
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 347

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

PART 4

CREDITORS' VOLUNTARY WINDING UP

CHAPTER 3

Nomination and appointment of liquidators and information to creditors

Information to creditors and appointment of liquidator

- 4.14.**—(1) This rule applies in respect of the appointment of a liquidator under section 100.
- (2) The directors of the company must deliver to the creditors a notice seeking their decision on the nomination of a liquidator by—
- (a) the deemed consent procedure; or
 - (b) a virtual meeting.
- (3) The decision date for the decision of the creditors on the nomination of a liquidator must be not earlier than 3 business days after the notice under paragraph (2) is delivered but not later than 14 days after the resolution is passed to wind up the company.
- (4) Where the directors have sought a decision from the creditors through the deemed consent procedure under paragraph (2)(a) but, pursuant to section 246ZF(5)(a) (deemed consent procedure), more than the specified number of creditors object so that the decision cannot be treated as having been made, the directors must then seek a decision from the creditors on the nomination of a liquidator by holding a physical meeting under rule 8.6 as if a physical meeting had been required under section 246ZE(4) (decisions by creditors and contributories: general)(1).
- (5) Where paragraph (4) applies, the meeting must not be held earlier than 3 business days after the notice under rule 8.6(3) is delivered or later than 14 days after the level of objections reaches that described in paragraph (4).
- (6) A request for a physical meeting under section 246ZE must be made in accordance with rule 8.6 except that—
- (a) such a request may be made at any time between the delivery of the notice under paragraph (2) and the decision date under paragraph (3); and
 - (b) the decision date where this paragraph applies must be not earlier than 3 business days after the notice under rule 8.6(3) is delivered and not later than 14 days after the level of requests reaches that described in section 246ZE.
- (7) The directors must deliver to the creditors a copy of the statement of affairs required under section 99 not later than on the business day before the decision date.

(1) Section 246ZE was prospectively inserted by section 122 of the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act").

(8) A notice delivered under paragraph (2), in addition to the information required by rules 8.7 (deemed consent) and 8.8 (notices to creditors of decision procedure), must contain—

- (a) the date the resolution to wind up is to be considered or was passed;
- (b) identification and contact details of any liquidator nominated by the company;
- (c) a statement of either—
 - (i) the name and address of a person qualified to act as an insolvency practitioner in relation to the company who during the period before the decision date, will furnish creditors free of charge with such information concerning the company’s affairs as they may reasonably require, or
 - (ii) a place in the relevant locality where, on the 2 business days falling next before the decision date, a list of the names and addresses of the company’s creditors will be available for inspection free of charge; and
- (d) where the notice is sent to creditors in advance of the copy of the statement of affairs, a statement that the directors, before the decision date and before the end of the period of 7 days beginning with the day after the day on which the company passed a resolution for winding up, are required by section 99—
 - (i) to make out a statement in the prescribed form as to the affairs of the company, and
 - (ii) send the statement to the company’s creditors.

(9) Where the company’s principal place of business in Scotland was situated in different localities at different times during the relevant period, the duty imposed by sub-paragraph (8)(c)(ii) above applies separately in relation to each of those localities.

(10) Where the company had no place of business in Scotland during the relevant period, the reference in paragraph (9) to the company’s principal place of business in Scotland are replaced by references to its registered office.

(11) In paragraph (9), “the relevant period” means the period of 6 months immediately preceding the day on which the notices referred to in paragraph (2) were delivered.

(12) Where a virtual or physical meeting is held under this rule and a liquidator has already been nominated by the company, the liquidator or an appointed person must attend any meeting held under this rule and report on any exercise of the liquidator’s powers under section 112, 165 or 166(2).

(13) A director who is in default in seeking a decision on the nomination of a liquidator in accordance with this rule is guilty of an offence.

(2) In section 165, a new subsection (2) is prospectively inserted by section 120(2) of the 2015 Act; section 166 is prospectively amended, subsection (4) omitted and a new subsection (5) inserted by paragraph 40 of schedule 9 of that Act.