
STATUTORY INSTRUMENTS

2022 No. 1239

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

PART 6

Objective 1

CHAPTER 1

Setting a bar date and further notifications

Notice of the bar date

107.—(1) This rule applies where the administrator sets a bar date for the submission of relevant funds claims as set out in regulation 20(1) and 21(1) (and for the purposes of this rule “bar date” includes a hard bar date).

(2) The administrator must give notice of the bar date—

- (a) to each customer of whose relevant funds claim the administrator is aware and whom the administrator has a means of contacting,
- (b) to each person whom the administrator believes has a right to assert a security interest or other entitlement over the asset pool and whom the administrator has a means of contacting.

(3) Notice of the bar date must also be sent to the FCA.

(4) Notice of the bar date—

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

(5) In advertising the date under paragraph (4), the administrator must aim to ensure that the bar date comes to the attention of as many of those persons who are eligible to submit a relevant funds claim as the administrator considers practicable.

Notifying potential claimants after bar date has passed

108.—(1) This rule applies where, after the bar date under regulation 20 has passed—

(a) there is evidence from—

- (i) the records of the institution, or
- (ii) information received by the administrator,

that there is a customer who is eligible to make a relevant funds claim but that the administrator has not received a relevant funds claim from that customer,

(b) the administrator has a means of contacting that customer.

(2) The administrator must send notice to that customer in writing stating that the administrator believes that customer is eligible to submit a relevant funds claim.

(3) The notice under paragraph (2) must state that—

- (a) the administrator believes that that customer has a relevant funds claim,
- (b) in making the distribution plan under rule 109, the administrator intends to calculate that customer’s relevant funds claim according to the information available to the administrator unless—
 - (i) that customer advises the administrator that it is not owed any relevant funds within fourteen business days of receipt of the notice or such longer period as may be agreed by the administrator,
 - (ii) that customer submits a relevant funds claim in accordance with rule 99 within fourteen business days of receipt of the notice or such longer period as may be agreed by the administrator, or
 - (iii) the court directs otherwise following an application made in accordance with rule 106.

CHAPTER 2

Distribution plan

Distribution plan

109.—(1) This rule applies where after setting a bar date under regulation 20, the administrator proposes to make a distribution from the asset pool.

(2) The administrator must draw up a distribution plan setting out—

- (a) subject to paragraph (3), a schedule of dates on which a distribution is to be made from the asset pool (“a distribution”),
- (b) the identity of the customers to whom a distribution is to be made,
- (c) how each relevant funds claim is to be calculated, taking into account—
 - (i) any liabilities owed by the customer to the institution under a PS or EMI contract,
 - (ii) any liabilities owed to the customer by the institution under a PS or EMI contract,
 - (iii) any shortfall claim of the customer,
- (d) the amount to be retained by the administrator from the asset pool to pay the expenses of the special administration in accordance with rules 96 and 98 and how the retention of these amounts will affect the amount paid to settle relevant funds claims,
- (e) the amount to be retained by the administrator from the asset pool by way of provision for any third party fees and expenses in respect of which a third party has a right of set-off or security right which takes priority over relevant funds claims in terms of regulation 18 and how the retention of these amounts will affect the amount paid to settle relevant funds claims.

(3) In setting out the schedule of dates for distributions, no date must be earlier than three months after the bar date.

(4) For the purpose of calculating the customer’s relevant funds claim so that the claim can be paid out (or partly paid out) before the contingency occurs or the dispute is resolved, the distribution plan must also set out—

- (a) where any liabilities under paragraph (2)(c) are contingent, how the administrator intends to value the liability,

- (b) where any liabilities are disputed, whether the administrator intends to make an assumption as to the outcome of the dispute.
- (5) Where an institution has more than one asset pool, the administrator must draw up a distribution plan for each asset pool.

Approval by the creditors' committee

110.—(1) Where there is a creditors' committee, the administrator must call a meeting of that committee to approve the distribution plan.

(2) The administrator must send the proposed distribution plan to each member of the creditors' committee when sending out notice of the meeting.

(3) The creditors' committee may approve the distribution plan with or without modification.

Approval by the court

111.—(1) This rule applies where a meeting of the creditors' committee has taken place in accordance with rule 110 or where there is no creditors' committee.

(2) The administrator must apply to the court for approval of the distribution plan.

(3) The administrator must send a copy of the distribution plan together with details as to how to find out the venue of the hearing, to the following—

- (a) all persons who have submitted a relevant funds claim,
- (b) any customer notified under rule 108,
- (c) the FCA.

(4) The court, on receiving an application under paragraph (2) must fix the venue for the hearing and in fixing the venue must have regard to the desirability of the application being heard as soon as is reasonably practicable subject to the persons notified under paragraph (3) and the members of the creditors' committee being able to attend and make representations at the hearing.

(5) On hearing the application under paragraph (2) the court may—

- (a) make an order approving the distribution plan with or without modification if satisfied that—
 - (i) where rule 108 applies, the administrator has made the necessary notifications in accordance with that rule,
 - (ii) where there is a creditors' committee, either that the committee has approved the distribution plan with or without modification or where the committee has been unable to approve the plan, the court has heard from the members of the committee or has given them an opportunity to explain why the committee were unable to approve the plan,
- (b) dismiss the application,
- (c) adjourn the hearing (generally or to a specified date), or
- (d) make any other order which the court thinks appropriate.

Treatment of late claimants

112.—(1) This rule applies where the administrator receives a relevant funds claim after the bar date set under regulation 20.

(2) Where the relevant funds claim is not submitted in accordance with rule 99, the administrator must notify the claimant accordingly and ask them to resubmit their relevant funds claim in accordance with the relevant rule.

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(3) Where the relevant funds claim is submitted in accordance with rule 99 after the bar date set under regulation 20 but before a distribution under either regulation 20 or a distribution plan, the administrator must, so far as is reasonably practicable, include within the distribution any such relevant funds claim in accordance with regulation 20(5).

(4) Where the relevant funds claim is submitted in accordance with rule 99 after a distribution under either regulation 20 or a distribution plan, the administrator must, so far as is reasonably practicable include within any subsequent distribution any such relevant funds claim in accordance with regulation 20(9).

(5) The administrator may amend the distribution plan to reflect distributions under this rule without the need for the plan to be approved again by either the court or the creditors' committee.