
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 347

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

PART 5

WINDING UP BY THE COURT

CHAPTER 6

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 of liquidator under section 138(1) (interim liquidator)

5.21.—(1) This rule applies to the appointment of a liquidator by the court under section 138(1) (such a liquidator being referred to in section 138, this rule and rules 5.22 (choosing a person to be liquidator) and 8.21 (chair at meetings) as an “interim liquidator”).

(2) The court must not make the appointment unless and until the person being appointed interim 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 interim liquidator’s appointment is effective from the date of the order of appointment.

(4) The interim liquidator must—

- (a) within 7 days beginning with the day the interim liquidator receives the copy order of appointment deliver notice of it to AiB; and
- (b) within 28 days beginning with the day the interim liquidator receives the copy order of appointment—

(i) deliver notice of it to the creditors and contributories; or

(ii) if the court permits and in accordance with the directions of the court either—

(aa) gazette the notice; or

(bb) otherwise advertise the notice,

or both gazette the notice and otherwise advertise the notice.

(5) Where the interim liquidator gives notice under paragraph (4)(b)(i) the liquidator may, in addition—

(a) gazette the notice; or

(b) otherwise advertise the notice in such manner as the liquidator thinks fit,

or both gazette the notice and otherwise advertise the notice in such manner as the liquidator thinks fit.

(6) Any notice under this rule must state—

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

Choosing a person to be liquidator

5.22.—(1) This rule applies where nominations are sought by the interim liquidator from the company's creditors and contributories under section 138(3) for the purpose of choosing a person to be liquidator of the company in place of the interim liquidator⁽¹⁾.

(2) The interim liquidator must deliver to the creditors and contributories a notice inviting proposals for a liquidator.

(3) The notice inviting proposals for a liquidator must explain that the liquidator is not obliged to seek the creditors' or contributories' views on any proposals that do not meet the requirements of paragraphs (4) and (5).

(4) A proposal must state the name and contact details of the proposed liquidator, and contain a statement that the proposed liquidator is qualified to act as an insolvency practitioner in relation to the company and has consented to act as liquidator of the company.

(5) A proposal must be received by the interim liquidator within 5 business days of the date of the notice under paragraph (2).

(6) Following the end of the period for inviting proposals under paragraph (2), where any proposals are received the interim liquidator must seek a decision on the proposals for nomination of a liquidator from the creditors (on any proposals received from creditors) and from the contributories (on any proposals received from contributories) by—

- (a) a decision procedure; or
- (b) the deemed consent procedure.

(7) Where a decision is sought under paragraph (6), the decision date must be not more than 60 days from the date of the winding-up order.

(8) The notice to be issued under rule 8.7 (deemed consent) (where the interim liquidator seeks a decision under paragraph (6) by the deemed consent procedure) or rule 8.8 (notices to creditors of decision procedure) (where the interim liquidator seeks a decision under paragraph (6) by a decision procedure) must also—

- (a) identify any liquidator proposed to be nominated by a creditor (in the case of a notice to creditors) or by a contributory (in the case of a notice to contributories) in accordance with this rule; and
- (b) contain a statement explaining the effect of section 138(5) (duty of interim liquidator to report to court where no person is appointed or nominated to be liquidator).

(9) The decision date in the notice referred to in paragraph (8) must be no later than 21 days after the date for receiving proposals has passed.

(10) The creditors and contributories must be given at least 14 days' notice of the decision date.

Appointment of liquidator by creditors or contributories

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

(2) The convener of the decision procedure or deemed consent procedure, or the chair in the case of a meeting, must certify the appointment, but not unless and until the appointee has provided to

(1) Section 138(3) to (5) is prospectively amended by paragraph 33(1) to (4) of schedule 9 of the 2015 Act.

the convener or the chair a statement to the effect that the appointee is an insolvency practitioner qualified under the Act to be the liquidator and consents to act.

- (3) The certificate must be authenticated and dated by the convener or chair and must—
 - (a) identify the company;
 - (b) identify and provide contact details for the person appointed as liquidator;
 - (c) state the date on which the liquidator was appointed;
 - (d) state 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 as liquidator of the company.
- (4) 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.
- (5) The liquidator's appointment is effective from the date on which the appointment is certified, that date to be endorsed on the certificate.
- (6) The convener or chair must deliver the certificate to the liquidator appointed.
- (7) The liquidator must—
 - (a) within 7 days beginning with the day the liquidator receives the certificate of appointment deliver notice of it to—
 - (i) the court; and
 - (ii) AiB; and
 - (b) within 28 days beginning with the day the liquidator receives the order of appointment—
 - (i) gazette the notice; or
 - (ii) otherwise advertise the notice in such manner as the liquidator thinks fit,or both gazette the notice and otherwise advertise the notice in such manner as the liquidator thinks fit.
- (8) Any notice under this rule must state—
 - (a) that a liquidator has been appointed; and
 - (b) the date of the appointment.

Decision on nomination

- 5.24.—**(1) In the case of a decision on the nomination of a liquidator—
- (a) if on any vote there are 2 nominees, the person who obtains the most support is appointed;
 - (b) if there are 3 or more nominees, and one of them has a clear majority over both or all the others together, that one is appointed; and
 - (c) in any other case, the convener or chair must continue to take votes (disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support last time) until a clear majority is obtained for any one nominee.
- (2) The convener or chair may at any time put to the meeting a resolution for the joint nomination of any 2 or more nominees.

Invitation to creditors and contributories to form a liquidation committee

5.25.—(1) Where a decision is sought from the company’s creditors and contributories on the appointment of a liquidator, the convener of the decision procedure must at the same time deliver to the creditors and contributories a notice inviting them to decide whether a liquidation committee should be established if sufficient creditors are willing to be members of the committee.

(2) The notice must also invite nominations for membership of the committee, such nominations to be received by a date specified in the notice.

(3) The notice must—

- (a) state that nominations must be delivered to the convener by the specified date;
- (b) state, in the case of creditors, that nominations can only be accepted if the convener is satisfied as to the creditors’ eligibility under rule 10.4 (eligibility for membership of creditors’ or liquidation committee); and
- (c) explain the effect of section 142(2) and (3)(2) on whether a committee is to be established under Part 10 (creditors and liquidation committees).

Appointment by the court (section 138(5), section 139(4) and section 140)

5.26.—(1) This rule applies where the liquidator is appointed by the court under section 138(5) (no person nominated or appointed by creditors and contributories), 139(4) (different persons nominated by creditors and contributories) or section 140(3) (winding up following administration or CVA).

(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) The liquidator must—

- (a) within 7 days beginning with the day the liquidator receives the copy order of appointment deliver notice of it to AiB; and
 - (b) within 28 days beginning with the day the liquidator receives the copy order of appointment—
 - (i) deliver notice of it to the creditors and contributories; or
 - (ii) if the court permits and in accordance with the directions of the court either—
 - (aa) gazette the notice; or
 - (bb) otherwise advertise the notice,
- or both gazette the notice and otherwise advertise the notice.

(5) Where the liquidator gives notice under paragraph (4)(b)(i) the liquidator may, in addition—

- (a) gazette the notice; or
- (b) otherwise advertise the notice in such manner as the liquidator thinks fit,

or both gazette the notice and otherwise advertise the notice.

(6) Any notice under this rule must—

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

(2) Section 141(2) and (3) are prospectively substituted by paragraph 36 of schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26) (“the 2015 Act”).

(3) Section 140(3) is prospectively amended by paragraph 35 of schedule 9 to the 2015 Act.

- (c) state whether the liquidator proposes to seek decisions from creditors and contributories for the purpose of establishing a liquidation committee, or proposes only to seek a decision from creditors for that purpose; and
- (d) if the liquidator does not propose to seek any such decision, set out the powers of the creditors under the Act to require the liquidator to seek one.

Liquidator's resignation

5.27.—(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 impracticable by—
 - (i) a conflict of interest; or
 - (ii) a change of personal circumstances;
- (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 5.27(8) of these Rules the liquidator will be released 21 days after the date of delivery of the notice of resignation to the court under section 172(6), unless the court orders otherwise; and
- (c) comply with rule 8.7 (deemed consent) or 8.8 (notices to creditors of decision procedure) so far as applicable.

(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 under section 172(6) (notice of resignation to the court).

(7) The resigning liquidator must deliver a copy of the notice of resignation under section 172(6) to AiB.

(8) The resigning liquidator's release is effective 21 days after the date on which the notice of resignation under section 172(6) is delivered to the court, unless the court orders otherwise.

Decision of creditors to remove liquidator

[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 174(4)(a)(i); and where the company's creditors have decided against release, section 174(4)(b)(i) (4).]

5.28.—(1) This rule applies where a decision is made, using a decision procedure, to remove the liquidator.

(2) The convener of the decision procedure or chair of the meeting (as the case may be) must within 3 business days of the decision to remove the liquidator—

- (a) deliver the certificate of the liquidator’s removal to the court;
- (b) deliver a copy of that certificate to AiB; and
- (c) if the convener or chair is a person other than the liquidator removed, deliver a copy of the certificate to the liquidator removed.

(3) If the creditors decided to appoint a new liquidator, the certificate of the new liquidator’s appointment must also be delivered to the new liquidator within that time; and the certificate must comply with the requirements in rule 5.23.

(4) The certificate of the liquidator’s removal must—

- (a) identify the company;
- (b) identify and provide contact details for the removed liquidator;
- (c) state that the creditors of the company decided on the date specified in the certificate that the liquidator specified in the certificate be removed from office as liquidator of the company;
- (d) state the decision procedure used, and the decision date;
- (e) state that the creditors either—
 - (i) did not decide against the liquidator being released, or
 - (ii) decided that the liquidator should not be released; and
- (f) be authenticated and dated by the convener or chair.

(5) The liquidator’s removal is effective from the date of the certificate of removal.

Removal of liquidator by the court (section 172(2))

[Note: in relation to release of the liquidator following removal from office by the court see section 174(4)(b)(ii).]

5.29.—(1) This rule applies where an application is made to the court under section 172(2)(5) 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 5.26 applies.

Deceased liquidator

[Note: in relation to release of the liquidator following death see section 174(4)(a)(ii)(6).]

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

- (a) the court; and
- (b) 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);
- (d) an executor of the deceased liquidator.

(3) If such 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 172(5)) see section 174(4)(b)(iii).]

5.31.—(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—

- (a) the court; and
- (b) AiB.

(3) The notice must be delivered 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).

(4) The notice must be authenticated and dated by the person delivering the notice.

Application by liquidator for release (section 174(4)(b) or (d))

5.32.—(1) An application by a former liquidator to the Accountant of Court for release under section 174(4)(b) or (d) must contain—

- (a) identification details for the insolvency proceedings;

- (b) identification and contact details for the former liquidator;
 - (c) a statement that the former liquidator is applying to the Accountant of Court to grant the former liquidator a certificate of the former liquidator's release as liquidator as a result of the circumstances specified in the application;
 - (d) details of the circumstances referred to in sub-paragraph (c) under which the former liquidator has ceased to act as liquidator.
- (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 146)

5.33.—(1) The final account which the liquidator is required to make up under section 146(2)(7) and deliver to 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 172(8)(8) as soon as the liquidator has complied with section 146(4) by filing with the court and delivering to the registrar of companies and AiB the final account and notice containing the statement required by section 146(4)(b) of whether any creditors have objected to the liquidator's release; and
- (e) that the liquidator will be released under section 174(4)(d)(ii)(9) at the same time as vacating office unless any of the creditors objected to the release.

(3) The liquidator must deliver a copy of the notice under section 146(4) to the Accountant of Court.

Relief from, or variation of, duty to report

5.34.—(1) The court may, on the application of the liquidator, relieve the liquidator of any duty imposed on the liquidator by rule 5.33, or authorise the liquidator to carry out the duty in a way other than required by that rule.

(2) In considering whether to act under this rule, the court must have regard to the cost of carrying out the duty, to the amount of the assets available, and to the extent of the interest of creditors or contributories, or any particular class of them.

(7) Section 146 is prospectively substituted by paragraph 38 of schedule 9 of the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act").

(8) A new subsection (8) is prospectively substituted by paragraph 43(4) of schedule 9 of the 2015 Act.

(9) A new subsection (4)(d)(ii) is prospectively substituted by paragraph 45(4) of schedule 9 of the 2015 Act.

Liquidator's duties on vacating office

5.35.—(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 the company's assets

5.36.—(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

5.37.—(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

5.38.—(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

5.39.—(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.