
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 347

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

PART 5

WINDING UP BY THE COURT

CHAPTER 4

Statement of affairs and other information

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

Interpretation

5.11. In this Chapter—

“liquidator” includes “provisional liquidator”;

“nominated person” means a relevant person who has been required by the liquidator to make out and deliver to the liquidator a statement of affairs; and

“relevant person” means a person mentioned in section 131(3).

Notice requiring statement of affairs (section 131)

5.12.—(1) Where, under section 131, the liquidator requires a nominated person to provide the liquidator with a statement of the affairs of the company, the liquidator must deliver a notice to that person.

(2) The notice must be headed “Notice requiring statement of affairs” and must—

- (a) identify the company immediately below the heading;
- (b) identify the liquidator;
- (c) state the name of the nominated person;
- (d) require the nominated person to prepare and submit to the liquidator a statement of affairs of the company on a date which is specified, being—
 - (i) the date of the winding-up order, or
 - (ii) a date directed by the liquidator;
- (e) inform the nominated person—
 - (i) of the names and addresses of any other nominated person to whom such a notice has been delivered, and
 - (ii) of the date by which the statement must be delivered; and
- (f) state the effect of section 131(7) (penalty for non-compliance) and section 235 (duty to co-operate) as it applies to the liquidator.

(3) The liquidator must inform the nominated person that a document for the preparation of the statement of affairs capable of completion in compliance with rule 5.13 can be supplied by the liquidator if requested.

Statement of affairs: contents and delivery

- 5.13.**—(1) The statement of affairs must be headed “Statement of affairs” and must contain—
- (a) identification details for the company;
 - (b) a statement that it is a statement of the affairs of the company on a date which is specified, being—
 - (i) the date of the winding-up order, or
 - (ii) the date directed by the liquidator;
 - (c) a list of the company’s shareholders with the following information about each one—
 - (i) name and postal address,
 - (ii) the type of shares held,
 - (iii) the nominal amount of the shares held,
 - (iv) the number of shares held,
 - (v) the amount per share called up, and
 - (vi) the total amount called up;
 - (d) the total amount of shares called up held by all shareholders;
 - (e) a summary of the assets of the company, setting out the book value and estimated realisable value of—
 - (i) any assets specifically secured,
 - (ii) any assets subject to a floating charge,
 - (iii) any assets not secured, and
 - (iv) the total value of all the assets available for preferential creditors;
 - (f) a summary of the liabilities of the company, 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;
 - (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 securities 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, and
 - (x) an estimate of the deficiency with respect to, or surplus available to, members of the company;

- (g) a list of the company's creditors (as required by section 131(2)) with the following particulars required by paragraph (2) indicating—
 - (i) any creditors under hire-purchase or conditional sale agreements,
 - (ii) any creditors who are consumers claiming amounts paid in advance of the supply of goods or services, and
 - (iii) any creditors claiming retention of title over property in the company's possession.
- (2) The particulars required by this paragraph relating to each creditor are as follows and must be given in this order—
 - (i) the name and postal address,
 - (ii) the amount of the debt owed to the creditor,
 - (iii) details of any security held by the creditor,
 - (iv) the date the security was given, and
 - (v) the value of the security.
- (3) Paragraph (4) applies where the particulars required by paragraph (2) relate to creditors who are either—
 - (a) employees or former employees of the company; or
 - (b) consumers claiming amounts paid in advance for the supply of goods or services.
- (4) Where this paragraph applies—
 - (a) the statement of affairs itself must state separately for each of paragraph (3)(a) and (b) the number of such creditors and the total of the debts owed to them; and
 - (b) the particulars required by paragraph (2) in respect of those creditors must be set out in separate schedules to the statement of affairs for each of paragraph (3)(a) and (b).
- (5) The statutory declaration required by section 131(2A)(1) must be a statutory declaration that the information provided in the statement of affairs is, to the best of the nominated person's knowledge and belief, accurate and complete.
- (6) The nominated person who makes the statutory declaration required by section 131(2A) and paragraph (5) (or one of them, if more than one) must deliver the statement of affairs to the liquidator.

Statement of affairs: statement of concurrence

- 5.14.**—(1) The liquidator may require a relevant person to deliver to the liquidator a statement of concurrence.
- (2) A statement of concurrence is a statement that the relevant person concurs in the statement of affairs submitted by a nominated person.
 - (3) The liquidator must inform the nominated person who has been required to submit a statement of affairs that the relevant person has been required to deliver a statement of concurrence.
 - (4) The nominated person must deliver a copy of the statement of affairs to every relevant person who has been required to submit a statement of concurrence.
 - (5) A statement of concurrence—
 - (a) must identify the company; and
 - (b) may be qualified in relation to matters dealt with in the statement of affairs where the relevant person—
 - (i) is not in agreement with the statement of affairs;

(1) Section 131(2A) was inserted by [S.I. 2010/18](#) and prospectively amended for Scotland by [S.S.I. 2016/141](#), article 10.

- (ii) considers the statement of affairs to be erroneous or misleading; or
- (iii) is without the direct knowledge necessary for concurring in it.

(6) A statement of concurrence must contain a statutory declaration by the relevant person required to submit it that the information provided in the statement of concurrence is, to the best of the relevant person's knowledge and belief, accurate and complete.

(7) The relevant person must deliver the required statement of concurrence to the liquidator before the end of the period of 5 business days (or such other period as the liquidator may agree) beginning with the day on which the relevant person receives the statement of affairs.

Statement of affairs: expenses

5.15.—(1) If a nominated person cannot personally prepare a proper statement of affairs, the liquidator may, as an expense of the liquidation, employ a person or firm to assist in the preparation of the statement.

(2) At the request of a nominated person, made on the grounds that the nominated person cannot personally prepare a proper statement of affairs, the liquidator may authorise an allowance, payable as an expense of the liquidation, of all or part of the expenses to be incurred by the nominated person in employing a person or firm to assist the nominated person in preparing it.

(3) Any such request by the nominated person must be accompanied by an estimate of the expenses involved; and the liquidator must only authorise the employment of a named person or a named firm, approved by the liquidator.

(4) An authorisation given by the liquidator under this rule must be subject to such conditions (if any) as the liquidator thinks fit to impose relating to the manner in which any person may obtain access to relevant documents and other records.

(5) Nothing in this rule relieves a nominated person from any obligation relating to the preparation, verification and submission of the statement of affairs, or to the provision of information to the liquidator.

(6) The liquidator must deliver a notice to the relevant person advising whether the liquidator grants or refuses the relevant person's request for an allowance under paragraph (2) and where such request is refused the relevant person may appeal to the court not later than 14 days from the date of delivery of the notice to the relevant person.

(7) Paragraphs (2) to (6) of this rule may be applied, on application to the liquidator by any relevant person, in relation to the making of a statement of concurrence.

Limited disclosure

5.16.—(1) This rule applies where the liquidator thinks that disclosure of the whole or part of a statement of affairs or a statement of concurrence would be likely to prejudice the conduct of the winding up or might reasonably be expected to lead to violence against any person.

(2) The liquidator may apply to the court for an order of limited disclosure in respect of the whole or any specified part of the—

- (a) statement of affairs; or
- (b) the statement of concurrence.

(3) The court may order that the whole or any specified part of the statement of affairs or the statement of concurrence must not be entered in the sederunt book.

(4) The court's order of limited disclosure may include directions regarding the disclosure of information in the statement of affairs or statement of concurrence to other persons.

(5) A creditor who seeks disclosure of the statement of affairs or statement of concurrence or a specified part of it in relation to which an order has been made under this rule may apply to the court for an order that the liquidator disclose that statement of affairs or statement of concurrence or specified part of it.

(6) The court may attach to an order for disclosure any conditions as to confidentiality, duration and scope of the order in any material change of circumstances, and other matters as it sees fit.

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

Delivery of accounts to liquidator

5.17.—(1) Any of the persons specified in section 235(3) must, at the request of the liquidator, deliver to the liquidator accounts of the company of such nature, as at such date, and for such period, as the liquidator may specify.

(2) The period specified may begin from a date up to 3 years before the date of the presentation of the winding-up petition, or from an earlier date to which audited accounts of the company were last prepared.

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

(4) Rule 5.15 applies (with the necessary modifications) in relation to accounts to be delivered under this rule as it applies in relation to the statement of affairs.

(5) The accounts must—

- (a) if the liquidator so requires, contain a statutory declaration by the person required to deliver them that the accounts are, to the best of the relevant person's knowledge and belief, accurate and complete; and
- (b) (whether or not they contain a statutory declaration) be delivered to the liquidator within 21 days of the request under paragraph (1), or such longer period as the liquidator may allow.

Expenses of assistance in preparing accounts

5.18.—(1) Where the liquidator requires a person to deliver accounts under rule 5.17, the liquidator may, with the approval of the liquidation committee (if there is one) and as an expense of the liquidation, employ a person or firm to assist that person in the preparation of the accounts.

(2) The person who is required to deliver accounts may request an allowance of all or part of the expenses to be incurred in employing a person or firm to assist in preparing the accounts.

(3) A request for an allowance must be accompanied by an estimate of the expenses involved.

(4) The liquidator must only authorise the employment of a named person or a named firm approved by the liquidator.

(5) The liquidator may, with the approval of the liquidation committee (if there is one), authorise such an allowance, payable as an expense of the liquidation.

Further disclosure

5.19.—(1) The liquidator may at any time require a nominated person to deliver (in writing) further information amplifying, modifying or explaining any matter contained in the statement of affairs, or in accounts delivered under the Act or these Rules.

(2) The information must—

- (a) if the liquidator so directs, contain a statutory declaration by the person required to deliver the information that the information is, to the best of the relevant person's knowledge and belief, accurate and complete; and
- (b) (whether or not it contains a statutory declaration) be delivered to the liquidator within 21 days of the requirement under paragraph (1), or such longer period as the liquidator may allow.