
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 347

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

PART 10

CREDITORS' AND LIQUIDATION COMMITTEES

CHAPTER 3

Membership and formalities of formation of a committee

[Note: (1) a document required by the Act or these Rules must also contain the standard contents required as set out in Part 1.

Note: (2) see sections 215, 363, 365 and 371 of the Financial Services and Markets Act 2000 for the rights of persons appointed by a scheme manager, the Financial Conduct Authority and the Prudential Regulation Authority to attend committees and make representations.]

Number of members of a committee

[Note: section 101(1) provides that a liquidation committee in a creditors' voluntary winding up may not have more than 5 members.]

10.3.—(1) A committee in a receivership must have at least 3 members but not more than 5 members.

(2) A liquidation committee in a creditors' voluntary winding up appointed pursuant to section 101(1) must have at least 3 members.

(3) A liquidation committee in a winding up by the court established under section 142(2) must have—

- (a) at least 3 and not more than 5 members elected by the creditors; and
- (b) where the grounds on which the company was wound up do not include inability to pay its debts, and where the contributories so decide, up to 3 contributory members elected by the contributories.

Eligibility for membership of creditors' or liquidation committee

10.4.—(1) A creditor is eligible to be a member of a committee if—

- (a) the person has submitted a statement of claim and, where not dispensed with under rules 7.16(2) or 8.28(2), documentary evidence of debt;

(1) In section 101 subsection (1) was substituted by paragraph 25(2) of schedule 9 of the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act") and subsection (3) was amended by paragraph 25(3) of that schedule.
(2) In section 142 subsections (1) to (4) were substituted by paragraph 37(2) of schedule 9 to the 2015 Act and subsection (6) was amended by paragraph 37(3) of that schedule.

- (b) the debt is not fully secured and the creditor has not agreed to surrender the creditor's security to the liquidator; and
- (c) neither of the following apply—
 - (i) the claim has been wholly rejected for voting purposes, or
 - (ii) the claim has been wholly rejected for the purpose of distribution or dividend.
- (2) No person can be a member as both a creditor and a contributory.
- (3) A body corporate or a partnership may be a member of a committee, but it cannot act otherwise than by a representative appointed under rule 10.17.

Establishment of committees

10.5.—(1) Where the creditors, or where applicable, contributories, decide that a creditors' or liquidation committee should be established, the convener or chair of the decision procedure or the convener of the deemed consent process (if not the office-holder) must—

- (a) as soon as reasonably practicable deliver a notice of the decision to the office-holder (or to the person appointed as office-holder); and
- (b) where a decision has also been made as to membership of the committee, inform the office-holder of the names and addresses of the persons elected to be members of the committee.
- (2) Before a person may act as a member of the committee that person must agree to do so.
- (3) A person's proxy-holder attending a meeting establishing the committee or, in the case of a body corporate or partnership, its duly appointed representative, may give such agreement (unless the proxy or instrument conferring authority contains a statement to the contrary).
- (4) Where a decision has been made to establish a committee but not as to its membership, the office-holder must seek a decision from the creditors (about creditor members of the committee) and, where appropriate in a winding up by the court, a decision from contributories (about contributory members of the committee).
- (5) The committee is not established (and accordingly cannot act) until the office-holder has delivered a notice of its membership in accordance with paragraph (9).
- (6) The notice must contain the following—
 - (a) a statement that the committee has been duly constituted;
 - (b) identification details for any company that is a member of the committee;
 - (c) the full name and address of each member that is not a company.
- (7) The notice must be authenticated and dated by the office-holder.
- (8) The notice must be delivered as soon as reasonably practicable after the minimum number of persons required by rule 10.3 have agreed to act as members and been elected.
- (9) The office-holder must, as soon as reasonably practicable, deliver the notice to AiB.

Liquidation committee established by contributories

10.6.—(1) This rule applies where, under section 142, the creditors do not decide that a liquidation committee should be established, or decide that a committee should not be established.

- (2) The contributories may decide to appoint one of their number to make application to the court for an order requiring the liquidator to seek a further decision from the creditors on whether to establish a liquidation committee; and—
 - (a) the court may, if it thinks that there are special circumstances to justify it, make such an order; and

(b) the creditors' decision sought by the liquidator in compliance with the order is deemed to have been a decision under section 142.

(3) If the creditors decide under paragraph (2)(b) not to establish a liquidation committee, the contributories may establish a committee.

(4) The committee must then consist of at least 3, and not more than 5, contributories elected by the contributories; and rule 10.5 applies, substituting for the reference to rule 10.3 in rule 10.5(8) a reference to this paragraph.

Notice of change of membership of a committee

10.7.—(1) If there is a change in membership of the committee, the office-holder must deliver a notice to AiB, as soon as reasonably practicable.

(2) The notice must contain—

- (a) the date of the original notice in respect of the constitution of the committee and the date of the last notice of membership given under this rule (if any);
- (b) a statement that this notice of membership replaces the previous notice;
- (c) identification details for any company that is a member of the committee;
- (d) the full name and address of any member that is not a company;
- (e) a statement whether any member has become a member since the issue of the previous notice;
- (f) the identification details for a company or otherwise the full name of any member named in the previous notice who is no longer a member and the date the membership ended.

(3) The notice must be authenticated and dated by the office-holder.

Vacancies: creditor members of creditors' or liquidation committee

10.8.—(1) This rule applies if there is a vacancy among the creditor members of a creditors' or liquidation committee or where the number of creditor members of the committee is fewer than the maximum allowed.

(2) A vacancy need not be filled if—

- (a) the office-holder and a majority of the remaining creditor members agree; and
- (b) the total number of creditor members does not fall below 3.

(3) The office-holder may appoint a creditor, who is qualified under rule 10.4 to be a member of the committee, to fill a vacancy or as an additional member of the committee, if—

- (a) the remaining creditor members of the committee (provided there are at least 2) agree in accordance with paragraph (4) to the appointment; and
- (b) the creditor agrees to act.

(4) Where there are only 2 remaining members of the committee, both must agree to the appointment, otherwise a majority must agree.

(5) Alternatively, the office-holder may seek a decision from creditors to appoint a creditor (with that creditor's consent) to fill the vacancy.

(6) Where the vacancy is filled by an appointment made by a decision of creditors which is not chaired or convened by the office-holder, the chair or convenor must report the appointment to the office-holder.

Vacancies: contributory members of liquidation committee

10.9.—(1) This rule applies if there is a vacancy among the contributory members of a liquidation committee or where the number of contributory members of the committee is fewer than the maximum allowed under rule 10.3(3)(b) or 10.6(4) as the case may be.

(2) A vacancy need not be filled if—

- (a) the liquidator and a majority of the remaining contributory members agree; and
- (b) in the case of a committee of contributories only, the number of members does not fall below 3.

(3) The liquidator may appoint a contributory to be a member of the committee, to fill a vacancy or as an additional member of the committee, if—

- (a) a majority of the remaining contributory members of the committee (provided there are at least 2) agree to the appointment; and
- (b) the contributory agrees to act.

(4) Alternatively, the office-holder may seek a decision from contributories to appoint a contributory (with that contributory's consent) to fill the vacancy.

(5) Where the vacancy is filled by an appointment made by a decision of contributories which is not convened or chaired by the office-holder, the convener or chair must report the appointment to the office-holder.

Resignation

10.10. A member of a committee may resign by informing the office-holder in writing.

Termination of membership

10.11. A person's membership of a committee is automatically terminated if that person—

- (a) becomes bankrupt or that person's estate is sequestrated, as the case may be, in which case the trustee in bankruptcy or the trustee in the sequestration replaces the person bankrupt or sequestrated as a member of the committee;
- (b) grants a trust deed for the benefit of creditors;
- (c) makes a composition with creditors;
- (d) is a person to whom a moratorium under a debt relief order applies;
- (e) neither attends nor is represented at 3 consecutive meetings (unless it is resolved at the third of those meetings that this rule is not to apply in that person's case);
- (f) has ceased to satisfy the criteria set out in rule 10.4 for eligibility to be a member of the committee;
- (g) ceases to be a creditor or is found never to have been a creditor;
- (h) ceases to be a contributory or is found never to have been a contributory.

Removal

10.12. A creditor member of a committee may be removed by a decision of the creditors through a decision procedure and in the case of a liquidation committee a contributory member of the committee may be removed by a decision of contributories through a decision procedure.

Cessation of liquidation committee in a winding up when creditors are paid in full

10.13.—(1) Where the creditors have been paid in full together with interest in accordance with section 189, the liquidator must deliver to AiB a notice to that effect.

(2) On the delivery of the notice the liquidation committee ceases to exist.

(3) The notice must—

- (a) identify the liquidator;
- (b) contain a statement by the liquidator certifying that the creditors of the company have been paid in full with interest in accordance with section 189; and
- (c) be authenticated and dated by the liquidator.