STATUTORY INSTRUMENTS

2015 No. 443

INSOLVENCY, ENGLAND AND WALES

The Insolvency (Amendment) Rules 2015

Made - - - -	*2nd March 2015*
Laid before Parliament	*3rd March 2015*
Coming into force	
for the purpose of Rules 1 and 13	*6th April 2015*
Remainder	*1st October 2015*

The Lord Chancellor has consulted the committee existing for the purposes of section 413 of the Insolvency Act 1986 ("the Act")(**1**).

The Lord Chancellor makes the following Rules in exercise of the powers conferred by sections 411 and 412(**2**) of the Act with the concurrence of the Secretary of State and with the concurrence of the Chancellor of the High Court (nominated by the Lord Chief Justice under section 411(7) of the Act) in relation to those Rules which affect court procedure.

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Insolvency (Amendment) Rules 2015.

(2) Rules 1 and 13 will come into force on 6th April 2015 and all other Rules will come into force on 1st October 2015.

(3) In these Rules "the 1986 Rules" means the Insolvency Rules 1986(**3**).

Amendments to the 1986 Rules

2. In Rule 2.47 (reports to creditors) of the 1986 Rules after paragraph (1)(dc) insert—

"(dd) a statement setting out whether as at the date of the report—

(i) the remuneration anticipated to be charged by the administrator is likely to exceed the fees estimate or any approval given under Rule 2.109AB,

(**1**) 1986 c.45; relevant amendments to section 413 have been made by paragraphs 185 and 190 of Schedule 4 to the Constitutional Reform Act 2005 c.4.

(**2**) Relevant amendments to sections 411 and 412 have been made by paragraphs 185, 188 and 189 of Schedule 4 to the Constitutional Reform Act 2005 c.4.

(**3**) S.I. 1986/1925; relevant amending instruments are S.I. 2003/1730, 2004/584, 2009/642, 2010/686 and 2014/817.

(ii) the expenses incurred or anticipated to be incurred are likely to exceed, or have exceeded, the details given to the creditors prior to the determination of the basis of remuneration, and

(iii) the reasons for that excess;".

3.—(1) Rule 2.106 (fixing of remuneration) of the 1986 Rules is amended as follows.

(2) In paragraph (2)(b)—

(a) omit "(as administrator)", and

(b) for "arising in the administration" substitute "as set out in the fees estimate".

(3) After paragraph (2) insert—

"(2A) Where the administrator proposes to take all or any part of the remuneration on the basis set out in paragraph (2)(b), the administrator must, prior to the determination of which of the bases set out in paragraph (2) are to be fixed, give to each creditor of the company of whose claim and address the administrator is aware—

(a) the fees estimate, and

(b) details of the expenses the administrator considers will be, or are likely to be, incurred.

(2B) The fees estimate and details of expenses given under paragraph (2A) may include remuneration anticipated to be charged and expenses anticipated to be incurred if the administrator becomes the liquidator where the administration moves into winding up.

(2C) Save where the administrator has given the information under paragraph (2A), the administrator must, prior to the determination of which of the bases set out in paragraph (2) are to be fixed, give to each creditor of the company of whose claim and address the administrator is aware, details of—

(a) the work the administrator proposes to undertake, and

(b) the expenses the administrator considers will be, or are likely to be, incurred.".

(4) In paragraph (6), for "(3)" substitute "(3C)".

4. After Rule 2.109A (review of remuneration) of the 1986 Rules insert—

"**Exceeding the fees estimate**

2.109AB.—(1) The administrator's remuneration must not exceed the total amount set out in the fees estimate without approval.

(2) The request for approval must be made—

(a) where the creditors' committee fixed the basis, to the committee;

(b) where the creditors fixed the basis, to the creditors;

(c) where the court fixed the basis, by application to the court;

and Rules 2.106 to 2.109 apply as appropriate.

(3) The request for approval must specify—

(a) the reasons why the administrator has exceeded, or is likely to exceed, the fees estimate;

(b) the additional work the administrator has undertaken or proposes to undertake;

(c) the hourly rate or rates the administrator proposes to charge for each part of that additional work;

(d) the time that additional work has taken or the administrator anticipates that work will take;

(e) whether the administrator anticipates that it will be necessary to seek further approval; and

(f) the reasons it will be necessary to seek further approval.".

5. After Rule 2.109C (apportionment of set fee remuneration) of the 1986 Rules insert—

"**Application of Rules 2.109A, 2.109AB and 2.109C where a company subsequently can make a distribution to unsecured creditors**

2.109D.—(1) This Rule applies where—

(a) the basis of remuneration has been fixed in accordance with Rule 2.106(5A);

(b) the administrator now thinks that the company has sufficient property to enable a distribution to be made to unsecured creditors other than by virtue of section 176A(2)(a); and

(c) the administrator makes—

(i) a request under Rule 2.109A or 2.109AB; or

(ii) an application under Rule 2.109C.

(2) The request under Rules 2.109A and 2.109AB must be made—

(a) where there is a creditors' committee, to the committee; or

(b) where there is no creditors' committee, to the creditors under Rule 2.106(5);

and Rule 2.106(5A) will not apply.

(3) The application under Rule 2.109C must be made—

(a) where there is a creditors' committee, to the committee; or

(b) where there is no creditors' committee, to the creditors under Rule 2.106(5);

and Rule 2.106(5A) will not apply.".

6. In Rule 4.49B (reports to creditors and members – winding up by the courts) of the 1986 Rules after paragraph (1)(f) insert—

"(fa) a statement setting out whether as at the date of the report—

(i) the remuneration anticipated to be charged by the liquidator is likely to exceed the fees estimate or any approval given under Rule 4.131AB,

(ii) the expenses incurred or anticipated to be incurred are likely to exceed, or have exceeded, the details given to the creditors prior to the determination of the basis of remuneration, and

(iii) the reasons for that excess;".

7.—(1) Rule 4.127 (fixing of remuneration) of the 1986 Rules is amended as follows.

(2) In paragraph (2)(b) after "arising in the winding up" add "as set out in the fees estimate".

(3) After paragraph (2) insert—

"(2A) Where the liquidator proposes to take all or any part of the remuneration on the basis set out in paragraph (2)(b), the liquidator must, prior to the determination of which of the bases set out in paragraph (2) are to be fixed, give to each creditor of the company of whose claim and address the liquidator is aware—

(a) the fees estimate, and

(b) details of the expenses the liquidator considers will be, or are likely to be, incurred.

(2B) Save where the liquidator has given the information under paragraph (2A), the liquidator must, prior to the determination of which of the bases set out in paragraph (2) are to be fixed, give to each creditor of the company of whose claim and address the liquidator is aware, details of—

(a) the work the liquidator proposes to undertake, and

(b) the expenses the liquidator considers will, or are likely to be, incurred.".

8. After Rule 4.131A (review of remuneration) of the 1986 Rules insert—

"**Exceeding the fees estimate**

4.131AB.—(1) The liquidator's remuneration must not exceed the total amount set out in the fees estimate without approval.

(2) The request for approval must be made—

(a) where the liquidation committee fixed the basis, to the committee;

(b) where the creditors fixed the basis, to the creditors;

(c) where the court fixed the basis, by application to the court;

and Rules 4.127 to 4.131 apply as appropriate.

(3) The request for approval must specify—

(a) the reasons why the liquidator has exceeded, or is likely to exceed, the fees estimate;

(b) the additional work the liquidator has undertaken or proposes to undertake;

(c) the hourly rate or rates the liquidator proposes to charge for each part of that additional work;

(d) the time that additional work has taken or the liquidator anticipates that work will take;

(e) whether the liquidator anticipates that it will be necessary to seek further approval; and

(f) the reasons it will be necessary to seek further approval.".

9. After Rule 4.131C (apportionment of set fee remuneration) of the 1986 Rules insert—

"**Application of Rules 4.131A, 4.131AB and 4.131C where a company subsequently can make a distribution to unsecured creditors**

4.131D.—(1) This Rule applies where—

(a) the basis of remuneration has been fixed in accordance with Rule 2.106(5A);

(b) the liquidator now thinks that the company has sufficient property to enable a distribution to be made to unsecured creditors other than by virtue of section 176A(2)(a); and

(c) the liquidator makes—

(i) a request under Rule 4.131A or 4.131AB; or

(ii) an application under Rule 4.131C.

(2) The request under Rules 4.131A and 4.131AB must be made—

(a) where there was a creditors' committee, to the liquidation committee; or