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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 347**

**The Insolvency (Scotland) (Receivership  
and Winding up) Rules 2018**

**PART 1**

**SCOPE, INTERPRETATION, TIME AND RULES ABOUT DOCUMENTS**

**CHAPTER 1**

Scope of these Rules

**Scope**

**1.1.**—(1) These Rules are made to give effect in Scotland in relation to receivership and winding up to—

- (a) Parts 3 to 7 of the Insolvency Act 1986; and
- (b) the EU Regulation.

(2) Consequently references to insolvency proceedings and requirements relating to such proceedings are, unless the context requires otherwise, limited to insolvency proceedings in respect of Parts 3 to 5 of the Act and the EU Regulation (whether or not court proceedings).

**CHAPTER 2**

Interpretation

[Note: the terms which are defined in rule 1.2 include some terms defined by the Act for limited purposes which are applied generally by these Rules. Such terms have the meaning given by the Act for those limited purposes.]

**Defined terms**

**1.2.**—(1) In these Rules unless the context otherwise requires—

“the Act” means the Insolvency Act 1986, and—

- (a) a reference to a numbered section without mention of another Act is to that section of the Act; and
- (b) a reference to schedule B1 is to that schedule of the Act;

“Companies Act” means the Companies Act 2006(1);

“Accountant in Bankruptcy” (or “AiB”) is to be construed in accordance with section 199 of the Bankruptcy (Scotland) Act 2016(2);

“appointed person” means a person who meets the requirements in paragraph (2) who is appointed by an office-holder;

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(1) 2006 c.46; relevant amendments are noted where reference is made to specific provisions which have been amended.

(2) 2016 asp 21.

“Article 1.2 undertaking” means one of the following within the meaning of Article 1.2 of the EU Regulation—

- (a) an insurance undertaking;
- (b) a credit institution;
- (c) an investment undertaking which provides services involving the holding of funds or securities for third parties;
- (d) a collective investment undertaking;

[Note “associate” is defined in section 435];

“attendance” and “attend”—

a person attends by being present, by attending remotely in accordance with section 246A(3) or rule 8.6, or by participating in a virtual meeting; and a person may attend a meeting in person, by proxy or by corporate representative (in accordance with section 434B of the Act(4) or section 323 of the Companies Act, as applicable);

“authenticate” means to authenticate in accordance with rule 1.6;

“authorised deposit-taker” means a person with permission under Part 4A of the Financial Services and Markets Act 2000(5) to accept deposits; this definition must be read with—

- (a) section 22 of that Act(6) and any relevant order under that section; and
- (b) schedule 2 of that Act;

“blank proxy” is to be interpreted in accordance with rule 9.3;

[Note: “business day” is defined in section 251];

“centre of main interests” has the same meaning as in the EU Regulation;

[Note: “connected” used of a person in relation to a company is defined in section 249 of the Act];

“consumer” means an individual acting for purposes that are wholly or mainly outside that individual’s trade, business, craft or profession;

[Note: “contributory” is defined in section 79];

“convener” means an office-holder or other person who seeks a decision in accordance with Part 8 (decision making) of these Rules;

[Note: “the court” is defined in section 251];

“CVA” means a voluntary arrangement in relation to a company under Part 1 of the Act;

“CVA and Administration Rules” means the Insolvency (Scotland) (Company Voluntary Arrangement and Administration) Rules 2018(7);

“decision date” and “decision procedure” are to be interpreted in accordance with rule 8.2;

[Note: “deemed consent procedure” is defined in section 246ZF(8) (also see rule 8.7)];

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- (3) Section 246A is inserted by S.I. 2010/18 and prospectively amended for Scotland by paragraph 54 of schedule 9 of the Small Business, Enterprise and Employment Act 2015 (c.26) (“the 2015 Act”) and article 5 of the Public Services Reform (Corporate Insolvency and Bankruptcy) (Scotland) Order 2017 (S.S.I. 2017/209). The 2015 Act amendments to this and other provisions of the Insolvency Act 1986 are in force for limited purposes (S.I. 2015/1329) and will be commenced for remaining purposes for the application of these Rules.
  - (4) Section 434B was inserted by S.I. 2008/948, schedule 1, paragraph 105 and prospectively amended by paragraph 57 of schedule 9 of the 2015 Act.
  - (5) 2000 c.8. Part 4A was inserted before Part 4 by section 11(2) of the Financial Services Act 2012 (c.21).
  - (6) Section 22 is amended by section 7 of the Financial Services Act 2012 (c.21).
  - (7) S.I. 2018/1082.
  - (8) Section 246ZF is prospectively inserted for Scotland by section 122 of the 2015 Act.

“deliver” and “delivery” are to be interpreted in accordance with Chapter 9 of Part 1 of these Rules;

“deliver to the creditors” and similar expressions in these Rules and the Act are to be interpreted in accordance with rule 1.33;

“document” includes a written notice or statement or anything else in writing capable of being delivered to a recipient;

[Note: “EU Regulation” is defined in section 436 as “Regulation (EU) 2015/848 of the European Parliament and the Council of 20 May 2015 on insolvency proceedings<sup>(9)</sup>”];

[Note: “the Gazette” has the meaning given in section 251];

“Gazette notice” means a notice which is, has been or is to be gazetted;

“to gazette” means to advertise in the Gazette, whether electronically or otherwise;

[Note: “hire-purchase agreement” is defined by section 436(1) as having the same meaning as in the Consumer Credit Act 1974<sup>(10)</sup>];

“identification details” and similar references to information identifying persons, proceedings, etc. are to be interpreted in accordance with rule 1.7;

“insolvent estate” means the company’s assets;

“IP number” means the number assigned to an office-holder as an insolvency practitioner by the Secretary of State;

“local creditor” has the same meaning as in Article 2(11) of the EU Regulation;

“main proceedings” means proceedings opened in accordance with Article 3(1) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of the EU Regulation and which—

- (a) in relation to Scotland, are set out in Annex A to that Regulation under the heading “United Kingdom”; and
- (b) in relation to another member State, are set out in Annex A under the heading relating to that member State<sup>(11)</sup>;

“meeting” in relation to a company’s creditors or contributories means either a “physical meeting” or a “virtual meeting”;

“member State liquidator” means a person falling within the definition of “insolvency practitioner” in Article 2(5) of the EU Regulation appointed in proceedings to which the EU Regulation applies in a member State other than the United Kingdom;

“nominated person” means a person who has been required under section 66 or 131 to make out and submit a statement as to the affairs of a company in receivership or being wound up by the court;

“non-EU proceedings” means insolvency proceedings which are not main, secondary or territorial proceedings;

“office-holder” means a person who under the Act or these Rules holds an office in relation to insolvency proceedings and includes a nominee;

“the official rate”, in relation to interest, is defined in section 251<sup>(12)</sup>;

“petitioner” includes a person who has been substituted as such;

“physical meeting” has the meaning given by rule 8.2;

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(9) OJ L 141, 5.6.2015, p.19.

(10) 1974 c.39.

(11) Where these Rules require reasons for a statement that proceedings are ‘main proceedings’ etc. the information required is set out in rule 1.7.

(12) Rule 7.26 specifies a rate used in calculating the official rate in accordance with section 189(4) and (5) of the Act.

“prescribed part” has the same meaning as in section 176A(2)(a)(13) and the Insolvency Act 1986 (Prescribed Part) Order 2003(14);

“progress report” means a report which complies with Chapter 1 of Part 7 (reporting, accounts, remuneration, claims and distributions);

[Note: “property” is defined in section 436(1)];

“proxy” and “proxy-holder” are to be interpreted in accordance with rule 9.2;

“qualified to act as an insolvency practitioner”, in relation to a company, is to be interpreted in accordance with Part 13 of the Act(15);

[Note: “records” is defined in section 436(1)];

“secondary proceedings” means proceedings opened in accordance with Article 3(2) and (3) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of the EU Regulation and which—

- (a) in relation to Scotland, are set out in Annex A to that Regulation under the heading “United Kingdom”; and
- (b) in relation to another member State, are set out in Annex A under the heading relating to that member State(16);

“serve” and “service” are to be interpreted in respect of a particular document by reference to the Rules of Court;

“standard contents” means—

- (a) for a Gazette notice, the standard contents set out in Chapter 5 of Part 1;
- (b) for a notice to be advertised other than in the Gazette, the standard contents set out in Chapter 6 of Part 1;
- (c) for a document to be delivered to—
  - (i) the registrar of companies;
  - (ii) AiB;
 the standard contents set out in Chapter 7 of Part 1;
- (d) for notices to be delivered to other persons, the standard contents set out in Chapter 8 of Part 1;

“standard fee for copies” means 15 pence per A4 or A5 page or 30 pence per A3 page;

“statement of claim” is to be interpreted in accordance with rule 7.16;

“temporary administrator” means a temporary administrator referred to in Article 52 of the EU Regulation;

“territorial proceedings” means proceedings opened in accordance with Article 3(2) and (4) of the EU Regulation which fall within the definition of insolvency proceedings in Article 2(4) of the EU Regulation and—

- (a) in relation to Scotland, are set out in Annex A to that Regulation under the heading “United Kingdom”; and

(13) Section 176A was inserted by the Enterprise Act 2002 (c.40), section 252.

(14) S.I. 2003/2097.

(15) Part 13 was amended by the Deregulation Act 2015 (c.20), section 17 and the Small Business, Enterprise and Employment Act 2015 (c.26), sections 115 and 137 to 143. Other amendments not relevant to this instrument have been made to Part 13.

(16) Where these Rules require reasons for a statement that proceedings are ‘secondary proceedings’ etc. the information required is set out in rule 1.8.

- (b) in relation to another member State, are set out in Annex A under the heading relating to that member State<sup>(17)</sup>;
- “venue” in relation to any proceedings, attendance before the court, decision procedure or meeting means the time, date and place or platform for the proceedings, attendance, decision procedure or meeting;
- “virtual meeting” has the meaning given by rule 8.2;
- “winding up by the court” means a winding up under section 122, 124A<sup>(18)</sup> or 221;
- [Note: “writing” is to be construed in accordance with section 436B<sup>(19)</sup>];
- “written resolution” in respect of a private company means a written resolution passed in accordance with Chapter 2 of Part 13 of the Companies Act.
- (2) An appointed person in relation to a company must be—
- (a) qualified to act as an insolvency practitioner in relation to that company; or
- (b) a person experienced in insolvency matters who is—
- (i) a member or employee of the office-holder’s firm, or
- (ii) an employee of the office-holder.
- (3) A fee or remuneration is chargeable when the work to which it relates is done.

## CHAPTER 3

### Calculation of time periods

#### Periods of time expressed in days

- 1.3.**—(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—
- (a) the day on which the period begins; and
- (b) if the end of the period is defined by reference to an event, the day on which that event occurs,
- are not included.

#### Periods of time expressed in months

- 1.4.**—(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; and
- (ii) the date in the month on which the period ends is—

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<sup>(17)</sup> Where these Rules require reasons for a statement that proceedings are ‘territorial proceedings’ etc. the information required is set out in rule 1.8.

<sup>(18)</sup> Section 124A was inserted by section 60 of the Companies Act 1989 (c.40) and amended by article 305 of S.I. 2001/3649 and section 25 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27).

<sup>(19)</sup> Section 436B(1) of the Act provides that a reference in the Act to a thing in writing includes that thing in electronic form; subsection (2) excludes certain sections of the Act from the application of subsection (1). Section 436B was inserted by S.I. 2010/18. Section 436B(2) is prospectively amended for Scotland by S.S.I. 2016/141, article 13.

- (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; and
  - (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.

## CHAPTER 4

### Form and content of documents

#### **Requirement for writing and form of documents**

- 1.5.—**(1) A notice or statement must be in writing unless the Act or these Rules provide otherwise.
- (2) A document in electronic form must be capable of being—
- (a) read by the recipient in electronic form; and
  - (b) reproduced by the recipient in hard-copy form.

#### **Authentication**

- 1.6.—**(1) A document in electronic form is authenticated—
- (a) if the identity of the sender is confirmed in a manner specified by the recipient; or
  - (b) where the recipient has not so specified, 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.
- (2) A document in hard copy form is authenticated if it is signed.
- (3) If a document 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.

#### **Information required to identify persons and insolvency proceedings etc.**

**1.7.—**(1) Where the Act or these Rules require a document to identify, or to contain identification details in respect of, a person or insolvency proceedings, or to provide contact details for an office-holder, the information set out in the table must be given.

(2) Where a requirement relates to a proposed office-holder, the information set out in the table in respect of an office-holder must be given with any necessary adaptations.

Company where it is the subject of the insolvency proceedings	In the case of a registered company— (a) the registered name;
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	<ul style="list-style-type: none"> <li>(b) for a company incorporated in Scotland under the Companies Act or a previous Companies Act, its registered number;</li> <li>(c) for a company incorporated outside the United Kingdom— <ul style="list-style-type: none"> <li>(i) the country or territory in which it is incorporated,</li> <li>(ii) the number, if any, under which it is registered, and</li> <li>(iii) the number, if any, under which it is registered as an overseas company under Part 34 of the Companies Act.</li> </ul> </li> </ul> <p>In the case of an unregistered company—</p> <ul style="list-style-type: none"> <li>(d) its name; and</li> <li>(e) the postal address of any principal place of business.</li> </ul>
Company other than one which is the subject of the insolvency proceedings	<p>In the case of a registered company—</p> <ul style="list-style-type: none"> <li>(f) the registered name;</li> <li>(g) for a company incorporated in any part of the United Kingdom under the Companies Act or a previous Companies Act, its registered number;</li> <li>(h) for a company incorporated outside the United Kingdom— <ul style="list-style-type: none"> <li>(i) the country or territory in which it is incorporated,</li> <li>(ii) the number, if any, under which it is registered; and</li> <li>(iii) the number, if any, under which it is registered as an overseas company under Part 34 of the Companies Act;</li> </ul> </li> </ul> <p>In the case of an unregistered company—</p> <ul style="list-style-type: none"> <li>(i) its name, and</li> <li>(j) the postal address of any principal place of business.</li> </ul>
Office-holder	<ul style="list-style-type: none"> <li>(k) the name of the office-holder; and</li> <li>(l) the nature of the appointment held by the office-holder.</li> </ul>
Contact details for an office-holder	<ul style="list-style-type: none"> <li>(m) a postal address for the office-holder; and</li> <li>(n) either an email address, or a telephone number, through which the office-holder may be contacted.</li> </ul>
Insolvency proceedings	<ul style="list-style-type: none"> <li>(o) information identifying the company to which the insolvency proceedings relate;</li> <li>(p) if the insolvency proceedings are, or are to be, conducted in a court—</li> </ul>

	<ul style="list-style-type: none"> <li>(i) the full name of the court and, if applicable,</li> <li>(ii) any number assigned to those insolvency proceedings by the court.</li> </ul>
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### **Reasons for stating that insolvency proceedings are or will be main, secondary etc. under the EU Regulation**

**1.8.** Where these Rules require reasons to be given for a statement that proceedings are or will be main, secondary or territorial or non-EU proceedings, the reasons must include—

- (a) the company’s centre of main interests;
- (b) the place of the company’s registered office within the meaning of Article 3(1) of the EU Regulation and where appropriate an explanation why this is not the same as the centre of main interests;
- (c) a statement that there is no registered office if that be the case in non-EU proceedings.

### **Prescribed format of documents**

**1.9.—(1)** Where a rule sets out the required contents of a document any title required by the rule must appear at the beginning of the document.

(2) Any other contents required by the rule (or rules where more than one apply to a particular document) must be provided in the order listed in the rule (or rules) or in another order which the maker of the document considers would be convenient for the intended recipient.

### **Variations from prescribed contents**

**1.10.—(1)** Where a rule sets out the required contents of a document, the document may depart from the required contents if—

- (a) the circumstances require such a departure (including where the requirement is not applicable in the particular case); or
- (b) the departure (whether or not intentional) is immaterial.

(2) However this rule does not apply to the required content of a statutory demand on a company set out in rule 5.3.

## **CHAPTER 5**

Standard contents of Gazette notices and the Gazette as evidence etc.

[Note: (1) the requirements in Chapter 5 must be read with rule 1.7 which sets out the information required to identify an office-holder, a company etc.

Note: (2) this Chapter does not apply to the notice of a liquidator’s appointment prescribed under section 109 by [S.I. 1987/752](#).]

### **Contents of notices to be gazetted under the Act or Rules**

**1.11.—(1)** Where, in accordance with the Act or these Rules, a notice is to be gazetted, the notice must contain the standard contents set out in this Chapter (in addition to any content specifically required by the Act or any other provision of these Rules).

(2) Information which this Chapter requires to be included in a Gazette notice may be omitted if it is not reasonably practicable to obtain it.



### **Standard contents of Gazette notices**

**1.12.**—(1) A Gazette notice must identify the insolvency proceedings and, if it is relevant to the particular notice, identify the office-holder and state—

- (a) the office-holder’s contact details;
- (b) the office-holder’s IP number;
- (c) the name of any person other than the office-holder who may be contacted about the insolvency proceedings; and
- (d) the date of the office-holder’s appointment.

(2) A Gazette notice relating to a registered company must also state—

- (a) its registered office;
- (b) any principal trading address if this is different from its registered office;
- (c) any name under which it was registered in the period of 12 months before the date of the commencement of the insolvency proceedings which are the subject of the Gazette notice; and
- (d) any other name or style (not being a registered name)—
  - (i) under which the company carried on business, and
  - (ii) in which any debt owed to a creditor was incurred.

(3) A Gazette notice relating to an unregistered company must also identify the company and specify any name or style—

- (a) under which the company carried on business; and
- (b) in which any debt owed to a creditor was incurred.

(4) Paragraph (1) does not apply to a notice under rule 12.4(3) (permission to act as a director: first excepted case).

### **The Gazette: evidence, variations, errors and timing**

**1.13.**—(1) Where a notice is gazetted under the Act or these Rules a copy of the Gazette containing the notice is evidence of any facts stated in the notice.

(2) Where the Act or these Rules require an order of the court to be gazetted, a copy of the Gazette containing the notice of the order may be produced in any proceedings as conclusive evidence that the order was made on the date specified in the Gazette notice.

(3) Where an order of the court which is gazetted has been varied, or any matter has been erroneously or inaccurately gazetted, the person whose responsibility it was to gazette the order or other matter must, as soon as is reasonably practicable, cause the variation 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.

## **CHAPTER 6**

### **Standard contents of notices advertised otherwise than in the Gazette**

[Note: the requirements in Chapter 6 must be read with rule 1.7 which sets out the information required to identify an office-holder, a company etc.]

**Standard contents of notices advertised otherwise than in the Gazette**

**1.14.**—(1) Where, in accordance with the Act or these Rules, a notice is to be advertised otherwise than in the Gazette, the notice must contain the standard contents set out in this rule (in addition to any content specifically required by the Act or any other provision of these Rules).

- (2) A notice relating to a company must also identify the insolvency proceedings and state—
- (a) the company’s principal trading address;
  - (b) any name under which the company was registered in the 12 months before the date of the commencement of the insolvency proceedings which are the subject of the notice; and
  - (c) any name or style (not being a registered name)—
    - (i) under which the company carried on business, and
    - (ii) in which any debt owed to a creditor was incurred.

(3) A notice must, if it is relevant to the particular notice, identify the office-holder and specify the office-holder’s contact details.

(4) Information which this rule requires to be included in a notice may be omitted if it is not reasonably practicable to obtain it.

**Non-Gazette notices: clear and comprehensible**

**1.15.** Information which this Chapter requires to be stated in a notice must be so stated in a way that is clear and comprehensible.

**CHAPTER 7**

Standard contents of documents to be delivered to the  
registrar of companies and the Accountant in Bankruptcy

[Note: the requirements in Chapter 7 must be read with rule 1.7 which sets out the information required to identify an office-holder, a company etc.]

**Standard contents of documents delivered to the registrar of companies and the Accountant in Bankruptcy**

- 1.16.**—(1) Where the Act or these Rules require a document to be delivered to—
- (a) the registrar of companies; or
  - (b) AiB,

the document must contain the standard contents set out in this Chapter (in addition to any content specifically required by the Act or any other provision of these Rules).

- (2) A document of more than one type must satisfy the requirements which apply to each.

**Registrar of companies and Accountant in Bankruptcy: covering notices**

**1.17.**—(1) This rule applies where the Act or these Rules require an office-holder to deliver any of the documents mentioned in paragraph (2) to (one or both of)—

- (a) the registrar of companies; or
- (b) AiB.

(2) The documents are—

- (a) an account (including a final account) or a summary of receipts and payments;
- (b) an receiver’s report under section 67(1);

- (c) a court order;
- (d) a declaration of solvency;
- (e) notice of the liquidator's resignation under section 171(5);
- (f) notice of the liquidator's death under rule 3.8;
- (g) notice to AiB that a liquidator has vacated office on loss of qualification to act under rule 5.31(2)(b);
- (h) any report including a progress report (including a final progress report);
- (i) an undertaking given under Article 36 of the EU Regulation.

(3) The office-holder must deliver with a document mentioned in paragraph (1) and (2) a notice containing the standard contents required by this Part.

(4) Such a notice may relate to more than one document where those documents relate to the same insolvency proceedings and are delivered together to the registrar of companies or delivered together to AiB.

#### **Standard contents of all documents**

**1.18.**—(1) A document to be delivered to the registrar of companies or AiB must—

- (a) identify the company;
- (b) state—
  - (i) the nature of the document,
  - (ii) the section (or paragraph) of the Act or the rule under which the document is delivered,
  - (iii) the date of the document,
  - (iv) the name and address of the person delivering the document, and
  - (v) the capacity in which that person is acting in relation to the company; and
- (c) be authenticated by the person delivering the document.

(2) Where the person delivering the document is the office-holder, the address may be omitted if it was previously notified to the same authority (the registrar or AiB) in the insolvency proceedings, and is unchanged.

#### **Standard contents of documents relating to the office of office-holders**

**1.19.**—(1) A document relating to the office of the office-holder must also identify the office-holder and state—

- (a) the date of the event of which notice is delivered or of the notice (as applicable);
- (b) where the document relates to an appointment, the person, body or court making the appointment;
- (c) where the document relates to the termination of an appointment, the reason for that termination; and
- (d) the contact details for the office-holder.

(2) Where the person delivering the document is the office-holder, the address may be omitted if in the insolvency proceedings—

- (a) in the case of delivery to the registrar of companies it has previously been notified to the registrar of companies;
- (b) in the case of delivery to AiB it has previously been notified to AiB,

and the address is unchanged.

#### **Standard contents of documents relating to other documents**

- 1.20.** A document relating to another document must also state—
- (a) the nature of the other document;
  - (b) the date of the other document; and
  - (c) where the other document relates to a period of time, the period of time to which it relates.

#### **Standard contents of documents relating to court orders**

- 1.21.** A document relating to a court order must also specify—
- (a) the nature of the order;
  - (b) the name of the court; and
  - (c) the date of the order.

#### **Standard contents of returns or reports of decisions**

- 1.22.** A return or report of a decision procedure, deemed consent procedure or meeting must also state—
- (a) the purpose of the procedure or meeting;
  - (b) a description of the procedure or meeting used;
  - (c) in the case of a decision procedure or meeting, the venue;
  - (d) in the case of a deemed consent procedure, the date the decision was deemed to have been made;
  - (e) whether, in the case of a meeting, the required quorum was in place; and
  - (f) the outcome (including any decisions made or resolutions passed).

#### **Standard contents of returns or reports of matters considered by company members by written resolution**

- 1.23.** A return or report of a matter, consideration of which has been sought from the members of a company by written resolution, must also state—
- (a) the purpose of the consideration; and
  - (b) the outcome of the consideration (including any resolutions passed).

#### **Standard contents of documents relating to other events**

- 1.24.** A document relating to any other event must also state—
- (a) the nature of the event, including the section (or paragraph) of the Act or the rule under which it took place; and
  - (b) the date on which the event occurred.

### **CHAPTER 8**

Standard contents of notices for delivery to other persons etc.

[Note: the requirements in Chapter 8 must be read with rule 1.7 which sets out the information required to identify an office-holder, a company etc.]

### **Standard contents of notices to be delivered to persons other than the registrar of companies or Accountant in Bankruptcy**

**1.25.**—(1) Where the Act or these Rules require a notice to be delivered to a person other than the registrar of companies or AiB in respect of insolvency proceedings under Parts 3 to 5 of the Act or the EU Regulation, the notice must contain the standard contents set out in this Chapter (in addition to any content specifically required by the Act or another provision of these Rules).

(2) A notice of more than one type must satisfy the requirements which apply to each.

(3) The requirements in respect of a document which is to be delivered to another person at the same time as the registrar of companies or AiB may be satisfied by delivering to that other person a copy of the document delivered to the registrar or AiB.

### **Standard contents of all notices**

**1.26.** A notice must—

- (a) state the nature of the notice;
- (b) identify the insolvency proceedings;
- (c) state the section (or paragraph) of the Act or the rule under which the notice is given; and
- (d) in the case of a notice delivered by the office-holder, state the contact details for the office-holder.

### **Standard contents of notices relating to the office of office-holders**

**1.27.** A notice relating to the office of the office-holder must also identify the office-holder and state—

- (a) the date of the event of which notice is delivered;
- (b) where the notice relates to an appointment, the person, body or court making the appointment; and
- (c) where the notice relates to the termination of an appointment, the reason for that termination.

### **Standard contents of notices relating to documents**

**1.28.** A notice relating to a document must also state—

- (a) the nature of the document;
- (b) the date of the document; and
- (c) where the document relates to a period of time, the period of time to which the document relates.

### **Standard contents of notices relating to court proceedings or orders**

**1.29.** A notice relating to court proceedings must also identify those proceedings and if the notice relates to a court order state—

- (a) the nature of the order; and
- (b) the date of the order.

**Standard contents of notices of the results of decisions**

**1.30.** A notice of the result of a decision procedure, deemed consent procedure or meeting must also state—

- (a) the purpose of the procedure or meeting;
- (b) a description of the procedure or meeting used;
- (c) in the case of a decision procedure or meeting, the venue;
- (d) in the case of a deemed consent procedure, the date the decision was deemed to have been made;
- (e) whether, in the case of a meeting, the required quorum was in place; and
- (f) the outcome (including any decisions made or resolutions passed).

**Standard contents of returns or reports of matters considered by company members by written resolution**

**1.31.** A return or report of a matter, consideration of which has been sought from the members of a company by written resolution, must also specify—

- (a) the purpose of the consideration; and
- (b) the outcome of the consideration (including any resolutions passed).

**CHAPTER 9****Delivery of documents and opting out (sections 246C and 248A(20))****Application of Chapter**

[Note: the registrar's rules include provision for the electronic delivery of documents.]

**1.32.—(1)** Subject to paragraph (2), this Chapter applies where a document is required under the Act or these Rules to be delivered, lodged, forwarded, furnished, given, sent, or submitted in respect of insolvency proceedings under Parts 3 to 5 of the Act or the EU Regulation unless the Act, a rule or an order of the court makes different provision.

(2) Rules 1.41 and 1.43 to 1.46 do not apply to—

- (a) the lodging of any petition or 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; or
- (d) the delivery of a document to the registrar of companies or AiB, except in accordance with paragraph (3) or (4).

(3) In respect of delivery of a document to the registrar of companies—

- (a) subject to sub-paragraph (b) only the following rules in this Chapter apply: rules 1.38 (postal delivery of documents), 1.39 (delivery by document exchange), 1.40 (personal delivery) and 1.47 (proof of delivery of documents);
- (b) requirements imposed under section 1068 and rules made under section 1117 of the Companies Act apply to determine the date when any document is received by the registrar of companies.

(20) Section 246C was prospectively inserted for Scotland by section 124(3) of the Small Business, Enterprise and Employment Act 2015 (c.26) and section 248A by section 124(4) of that Act.

(4) In respect of delivery of a document to AiB, of the rules in this Chapter only those mentioned in paragraph (3)(a) apply.

(5) Where a document is required or permitted to be served at a company's registered office service may be effected at a previous registered office in accordance with section 87(2) of the Companies Act.

(6) In the case of an overseas company service may be effected in any manner provided for by section 1139(2) of the Companies Act.

### **Delivery to the creditors and opting out**

**1.33.**—(1) Where the Act or a rule requires an office-holder to deliver a document to the creditors, or the creditors in a class, the requirement is satisfied by the delivery of the document to all such creditors of whose address the office-holder is aware other than opted-out creditors unless the opt out does not apply.

- (2) Where a creditor has opted out from receiving documents, the opt out does not apply to—
- (a) a notice which the Act requires to be delivered to all creditors without expressly excluding opted-out creditors;
  - (b) a notice of a change in the office-holder or the contact details for the office-holder;
  - (c) a notice as provided for by section 246C(2) (notices of distributions, intended distributions and notices required to be given by court order); or
  - (d) a document which these Rules require to accompany a notice within sub-paragraphs (a) to (c).

(3) The office-holder must begin to treat a creditor as an opted-out creditor as soon as reasonably practicable after delivery of the creditor's election to opt out.

(4) An office-holder in any consecutive insolvency proceedings of a different kind under Parts 3 to 5 of the Act in respect of the same company who is aware that a creditor was an opted-out creditor in the earlier insolvency proceedings must treat the creditor as an opted out creditor in the consecutive insolvency proceedings.

### **Creditor's election to opt out**

**1.34.**—(1) A creditor may at any time elect to be an opted-out creditor.

(2) The creditor's election to opt out must be by a notice in writing authenticated and dated by the creditor.

(3) The creditor must deliver the notice to the office-holder.

(4) A creditor becomes an opted-out creditor when the notice is delivered to the office-holder.

(5) An opted-out creditor—

- (a) will remain an opted-out creditor for the duration of the insolvency proceedings unless the opt out is revoked; and
- (b) is deemed to be an opted-out creditor in respect of any consecutive insolvency proceedings under Parts 3 to 5 of the Act of a different kind relating to the same company.

(6) The creditor may at any time revoke the election to opt out by a further notice in writing, authenticated and dated by the creditor and delivered to the office-holder.

(7) The creditor ceases to be an opted-out creditor from the date the notice is delivered to the office-holder.

**Office-holder to provide information to creditors on opting out**

**1.35.**—(1) The office-holder must, in the first communication with a creditor, inform the creditor in writing that the creditor may elect to opt out of receiving further documents relating to the insolvency proceedings.

(2) The communication must contain—

- (a) identification and contact details for the office-holder;
- (b) a statement that the creditor has the right to elect to opt out of receiving further documents about the insolvency proceedings unless—
  - (i) the Act requires a document to be delivered to all creditors without expressly excluding opted-out creditors,
  - (ii) the document is a notice relating to a change in the office-holder or the office-holder's contact details, or
  - (iii) the document is a notice of a dividend or proposed dividend; or
  - (iv) the document is a notice which the court orders to be sent to all creditors or all creditors of a particular category to which the creditor belongs;
- (c) a statement that opting out will not affect the creditor's entitlement to receive dividends should any be paid to creditors;
- (d) a statement that unless these Rules provide to the contrary opting out will not affect any right the creditor may have to vote in a decision procedure or to participate in a deemed consent procedure in the insolvency proceedings although the creditor will not receive notice of it;
- (e) a statement that a creditor who opts out will be treated as having opted out in respect of any consecutive insolvency proceedings of a different kind in respect of the same company; and
- (f) information about how the creditor may elect to be or cease to be an opted-out creditor.

**Delivery of documents to authorised recipients**

**1.36.** Where under the Act or these Rules a document is to be delivered to a person (other than by being served on that person), it may be delivered instead to any other person authorised in writing to accept delivery on behalf of the first-mentioned person.

**Delivery of documents to joint office-holders**

**1.37.** Where there are joint office-holders in insolvency proceedings, delivery of a document to one of them is to be treated as delivery to all of them.

**Postal delivery of documents**

**1.38.**—(1) A document is delivered if it is sent by post in accordance with the provisions of this rule.

- (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 document.
- (4) Unless the contrary is shown—
  - (a) a document sent by first class post is to be treated as delivered on the second business day after the day on which it is posted;



- (b) a document sent by second class post is to be 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 document was posted, the date of that post-mark is to be treated as the date on which the 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.

### **Delivery by document exchange**

**1.39.**—(1) A document is delivered to a member of a document exchange if it is delivered to that document exchange.

- (2) Unless the contrary is shown, a document is treated as delivered—
  - (a) one business day after the day it is delivered to the document exchange where the sender and the intended recipient are members of the same document exchange; or
  - (b) two business days after the day it is delivered to the departure facility of the sender’s document exchange where the sender and the intended recipient are members of different document exchanges.

### **Personal delivery of documents**

**1.40.**—(1) A document is delivered if it is personally delivered in accordance with this rule.

(2) In the case of an individual, a document is personally delivered if it is left with that individual.

(3) In the case of a legal person, a document is personally delivered if it is left with an individual at the registered office, other official address or a place of business of that legal person.

### **Electronic delivery of documents**

**1.41.**—(1) A document is delivered if it is sent by electronic means and the following conditions apply.

- (2) The conditions are that the intended recipient of the document has—
  - (a) given actual or deemed consent for the electronic delivery of the document;
  - (b) not revoked that consent before the document is sent; and
  - (c) provided an electronic address for the delivery of the document.

(3) Consent may relate to a specific case or generally.

(4) For the purposes of paragraph (2)(a) an intended recipient is deemed to have consented to the electronic delivery of a document where the intended recipient and the company who is the subject of the insolvency proceedings had customarily communicated with each other by electronic means before the insolvency proceedings commenced.

(5) Unless the contrary is shown, a document is to be treated as delivered by electronic means to an electronic address where the sender can produce a copy of the electronic communication which—

- (a) contains the document; and
- (b) shows the time and date the communication was sent and the electronic address to which it was sent.

(6) Unless the contrary is shown, a document sent electronically is treated as delivered to the electronic address to which it is sent at 9.00 am on the next business day after it was sent.

**Electronic delivery of documents to the court**

**1.42.**—(1) A document may not be delivered to a 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.

**Electronic delivery by office-holders**

**1.43.**—(1) Where an office-holder delivers a document by electronic means, the document must contain, or be accompanied by, a statement that the recipient may request a hard copy of the document and a telephone number, email address and postal address that may be used to make that request.

(2) An office-holder who receives such a request must deliver a hard copy of the document to the recipient free of charge within 5 business days of receipt of the request.

**Use of website by office-holder to deliver a particular document (section 246B)**

**1.44.**—(1) This rule applies for the purposes of sections 246B(21) (use of websites).

(2) An office-holder who proposes to satisfy the requirement to deliver a document to any person by making it available on a website in accordance with section 246B(1) must deliver a notice to that person which contains—

- (a) a statement that the document is available for viewing and downloading on a website;
- (b) the website's address and any password necessary to view and download the document; and
- (c) a statement that that person may request a hard copy of the document together with a telephone number, email address and postal address which may be used to make that request.

(3) An office-holder who receives such a request must deliver a hard copy of the document to the person who made the request free of charge within 5 business days of receipt of the request.

(4) A document to which a notice under paragraph (2) relates must—

- (a) remain available on the website for the period required by rule 1.46; and
- (b) be in a format that enables it to be downloaded within a reasonable time of an electronic request being made for it to be downloaded.

(5) A 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 it is first made available on the website; or
- (b) when the notice under paragraph (2) is delivered to that person, if that is later.

(6) Section 246B(1) does not apply to a notice under paragraph (2).

(7) In this rule “document” includes any notice or information in any other form.

**General use of website to deliver documents**

**1.45.**—(1) The office-holder may deliver a notice to each person to whom a document will be required to be delivered in the insolvency proceedings which contains—

- (a) a statement that future documents in the insolvency proceedings other than those mentioned in paragraph (2) will be made available for viewing and downloading on a website without notice to the recipient and that the office-holder will not be obliged to

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(21) Section 246B was inserted by [S.I. 2010/18](#) and prospectively amended for Scotland by [S.S.I. 2016/141](#).

- deliver any such documents to the recipient of the notice unless it is requested by that person;
- (b) a telephone number, email address and postal address which may be used to make a request for a hard copy of a document;
  - (c) a statement that the recipient of the notice may at any time request a hard copy of—
    - (i) any document available for viewing on the website,
    - (ii) any document which may be made available there in the future, 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 documents:—
- (a) a document for which personal delivery is required;
  - (b) any document relating to adjudication of creditors' claims or payment of dividend; and
  - (c) a document which is not delivered generally.
- (3) A document is delivered generally if it is delivered to some or all of the following classes of persons:—
- (a) members,
  - (b) contributories,
  - (c) creditors;
  - (d) any class of members, contributories or creditors.
- (4) An office-holder 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 document to which the notice applies has been made available on the website; or
  - (b) to deliver a hard copy of such a document unless a request is received under paragraph (1)(c).
- (5) An office-holder who receives a request under paragraph (1)(c)—
- (a) in respect of a document which is already available on the website must deliver a hard copy of the document to the recipient free of charge within 5 business days of receipt of the request; and
  - (b) in respect of all future documents must deliver each such document in accordance with the requirements for delivery of such a document in the Act and these Rules.
- (6) A document to which a statement under paragraph (1)(a) applies must—
- (a) remain available on the website for the period required by rule 1.46; and
  - (b) be in such a format as to enable it to be downloaded within a reasonable time of an electronic request being made for it to be downloaded.
- (7) A 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 the relevant document was first made available on the website; or
  - (b) when the notice under paragraph (1) is delivered to that person, if that is later.
- (8) Paragraph (7) does not apply in respect of a person who has made a request under paragraph (1)(c)(ii) for hard copies of all future documents.

**Retention period for documents made available on websites**

**1.46.**—(1) This rule applies to a document which is made available on a website under rules 1.44 and 1.45.

(2) Such a document must continue to be made available on the website until 2 months after the end of the particular insolvency proceedings or the release of the last person to hold office as the office-holder in those insolvency proceedings, whichever is later.

**Proof of delivery of documents**

**1.47.**—(1) A certificate complying with this rule is proof that a document has been duly delivered to the recipient in accordance with this Chapter unless the contrary is shown.

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

(3) In the case of an office-holder the certificate must be given by—

- (a) the office-holder;
- (b) the office-holder's solicitor; or
- (c) a partner or an employee of either of them.

(4) In the case of a person other than an office-holder the certificate must be given by that person and must state—

- (a) that the document was delivered by that person; or
- (b) that another person (named in the certificate) was instructed to deliver it.

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

**Delivery of statements of claim and documentary evidence of debt**

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

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

(3) This rule also applies where a creditor in insolvency proceedings is deemed to have submitted a claim in administration proceedings which immediately preceded the insolvency proceedings.

**CHAPTER 10****Inspection of documents, copies and provision of information****Right to copies of documents**

**1.49.** Where the Act, in relation to proceedings under Parts 3 to 5 of the Act, or these Rules give a person the right 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 copies of documents provided by the office-holder**

**1.50.** Except where prohibited by these Rules, an office-holder is entitled to require the payment of the standard fee for copies of documents requested by a creditor, member, contributory or member of a liquidation or creditors' committee.

### **Offence in relation to inspection of documents**

**1.51.**—(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, a member of a company or a contributory of a company with the intention of gaining sight of the document.

(2) A relevant document is one which is on the court file or held by the office-holder or any other person and which a creditor, a member of a company or a contributory of a company has the right to inspect under these Rules.

### **Right to list of creditors**

**1.52.**—(1) This rule applies to—

- (a) creditors' voluntary winding up; and
- (b) winding up by the court.

(2) A creditor has the right to require the office-holder to provide a list of the names and addresses of the creditors and the amounts of their respective debts.

(3) The office-holder on being required to provide such a list—

- (a) must deliver it to the person requiring the list as soon as reasonably practicable; and
- (b) may charge the standard fee for copies for a hard copy.

(4) The office-holder may omit the name and address of a creditor if the office-holder thinks its disclosure would be prejudicial to the conduct of the insolvency proceedings or might reasonably be expected to lead to violence against any person.

(5) In such a case the list must include—

- (a) the amount of that creditor's debt; and
- (b) a statement that the name and address of the creditor has been omitted for that debt.

### **Confidentiality of documents: grounds for refusing inspection**

**1.53.**—(1) Where an office-holder considers that a document forming part of the records of the insolvency proceedings—

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

the office-holder may decline to allow it to be inspected by a person who would otherwise be entitled to inspect it.

(2) The persons to whom the office-holder may refuse inspection include members of a liquidation committee or a creditors' committee.

(3) Where the office-holder refuses inspection of a document, the person wishing to inspect it may apply to the court which may reconsider the office-holder's decision.

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

### **Sederunt book**

**1.54.**—(1) The office-holder must maintain a sederunt book during the office-holder's term of office for the purpose of providing an accurate record of the insolvency proceedings.

(2) The office-holder must include in the sederunt book—

- (a) the information listed in schedule 4; and

- (b) a copy of anything else required to be recorded in it by any provision of the Act or these Rules.
- (3) The office-holder 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 office-holder in the office-holder's own interest.
- (5) The office-holder must retain, or make arrangements for retention of, the sederunt book for the period specified in regulation 13(5) of the Insolvency Practitioners Regulations 2005(22).
- (6) Where the sederunt book is maintained in electronic form it must be capable of reproduction in hard copy form.

### **Transfer and disposal of company's books, papers and other records**

**1.55.**—(1) Where insolvency proceedings have terminated and other insolvency proceedings under Parts 2 to 5 of the Act have commenced in relation to the same company, the office-holder appointed in the original proceedings, must, before the expiry of the earlier of—

- (a) the period of 30 days beginning with the date the office-holder in the subsequent insolvency proceedings makes a request to the original office-holder to do so; or
- (b) the period of 6 months after the relevant date,

deliver to the office-holder appointed in the subsequent proceedings the books, papers and other records of the company.

(2) In the case of receivership, where—

- (a) the original proceedings have terminated; and
- (b) no subsequent proceedings have commenced within the period of 6 months after the relevant date in relation to the original proceedings,

the receiver may dispose of the books, papers and records of the company after the expiry of the period of 6 months referred to in sub-paragraph (b), but only in accordance with paragraph (3).

(3) Directions to that effect may be given by—

- (a) the members of the company by extraordinary resolution; or
- (b) the court.

(4) Where a company is being wound up, the liquidator must dispose of the books, papers and records of the company either in accordance with—

- (a) in the case of a winding up by the court, directions of the liquidation committee, or, if there is no such committee, directions of the court;
- (b) in the case of a members' voluntary winding up, directions of the members by extraordinary resolution; and
- (c) in the case of a creditors' voluntary winding up, directions of the liquidation committee, or, if there is no such committee, of the creditors given at or before the end of the period within which a creditor may object to release of the liquidator following a final account under section 106 (see rule 4.30(2)(c) and (d)),

or, if, by the date which is 12 months after the dissolution of the company, no such directions have been given, after that date in such a way as the liquidator deems appropriate.

(5) In this Rule, "the relevant date" means—

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(22) *S.I. 2005/524.* Such records must be preserved until the later of the sixth anniversary of the date of the grant of the insolvency practitioner's release or discharge, or of the date on which any security or caution maintained expires or otherwise ceases to have effect.

- (a) in the case of a receivership, the date on which the receiver resigns and the receivership terminates without a further receiver being appointed; and
- (b) in the case of a winding up, the date of dissolution of the company.

## CHAPTER 11

### Formal defects

#### **Power to cure defects in procedure**

**1.56.**—(1) The court may, on the application of any person having an interest—

- (a) if there has been a failure to comply with any requirement of the Act or the Rules, make an order waiving any such failure and, so far as practicable, restoring any person prejudiced by the failure to the position that person would have been in but for the failure;
- (b) if for any reason anything required or authorised to be done in, or in connection with, the insolvency proceedings cannot be done, make such order as may be necessary to enable that thing to be done.

(2) The court, in an order under paragraph (1), may impose such conditions, including conditions as to expenses, as the court thinks fit and may in particular—

- (a) authorise or dispense with the performance of any act in the insolvency proceedings;
- (b) appoint as office-holder in the insolvency proceedings any person who would be eligible to act in that capacity, whether or not in place of an existing office-holder;
- (c) extend or waive any time limit specified in or under the Act or the Rules.

(3) An application under paragraph (1) which is made to the sheriff—

- (a) may at any time be remitted by the sheriff to the Court of Session;
- (b) must be so remitted if the Court of Session so directs on an application by any person,

if the sheriff or the Court of Session, as the case may be, considers that the remit is desirable because of the importance or complexity of the matters raised by the application.

#### **Formal defects**

**1.57.** No insolvency proceedings are invalidated by any formal defect or irregularity unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of the court.