
STATUTORY INSTRUMENTS

2018 No. 1082

The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018

PART 3

ADMINISTRATION

CHAPTER 3

Appointment of administrator by holder of floating charge

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

Notice of intention to appoint

3.16.—(1) This rule applies where the holder of a qualifying floating charge (“the appointer”) gives notice under paragraph 15(1)(a) of Schedule B1 of intention to appoint an administrator under paragraph 14 of that Schedule and lodges a copy of the notice with the court under paragraph 44(2) of that Schedule.

(2) The notice lodged with the court must be headed “Notice of intention to appoint an administrator by holder of qualifying floating charge” and must contain the following—

- (a) identification details for the insolvency proceedings;
 - (b) the name and address of the appointer;
 - (c) a statement that the appointer intends to appoint an administrator of the company;
 - (d) the name and address of the proposed administrator;
 - (e) a statement that the appointer is the holder of the qualifying floating charge in question and that it is now enforceable;
 - (f) details of the charge including the date the charge was created, the date the charge was registered and the maximum amount, if any, secured by the charge;
 - (g) a statement that the notice is being given in accordance with paragraph 15(1)(a) of Schedule B1 to the holder of every prior floating charge which satisfies paragraph 14(2) of that Schedule;
 - (h) the names and addresses of the holders of such prior floating charges and details of the charges;
 - (i) a statement whether the company is or is not subject to insolvency proceedings at the date of the notice, and details of the proceedings if it is;
 - (j) a statement whether the company is an Article 1.2 undertaking; and
 - (k) a statement whether the proceedings flowing from the appointment will be main, secondary, territorial or non-EU proceedings with reasons for the statement.
- (3) The notice must be authenticated by the appointer or the appointer’s solicitor and dated.

(4) The lodging of the copy with the court under paragraph 44(2) of Schedule B1 must be done at the same time as notice is given in accordance with paragraph 15(1)(a).

Notice of appointment

3.17.—(1) Notice of an appointment under paragraph 14 of Schedule B1 must be headed “Notice of appointment of an administrator by holder of a qualifying floating charge” and must contain—

- (a) identification details for the insolvency proceedings;
- (b) the name and address of the appointer;
- (c) a statement that the appointer has appointed the person named as administrator of the company;
- (d) the name and address of the person appointed as administrator;
- (e) a statement that a copy of the administrator’s consent to act accompanies the notice;
- (f) a statement that the appointer is the holder of the qualifying floating charge in question and that it is now enforceable;
- (g) details of the charge including the date of the charge, the date on which it was registered and the maximum amount if any secured by the charge;
- (h) one of the following statements—
 - (i) that notice has been given in accordance with paragraph 15(1)(a) of Schedule B1 to the holder of every prior floating charge which qualifies as such in terms of paragraph 14(2) of that Schedule, that two business days have elapsed from the date the last such notice was given (if more than one), and—
 - (aa) that a copy of every such notice was lodged with the court under paragraph 44(2) of Schedule B1, and the date of that lodging (or the latest date of lodging if more than one), or
 - (bb) that a copy of every such notice accompanies the notice of appointment but was not lodged with the court under paragraph 44(2) of Schedule B1,
 - (ii) that the holder of every such floating charge to whom notice was given has consented in writing to the making of the appointment and that a copy of every consent accompanies the notice of appointment,
 - (iii) that the holder of every such floating charge has consented in writing to the making of the appointment without notice having been given to all and that a copy of every consent accompanies the notice of appointment, or
 - (iv) that there is no such floating charge;
- (i) a statement whether the company is or is not subject to insolvency proceedings at the date of the notice, and details of the insolvency proceedings if it is;
- (j) a statement whether the company is an Article 1.2 undertaking;
- (k) a statement whether the insolvency proceedings flowing from the appointment will be main, secondary, territorial or non-EU proceedings and the reasons for so stating; and
- (l) a statement that the appointment is in accordance with Schedule B1.

(2) Where two or more administrators are appointed the notice must also specify, in terms of paragraph 100(2) of Schedule B1—

- (a) which functions, if any, are to be exercised by those persons acting jointly; and
- (b) which functions, if any, are to be exercised by any or all of those persons.

(3) The statutory declaration included in the notice in accordance with paragraph 18(2) of Schedule B1 must be made not more than five business days before the notice is lodged with the court.

Lodging of notice with the court

3.18.—(1) Three copies of the notice of appointment must be lodged with the court, accompanied by—

- (a) the administrator’s consent to act; and
- (b) either—
 - (i) evidence that the appointer has given notice as required by paragraph 15(1)(a) of Schedule B1, or
 - (ii) copies of the written consent of all those required to give consent in accordance with paragraph 15(1)(b) of Schedule B1.

(2) The court must certify the copies of the notice, endorse them with the date and time of lodging and deliver two of the certified copies to the appointer.

(3) The appointer must as soon as reasonably practicable deliver one of the certified copies to the administrator.

(4) This rule is subject to rules 3.20 and 3.21.

Appointment by floating charge holder after administration application made

3.19.—(1) This rule applies where the holder of a qualifying floating charge, after receiving notice that an administration application has been made, appoints an administrator under paragraph 14 of Schedule B1.

(2) The holder must as soon as reasonably practicable deliver a copy of the notice of appointment to—

- (a) the person making the administration application; and
- (b) the court in which the application has been made.

Appointment taking place out of court business hours: procedure

3.20.—(1) When (but only when) the court is not open for public business, the holder of a qualifying floating charge may lodge a notice of appointment in court in accordance with this rule.

(2) The person making the appointment must lodge the notice with the court by—

- (a) faxing it to the court; or
- (b) where rule 1.42 applies, by electronic means.

(3) Where the notice under paragraph (2) is faxed to the court the person making the appointment must—

- (a) ensure that a fax transmission report is produced by the sending machine which records the date and time of sending; and
- (b) send to the administrator, as soon as reasonably practicable, a copy of the notice of appointment and, where paragraph (2)(a) applies, a copy of the fax transmission report.

(4) The person making the appointment must lodge in court, on the next occasion that the court is open for public business, the original notice of appointment together with the documents required by rule 3.21 and—

- (a) the fax transmission report showing the date and time when the notice was sent; and

- (b) a statement of the full reasons for the out of hours lodging of the notice of appointment, including why it would have been damaging to the company or its creditors not to have so acted.

Appointment taking place out of court business hours: content of notice

3.21.—(1) A notice of appointment lodged in accordance with rule 3.20 must be headed “Notice of appointment of an administrator by holder of qualifying floating charge pursuant to paragraphs 14 and 18 of Schedule B1 to the Insolvency Act 1986 and Rule 3.20 of the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018” and must contain—

- (a) identification details for the insolvency proceedings;
- (b) the name and address of the appointer;
- (c) a statement that the appointer has appointed the person named as administrator of the company;
- (d) the name and address of the person appointed as administrator;
- (e) a statement that a copy of the administrator’s consent to act accompanies the notice;
- (f) a statement that the appointer is the holder of the qualifying floating charge in question and that it is now enforceable;
- (g) details of the charge including the date of the charge, the date on which it was registered and the maximum amount, if any, secured by the charge;
- (h) one of the following statements—
 - (i) that notice has been given in accordance with paragraph 15(1)(a) of Schedule B1 to the holder of every prior floating charge which satisfied paragraph 14(2) of that Schedule, that two business days have elapsed from the date the last such notice was given (if more than one) and—
 - (aa) that a copy of every such notice was lodged with the court under paragraph 44(2) of Schedule B1, and the date of that lodging (or the latest date of lodging if more than one), or
 - (bb) that a copy of every such notice accompanies the notice of appointment but was not lodged with the court under paragraph 44(2) of Schedule B1,
 - (ii) that the holder of every such floating charge to whom notice was given has consented in writing to the making of the appointment and that a copy of every consent accompanies the notice of appointment,
 - (iii) that the holder of every such floating charge has consented in writing to the making of the appointment without notice having been given to all and that a copy of every consent accompanies the notice of appointment, or
 - (iv) that there is no such floating charge;
- (i) a statement whether the company is or is not subject to insolvency proceedings at the date of the notice, and details of the proceedings if it is;
- (j) a statement whether the company is an Article 1.2 undertaking;
- (k) a statement whether the proceedings flowing from the appointment will be main, secondary, territorial or non-EU proceedings and the reasons for so stating and that a copy of the statement accompanies the notice of appointment;
- (l) a statement that the appointment is in accordance with Schedule B1; and
- (m) an undertaking that the following will be delivered to the court on the next occasion on which the court is open for public business—

- (i) any document referred to in the notice in accordance with rule 3.20 as accompanying the notice,
 - (ii) the fax transmission report, and
 - (iii) a statement of reasons for the lodging of the notice out of court business hours.
- (2) Where two or more administrators are appointed the notice must also specify, in terms of paragraph 100(2) of Schedule B1—
- (a) which functions, if any, are to be exercised by those persons acting jointly; and
 - (b) which functions, if any, are to be exercised by any or all of those persons.
- (3) The statutory declaration included in the notice in accordance with paragraph 18(2) of Schedule B1 must be made not more than five business days before notice is lodged with the court.

Appointment taking place out of court business hours: legal effect

3.22.—(1) The lodging of a notice in accordance with rule 3.20 has the same effect for all purposes as the lodging of a notice of appointment in accordance with rule 3.18.

- (2) The appointment—
- (a) takes effect either –
 - (i) from the date and time of the fax transmission, or
 - (ii) in accordance with rule 1.42(2)

but ceases to have effect if the requirements of rule 3.20(4) are not completed on the next occasion the court is open for public business.

(3) Where any question arises in relation to the date and time that the appointment was lodged with the court, it is a presumption capable of rebuttal that the date and time shown on the appointer's fax transmission report is the date and time at which the notice was lodged.