of the special administration by a person who would otherwise be entitled to inspect it where the administrator considers that the document—

- (a) should be treated as confidential, or
- (b) is of such a nature that its disclosure would be prejudicial to the conduct of the special administration or might reasonably be expected to lead to violence against any person.

(2) The persons to whom the administrator may refuse inspection under this rule include members of the creditors' committee.

(3) Where the administrator refuses inspection of a document, the person wishing to inspect it may apply to the court for an order to overrule the administrator's decision.

(4) The court's decision on the application may be subject to such conditions (if any) as it thinks just.

Right to copy documents

191. Where the Regulations or these Rules confer a right for any person to inspect documents, that person has a right to be supplied on request with copies of those documents, on payment of the standard fee for copies.

Charges for copy documents

192. Except where prohibited by these Rules, the administrator is entitled to require the payment of the standard fee for copies of documents requested by a creditor, customer, member, contributory or member of the creditors' committee.

Right to have list of creditors

193.—(1) A creditor has the right to require the administrator to provide a list of the creditors and the amounts of their respective debts unless paragraph (5) applies.

(2) The administrator on being required to furnish the list under paragraph (1)—

- (a) must send it to the person requiring the list to be furnished as soon as is reasonably practicable,
- (b) may charge the standard fee for copies for doing so.

(3) Where any of the creditors of the institution are either—

- (a) employees or former employees of the institution, or
- (b) consumers claiming amounts paid in advance for the supply of goods or services,

the list furnished under paragraph (2) shall state the number of employees or former employees of the institution and the total of the debts owed to them, and the number of consumers claiming amounts paid in advance for the supply of goods or services and the total of the debts owed to them, but shall not include the names and addresses of such creditors.

(4) The name and address of any creditor may be omitted from the list furnished under paragraph (2) where the administrator is of the view that its disclosure would be prejudicial to the conduct of the proceedings or might reasonably be expected to lead to violence against any person provided that—

- (a) the amount of the debt in question is shown in the list,
- (b) a statement is included in the list that the name and address of the creditor has been omitted in respect of that debt.

(5) Paragraph (1) does not apply where a statement of affairs has been delivered to the registrar of companies.

Sederunt book

194.—(1) The administrator must maintain a sederunt book ("the sederunt book") during their term of office for the purpose of providing an accurate record of the insolvency proceedings.

(2) Without prejudice to the generality of the above, the administrator must include in the sederunt book a copy of anything else required to be recorded in it by any provision of the Regulations or these Rules.

(3) The administrator must make the sederunt book available for inspection at all reasonable hours by any interested person.

(4) Any entry in the sederunt book is sufficient evidence of the facts stated in it, except where it is relied upon by the administrator in the administrator's own interest.

(5) The administrator must retain, or make arrangements for the retention of, the sederunt book for a period of not less than six years after the end of the special administration or (if later) the release of the last person to hold office as administrator in the special administration.

Transfer and disposal of institution's books, papers and other records

195.—(1) Where an institution is in special administration, the administrator must dispose of the books, papers and records of the institution in accordance with the directions of—

- (a) the creditors' committee (if there is one), or
- (b) where there is no creditors' committee, the court.

(2) If no directions under paragraph (1) have been given by the expiry of the period of 12 months after the date of dissolution of the institution, the administrator may dispose of the institution's books, papers and records in such a way as the administrator considers appropriate.

(3) An administrator or former administrator ("A") must within fourteen days of a request by the Secretary of State give the Secretary of State particulars of any money in A's hands or under A's control representing unclaimed or undistributed assets of the institution or dividends or other sums due to any person as a member or former member of the institution.

CHAPTER 6

Periods of time and caution

Periods of time expressed in days

196.—(1) This rule applies to the calculation of a period of time expressed in days.

(2) A period of time expressed as a number of days is to be computed as clear days.

(3) In this rule, "clear days" means that in computing the number of days the following are not included—

- (a) the day on which the period begins,
- (b) if the end of the period is defined by reference to an event, the day on which that event occurs.

Periods of time expressed in months

197.—(1) This rule applies to the calculation of a period of time expressed in months.

(2) The beginning and the end of a period expressed in months are to be determined as follows—

- (a) if the beginning of the period is specified—
 - (i) the month in which the period ends is the specified number of months after the month in which it begins,
 - (ii) the date in the month on which the period ends is—
 - (aa) the day before the date corresponding to the date in the month on which it begins, or
 - (bb) if there is no such date in the month in which it ends, the last day of that month,
- (b) if the end of the period is specified—
 - (i) the month in which the period begins is the specified number of months before the month in which it ends,
 - (ii) the date in the month on which the period begins is—
 - (aa) the day after the date corresponding to the date in the month on which it ends, or
 - (bb) if there is no such date in the month in which it begins, the last day of that month.

Administrator's caution

198.—(1) Wherever under these Rules any person has to appoint or certify the appointment of an administrator, that person must, before making or certifying the appointment, be satisfied that the person appointed or to be appointed has caution for the proper performance of that office.

(2) It is the duty of the creditors' committee to review from time to time the adequacy of the administrator's caution.

(3) The cost of the administrator's caution must be paid as an expense of the proceedings.

Service on joint administrators

199. Where there are joint administrators in a special administration, service on one of them is to be treated as service on all of them.

CHAPTER 7

Transfer of proceedings

Proceedings commenced in the wrong court

200. Where a special administration is commenced in a court other than the Court of Session, that court may order the transfer of the proceedings to the Court of Session.

Proceedings other than special administration commenced

201.—(1) The FCA may apply to the court to order that the proceedings be converted to a special administration where—

- (a) a winding up order or a Schedule B1 administration order has been made in respect of an institution, or
- (b) a resolution has been made for the winding up of or for the appointment of a Schedule B1 administrator of an institution.

(2) In making an order under paragraph (1) the court may give such directions as it sees fit, including directions as to the former officer-holder's remuneration and expenses.

(3) An application under paragraph (1) may be made without notice.

(4) Without prejudice to the generality of the court's power in paragraph (2), where the person appointed as office-holder under the original proceedings ('P') is not the same person as the administrator in the special administration, the court may direct that—

- (a) P be sent a copy of the order under paragraph (1) by the administrator,
- (b) P hand over—
 - (i) the records of the original proceedings, including correspondence, statements of claim and other related papers appertaining to those proceedings while they were within P's responsibility,
 - (ii) the institution's books, papers and other records,
 - (iii) all the assets of the institution and the relevant funds held by the institution in P's possession.

(5) In this rule—

- (a) "office-holder" means provisional liquidator, liquidator or Schedule B1 administrator as the case may be,
- (b) "original proceedings" means the proceedings following the making of the winding up order, the Schedule B1 administration order or the resolution referred to in paragraph (1).