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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 347**

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

**PART 8**

**DECISION MAKING**

**CHAPTER 1**

**Application of Part**

**Application of Part**

**8.1.** In this Part—

- (a) Chapters 2 to 11 apply where the Act or these Rules require a decision to be made by a qualifying decision procedure or permit a decision to be made by the deemed consent procedure; and
- (b) Chapter 12 applies to company meetings.

**CHAPTER 2**

**Decision procedures**

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

**Interpretation**

**8.2.—(1)** In these Rules—

“decision date” means—

- (a) in the case of a decision to be made at a meeting, the date of the meeting;
- (b) in the case of a decision to be made either by a decision procedure other than a meeting or by the deemed consent procedure, the date the decision is to be made or deemed to have been made,

and a decision falling within paragraph (b) is to be treated as made at 23:59 on the decision date;

“decision procedure” means a qualifying decision procedure as prescribed by rule 8.3;

“electronic voting” includes any electronic system which enables a person to vote without the need to attend at a particular location to do so;

“physical meeting” means a meeting where the creditors are invited to be present together at the same place (whether or not it is possible to attend the meeting without being present at that place)(1);

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(1) As described in section 246ZE(9), prospectively inserted by section 122 of the 2015 Act.

“virtual meeting” means a meeting where persons who are not invited to be physically present together may participate in the meeting including communicating directly with all the other participants in the meeting and voting (either directly or via a proxy-holder);

(2) The decision date is to be set at the discretion of the convener, but must be not less than 14 days from the date of delivery of the notice, except where the table in rule 8.11 requires a different period or the court directs otherwise.

(3) The rules in Chapters 2 to 11 about decision procedures of creditors apply with any necessary modifications to decision making by contributories.

(4) In particular, in place of the requirement for percentages or majorities in decision making by creditors to be determined by value, where the procedure seeks a decision from contributories value must be determined on the percentage of voting rights in accordance with rule 8.39.

### **The prescribed decision procedures**

[Note: under section 246ZE a decision may not be made by a creditors’ meeting (a physical meeting) unless the prescribed proportion of the creditors request in writing that the decision be made by such a meeting.]

**8.3.** The following decision procedures are prescribed for the purpose of section 246ZE(2) by which a convener may seek a decision under the Act or these Rules from creditors—

- (a) correspondence;
- (b) electronic voting;
- (c) virtual meeting;
- (d) physical meeting;
- (e) any other decision making procedure which enables all creditors who are entitled to participate in the making of the decision to participate equally.

### **Electronic voting**

**8.4.** Where the decision procedure uses electronic voting—

- (a) the notice delivered to creditors in accordance with rule 8.8 must give them any necessary information as to how to access the voting system including any password required;
- (b) except where electronic voting is being used at a meeting, the voting system must be a system capable of enabling a creditor to vote at any time between the notice being delivered and the decision date; and
- (c) in the course of a vote the voting system must not provide any creditor with information concerning the vote cast by any other creditor.

### **Virtual meetings**

**8.5.** Where the decision procedure uses a virtual meeting the notice delivered to creditors in accordance with rule 8.8 must contain—

- (a) any necessary information as to how to access the virtual meeting including any telephone number, access code or password required; and

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(2) Section 246ZE(11) provides: “In this Group of Parts “qualifying decision procedure” means a procedure prescribed or authorised under paragraph 8A of schedule 8.” In terms of section 251 “prescribed” means prescribed by rules; “rules” means rules under section 411. Schedule 8 is introduced by section 411(2) which provides that without prejudice to the generality of in particular rule 411(1), rules may contain any such provision as is specified in schedule 8. Paragraph 8A(1)(a) of schedule 8 provides in particular that rules may contain provision about the making of decisions by creditors and contributories including provision prescribing particular procedures by which creditors and contributories make decisions.

- (b) a statement that the meeting may be suspended or adjourned by the chair of the meeting (and must be adjourned if it is so resolved at the meeting).

### **Physical meetings**

**8.6.—**(1) A request for a physical meeting under section 246ZE(3) may be made before or after the notice of the decision procedure or deemed consent procedure has been delivered, but must be made not later than 5 business days after the date on which the convener delivered the notice of the decision procedure or deemed consent procedure unless these Rules provide to the contrary.

(2) It is the convener's responsibility to check whether any requests for a physical meeting are submitted before the deadline and if so whether in aggregate they meet or surpass one of the thresholds requiring a physical meeting under section 246ZE(7).

(3) Where the prescribed proportion of creditors requires a physical meeting the convener must summon the meeting by giving notice which complies with rule 8.8 so far as applicable and which must also contain a statement that the meeting may be suspended or adjourned by the chair of the meeting (and must be adjourned if it is so resolved at the meeting).

(4) In addition, the notice under paragraph (3) must inform the creditors that as a result of the requirement to hold a physical meeting the original decision procedure or the deemed consent procedure is superseded.

(5) The convener must send the notice under paragraph (3) not later than 3 business days after one of the thresholds requiring a physical meeting has been met or surpassed.

(6) The convener—

- (a) may permit a creditor to attend a physical meeting remotely if the convener receives a request to do so in advance of the meeting; and
- (b) must include in the notice of the meeting a statement explaining the convener's discretion to permit remote attendance.

(7) In this rule, attending a physical meeting "remotely" means attending and being able to participate in the meeting without being in the place where the meeting is being held.

(8) For the purpose of determining whether the thresholds under section 246ZE(7) are met, the convener must calculate the value of the creditor's debt by reference to rule 8.31.

### **Deemed consent**

[Note: the deemed consent procedure cannot be used to make a decision on remuneration of any person, or where the Act, these Rules or any other legislation or court order requires a decision to be made by a decision procedure.]

**8.7.—**(1) This rule makes further provision about the deemed consent procedure to that set out in section 246ZF(3).

(2) A notice seeking deemed consent must, in addition to the requirements of section 246ZF comply with the requirements of rule 8.8 so far as applicable and must also contain—

- (a) a statement that in order to object to the proposed decision a creditor must have delivered a notice, stating that the creditor so objects, to the convener not later than the decision date together with a statement of claim and documentary evidence of debt in accordance with these Rules failing which the objection will be disregarded;
- (b) a statement that it is the convener's responsibility to aggregate any objections to see if the threshold is met for the decision to be taken as not having been made; and

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(3) Section 246ZF is prospectively inserted by section 122 of the 2015 Act.

- (c) a statement that if the threshold is met the deemed consent procedure will terminate without a decision being made and if a decision is sought again on the same matter it will be sought by a decision procedure.

(3) In this rule, the threshold is met where the appropriate number of relevant creditors (as defined in section 246ZF(7)) have objected to the proposed decision.

(4) For the purpose of aggregating objections, the convener may presume the value of relevant creditors' claims to be the value of claims by those creditors who, in the convener's view, would have been entitled to vote had the decision been sought by a decision procedure in accordance with this Part, even where those creditors had not already met the criteria for such entitlement to vote.

(5) Rules 8.31(2) (calculation of voting rights), 8.32 (calculation of voting rights: authorised deposit-taker) and 8.33 (procedure for admitting creditors' claims for voting) apply to the admission or rejection of a claim for the purpose of the convener deciding whether or not an objection should count towards the total aggregated objections.

(6) A decision of the convener on the aggregation of objections under this rule is subject to appeal under rule 8.35 as if it were a decision under Chapter 8 of this Part.

## CHAPTER 3

### Notices, voting and venues for decisions

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

#### **Notices to creditors of decision procedure**

**8.8.—**(1) This rule sets out the requirements for notices to creditors where a decision is sought by a decision procedure.

- (2) The convener must deliver a notice to every creditor who is entitled to notice of the procedure.
- (3) The notice must contain the following—
  - (a) identification details for the insolvency proceedings;
  - (b) details of the decision to be made or of any resolution on which a decision is sought;
  - (c) a description of the decision procedure which the convener is using, and arrangements, including the venue, for the decision procedure;
  - (d) a statement of the decision date;
  - (e) a statement as to when the creditor must have delivered a statement of claim and documentary evidence of debt in accordance with these Rules failing which a vote by the creditor will be disregarded;
  - (f) a statement that a creditor whose debt is treated as a small debt in accordance with rule 7.35 must still deliver a statement of claim and documentary evidence of debt if that creditor wishes to vote;
  - (g) a statement that a creditor who has opted out from receiving notices may nevertheless vote if the creditor provides a statement of claim and documentary evidence of debt in accordance with paragraph (e);
  - (h) in the case of a decision to remove a liquidator in a creditors' voluntary winding up or a winding up by the court, a statement drawing the attention of creditors to section 173(2) or 174(4) (which relate to the release of the liquidator), as appropriate(4);

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(4) Section 173(2)(d) is prospectively amended, (2)(a), (b) and (e) substituted and (2A) inserted by paragraph 44 of schedule 9 of the 2015 Act, and section 174(4) amended by paragraph 45 of schedule 9 of the same Act.

- (i) except in the case of a physical meeting, a statement that creditors who meet the thresholds in section 246ZE(7) may, within 5 business days from the date of delivery of the notice, require a physical meeting to be held to consider the matter;
  - (j) in the case of a meeting, a statement that any proxy must be delivered to the convener or chair before it may be used at the meeting;
  - (k) in the case of a meeting, a statement that, where applicable, a complaint may be made in accordance with rule 8.38 and the period within which such a complaint may be made; and
  - (l) a statement that a creditor may appeal a decision in accordance with rule 8.35, and the relevant period under rule 8.35 within which such an appeal may be made.
- (4) The notice must be authenticated and dated by the convener.
- (5) Where the decision procedure is a meeting the notice must be accompanied by a blank proxy complying with rule 9.3.
- (6) This rule does not apply if the court orders under rule 8.12 that notice of a decision procedure be given by advertisement only.

### **Voting in a decision procedure**

**8.9.—**(1) In order to be counted in a decision procedure other than where votes are cast at a meeting, votes must—

- (a) be received by the convener on or before the decision date; and
  - (b) in the case of a vote cast by a creditor, be accompanied by a statement of claim and documentary evidence of debt (where the requirement to provide the latter is not dispensed with under rule 8.28(2)) unless already given to the convener.
- (2) In a receivership, a creditors' voluntary winding up or a winding up by the court a vote must be disregarded if—
- (a) a statement of claim and, where required, documentary evidence of debt are not received by the convener on or before the decision date or, in the case of a meeting, at or before the meeting (unless under rule 8.26 the chair is content to accept them before resumption of the adjourned meeting); or
  - (b) the convener decides, in the application of Chapter 8 of this Part, that the creditor is not entitled to cast the vote.
- (3) The convener must have received at least one valid vote on or before the decision date in order for the decision to be made.

### **Venue for the decision procedure**

**8.10.** The convener must have regard to the convenience of those invited to participate when fixing the venue for a decision procedure (including the resumption of an adjourned meeting).

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

[Note: when an office-holder is obliged to give notice to “the creditors”, this is subject to rule 1.33, which limits the obligation to giving notice to those creditors of whose address the office-holder is aware.]

**8.11.—**(1) Notices of decision procedures, and notices seeking deemed consent, must be delivered in accordance with the following table.

<i>Proceedings</i>	<i>Decisions</i>	<i>Persons to whom notice must be delivered</i>	<i>Minimum notice required</i>
receivership	decisions of creditors	the creditors	14 days
creditors' voluntary winding up	decisions of creditors for appointment of liquidator (including any decision made at the same time on the establishment of a liquidation committee)	the creditors	14 days on conversion from members' voluntary liquidation, 7 days on conversion from member's voluntary liquidation where deemed consent has been objected to and in other cases, 3 business days
creditors' voluntary winding up or a winding up by the court	decisions of creditors to consider whether a replacement should be appointed after a liquidator's resignation	the creditors	28 days
winding up by the court	decisions of creditors to consider whether to remove or replace the liquidator (other than after a liquidator's resignation)	the creditors	14 days
creditors' voluntary winding up or a winding up by the court	other decisions of creditors	the creditors	14 days
creditors' voluntary winding up or a winding up by the court	decisions of contributories	every person appearing (by the company's records or otherwise) to be a contributory	14 days
main proceedings in another Member State	approval under Article 36(5) of the EU Regulation of proposed undertaking offered by a member State liquidator	all the local creditors in the United Kingdom	14 days

(2) This rule does not apply where the court orders under rule 8.12 that notice of a decision procedure be given by advertisement only.

#### **Notice of decision procedure by advertisement only**

**8.12.**—(1) The court may order that notice of a decision procedure is to be given by advertisement only and not by individual notice to the persons concerned.

(2) In considering whether to make such an order, the court must have regard to the relative cost of advertisement as against the giving of individual notices, the amount of assets available and the extent of the interest of creditors, members or contributories or any particular class of them.

(3) The advertisement must meet the requirements for a notice under rule 8.8(3), and must also state—

- (a) that the court ordered that notice of the decision procedure be given by advertisement only; and
- (b) the date of the court's order.

### **Gazetting and advertisement**

**8.13.**—(1) In a creditors' voluntary winding up or a winding up by the court where a decision is being sought in a meeting the convener must gazette a notice stating—

- (a) that a meeting of creditors or contributories is to take place;
- (b) the venue for the meeting;
- (c) the purpose of the meeting; and
- (d) the time and date by which, and place at which, those attending must deliver proxies and statements of claim and documentary evidence of debt (if not already delivered) in order to be entitled to vote.

(2) The notice must also state—

- (a) who is the convener in respect of the meeting; and
- (b) if the meeting results from a request of one or more creditors under section 246ZE, the fact that it was so summoned.

(3) The notice must be gazetted before or as soon as reasonably practicable after notice of the meeting is delivered in accordance with these Rules.

(4) Information to be gazetted under this rule may also be advertised in such other manner as the convener thinks fit.

(5) The convener may gazette other decision procedures or the deemed consent procedure in which case the equivalent information to that required by this rule must be stated in the notice.

### **Notice to company officers in respect of meetings**

**8.14.**—(1) In a creditors' voluntary winding up or a winding up by the court notice to participate in a creditors' meeting must be delivered to every present or former officer of the company whose presence the convener thinks is required and that person is required to attend the meeting.

(2) A notice under this rule must be delivered in compliance with the minimum notice requirements set out in rule 8.2(2) or in compliance with an order of the court under rule 8.12.

### **Non-receipt of notice of decision**

**8.15.** Where a decision is sought by a notice in accordance with the Act or these Rules, the decision procedure or deemed consent procedure is presumed to have been duly initiated and conducted, even if not everyone to whom the notice is to be delivered has received it.

### **Decisions on remuneration and conduct**

**8.16.**—(1) This rule applies in relation to a decision or resolution which is proposed in a creditors' voluntary winding up or a winding up by the court and which affects a person in relation to that person's remuneration or conduct as liquidator (actual, proposed or former).

(2) The following may not vote on such a decision or resolution whether as a creditor, contributory, proxy-holder or corporate representative, except so far as permitted by rule 9.7 (proxy-holder with financial interest)—

- (a) that person;

- (b) the partners and employees of that person;
- (c) the officers and employees of the company of which that person is a director, officer or employee; and
- (d) the representative of any person mentioned in sub-paragraphs (a) to (c).

## CHAPTER 4

### Decision making in particular proceedings

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

#### **Decisions in winding up of authorised deposit-takers**

**8.17.**—(1) This rule applies in a creditors' voluntary winding up or a winding up by the court of an authorised deposit-taker.

(2) The directors of a company must deliver a notice of a meeting of the company at which it is intended to propose a resolution for its winding up to the Financial Conduct Authority and to the scheme manager established under section 212(1) of the Financial Services and Markets Act 2000<sup>(5)</sup>.

(3) These notices must be the same as those delivered to members of the company.

(4) Where any decision is sought for the purpose of considering whether a replacement should be appointed after the liquidator's resignation, removing the liquidator or appointing a new liquidator, the convener must also deliver a copy of the notice by which such a decision is sought to the Financial Conduct Authority and the scheme manager.

(5) A scheme manager who is required by this rule to be given notice of a meeting is entitled to be represented at the meeting.

## CHAPTER 5

### Requisitioned decisions

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

#### **Requisitions of decision**

[Note: this rule is concerned with requests by creditors or contributories for a decision, rather than requests for decisions to be made by way of a physical meeting under section 246ZE(3)(6).]

**8.18.**—(1) In this Chapter, "requisitioned decision" means—

- (a) a decision requested to be sought under section 142(4)(7), 171(2)(b), 171(3A)(8) or 172(3)(9);
- (b) any other decision sought by a liquidator in a winding up by the court following a request to seek a decision on any matter from—
  - (i) one-tenth in value of a company's creditors; or

(5) 2000 c.8.

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

(7) Section 142 is prospectively amended by paragraph 37 of schedule 9 of the 2015 Act.

(8) Section 171(2)(b) is prospectively amended, subsections (3) and (6) substituted and subsections (3A) and (7) inserted by paragraph 42 of schedule 9 of the 2015 Act.

(9) Section 172(3) is prospectively amended by paragraph 43(3) of schedule 9 of the 2015 Act.



- (ii) one-tenth in value of a company's contributories.
- (2) The request for a requisitioned decision must include a statement of the purpose of the proposed decision and either—
  - (a) a copy of the requesting creditor's statement of claim or a statement of the requesting contributory's value, together with—
    - (i) a list of the creditors or contributories concurring with the request and of the amounts of their respective claims or values; and
    - (ii) confirmation of concurrence from each creditor or contributory concurring; or
  - (b) a copy of the requesting creditor's statement of claim or a statement of the requesting contributory's value and a statement that that alone is sufficient without the concurrence of other creditors or contributories.
- (3) A decision procedure must be instigated under section 171(2)(b) for the removal of the liquidator, other than a liquidator appointed by the court under section 108, if 25% in value of the company's creditors, excluding those who are connected with the company<sup>(10)</sup>, request it.
- (4) Where a decision procedure under 171(2)(b), 171(3) or 171(3A) is to be instigated, or is proposed to be instigated, the court may, on the application of any creditor, give directions as to the decision procedure to be used and any other matter which appears to the court to require regulation or control.

#### **Expenses and timing of requisitioned decision**

- 8.19.**—(1) The convener must, not later than 14 days from receipt of a request for a requisitioned decision, provide the requesting creditor with itemised details of the sum to be deposited as caution for payment of the expenses of such procedure.
- (2) The convener is not obliged to initiate the decision procedure or deemed consent procedure (where applicable) until either—
- (a) the convener has received the required sum; or
  - (b) the period of 14 days has expired without the convener having informed the requesting creditor or contributory of the sum required to be deposited as caution.
- (3) A requisitioned decision must be made within 28 days of the date on which the earlier of the events specified in paragraph (2) of this rule occurs.
- (4) The expenses of a requisitioned decision must be paid out of the deposit (if any) unless—
- (a) the creditors decide that they are to be payable as an expense of the liquidation; and
  - (b) in the case of a decision of contributories, the creditors are first paid in full, with interest.
- (5) The notice of a requisitioned decision of creditors must contain a statement that the creditors may make a decision as in paragraph (4)(a) of this rule.
- (6) Where the creditors do not so decide, the expenses must be paid by the requesting creditor or contributory to the extent that the deposit (if any) is not sufficient.
- (7) To the extent that the deposit (if any) is not required for payment of the expenses, it must be repaid to the requesting creditor or contributory.

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<sup>(10)</sup> "Connected" with a company is defined in section 249 of the Act.

## CHAPTER 6

### Constitution of meetings

#### Quorum at meetings

**8.20.**—(1) A meeting is not competent to act unless a quorum is in attendance.

(2) A quorum is—

- (a) in the case of a meeting of creditors, at least one creditor entitled to vote; and
- (b) in the case of a meeting of contributories, at least 2 contributories entitled to vote, or all the contributories, if their number does not exceed 2.

(3) Where the provisions of this rule as to quorum are satisfied by the attendance of the chair alone or the chair and one additional person, but the chair is aware, either by virtue of statements of claim and documentary evidence of debt and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote, the chair must delay the start of the meeting by at least 15 minutes after the appointed time.

(4) In this rule, the reference to the number of creditors or contributories necessary to constitute a quorum includes those represented by proxy by any person (including the chair).

#### Chair at meetings

**8.21.**—(1) The chair of a meeting must be—

- (a) the convener; or
- (b) an appointed person.

(2) However—

- (a) where a decision on the appointment of a liquidator under rule 4.14(2)(b), 4.14(4) or 4.14(6) (information to creditors and appointment of liquidator in creditors voluntary winding up) is made by a meeting the chair of the meeting must be the convener;
- (b) where a decision on the appointment of a liquidator under rule 5.22(6) (appointment of liquidator in place of the interim liquidator under section 138(3) in court winding up) is made by a meeting and a resolution is proposed to appoint the interim liquidator to be liquidator another person may be appointed to act as chair for the purpose of choosing the liquidator.

#### The chair – attendance, interventions and questions

**8.22.** The chair of a meeting may—

- (a) allow any person who has given reasonable notice of wishing to attend to participate in a virtual meeting or to be admitted to a physical meeting;
- (b) decide what intervention, if any, may be made at—
  - (i) a meeting of creditors by any person attending who is not a creditor; or
  - (ii) a meeting of contributories by any person attending who is not a contributory; and
- (c) decide what questions may be put to any present or former officer of the company.

## CHAPTER 7

### Adjournment and suspension of meetings

#### Adjournment by chair

**8.23.—**(1) The chair may (and must if it is so resolved) adjourn a meeting for not more than 14 days, subject to any direction of the court and to rule 8.24.

(2) Any further adjournment under this rule must not be to a day later than 14 days after the date on which the meeting was originally held, subject to any direction of the court.

#### Adjournment of meetings to remove a liquidator

**8.24.** If the chair of a meeting to remove the liquidator in a creditors' voluntary winding up or a winding up by the court is the liquidator or the liquidator's nominee and a resolution has been proposed for the liquidator's removal, the chair must not adjourn the meeting without the consent of at least  $\frac{1}{2}$  (in value) of the creditors attending and entitled to vote.

#### Adjournment in absence of chair

**8.25.—**(1) In a receivership, a creditors' voluntary winding up or a winding up by the court, if no one attends to act as chair within 30 minutes of the time fixed for a meeting to start, then the meeting is adjourned to the same time and place the following week or, if that is not a business day, to the business day immediately following.

(2) If no one attends to act as chair within 30 minutes of the time fixed for the meeting after a second adjournment under this rule, then the meeting comes to an end.

#### Statements of claim and documentary evidence of debt in adjournment

**8.26.** Where a meeting in a receivership, a creditors' voluntary winding-up or a winding up by the court is adjourned, the chair may allow a statement of claim and documentary evidence of debt (where required) to be used if delivered at or before resumption of the adjourned meeting.

#### Suspension

**8.27.** The chair of a meeting may, without an adjournment, declare the meeting suspended for one or more periods not exceeding one hour in total (or, in exceptional circumstances, such longer total period during the same day as the chair may determine).

## CHAPTER 8

### Creditors' voting rights and majorities

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

#### Creditors' voting rights

**8.28.—**(1) In a receivership, a creditors' voluntary winding up or a winding up by the court, a creditor is entitled to vote in a decision procedure or to object to a decision proposed using the deemed consent procedure only if—

- (a) the creditor has delivered to the convener a statement of claim and documentary evidence of debt, including any calculation for the purposes of rule 8.31 or 8.32;

- (b) the statement of claim and documentary evidence of debt was received by the convener not later than the decision date, or in the case of a meeting, at or before the meeting; and
- (c) the statement of claim and documentary evidence of debt has been admitted for the purposes of entitlement to vote.

(2) The convener or chair may dispense with the requirement to produce documentary evidence of debt in paragraph (1)(a) and (b) in respect of any debt or any class or debt.

(3) In the case of a meeting, a proxy-holder is not entitled to vote on behalf of a creditor unless the convener or chair has received the proxy intended to be used on behalf of that creditor.

### **Scheme manager's voting rights**

**8.29.**—(1) For the purpose of voting in a creditors' voluntary winding up or a winding up by the court of an authorised deposit-taker at which the scheme manager established under section 212(1) of the Financial Services and Markets Act 2000<sup>(11)</sup> is entitled to be represented under rule 8.17 (but not for any other purpose), the manager may deliver, instead of a statement of claim and documentary evidence of debt, a statement containing—

- (a) the names of the creditors of the company in relation to whom an obligation of the scheme manager has arisen or may reasonably be expected to arise;
- (b) the amount of each such obligation; and
- (c) the total amount of all such obligations.

(2) The manager may from time to time deliver a further statement; and each such statement supersedes any previous statement.

### **Claim made in proceedings in other member States**

**8.30.**—(1) Where in a creditors' voluntary winding up or a winding up by the court—

- (a) a creditor is entitled to vote under rule 8.28(1) (as determined, where that be the case, in accordance with rule 8.35);
- (b) that creditor has made the claim in other proceedings;
- (c) that creditor votes on a resolution in a decision procedure; and
- (d) a member State liquidator casts a vote in respect of the same claim,

only the creditor's vote is to be counted.

(2) Where in a creditors' voluntary winding up or a winding up by the court—

- (a) a creditor has made a claim in more than one set of other proceedings; and
- (b) more than one member State liquidator seeks to vote in respect of that claim,

the entitlement to vote in respect of that claim is exercisable by the member State liquidator in the main proceedings, whether or not the creditor has made the claim in the main proceedings.

(3) In this rule, "other proceedings" means main, secondary or territorial proceedings in another member State.

### **Calculation of voting rights**

**8.31.**—(1) Votes are calculated according to the amount of each creditor's claim—

- (a) in a receivership, as at the date of the appointment of the receiver, less any payments that have been made to the creditor after that date in respect of the claim;

(11) 2000 c.8.

- (b) in a creditors' voluntary winding up or a winding up by the court, as set out in the creditor's statement of claim and documentary evidence of debt to the extent that it has been admitted.
- (2) A creditor may vote in respect of a debt of an unliquidated or unascertained amount if the convener or chair decides to put upon it an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.
- (3) Where a debt is wholly secured its value for voting purposes is nil.
- (4) Where a debt is partly secured its value for voting purposes is the value of the unsecured part.
- (5) No vote may be cast in respect of a claim more than once on any resolution put to the meeting; and for this purpose (where relevant), the claim of a creditor and of any member State liquidator in relation to the same debt are a single claim.
- (6) A vote cast in a decision procedure which is not a meeting may not be changed.
- (7) Paragraph (5) does not prevent a creditor or member State liquidator from—
  - (a) voting in respect of less than the full value of an entitlement to vote; or
  - (b) casting a vote one way in respect of part of the value of an entitlement and another way in respect of some or all of the balance of that value.

#### **Calculation of voting rights: winding up of authorised deposit-taker**

**8.32.** Any voting rights which a creditor might otherwise exercise in respect of a claim in a creditors' voluntary winding up or a winding up by the court of an authorised deposit-taker are reduced by a sum equal to the amount of that claim in relation to which the scheme manager, by virtue of its having delivered a statement under rule 8.29, is entitled to exercise voting rights.

#### **Procedure for admitting creditors' claims for voting**

- 8.33.**—(1) The convener or chair in respect of a decision procedure must ascertain entitlement to vote and admit or reject claims accordingly.
- (2) The convener or chair may admit or reject a claim in whole or in part.
  - (3) If the convener or chair is in any doubt whether a claim should be admitted or rejected, the convener or chair must mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

#### **Requisite majorities**

**8.34.** A decision is made by creditors when a majority (in value) of those voting have voted in favour of the proposed decision.

#### **Appeals against decisions under this Chapter**

- 8.35.**—(1) A decision of the convener or chair under this Chapter is subject to appeal to the court by a creditor or by a contributory (as applicable).
- (2) If the decision is reversed or varied, or votes are declared invalid, the court may order another decision procedure to be initiated or make such order as it thinks just.
  - (3) An appeal under this rule may not be made later than 21 days after the decision date.
  - (4) The person who made the decision is not personally liable for expenses incurred by any person in relation to an appeal under this rule unless the court makes an order to that effect.

## CHAPTER 9

### Exclusions from meetings

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

#### Action where person excluded

**8.36.**—(1) In this rule and rules 8.37 and 8.38, an “excluded person” means a person who has taken all steps necessary to attend a virtual meeting or has been permitted by the convener to attend a physical meeting remotely under the arrangements which—

- (a) have been put in place by the convener of the meeting; but
- (b) do not enable that person to attend the whole or part of that meeting.

(2) Where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may—

- (a) continue the meeting;
- (b) declare the meeting void and convene the meeting again; or
- (c) declare the meeting valid up to the point where the person was excluded and adjourn the meeting.

(3) Where the chair continues the meeting, the meeting is valid unless—

- (a) the chair decides in consequence of a complaint under rule 8.38 to declare the meeting void and hold the meeting again; or
- (b) the court directs otherwise.

(4) Without prejudice to paragraph (2), where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may, at the chair’s discretion and without an adjournment, declare the meeting suspended for any period up to 1 hour.

#### Indication to excluded person

**8.37.**—(1) A creditor who claims to be an excluded person may request an indication of what occurred during the period of that person’s claimed exclusion.

(2) A request under paragraph (1) must be made in accordance with paragraph (3) as soon as reasonably practicable, and in any event, not later than 4pm on the business day following the day on which the exclusion is claimed to have occurred.

(3) A request under paragraph (1) must be made to—

- (a) the chair, where it is made during the course of the meeting; or
- (b) the convener where it is made after the meeting.

(4) Where satisfied that the person making the request is an excluded person, the person to whom the request is made under paragraph (3) must deliver the requested indication to the excluded person as soon as reasonably practicable, and in any event, not later than 4pm on the business day following the day on which the request was made under paragraph (1).

#### Complaint

**8.38.**—(1) A person may make a complaint who—

- (a) is, or claims to be, an excluded person; or
- (b) attends the meeting and claims to have been adversely affected by the actual, apparent or claimed exclusion of another person.

- (2) A complaint under paragraph (1) must be made to the appropriate person who is—
  - (a) the chair, where it is made during the course of the meeting; or
  - (b) the convener, where it is made after the meeting.
- (3) The complaint must be made as soon as reasonably practicable and, in any event, not later than 4pm on the business day following—
  - (a) the day on which the person was, appeared or claimed, to be excluded; or
  - (b) where an indication is sought under rule 8.37, the day on which the complainant received the indication.
- (4) The appropriate person must, as soon as reasonably practicable following receipt of the complaint,—
  - (a) consider whether there is an excluded person;
  - (b) where satisfied that there is an excluded person, consider the complaint; and
  - (c) where satisfied that there has been prejudice, take such action as the appropriate person considers fit to remedy the prejudice.
- (5) Paragraph (6) applies where the appropriate person is satisfied that the complainant is an excluded person and—
  - (a) a resolution was voted on at the meeting during the period of the person's exclusion; and
  - (b) the excluded person asserts how the excluded person intended to vote on the resolution.
- (6) Where the appropriate person is satisfied that if the excluded person had voted as that person intended it would have changed the result of the resolution, then the appropriate person must, as soon as reasonably practicable,—
  - (a) count the intended vote as having been cast in that way;
  - (b) amend the record of the result of the resolution;
  - (c) where notice of the result of the resolution has been delivered to those entitled to attend the meeting, deliver notice to them of the change and the reason for it; and
  - (d) where notice of the result of the resolution has yet to be delivered to those entitled to attend the meeting, the notice must include details of the change and the reason for it.
- (7) Where satisfied that more than one complainant is an excluded person, the appropriate person must have regard to the combined effect of the intended votes.
- (8) The appropriate person must deliver notice to the complainant of any decision as soon as reasonably practicable.
- (9) A complainant who is not satisfied by the action of the appropriate person may apply to the court for directions and any application must be made no more than 2 business days from the date of receiving the decision of the appropriate person.

## CHAPTER 10

### Contributories' voting rights and majorities

#### **Contributories' voting rights and requisite majorities**

##### **8.39.** In a decision procedure for contributories—

- (a) voting rights are as at a general meeting of the company, subject to any provision of the articles affecting entitlement to vote, either generally or at a time when the company is in liquidation; and
- (b) a decision is made if more than  $\frac{1}{2}$  of the votes cast by contributories are in favour.

## CHAPTER 11

### Records

#### Record of a decision

**8.40.**—(1) Where a decision is sought using a decision procedure, the convener or chair must make a record of the decision procedure.

(2) In the case of a meeting, the record must be in the form of a minute of the meeting.

(3) The record must be authenticated by the convener or chair and must include—

- (a) identification details for the insolvency proceedings;
- (b) in the case of a decision procedure of creditors, a list of the names of the creditors who participated and their claims;
- (c) in the case of a decision procedure of contributories, a list of the names of the contributories who participated;
- (d) where a decision is taken on the election of members of a creditors' committee or liquidation committee, the names and addresses of those elected;
- (e) a record of any change to the result of the resolution made under rule 8.38(6) and the reason for any such change; and
- (f) in any case, a record of every decision made and how creditors voted.

(4) Where a decision is sought using the deemed consent procedure, the convener must make a record of the procedure.

(5) The record under paragraph (4) must be authenticated by the convener and must—

- (a) identify the proceedings;
- (b) state whether or not the decision was taken; and
- (c) contain a list of the creditors or contributories who objected to the decision, and in the case of creditors, their claims.

(6) A record under this rule must also identify any decision procedure (or the deemed consent procedure) by which the decision had previously been sought.

## CHAPTER 12

### Company meetings

#### Company meetings

**8.41.**—(1) Unless the Act or these Rules provide otherwise, a company meeting must be called and conducted, and records of the meeting must be kept—

- (a) in accordance with the law of Scotland, including any applicable provision in or made under the Companies Act, in the case of a company incorporated—
  - (i) in Scotland, or
  - (ii) outside the United Kingdom other than in an EEA state;
- (b) in accordance with the law of that state applicable to meetings of the company in the case of a company incorporated in an EEA state other than the United Kingdom.

(2) Reference to a company meeting called and conducted to resolve, decide or determine a particular matter includes a reference to that matter being resolved, decided or determined by written resolution.



### **Remote attendance: notification requirements**

**8.42.** When a meeting is to be summoned and held in accordance with section 246A(3)(12), the convener must notify all those to whom notice of the meeting is being given of—

- (a) the ability of a person claiming to be an excluded person to request an indication in accordance with rule 8.45;
- (b) the ability of a person within rule 8.46(1) to make a complaint in accordance with that rule; and
- (c) in either case, the period within which a request or complaint must be made.

### **Location of company meetings**

**8.43.—**(1) This rule applies to a request to the convener of a meeting under section 246A(9)(13) to specify a place for the meeting.

(2) The request must be accompanied by—

- (a) a list of the members making or concurring with the request and their voting rights, and
- (b) from each person concurring, confirmation of that person's concurrence.

(3) The request must be delivered to the convener within 7 business days of the date on which the convener delivered the notice of the meeting in question.

(4) Where the convener considers that the request has been properly made in accordance with the Act and this rule, the convener must—

- (a) deliver notice to all those previously given notice of the meeting—
  - (i) that it is to be held at a specified place, and
  - (ii) as to whether the date and time are to remain the same or not;
- (b) set a venue (including specification of a place) for the meeting, the date of which must be not later than 28 days after the original date for the meeting; and
- (c) deliver at least 14 days' notice of that venue to all those previously given notice of the meeting,

and the notices required by sub-paragraphs (a) and (c) may be delivered at the same or different times.

(5) Where the convener has specified a place for the meeting in response to a request to which this rule applies, the chair of the meeting must attend the meeting by being present in person at that place.

### **Action where person excluded**

**8.44.—**(1) In this rule and rules 8.45 and 8.46, an “excluded person” means a person who has taken all steps necessary to attend a company meeting under the arrangements which—

- (a) have been put in place by the convener of the meeting under section 246A(6); but
- (b) do not enable that person to attend the whole or part of that meeting.

(2) Where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may—

- (a) continue the meeting;
- (b) declare the meeting void and convene the meeting again; or

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(12) Section 246A was inserted by [S.I. 2010/18](#) and prospectively amended by paragraph 54 of schedule 9 of the Small Business, Enterprise and Employment Act 2015 (c.26) (“the 2015 Act”) and [S.S.I. 2017/209](#), article 5.

(13) Section 246A(9) is amended by paragraph 54(4) of schedule 9 of the 2015 Act.

- (c) declare the meeting valid up to the point where the person was excluded and adjourn the meeting.
- (3) Where the chair continues the meeting, the meeting is valid unless—
  - (a) the chair decides in consequence of a complaint under rule 8.46 to declare the meeting void and hold the meeting again; or
  - (b) the court directs otherwise.
- (4) Without prejudice to paragraph (2), where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may, in the chair's discretion and without an adjournment, declare the meeting suspended for any period up to 1 hour.

### **Indication to excluded person**

- 8.45.**—(1) A person who claims to be an excluded person may request an indication of what occurred during the period of that person's claimed exclusion.
- (2) A request under paragraph (1) must be made in accordance with paragraph (3) as soon as reasonably practicable, and in any event, not later than 4pm on the business day following the day on which the exclusion is claimed to have occurred.
  - (3) A request under paragraph (1) must be made to—
    - (a) the chair where it is made during the course of the meeting; or
    - (b) the convener where it is made after the meeting.
  - (4) Where satisfied that the person making the request is an excluded person, the person to whom the request is made under paragraph (3) must deliver the requested indication to the excluded person as soon as reasonably practicable, and in any event, not later than 4pm on the business day following the day on which the request was made under paragraph (1).

### **Complaint**

- 8.46.**—(1) A person may make a complaint who—
  - (a) is, or claims to be, an excluded person; or
  - (b) attends the meeting and claims to have been adversely affected by the actual, apparent or claimed exclusion of another person.
- (2) The complaint under paragraph (1) must be made to the appropriate person who is—
    - (a) the chair, where the complaint is made during the course of the meeting; or
    - (b) the convener, where it is made after the meeting.
  - (3) The complaint must be made as soon as reasonably practicable and, in any event, no later than 4pm on the business day following—
    - (a) the day on which the person was, appeared or claimed to be excluded; or
    - (b) where an indication is sought under rule 8.45, the day on which the complainant received the indication.
  - (4) The appropriate person must, as soon as reasonably practicable following receipt of the complaint,—
    - (a) consider whether there is an excluded person;
    - (b) where satisfied that there is an excluded person, consider the complaint; and
    - (c) where satisfied that there has been prejudice, take such action as the appropriate person considers fit to remedy the prejudice.

(5) Paragraph (6) applies where the appropriate person is satisfied that the complainant is an excluded person and—

- (a) a resolution was voted on at the meeting during the period of the person's exclusion; and
- (b) the excluded person asserts how the excluded person intended to vote on the resolution.

(6) Where the appropriate person is satisfied that if the excluded person had voted as that person intended it would have changed the result of the resolution, then the appropriate person must, as soon as reasonably practicable—

- (a) count the intended vote as having been cast in that way;
- (b) amend the record of the result of the resolution;
- (c) where notice of the result of the resolution has been delivered to those entitled to attend the meeting, deliver notice to them of the change and the reason for it; and
- (d) where notice of the result of the resolution has yet to be delivered to those entitled to attend the meeting, the notice must include details of the change and the reason for it.

(7) Where satisfied that more than one complainant is an excluded person, the appropriate person must have regard to the combined effect of the intended votes.

(8) The appropriate person must deliver notice to the complainant of any decision as soon as reasonably practicable.

(9) A complainant who is not satisfied by the action of the appropriate person may apply to the court for directions and any application must be made no more than 2 business days from the date of receiving the decision of the appropriate person.