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STATUTORY INSTRUMENTS

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**2018 No. 1082**

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

**PART 5**

**DECISION MAKING**

**CHAPTER 3**

**Notices, voting and venues for decisions**

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

**Notices to creditors of decision procedure**

**5.8.**—(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) except in the case of a decision in relation to a proposed CVA, 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 3.118 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 in relation to a proposed CVA, a statement of the effects of the relevant provisions of the following—
  - (i) rule 5.26 about creditors' voting rights,
  - (ii) rule 5.28 about the calculation of creditors' voting rights, and
  - (iii) rule 5.31 about the requisite majority of creditors for making decisions;

- (i) except in the case of a physical meeting, a statement that creditors who meet the thresholds in section 246ZE(7) may, within five 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 5.35 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 5.32, and the relevant period under rule 5.32 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 6.3.
- (6) This rule does not apply if the court orders under rule 5.12 that notice of a decision procedure be given by advertisement only.

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

**5.9.**—(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—
    - (i) in a CVA, be accompanied by written notification of the creditor's debt unless such a notification has already been given to the convener;
    - (ii) in an administration, 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 5.26(2)) unless already given to the convener.
- (2) In an administration, 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 5.24 the chair is content to accept them before resumption of the adjourned meeting); or
  - (b) the convener decides, in the application of Chapter 7 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 a decision to be made.

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

**5.10.** 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.]

**5.11.**—(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>
administration	decisions of creditors	the creditors who had claims against the company at the date when the company entered administration (except for those who have subsequently been paid in full)	14 days
proposed CVA	decisions of creditors	the creditors	7 days for a decision on proposed modifications to the proposal from the company's directors under paragraph 31(7) of Schedule A1; 7 days for consideration of proposal where physical meeting requisitioned; in other cases, 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 5.12 that notice of a decision procedure be given by advertisement only.

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

**5.12.**—(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 or members or any particular class of them.

(3) The advertisement must meet the requirements for a notice under rule 5.8(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**

**5.13.**—(1) In an administration, where a decision is being sought in a meeting the convener must gazette a notice stating—

- (a) that a meeting of creditors 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 the 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**

- 5.14.**—(1) In a proposal for a CVA or in an administration, 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 5.11 or in compliance with an order of the court under rule 5.12.

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

**5.15.** 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**

- 5.16.**—(1) This rule applies in relation to a decision or resolution which is proposed in an administration, and which affects a person in relation to that person's remuneration or conduct as administrator (actual, proposed or former).
- (2) The following may not vote on such a decision or resolution whether as a creditor, proxy-holder or corporate representative, except so far as permitted by rule 6.7 (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).