
STATUTORY INSTRUMENTS

2022 No. 1239

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

PART 3

Process of Special Administration

CHAPTER 1

Notice of appointment and statement of affairs

Notification and advertisement of administrator's appointment

15.—(1) The notice of appointment under paragraph 46(2)(b) to be given by the administrator as soon as is reasonably practicable after appointment—

- (a) must be gazetted,
- (b) may be advertised in such other manner as the administrator thinks fit.

(2) In addition to the standard contents, the notice must state that an administrator has been appointed and the date of the appointment.

(3) The administrator must as soon as is reasonably practicable after appointment give notice of the appointment to—

- (a) any messenger-at-arms or sheriff officer who, to the administrator's knowledge, is charged with executing diligence or other legal process against the institution,
- (b) any person who, to the administrator's knowledge, has exercised diligence or other legal process against the institution,
- (c) the Keeper of the Register of Inhibitions and Adjudications,
- (d) any supervisor of a voluntary arrangement under Part 1 of the IA 1986.

(4) The administrator must send the notice of appointment to the registrar of companies within seven days of the date of the order appointing them.

(5) Any notice required to be sent by the administrator under these Rules or under Schedule B1 must—

- (a) contain details of the court and the relevant court reference number,
- (b) contain the full name, registered address, registered number, all trading names and principal trading office of the institution,
- (c) contain the name, business address and IP number of the person or persons appointed as administrator and the date of their appointment,
- (d) be authenticated and dated by the administrator.

Notice requiring statement of affairs

16.—(1) In this Part, “relevant person” has the meaning given to it in paragraph 47(3) and “nominated person” is the relevant person who has been required by the administrator to make out and deliver a statement of affairs to the administrator.

(2) The administrator must deliver notice to each relevant person who the administrator deems appropriate requiring that relevant person to make out and deliver a statement of the institution’s affairs.

(3) The notice must be headed “notice requiring statement of affairs” and must inform each of the nominated persons of—

- (a) the name and addresses of all others (if any) to whom the same notice has been sent,
- (b) the date by which the statement must be delivered to the administrator, being before the end of the period of eleven days beginning with the day on which the nominated person receives notice of the requirement,
- (c) the effect of paragraph 48(4),
- (d) the application to that nominated person and to each other relevant person of section 235 of the IA 1986(1).

(4) The administrator must, on request, provide details to the nominated person as to how the statement should be prepared.

(5) The nominated person must deliver the statement of affairs, together with a copy, to the administrator.

Statement of affairs: content

17.—(1) The statement of the institution’s affairs must be headed “Statement of affairs” and must—

- (a) identify the institution immediately below the heading,
- (b) state that it is a statement of the affairs of the institution on a specified date, being the date on which it entered special administration.

(2) The statement of affairs must contain (in addition to the matters required by paragraph 47(2))

- (a) a summary of the assets of the institution, setting out the book value and the estimated realisable value of—
 - (i) any assets subject to a fixed charge,
 - (ii) any assets subject to a floating charge,
 - (iii) any uncharged assets,
 - (iv) the total value of all the assets available for preferential creditors,
- (b) a summary of the liabilities of the institution, setting out—
 - (i) the amount of preferential debts,
 - (ii) an estimate of the deficiency with respect to preferential debts or the surplus available after paying the preferential debts,
 - (iii) an estimate of the prescribed part, if applicable,
 - (iv) an estimate of the total assets available to pay debts secured by floating charges,
 - (v) the amount of debts secured by floating charges,

(1) Section 235 was modified by [S.I. 2021/716](#). There are other amending instruments, but none is relevant.

- (vi) an estimate of the deficiency with respect to debts secured by floating charges or the surplus available after paying the debts secured by fixed or floating charges,
 - (vii) the amount of unsecured debts (excluding preferential debts),
 - (viii) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts,
 - (ix) any issued and called-up capital,
 - (x) an estimate of the deficiency with respect to, or surplus available to, members of the institution,
- (c) a list of the institution's creditors with the further particulars required by paragraph (3) indicating—
- (i) any creditors under hire-purchase, conditional sale and hiring agreements,
 - (ii) any creditors claiming retention of title over property in the institution's possession,
- (d) the name and address of each member of the institution and the number, nominal value and other details of the shares held by each member.
- (3) Subject to paragraphs (4) and (5), the list of creditors required by paragraph 47(2) and paragraph (2)(c) of this rule must contain the following details—
- (a) the name and postal address of the creditor,
 - (b) the amount of the debt owed to the creditor,
 - (c) details of any security held by the creditor,
 - (d) the date on which the security was given,
 - (e) the value of any such security.
- (4) Paragraph (5) applies where the particulars required by paragraph (3) relate to creditors who are—
- (a) employees or former employees of the institution, or
 - (b) consumers claiming amounts paid in advance for the supply of goods or services.
- (5) Where this paragraph applies—
- (a) the statement of affairs itself must state—
 - (i) the number of employees or former employees of the institution and the total of the debts owed to them,
 - (ii) 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,
 - (b) the particulars required by paragraph (3) must be set out in a separate schedule to the statement of affairs for each of the employees, former employees and consumers referred to in paragraphs (4)(a) and (4)(b).
- (6) Subject to paragraph (7), the administrator must not—
- (a) disclose to any person any schedule or any of the details contained in any schedule provided under paragraph (5)(b),
 - (b) send or deliver to any person (including the registrar of companies) any schedule provided under paragraph (5)(b) at the same time as sending or delivering the statement of affairs,
 - (c) include a schedule or any of the details contained in any schedule provided under paragraph (5)(b) in a statement of proposals under rule 24 or a revised statement of proposals under rule 30.

(7) Following a written request from the FCA, the administrator must, as soon as is reasonably practicable, send or deliver to the FCA a copy of any schedule provided under paragraph (5)(b).

Details of the asset pool, safeguarding measures and reconciliation

18.—(1) In addition to the matters required by paragraph 47(2), paragraph 47(5) and under rule 17, the statement of affairs must include particulars of the asset pool including the relevant funds held by the institution.

(2) The particulars must include—

- (a) subject to paragraph (3), the names and contact details of each customer of the institution and each such customer’s relevant funds claim,
- (b) details of the asset pool including details of—
 - (i) the safeguarding measures employed by the institution and the amount of relevant funds safeguarded in accordance with each of such measures,
 - (ii) any relevant funds invested (in the case of a payment institution) in secure, liquid assets approved by the FCA in accordance with regulation 23(6) of the PSR 2017(2) or (in the case of an electronic money institution) in secure, liquid low-risk assets in accordance with regulation 21(2) of the EMR 2011(3),
 - (iii) any insurance policy covering relevant funds,
 - (iv) the accounts in which relevant funds are held,
 - (v) any guarantee given by an authorised insurer or authorised credit institution covering relevant funds,
- (c) details as to any security interest held by the institution or another person in respect of the asset pool.

(3) Where the particulars required by paragraph (2)(a) relate to customers who are individuals—

- (a) the particulars must be set out in a separate schedule from the statement of affairs,
- (b) the statement of affairs must state the number of customers who are individuals and the total of the debts owed to them.

(4) Subject to paragraph (5), the administrator must not—

- (a) disclose to any person any schedule or any of the details contained in any schedule provided under paragraph (3)(a),
- (b) send or deliver to any person (including the registrar of companies) any schedule provided under paragraph (3)(a) at the same time as sending or delivering the statement of affairs,
- (c) include any schedule or any of the details contained in any schedule provided under paragraph (3)(a) in a statement of proposals under rule 24 or a revised statement of proposals under rule 30.

(5) Following a written request from the FCA, the administrator must, as soon as is reasonably practicable, send or deliver to the FCA a copy of any schedule provided under paragraph (3)(a).

Statement of concurrence

19.—(1) The administrator may require any relevant person to submit a statement of concurrence.

(2) Where the administrator requires a statement of concurrence, the nominated person making the statement of affairs must be informed of that fact.

(2) *S.I. 2017/752*, amended by *S.I. 2017/1173*, *2018/1021*. There are other amending instruments but none is relevant.

(3) *S.I. 2011/99*, amended by *S.I. 2013/3115*, *2015/575*, *2017/252*, *2017/1173*, *2018/1021*. There are other amending instruments, but none is relevant.

(3) The nominated person must deliver a copy of the statement of affairs to every person who has been required to submit a statement of concurrence.

(4) The relevant person required to submit a statement of concurrence must deliver the statement of concurrence together with a copy before the end of the period of five business days (or such other period as the administrator may agree) beginning on the day on which the statement of affairs being concurred with is received by that relevant person.

(5) A statement of concurrence—

(a) must identify the institution,

(b) may be qualified in respect of matters dealt with by the statement of affairs, where the relevant person making the statement of concurrence—

(i) is not in agreement with the statement of affairs,

(ii) considers the statement of affairs to be erroneous or misleading,

(iii) is without the direct knowledge necessary for concurring with it.

(6) A statement of concurrence must be a statutory declaration made in accordance with the Statutory Declaration Act 1835(4).

(7) Subject to paragraph (9) and rule 20, the administrator must as soon as is reasonably practicable deliver a copy of the statement of affairs and any statement of concurrence to the registrar of companies.

(8) Subject to paragraph (10) and rule 20, the administrator must insert any statement of affairs submitted to the administrator, together with any statement of concurrence, in the sederunt book.

(9) The administrator must not deliver to the registrar of companies with the statement of affairs and any statement of concurrence any schedule required by rule 17(5)(b) or rule 18(3)(a).

(10) Any schedule required by rule 17(5)(b) or rule 18(3)(a) must not be entered in the sederunt book.

Limited disclosure

20.—(1) Where the administrator thinks that it would prejudice the conduct of the special administration (or might reasonably be expected to lead to violence against any person) for the whole or part of a statement of affairs or a statement of concurrence to be disclosed, the administrator may apply to the court for an order of limited disclosure in respect of the whole or any part of a statement of affairs or a statement of concurrence.

(2) The court may, on such application, order that the statement of affairs or any statement of concurrence or, as the case may be, a specified part of either must not be delivered to the registrar of companies or entered in the sederunt book.

(3) The administrator must, as soon as is reasonably practicable, deliver a copy of the order, the statement of affairs and any statement of concurrence (to the extent provided by the order) to the registrar of companies and must place a copy of the order in the sederunt book.

(4) If a creditor or a customer seeks disclosure of the statement of affairs, a statement of concurrence or a specified part of either in relation to which an order has been made under this rule, that person may apply to the court for an order that the administrator disclose it or a specified part of it.

(5) An application under paragraph (4) must be supported by written evidence in the form of an affidavit.

(6) The applicant must give the administrator notice of the application at least three business days before the hearing.

(7) The court may make any order for disclosure subject to such conditions as to—

- (a) confidentiality,
- (b) duration,
- (c) the scope of the order in the event of any change of circumstances, or
- (d) other matters,

as it thinks just.

(8) If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the administrator must, as soon as is reasonably practicable after the change, apply to the court for the order or any part of it to be discharged or varied.

(9) The administrator must, as soon as is reasonably practicable after the making of an order under paragraph (8)—

- (a) deliver a copy of the statement of affairs and any statement of concurrence to the extent provided by the order to the registrar of companies,
- (b) place a copy of the order in the sederunt book together with a copy of the statement of affairs and any statement of concurrence to the extent no longer subject to the order under paragraph (2).

(10) When the statement of affairs or a statement of concurrence is delivered to the registrar of companies in accordance with paragraph (9)(a), the administrator must, where they have sent a statement of proposals under paragraph 49, deliver to the creditors and the customers a copy or summary of the statement of affairs and any statement of concurrence as delivered to the registrar of companies.

Release from duty to submit statement of affairs

21.—(1) The power of the administrator under paragraph 48(2) to revoke a requirement to submit a statement of affairs or to extend the period within which it must be submitted may be exercised upon the administrator's own initiative, or at the request of any nominated person who has been required to provide the statement of affairs.

(2) The nominated person may, if they request a revocation or extension and it is refused by the administrator, apply to the court for it and when such an application is made, the period referred to in paragraph 48(1) and rule 16(3)(b) is suspended pending the court's decision.

(3) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it without giving notice to any other party other than the applicant.

(4) The applicant must, at least fourteen days before any hearing, deliver to the administrator a notice stating the venue and accompanied by a copy of the application and of any evidence on which the applicant intends to rely.

(5) Where an application has been made under paragraph (2), the FCA may be given notice of the hearing and may appear or be represented at the hearing or may make written representations.

(6) The administrator may appear and be heard on the application and, whether or not they appear, the administrator may lodge a written report of any matters which they consider ought to be drawn to the court's attention.

(7) If a report is lodged under paragraph (6), a copy of it must be delivered by the administrator to the applicant not later than five business days before the hearing.

(8) Copies of any order made on the application must be delivered by the court to the applicant and the administrator.

(9) On any application under this rule, the applicant's costs must be paid in any event by the applicant and, unless the court otherwise orders, no allowance towards them must be made as an expense of the special administration.

(10) A copy of any order made on the application must be placed in the sederunt book.

Expenses of statement of affairs

22.—(1) A nominated person making the statement of affairs and a statutory declaration or a relevant person making a statement of concurrence must be allowed and paid by the administrator as an expense of the special administration, any expenses incurred by the nominated person or relevant person in so doing which the administrator considers reasonable.

(2) Any decision by the administrator under this rule is subject to appeal to the court.

(3) Nothing in this rule relieves a nominated person or a relevant person from any obligation with respect to—

- (a) the preparation, verification and submission of the statement of affairs or a statement of concurrence,
- (b) the provision of information to the administrator.

Submission of accounts

23.—(1) Any of the persons specified in section 235(3) of the IA 1986 must, at the request of the administrator, provide the administrator with the institution's accounts as at such date and for such period as the administrator may specify.

(2) The period specified may begin from a date up to 3 years preceding the date the institution entered special administration, or from an earlier date to which the audited accounts of the institution were last prepared.

(3) The court may, on the administrator's application, require accounts for an earlier period.

(4) Rule 22 applies (with the necessary modification) in relation to the accounts to be provided under this rule as it applies to the statement of affairs.

(5) The accounts must (if the administrator so requires) be verified by a statutory declaration and (whether or not so verified) be delivered within twenty-one days of the request under paragraph (1) (or such longer period as the administrator may allow).