
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 347

INSOLVENCY

COMPANIES

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

Made - - - - 13th November 2018

Laid before the Scottish

Parliament - - 14th November 2018

Coming into force 6th April 2019

**THE INSOLVENCY (SCOTLAND)
(RECEIVERSHIP AND WINDING UP) RULES 2018**

1. Citation and commencement
2. Revocations
3. Extent and application
4. Transitional and savings provisions
5. Punishment of offences

PART 1

SCOPE, INTERPRETATION, TIME AND RULES ABOUT DOCUMENTS

CHAPTER 1

Scope of these Rules

- 1.1 Scope

CHAPTER 2

Interpretation

- 1.2 Defined terms

Status: This is the original version (as it was originally made).

CHAPTER 3

Calculation of time periods

- 1.3 Periods of time expressed in days
- 1.4 Periods of time expressed in months

CHAPTER 4

Form and content of documents

- 1.5 Requirement for writing and form of documents
- 1.6 Authentication
- 1.7 Information required to identify persons and insolvency proceedings etc.
- 1.8 Reasons for stating that insolvency proceedings are or will be main, secondary etc. under the EU Regulation
- 1.9 Prescribed format of documents
- 1.10 Variations from prescribed contents

CHAPTER 5

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

- 1.11 Contents of notices to be gazetted under the Act or Rules
- 1.12 Standard contents of Gazette notices
- 1.13 The Gazette: evidence, variations, errors and timing

CHAPTER 6

Standard contents of notices advertised otherwise than in the Gazette

- 1.14 Standard contents of notices advertised otherwise than in the Gazette
- 1.15 Non-Gazette notices: clear and comprehensible

CHAPTER 7

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

- 1.16 Standard contents of documents delivered to the registrar of companies and the Accountant in Bankruptcy
- 1.17 Registrar of companies and Accountant in Bankruptcy: covering notices
- 1.18 Standard contents of all documents
- 1.19 Standard contents of documents relating to the office of office-holders
- 1.20 Standard contents of documents relating to other documents
- 1.21 Standard contents of documents relating to court orders
- 1.22 Standard contents of returns or reports of decisions
- 1.23 Standard contents of returns or reports of matters considered by company members by written resolution
- 1.24 Standard contents of documents relating to other events

CHAPTER 8

Standard contents of notices for delivery to other persons etc.

- 1.25 Standard contents of notices to be delivered to persons other than the registrar of companies or Accountant in Bankruptcy
- 1.26 Standard contents of all notices
- 1.27 Standard contents of notices relating to the office of office-holders
- 1.28 Standard contents of notices relating to documents
- 1.29 Standard contents of notices relating to court proceedings or orders
- 1.30 Standard contents of notices of the results of decisions
- 1.31 Standard contents of returns or reports of matters considered by company members by written resolution

CHAPTER 9

Delivery of documents and opting out (sections 246C and 248A)

Application of Chapter

- 1.33 Delivery to the creditors and opting out
- 1.34 Creditor's election to opt out
- 1.35 Office-holder to provide information to creditors on opting out
- 1.36 Delivery of documents to authorised recipients
- 1.37 Delivery of documents to joint office-holders
- 1.38 Postal delivery of documents
- 1.39 Delivery by document exchange
- 1.40 Personal delivery of documents
- 1.41 Electronic delivery of documents
- 1.42 Electronic delivery of documents to the court
- 1.43 Electronic delivery by office-holders
- 1.44 Use of website by office-holder to deliver a particular document (section 246B)
- 1.45 General use of website to deliver documents
- 1.46 Retention period for documents made available on websites
- 1.47 Proof of delivery of documents
- 1.48 Delivery of statements of claim and documentary evidence of debt

CHAPTER 10

Inspection of documents, copies and provision of information

- 1.49 Right to copies of documents
- 1.50 Charges for copies of documents provided by the office-holder
- 1.51 Offence in relation to inspection of documents
- 1.52 Right to list of creditors
- 1.53 Confidentiality of documents: grounds for refusing inspection
- 1.54 Sederunt book
- 1.55 Transfer and disposal of company's books, papers and other records

Status: This is the original version (as it was originally made).

CHAPTER 11

Formal defects

- 1.56 Power to cure defects in procedure
- 1.57 Formal defects

PART 2

RECEIVERSHIP

CHAPTER 1

Appointment of receiver by the holder of the floating charge under section 51(1)

- 2.1 Receipt of instrument of appointment and acceptance of appointment
- 2.2 Certified copy instrument of appointment
- 2.3 Notice under section 53(1)

CHAPTER 2

Appointment of receiver by the court under section 51(2)

- 2.4 Notice under section 54(3)

CHAPTER 3

Information to be given by receiver when appointed (section 65(1))

- 2.5 Notice of appointment of receiver

CHAPTER 4

Statement of Affairs

- 2.6 Interpretation
- 2.7 Requirement to provide a statement of affairs (section 66(1))
- 2.8 Statement of affairs: contents and delivery (section 66(2))
- 2.9 Statement of affairs: statement of concurrence
- 2.10 Statement of affairs: expenses
- 2.11 Limited disclosure

CHAPTER 5

Receiver's report

- 2.12 Receiver's report under section 67(1): content (prescribed part)
- 2.13 Receiver's report under section 67(1): notice
- 2.14 Unsecured creditors request for copy report (section 67(2)(b))
- 2.15 Receiver's report – notice to unsecured creditors and invitation to form a creditors' committee

CHAPTER 6

Receiver's summary of receipts and payments

- 2.16 Summary of receipts and payments

CHAPTER 7

Cessation of appointment of receiver

- 2.17 Resignation
- 2.18 Deceased receiver: notice
Other vacation of office

CHAPTER 8

Receivers and the prescribed part

- 2.20 Receiver to deal with prescribed part

PART 3

MEMBERS' VOLUNTARY WINDING UP

CHAPTER 1

Statutory declaration of solvency (section 89)

Statutory declaration of solvency: requirements additional to those in section 89

CHAPTER 2

The liquidator

- Appointment by the company
- 3.3 Meetings in members' voluntary winding up of authorised deposit-takers
Appointment by the court (section 108)
- 3.5 Liquidator's resignation
Removal of liquidator by company meeting
Removal of liquidator by the court
Deceased liquidator
Loss of qualification as insolvency practitioner
- 3.10 Application by former liquidator to the Accountant of Court for release (section 173(2)(b))
- 3.11 Delivery of draft final account to members (section 94)
- 3.12 Final account prior to dissolution (section 94)
- 3.13 Liquidator's duties on vacating office (hand-over of assets etc.)
- 3.14 Taking possession and realisation of company's assets
- 3.15 Realisation of the company's heritable property
- 3.16 Power of court to set aside certain transactions entered into by liquidator
- 3.17 Rule against improper solicitation by or on behalf of the liquidator

Status: This is the original version (as it was originally made).

CHAPTER 3

Special manager

- 3.18 Application for and appointment of special manager (section 177)
- 3.19 Caution
- 3.20 Failure to find or maintain caution
- 3.21 Accounting
- 3.22 Termination of appointment

CHAPTER 4

Conversion to creditors' voluntary winding up

- 3.23 Statement of affairs (section 95)

PART 4

CREDITORS' VOLUNTARY WINDING UP

CHAPTER 1

Application of Part

- 4.1 Application of Part 4

CHAPTER 2

Statement of affairs and other information

- Statement of affairs made out by the liquidator under section 95(1A)
- Statement of affairs made out by the directors under section 99(1)
- 4.4 Additional requirements as to statements of affairs
- 4.5 Statement of affairs: statement of concurrence
- 4.6 Limited disclosure
- 4.7 Expenses of statement of affairs and decisions sought from creditors
- 4.8 Delivery of accounts to liquidator (section 235)
- 4.9 Expenses of assistance in preparing accounts

CHAPTER 3

Nomination and appointment of liquidators and information to creditors

- 4.10 Application of the rules in this Chapter
- 4.11 Nomination of liquidator and information to creditors on conversion from members' voluntary winding up (section 96)
- 4.12 Creditors' decision on appointment other than at a meeting (conversion from members' voluntary winding up)
- 4.13 Information to creditors and contributories (conversion of members' voluntary winding up to creditors' voluntary winding up)
- 4.14 Information to creditors and appointment of liquidator
- 4.15 Information to creditors and contributories
- 4.16 Further information where administrator becomes liquidator (paragraph 83(3) of schedule B1)

- 4.17 Report by director etc.
- 4.18 Decisions on nomination
- 4.19 Invitation to creditors to form a liquidation committee

CHAPTER 4

The liquidator

- Appointment by creditors or by the company
- 4.21 Power to fill vacancy in office of liquidator
Appointment by the court (section 100(3) or 108)
- 4.23 Liquidator's resignation and replacement
Removal of liquidator by creditors
Removal of liquidator by the court
Deceased liquidator
Loss of qualification as insolvency practitioner
- 4.28 Vacation of office on making of winding-up order
- 4.29 Application by former liquidator for release (section 173(2)(b) or (e))
- 4.30 Final account prior to dissolution (section 106)
- 4.31 Liquidator's duties on vacating office (hand-over of assets etc.)
- 4.32 Taking possession and realisation of company's assets
- 4.33 Realisation of the company's heritable property
- 4.34 Power of court to set aside certain transactions
- 4.35 Rule against improper solicitation
- 4.36 Permission for exercise of powers by liquidator

CHAPTER 5

Special Manager

- 4.37 Application for and appointment of special manager (section 177)
- 4.38 Caution
- 4.39 Failure to give or keep up caution
- 4.40 Accounting
- 4.41 Termination of appointment

PART 5

WINDING UP BY THE COURT

CHAPTER 1

Application of Part

- 5.1 Application of Part 5

CHAPTER 2

The statutory demand (sections 123(1)(a) and 222(1)(a))

- 5.2 Interpretation
- 5.3 The statutory demand

Status: This is the original version (as it was originally made).

CHAPTER 3

Provisional liquidator

- 5.4 Application for appointment of provisional liquidator (section 135)
- 5.5 Order of appointment of provisional liquidator – delivery of copy
Delivery of copy order of appointment of provisional liquidator – notice
- 5.7 Notice of appointment of provisional liquidator
- 5.8 Caution
- 5.9 Remuneration
- 5.10 Termination of appointment

CHAPTER 4

Statement of affairs and other information

- 5.11 Interpretation
- 5.12 Notice requiring statement of affairs (section 131)
- 5.13 Statement of affairs: contents and delivery
- 5.14 Statement of affairs: statement of concurrence
- 5.15 Statement of affairs: expenses
- 5.16 Limited disclosure
- 5.17 Delivery of accounts to liquidator
- 5.18 Expenses of assistance in preparing accounts
- 5.19 Further disclosure

CHAPTER 5

Further information where winding up follows administration

- 5.20 Further information where winding up follows administration

CHAPTER 6

The liquidator

- 5.21 Appointment of liquidator under section 138(1) (interim liquidator)
- 5.22 Choosing a person to be liquidator
- 5.23 Appointment of liquidator by creditors or contributories
- 5.24 Decision on nomination
- 5.25 Invitation to creditors and contributories to form a liquidation committee
- 5.26 Appointment by the court (section 138(5), section 139(4) and section 140)
- 5.27 Liquidator's resignation
 - Decision of creditors to remove liquidator
 - Removal of liquidator by the court (section 172(2))
 - Deceased liquidator
 - Loss of qualification as insolvency practitioner
- 5.32 Application by liquidator for release (section 174(4)(b) or (d))
- 5.33 Final account prior to dissolution (section 146)
- 5.34 Relief from, or variation of, duty to report
- 5.35 Liquidator's duties on vacating office
- 5.36 Taking possession and realisation of the company's assets
- 5.37 Realisation of the company's heritable property

- 5.38 Power of court to set aside certain transactions
- 5.39 Rule against improper solicitation

CHAPTER 7

Special manager

- 5.40 Application of this Chapter and interpretation
- 5.41 Appointment and remuneration of special manager (section 177)
- 5.42 Caution
- 5.43 Failure to give or keep up caution
- 5.44 Accounting
- 5.45 Termination of appointment

CHAPTER 8

Public examination of company officers and others (section 133)

- 5.46 Request by a creditor for a public examination (section 133(2))
- 5.47 Request by a contributory for a public examination (section 133(2))
- 5.48 Further provisions about requests by a creditor or contributory for a public examination
- 5.49 Notice of the public examination
- 5.50 Examinee unfit for examination
- 5.51 Expenses of examination

CHAPTER 9

Distribution of company's assets by the liquidator

- 5.52 Winding up commencing as voluntary
- 5.53 Saving for powers of the court (section 156)

CHAPTER 10

MISCELLANEOUS

Limitation

- 5.54 Limitation of actions

Dissolution after winding up

Dissolution after winding up

PART 6

BLOCK TRANSFER OF WINDING UP PROCEEDINGS

- 6.1 Power to make a block transfer order
- 6.2 Application for block transfer order
- 6.3 Action following application for a block transfer order

Status: This is the original version (as it was originally made).

PART 7

WINDING UP - REPORTING, ACCOUNTS, REMUNERATION, CLAIMS AND DISTRIBUTIONS

7.1 Application of Part

CHAPTER 1

Reporting

- 7.2 Reports by interim liquidator in a winding up by the court
- 7.3 Reports by interim liquidator: estimate of prescribed part
- 7.4 Progress reports: content
- 7.5 Remuneration and outlays etc.: members' voluntary winding up
- 7.6 Remuneration and outlays etc.: creditors' voluntary winding up and winding up by the court
- 7.7 Progress reports in voluntary winding up: timing and delivery
Progress reports in winding up by the court: timing and delivery

CHAPTER 2

Final accounts

- 7.9 Contents of final account

CHAPTER 3

Liquidator's remuneration

- 7.10 Determination of outlays and remuneration: members' voluntary winding up
- 7.11 Determination of outlays and remuneration: creditors' voluntary winding up and winding up by the court
- 7.12 Appeal against fixing of outlays and remuneration: creditors' voluntary winding up and winding up by the court
- 7.13 Recourse of liquidator to decision of creditors: creditors' voluntary winding up and winding up by the court
- 7.14 Recourse to the court: creditors' voluntary winding up and winding up by the court
- 7.15 Creditors' claim that remuneration is excessive: creditors' voluntary winding up and winding up by the court

CHAPTER 4

Claims by creditors

- 7.16 Submission of claims
- 7.17 False claims or evidence
- 7.18 Evidence of claims
- 7.19 Adjudication of claims
- 7.20 Entitlement to draw a dividend
- 7.21 Liabilities and rights of co-obligants

- 7.22 Amount which may be claimed generally
- 7.23 Debts depending on contingency
- 7.24 Secured debts
- 7.25 Claims in foreign currency

CHAPTER 5

Official rate of interest

- 7.26 Specified rate of interest

CHAPTER 6

Distribution of company's assets by the liquidator

- 7.27 Order of priority in distribution
- 7.28 Order of priority of expenses of liquidation
- 7.29 Winding up commencing as voluntary
- 7.30 Saving for powers of the court (section 156)
Estate to be distributed in respect of the accounting periods
- 7.32 Payment of dividends
- 7.33 Unclaimed dividends
- 7.34 Small debts
- 7.35 Contents of notice to be delivered to creditors owed small debts etc.

PART 8

DECISION MAKING

CHAPTER 1

Application of Part

- 8.1 Application of Part

CHAPTER 2

Decision procedures

- 8.2 Interpretation
The prescribed decision procedures
- 8.4 Electronic voting
- 8.5 Virtual meetings
- 8.6 Physical meetings
Deemed consent

CHAPTER 3

Notices, voting and venues for decisions

- 8.8 Notices to creditors of decision procedure
- 8.9 Voting in a decision procedure
- 8.10 Venue for the decision procedure

Status: This is the original version (as it was originally made).

Notice of decision procedures or of seeking deemed consent: when and to whom delivered

- 8.12 Notice of decision procedure by advertisement only
- 8.13 Gazetting and advertisement
- 8.14 Notice to company officers in respect of meetings
- 8.15 Non-receipt of notice of decision
- 8.16 Decisions on remuneration and conduct

CHAPTER 4

Decision making in particular proceedings

- 8.17 Decisions in winding up of authorised deposit-takers

CHAPTER 5

Requisitioned decisions

- Requisitions of decision
- 8.19 Expenses and timing of requisitioned decision

CHAPTER 6

Constitution of meetings

- 8.20 Quorum at meetings
- 8.21 Chair at meetings
- 8.22 The chair – attendance, interventions and questions

CHAPTER 7

Adjournment and suspension of meetings

- 8.23 Adjournment by chair
- 8.24 Adjournment of meetings to remove a liquidator
- 8.25 Adjournment in absence of chair
- 8.26 Statements of claim and documentary evidence of debt in adjournment
- 8.27 Suspension

CHAPTER 8

Creditors' voting rights and majorities

- 8.28 Creditors' voting rights
- 8.29 Scheme manager's voting rights
- 8.30 Claim made in proceedings in other member States
- 8.31 Calculation of voting rights
- 8.32 Calculation of voting rights: winding up of authorised deposit-taker
- 8.33 Procedure for admitting creditors' claims for voting
- 8.34 Requisite majorities
- 8.35 Appeals against decisions under this Chapter

CHAPTER 9

Exclusions from meetings

- 8.36 Action where person excluded
- 8.37 Indication to excluded person
- 8.38 Complaint

CHAPTER 10

Contributories' voting rights and majorities

- 8.39 Contributories' voting rights and requisite majorities

CHAPTER 11

Records

- 8.40 Record of a decision

CHAPTER 12

Company meetings

- 8.41 Company meetings
- 8.42 Remote attendance: notification requirements
- 8.43 Location of company meetings
- 8.44 Action where person excluded
- 8.45 Indication to excluded person
- 8.46 Complaint

PART 9

PROXIES AND CORPORATE REPRESENTATION

- 9.1 Application and interpretation
- 9.2 Specific and continuing proxies
- 9.3 Blank proxy
- 9.4 Use of proxies
- 9.5 Use of proxies by the chair
- 9.6 Right of inspection and delivery of proxies
- 9.7 Proxy-holder with financial interest
- Resolution conferring authorisation to represent corporation

PART 10

CREDITORS' AND LIQUIDATION COMMITTEES

CHAPTER 1

Introductory

- 10.1 Scope and interpretation

Status: This is the original version (as it was originally made).

CHAPTER 2

Functions of a committee

- 10.2 Functions of a committee

CHAPTER 3

Membership and formalities of formation of a committee

- Number of members of a committee
- 10.4 Eligibility for membership of creditors' or liquidation committee
- 10.5 Establishment of committees
- 10.6 Liquidation committee established by contributories
- 10.7 Notice of change of membership of a committee
- 10.8 Vacancies: creditor members of creditors' or liquidation committee
- 10.9 Vacancies: contributory members of liquidation committee
- 10.10 Resignation
- 10.11 Termination of membership
- 10.12 Removal
- 10.13 Cessation of liquidation committee in a winding up when creditors are paid in full

CHAPTER 4

Meetings of Committee

- 10.14 Meetings of committee
- 10.15 The chair at meetings
- 10.16 Quorum
- 10.17 Committee members' representatives
- 10.18 Voting rights and resolutions
- 10.19 Resolutions by correspondence
- 10.20 Remote attendance at meetings of committee
- 10.21 Procedure for requests that a place for a meeting should be specified

CHAPTER 5

Supply of information by the office-holder to the committee

- Notice requiring office-holder to attend the creditors' committee (receivership: section 68(2))
- 10.23 Office-holder's obligation to supply information to the committee (winding up)

CHAPTER 6

Miscellaneous

- 10.24 Expenses of members etc.
- 10.25 Dealings by committee members and others: winding up
- 10.26 Dealings by committee members and others: receivership
- 10.27 Formal defects

- 10.28 Special rule for winding up by the court: functions vested in the court

CHAPTER 7

Winding up by the court following an administration

Continuation of creditors' committee

PART 11

THE EU REGULATION

- 11.1 Interpretation of this Part
- 11.2 Conversion into other winding up proceedings: application
- 11.3 Conversion into winding up proceedings: court order
- 11.4 Confirmation of creditors' voluntary winding up: application
- 11.5 Confirmation of creditors' voluntary winding up: court order
- 11.6 Confirmation of creditors' voluntary winding up: notice to member State liquidator
- 11.7 Proceedings in another member State: duty to give notice
- 11.8 Member State liquidator: rules on creditors' participation in proceedings
- 11.9 Main proceedings in Scotland: undertaking in respect of assets in another member State (Article 36 of the EU Regulation)
- 11.10 Main proceedings in another member State: approval of undertaking offered by the member State liquidator to local creditors in the UK
- 11.11 Powers of a liquidator, provisional liquidator or member State liquidator in proceedings concerning members of a group of companies (Article 60 of the EU Regulation)
- 11.12 Group coordination proceedings (Section 2 of Chapter 5 of the EU Regulation)
- 11.13 Group coordination order (Article 68 of the EU Regulation)
- 11.14 Delivery of group coordination order to registrar of companies
- 11.15 Liquidator or provisional liquidator's report
- 11.16 Publication of opening of proceedings by a member State liquidator
- 11.17 Statement by member State liquidator that insolvency proceedings in another member State are closed etc.

PART 12

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

- 12.1 Preliminary
 - 12.2 Application for permission under section 216(3)
 - 12.3 Power of court to call for liquidator's report
 - 12.4 First excepted case
 - 12.5 Statement as to the effect of the notice under rule 12.4(2)
 - 12.6 Second excepted case
 - 12.7 Third excepted case
- Signature

SCHEDULE 1 Revocations

- 1. In this Schedule, "the 1986 Rules" means the Insolvency (Scotland)...

Status: This is the original version (as it was originally made).

SCHEDULE 2 Transitional and savings provisions

1. General
 2. Requirement for office-holder to provide information to creditors on opting out
 3. Electronic communication
 4. Statements of affairs
 5. Savings in respect of meetings taking place on or after the commencement date and resolutions by post
 6. Savings in respect of final meetings taking place on or after the commencement date
 7. Progress reports and statements to the registrar of companies
 8. Foreign currency
 9. General powers of liquidator
 10. Accounting periods
 11. Applications before the court
 12. Forms
 13. Insolvency registers
 14. Savings in respect of special insolvency rules: limited liability partnerships
- SCHEDULE 3 Punishment of offences under these Rules
- SCHEDULE 4 Information to be included in the sederunt book

Receivership

1. The instrument of appointment of the receiver under section 53....
2. (1) Each statement of affairs and each statement of concurrence...
3. Any order for limited disclosure under rule 2.11(3) must be inserted...
4. On discharge or variation of an order for limited disclosure...
5. The report by the receiver under section 67.

Winding up

6. A certificate of appointment of the liquidator by the company...
7. The inventory and valuation of the assets of the company...
8. (1) The statement of affairs under rule 4.2 must be...
9. (1) The statement of affairs under rule 4.3 must be...
10. Any statement of concurrence under Part 4 of these Rules,...
11. Any order for limited disclosure under rule 4.6(3) must be inserted...
12. On discharge or variation of an order for limited disclosure...
13. A certificate of appointment of the liquidator by creditors or...
14. The inventory and valuation of the assets of the company...
15. (1) Each statement of affairs and each statement of concurrence...
16. Any order for limited disclosure under rule 5.16(3) must be inserted...
17. On discharge or variation of an order for limited disclosure...
18. A certificate of appointment of the liquidator under rule 5.23....
19. The inventory and valuation of the assets of the company...
20. Any transcript prepared of a public examination under section 133....

Common parts

21. Any petition for winding up or the appointment of any...
22. Any decision or order of the court, including any decision...
23. Any progress report required by Chapter 1 of Part 7....
24. Any final report or account mentioned in Chapter 2 of...

25. Where the liquidator accepts or rejects a claim under rule...
 26. A record of the court's decision on any appeal against...
 27. A record of an agreement or determination under rule 7.31(2)(c)(i)...
 28. The audited accounts.
 29. The scheme of division.
 30. The final determination in relation to the liquidator's outlays and...
 31. A record of a decision procedure made in accordance with...
 32. A record of a deemed consent procedure made in accordance...
 33. All proxies.
 34. A copy of every resolution passed under rule 10.18 (voting...
 35. A copy of every resolution passed under rule 10.19 (resolutions...
 36. A note that the agreement of the committee to a...
- Explanatory Note