

---

SCOTTISH STATUTORY INSTRUMENTS

---

**2018 No. 347**

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

**PART 12**

**PERMISSION TO ACT AS DIRECTOR ETC. OF  
COMPANY WITH A PROHIBITED NAME (SECTION 216)**

**First excepted case**

**12.4.**—(1) This rule applies where—

- (a) a person (“the person”) was within the period mentioned in section 216(1) a director, or shadow director, of an insolvent company that has gone into insolvent liquidation; and
- (b) the person acts in all or any of the ways specified in section 216(3) in connection with, or for the purposes of, the carrying on (or proposed carrying on) of the whole or substantially the whole of the business of the insolvent company where that business (or substantially the whole of it) is (or is to be) acquired from the insolvent company under arrangements—
  - (i) made by its liquidator, or
  - (ii) made before the insolvent company entered into insolvent liquidation by an office-holder acting in relation to it as administrator, receiver or supervisor of a CVA.

(2) The person will not be taken to have contravened section 216 if prior to that person acting in the circumstances set out in paragraph (1) a notice is, in accordance with the requirements of paragraph (3),—

- (a) given by the person, to every creditor of the insolvent company whose name and address—
    - (i) is known by that person, or
    - (ii) is ascertainable by that person on the making of such enquiries as are reasonable in the circumstances; and
  - (b) published in the Gazette.
- (3) The notice referred to in paragraph (2)—
- (a) may be given and published before the completion of the arrangements referred to in paragraph (1)(b) but must be given and published no later than 28 days after their completion;
  - (b) must contain—
    - (i) identification details for the company,
    - (ii) the name and address of the person,
    - (iii) a statement that it is the person’s intention to act (or, where the insolvent company has not entered insolvent liquidation, to act or continue to act) in all or any of the ways specified in section 216(3) in connection with, or for the purposes of, the carrying on of the whole or substantially the whole of the business of the insolvent company,

- (iv) the prohibited name or, where the company has not entered into insolvent liquidation, the name under which the business is being, or is to be, carried on which would be a prohibited name in respect of the person in the event of the insolvent company entering insolvent liquidation,
- (v) a statement that the person would not otherwise be permitted to undertake those activities without the leave of the court or the application of an exception created by Rules made under the Insolvency Act 1986,
- (vi) a statement that breach of the prohibition created by section 216 is a criminal offence, and
- (vii) a statement as set out in rule 12.5 of the effect of issuing the notice under rule 12.4(2);
- (c) where the company is in administration, has a receiver appointed or is subject to a CVA,—
  - (i) the date that the company entered administration, had a receiver appointed or a CVA approved (whichever is the earliest), and
  - (ii) a statement that the person was a director of the company on that date; and
- (d) where the company is in insolvent liquidation,—
  - (i) the date that the company entered insolvent liquidation, and
  - (ii) a statement that the person was a director of the company during the 12 months ending with that date.
- (4) Notice may in particular be given under this rule—
  - (a) prior to the insolvent company entering insolvent liquidation where the business (or substantially the whole of the business) is, or is to be, acquired by another company under arrangements made by an office-holder acting in relation to the insolvent company as administrator, receiver or supervisor of a CVA (whether or not at the time of the giving of the notice the person is a director of that other company); or
  - (b) at a time when the person is a director of another company where—
    - (i) the other company has acquired, or is to acquire, the whole, or substantially the whole, of the business of the insolvent company under arrangements made by its liquidator, and
    - (ii) it is proposed that after the giving of the notice a prohibited name should be adopted by the other company.
- (5) Notice may not be given under this rule by a person who has already acted in breach of section 216.