
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 347

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

PART 4

CREDITORS' VOLUNTARY WINDING UP

CHAPTER 2

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.]

Statement of affairs made out by the liquidator under section 95(1A)(1)

[Note: section 95(4A)(2) requires the statement of affairs to contain a statutory declaration by some or all of the directors.

Note: the “official rate” referred to in paragraph (2)(c) is defined in section 251 as the rate referred to in section 189(4)). Also see section 189(5) and rule 7.26.]

4.2.—(1) This rule applies to the statement of affairs made out by the liquidator under section 95(1A) (effect of company’s insolvency in members’ voluntary winding up).

(2) 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 the date of the opinion formed by the liquidator under section 95(1);
- (c) a statement that as at that date, the liquidator formed the opinion that the company would be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors’ declaration of solvency made under section 89; and
- (d) the date it is made.

(3) The statutory declaration required by section 95(4A) must be a statutory declaration that the information provided in the statement of affairs is, to the best of the liquidator’s knowledge and belief, accurate and complete.

Statement of affairs made out by the directors under section 99(1)

[Note: section 99(2A)(3) requires the statement of affairs to contain a statutory declaration by some or all of the directors.]

(1) Section 95(1A) is prospectively inserted by paragraph 19(2) of schedule 9 of the 2015 Act.

(2) Section 95(4A) was inserted by S.I. 2010/18 and prospectively amended for Scotland by S.S.I. 2016/141, article 8.

(3) Section 99(2A) was inserted by S.I. 2010/18 and prospectively amended for Scotland by S.S.I. 2016/141, article 9.

4.3.—(1) This rule applies to the statement of affairs made out by the directors under section 99(1)(4).

(2) 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 a date not more than 14 days before the date of the resolution for winding up; and
- (c) the date it is made.

(3) The statutory declaration required by section 99(2A) must be a statutory declaration that the information provided in the statement of affairs is, to the best of the directors’ knowledge and belief, accurate and complete.

(4) If a creditor requests a copy of the statement of affairs at a time when no liquidator is appointed the directors must deliver a copy to the creditor.

(5) The directors must deliver the statement of affairs to the liquidator as soon as reasonably practicable after the liquidator is appointed.

Additional requirements as to statements of affairs

4.4.—(1) A statement of affairs under section 95(1A) or 99(1) must also contain—

- (a) a list of the company’s shareholders, with the following details 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;
- (b) the total amount of shares called up held by all shareholders;
- (c) 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;
- (d) 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 security or floating charges,
 - (vii) the amount of unsecured debts (excluding preferential debts),

(4) Section 99(1) is prospectively substituted by paragraph 23(2) of schedule 9 of the 2015 Act (c.26).

- (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;
- (e) a list of the company's creditors 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:—
- (i) the name and postal address,
 - (ii) amount of the debt owed to the creditor, (as required by section 95(4) or 99(2)),
 - (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 paragraphs (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 paragraphs (3)(a) and (b).

Statement of affairs: statement of concurrence

4.5.—(1) The liquidator may require a director (“the 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 another director.

(3) The liquidator must inform the director 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 director who has been required to submit the statement of affairs must deliver a copy 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,
 - (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.

Limited disclosure

4.6.—(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.

(8) This rule does not apply so far as section 95 or 99 does not permit limited disclosure.

Expenses of statement of affairs and decisions sought from creditors

4.7.—(1) Any reasonable and necessary expenses of preparing the statement of affairs under section 99 may be paid out of the company's assets, either before or after the commencement of the winding up, as an expense of the liquidation.

(2) Any reasonable and necessary expenses of the decision procedure or deemed consent procedure to seek a decision from the creditors on the nomination of a liquidator under rule 4.14 (information to creditors and appointment of liquidator) may be paid out of the company's assets, either before or after the commencement of the winding up, as an expense of the liquidation.

(3) Where payment under paragraph (1) or (2) is made before the commencement of the winding up, the directors must deliver to the creditors with the statement of affairs a statement of the amount of the payment and the identity of the person to whom it was made.

(4) The liquidator appointed under section 100(5) may make such a payment, but if there is a liquidation committee, the liquidator must deliver to the committee at least 5 business days' notice of the intention to make it.

(5) Section 100 is prospectively amended by paragraph 24 of schedule 9 of the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act") which inserts new subsections (1), (1A) and (1B).

(5) However such a payment may not be made to the liquidator, or to any associate of the liquidator, otherwise than with the approval of the liquidation committee, the creditors, or the court.

(6) This is without prejudice to the court's powers under rule 5.52 (voluntary winding up superseded by winding up by the court).

Delivery of accounts to liquidator (section 235)

4.8.—(1) A person who is specified in section 235(3) must deliver to the liquidator accounts of the company of such nature, as at such date, and for such period, as the liquidator requires.

(2) The period for which the liquidator may require accounts may begin from a date up to 3 years before the date of the resolution for winding up, or from an earlier date to which audited accounts of the company were last prepared.

(3) The accounts must, 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.

(4) The accounts (containing a statutory declaration if so required) must be delivered to the liquidator within 21 days from the liquidator's request, or such longer period as the liquidator may allow.

Expenses of assistance in preparing accounts

4.9.—(1) Where the liquidator requires a person to deliver accounts under rule 4.8, 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.