
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 347

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

PART 4

CREDITORS' VOLUNTARY WINDING UP

CHAPTER 4

The liquidator

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

Appointment by creditors or by the company

[Note: under section 109 and paragraph 23 of schedule 8 of the Scotland Act 1998 a liquidator must also, within 14 days, publish in the Gazette and deliver to the Accountant in Bankruptcy notice of the liquidator's appointment.]

4.20.—(1) This rule applies where a person is appointed as liquidator by creditors or the company.

(2) The liquidator's appointment takes effect from the date of the passing of the resolution of the company or, where the creditors decide to appoint a person who is not the person appointed by the company, from the relevant decision date.

(3) Their appointment must be certified by—

- (a) the convener or chair of the decision procedure or deemed consent procedure; or
- (b) in respect of an appointment by the company the chair of the company meeting or a director or the secretary of the company (in the case of a written resolution).

(4) The person who certifies the appointment must not do so unless and until the proposed liquidator ("the appointee") has provided that person with a statement of being an insolvency practitioner qualified under the Act to be the liquidator and of consenting to act.

(5) The certificate must be authenticated and dated by the person who certifies the appointment and must contain—

- (a) identification details for the company;
- (b) identification and contact details for the person appointed as liquidator;
- (c) the date of the meeting of the company or conclusion of the decision procedure or deemed consent procedure when the liquidator was appointed;
- (d) a statement that the appointee—
 - (i) has provided a statement of being qualified to act as an insolvency practitioner in relation to the company,
 - (ii) has consented to act, and

(iii) was appointed liquidator of the company.

(6) Where 2 or more liquidators are appointed the certificate must also specify (as required by section 231) whether any act required or authorised under any enactment to be done by the liquidator is to be done by all or any one or more of them.

(7) The person who certifies the appointment must deliver the certificate as soon as reasonably practicable to the liquidator.

(8) The liquidator may within 28 days of the liquidator's appointment advertise notice of it (otherwise than in the Gazette) in such manner as the liquidator thinks fit.

(9) The notice must state—

- (a) that a liquidator has been appointed; and
- (b) the date of the appointment.

Power to fill vacancy in office of liquidator

4.21. Where a vacancy in the office of liquidator occurs in the manner mentioned in section 104 a decision procedure to fill the vacancy may be initiated by any creditor or, if there was more than one liquidator, by the continuing liquidator or liquidators.

Appointment by the court (section 100(3) or 108)

[Note: under section 109 and paragraph 23 of schedule 8 of the Scotland Act 1998 a liquidator must also, within 14 days, publish in the Gazette and deliver to the Accountant in Bankruptcy notice of the liquidator's appointment.]

4.22.—(1) This rule applies where the liquidator is appointed by the court under section 100(3) or 108.

(2) The court must not make the appointment unless and until the person being appointed liquidator has lodged in court a statement to the effect that that person is qualified to act as an insolvency practitioner in relation to the company and consents to act as liquidator.

(3) The liquidator's appointment is effective from the date of the order of appointment.

(4) Within 28 days from appointment the liquidator must—

- (a) deliver a notice of it to the creditors; or
- (b) if the court permits, and in accordance with the directions of the court, advertise the notice (otherwise than in the Gazette).

(5) Where the liquidator gives notice under paragraph (4)(a) the liquidator may, in addition, advertise the notice (otherwise than in the Gazette) in such manner as the liquidator thinks fit.

(6) Any notice under this rule must state—

- (a) that a liquidator has been appointed; and
- (b) the date of the appointment.

Liquidator's resignation and replacement

4.23.—(1) A liquidator may resign only—

- (a) on grounds of ill health;
- (b) because of the intention to cease to practise as an insolvency practitioner;
- (c) because the further discharge of the duties of liquidator is prevented or made impractical by—

- (i) a conflict of interest, or
 - (ii) a change of personal circumstances; or
 - (d) where 2 or more persons are acting as liquidator jointly and it is the opinion of both or all of them that it is no longer expedient that there should continue to be that number of joint liquidators.
- (2) Before resigning, the liquidator must deliver a notice to creditors, and invite the creditors by a decision procedure, or by deemed consent procedure, to consider whether a replacement should be appointed, except where the resignation is under sub-paragraph (1)(d).
- (3) The notice must—
- (a) state the liquidator’s intention to resign;
 - (b) state that under rule 4.23(7) of these Rules the liquidator will be released 21 days after the date of delivery of the notice of resignation to AiB under section 171(5), unless the court orders otherwise; and
 - (c) comply with rules 8.7 (deemed consent) and 8.8 (notices to creditors of decision procedure) so far as are relevant.
- (4) The notice may suggest the name of a replacement liquidator.
- (5) The notice must be accompanied by a summary of the liquidator’s receipts and payments.
- (6) The decision date must be not more than 5 business days before the date on which the liquidator intends to give notice of resignation to AiB under section 171(5).
- (7) The resigning liquidator’s release is effective 21 days after the date on which the notice of resignation under section 171(5) is delivered to AiB, unless the court orders otherwise.

Removal of liquidator by creditors

[Note: in relation to release of the liquidator following removal from office by a decision of the company’s creditors, see: where the company’s creditors have not decided against the liquidator’s release, section 173(2)(a)(ii); and where the company’s creditors have decided against release, section 173(2)(b)(i).]

4.24.—(1) Where the creditors decide that the liquidator be removed, the convener of the decision procedure or the chair of the meeting (as the case may be) must as soon as reasonably practicable deliver the certificate of the liquidator’s removal to the removed liquidator.

(2) The removed liquidator must deliver a notice of the removal to AiB as soon as reasonably practicable.

Removal of liquidator by the court

[Note: in relation to release of the liquidator following removal from office by the court see section 173(2)(b)(ii).]

4.25.—(1) This rule applies where an application is made to the court for the removal of the liquidator, or for an order directing the liquidator to initiate a decision procedure of creditors for the purpose of removing the liquidator.

(2) The court may require the applicant to make a deposit or find caution for the expenses to be incurred by the liquidator on the application.

- (3) The applicant must, at least 14 days before the hearing, deliver to the liquidator—
 - (a) a notice of the hearing stating the venue;

- (b) a copy of the application; and
 - (c) a copy of any evidence on which the applicant intends to rely.
- (4) The expenses of the application are not payable as an expense of the liquidation unless the court orders otherwise.
- (5) Where the court removes the liquidator the order of removal may include such provision as the court thinks fit with respect to matters arising in connection with the removal.
- (6) The person removed must as soon as reasonably practicable after receiving a copy of the order of removal deliver a copy of the order of removal to AiB.
- (7) If the court appoints a new liquidator rule 4.22 applies.

Deceased liquidator

[Note: in relation to release of a deceased liquidator, see section 173(2)(a)(iii)(1) and paragraph 23 of schedule 8 of the Scotland Act 1998.]

4.26.—(1) If the liquidator dies a notice of the fact and date of death must be delivered as soon as reasonably practicable—

- (a) where there is a liquidation committee, to the members of that committee; and
 - (b) to AiB.
- (2) The notice must be delivered by one of the following—
- (a) a surviving joint liquidator;
 - (b) a member of the deceased liquidator’s firm (if the deceased was a member or employee of a firm);
 - (c) an officer of the deceased liquidator’s company (if the deceased was an officer or employee of a company); or
 - (d) an executor of the deceased liquidator.

(3) If such a notice has not been delivered within the 21 days following the liquidator’s death then any other person may deliver the notice.

Loss of qualification as insolvency practitioner

[Note: in relation to release of the liquidator where the liquidator vacates office on ceasing to be a person qualified to act as an insolvency practitioner in relation to the company (section 171(4)), see section 173(2)(b)(iii).]

4.27.—(1) This rule applies where the liquidator vacates office on ceasing to be qualified to act as an insolvency practitioner in relation to the company.

(2) A notice of the fact must be delivered as soon as reasonably practicable to AiB by one of the following—

- (a) the liquidator who has vacated office;
- (b) a continuing joint liquidator;
- (c) the recognised professional body which was the source of the vacating liquidator’s authorisation to act (immediately before the liquidator vacated office).

(3) Each notice must be authenticated and dated by the person delivering the notice.

(1) Section 173 is prospectively amended by paragraph 44 of schedule 9 of the Small Business, Enterprise and Employment Act 2015 (c.26) (“the 2015 Act”).

Vacation of office on making of winding-up order

4.28. Where the liquidator vacates office in consequence of the court making a winding-up order against the company, rule 4.29 applies in relation to the application to the Accountant of Court for release of the liquidator.

Application by former liquidator for release (section 173(2)(b) or (e))

4.29.—(1) An application by a former liquidator to the Accountant of Court for release under section 173(2)(b) or (e) must contain—

- (a) identification details for the insolvency proceedings;
- (b) identification and contact details for the former liquidator;
- (c) details of the circumstances under which the former liquidator has ceased to act as liquidator; and
- (d) a statement that the former liquidator is applying to the Accountant of Court for a certificate of the former liquidator's release as liquidator as a result of the circumstances specified in the application.

(2) The application must be authenticated and dated by the former liquidator.

(3) When the Accountant of Court gives a release, the Accountant of Court must deliver—

- (a) a certificate of the release to the former liquidator; and
- (b) a notice of the release to AiB.

(4) Release is effective from the date of the certificate or such other date as the certificate specifies.

Final account prior to dissolution (section 106)

4.30.—(1) The final account which the liquidator is required to make up under section 106(1)(2) and deliver to members and creditors must comply with the requirements of rule 7.9.

(2) When the account is delivered to the creditors it must be accompanied by a notice which states—

- (a) that the company's affairs are fully wound up;
- (b) that a creditor may object to the release of the liquidator by giving notice in writing to the liquidator before the end of the prescribed period;
- (c) that the prescribed period is the period ending 28 days after delivery of the notice;
- (d) that the liquidator will vacate office under section 171 on delivering to the registrar of companies and AiB the final account and notice saying whether any creditor has objected to release; and
- (e) that the liquidator will be released under section 173(3) at the same time as vacating office unless any of the company's creditors objected to the liquidator's release.

(3) The copy of the account which the liquidator delivers to the registrar of companies and AiB under section 106(3)(a) must be accompanied by a notice containing the statement required by section 106(3)(b) of whether any creditors have objected to the liquidator's release.

(4) Where a creditor has objected to the liquidator's release rule 4.29 applies to an application by the liquidator to the Accountant of Court for release.

(2) New section 106 is prospectively substituted by paragraph 29 of schedule 9 of the 2015 Act.

(3) Section 173(2)(d) is prospectively amended and a new (2)(a), (b) and (e) and (2A) inserted by paragraph 44 of schedule 9 of the 2015 Act.

(5) The liquidator is not obliged to prepare or deliver any progress report which may become due under these Rules in the period between the date to which the final account is made up and the date when the account is delivered to the registrar of companies and AiB under section 106(3)(a).

Liquidator’s duties on vacating office (hand-over of assets etc.)

4.31.—(1) This rule applies where a person appointed as liquidator (“the succeeding liquidator”) succeeds a previous liquidator (“the former liquidator”) as the liquidator.

(2) When the succeeding liquidator’s appointment takes effect the former liquidator must as soon as reasonably practicable deliver to the succeeding liquidator—

- (a) the assets (after deduction of any expenses properly incurred, and distributions made, by the former liquidator);
- (b) the records of the winding up, including correspondence, statements of claim, evidence of debts and other documents relating to the winding up; and
- (c) the company’s documents and other records.

(3) In doing so, the former liquidator must hand over—

- (a) such information relating to the affairs of the company and the course of the winding up as the succeeding liquidator considers reasonably required for the effective discharge of the succeeding liquidator’s duties as liquidator; and
- (b) all records and documents in the former liquidator’s possession relating to the affairs of the company and its winding up.

Taking possession and realisation of company’s assets

4.32.—(1) The liquidator must—

- (a) as soon as reasonably practicable after the liquidator’s appointment take possession of—
 - (i) the whole assets of the company; and
 - (ii) any property, books, papers or records in the possession or control of the company or to which the company appears to be entitled; and
- (b) make up and maintain an inventory and valuation of the assets of the company.

(2) The liquidator is entitled to have access to, and to make copies of, all documents or records relating to the assets, property, business or financial affairs of the company—

- (a) sent by or on behalf of the company to a third party; and
- (b) in that third party’s hands.

(3) If a person obstructs the liquidator in the liquidator’s exercise, or attempted exercise, of a power conferred by paragraph (2), the court may, on the liquidator’s application, order the person to cease obstructing the liquidator.

(4) The liquidator may require delivery to the liquidator of any title deed or other document of the company, even if a right of lien is claimed over it.

(5) Paragraph (4) is without prejudice to any preference of the holder of the lien.

Realisation of the company’s heritable property

4.33.—(1) This rule applies to the sale of any part of the company’s heritable property over which a heritable security is held by a creditor or creditors if the rights of the secured creditor are preferable to those of the liquidator.

(2) The liquidator may sell that part only with the concurrence of every such creditor unless the liquidator obtains a sufficiently high price to discharge every such security.

(3) Subject to paragraph (4), the following acts are precluded—

- (a) the taking of steps by a creditor to enforce the creditor's security over that part after the liquidator has intimated to the creditor an intention to sell it;
- (b) the commencement by the liquidator of the procedure for the sale of that part after a creditor has intimated to the liquidator that the creditor intends to commence the procedure for its sale.

(4) Where the liquidator or a creditor has given intimation under paragraph (3) but has unduly delayed in proceeding with the sale, then, if authorised by the court in the case of—

- (a) paragraph (3)(a), any creditor to whom intimation has been given may enforce the creditor's security;
- (b) paragraph (3)(b), the liquidator may sell that part.

(5) The validity of the title of any purchaser is not challengeable on the ground that there has been a failure to comply with a requirement of this rule.

Power of court to set aside certain transactions

4.34.—(1) If in the course of the liquidation the liquidator enters into any transaction with a person who is an associate of the liquidator, the court may, on the application of any interested person, set the transaction aside and order the liquidator to compensate the company for any loss suffered in consequence of it.

(2) This does not apply if either—

- (a) the transaction was entered into with the prior consent of the court; or
- (b) it is shown to the court's satisfaction that the transaction was for value, and that it was entered into by the liquidator without knowing, or having any reason to suppose, that the person concerned was an associate.

(3) Nothing in this rule is to be taken as prejudicing the operation of any rule of law relating to a trustee's dealings with trust property or the fiduciary obligations of any person.

Rule against improper solicitation

4.35.—(1) Where the court is satisfied that any improper solicitation has been used by or on behalf of the liquidator in obtaining proxies or procuring the liquidator's appointment, it may order that no remuneration be allowed as an expense of the liquidation to any person by whom, or on whose behalf, the solicitation was exercised.

(2) An order of the court under this rule overrides any resolution of the liquidation committee or the creditors, or any other provision of these Rules relating to the liquidator's remuneration.

Permission for exercise of powers by liquidator

4.36.—(1) Where these Rules require permission for the liquidator to exercise a power any permission given must not be a general permission but must relate to a particular proposed exercise of the liquidator's power.

(2) A person dealing with the liquidator in good faith and for value is not concerned to enquire whether any such permission has been given.

(3) Where the liquidator has done anything without such permission, the court or the liquidation committee may, for the purpose of enabling the liquidator to meet the liquidator's expenses out of the

assets, ratify what the liquidator has done; but neither may do so unless satisfied that the liquidator has acted in a case of urgency and has sought ratification without undue delay.

(4) In this rule “permission” includes “sanction”.