
STATUTORY INSTRUMENTS

2018 No. 1082

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

PART 5

DECISION MAKING

CHAPTER 1

Application of Part

Application of Part

5.1. In this Part—

- (a) Chapters 2 to 9 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 10 applies to company meetings.

CHAPTER 2

Decision procedures

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

Interpretation

5.2.—(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 sub-paragraph (b) is to be treated as made at 23:59 on the decision date;

“decision procedure” means a qualifying decision procedure prescribed by rule 5.3;

“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);

“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 5.11 requires a different period or the court directs otherwise.

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.]

5.3.—(1) The following decision procedures are prescribed for the purpose of section 246ZE(1) 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

5.4. Where the decision procedure uses electronic voting—

- (a) the notice delivered to creditors in accordance with rule 5.8 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

5.5. Where the decision procedure uses a virtual meeting the notice delivered to creditors in accordance with rule 5.8 must contain—

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

5.6.—(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

(1) Section 246ZE was added by section 122 of the 2015 Act. Subsection (11) provides that “qualifying decision procedure” means a procedure prescribed or authorised under paragraph 8A of Schedule 8 to the Act.

made not later than five 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 require a physical meeting the convener must summon the meeting by giving notice which complies with rule 5.8 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 three 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 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 5.28.

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, any other legislation or a court order requires a decision to be made by a decision procedure.]

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

(2) A notice seeking deemed consent must, in addition to the requirements of section 246ZF, comply with the requirements of rule 5.8 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
- (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 5.28, 5.29 and 5.30 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 5.32 as if it were a decision under Chapter 7 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 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	14 days

<i>Proceedings</i>	<i>Decisions</i>	<i>Persons to whom notice must be delivered</i>	<i>Minimum notice required</i>
		have subsequently been paid in full)	
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).

CHAPTER 4

Requisitioned decisions

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

Requisitions of decision

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

5.17.—(1) In this Chapter, "requisitioned decision" means a decision requested to be sought under paragraph 52(2) or 56(1) of Schedule B1.

(2) A request for a decision to be sought under paragraph 52(2) of Schedule B1 must be delivered within eight business days of the date on which the administrator's statement of proposals is delivered.

(3) 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, together with—
 - (i) a list of the creditors concurring with the request and of the amounts of their respective claims, and
 - (ii) confirmation of concurrence from each creditor concurring; or
- (b) a copy of the requesting creditor's statement of claim and a statement that that alone is sufficient without the concurrence of other creditors.

Expenses and timing of requisitioned decision

5.18.—(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 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 the creditors decide that they are to be payable as an expense of the administration.

(5) The notice of a requisitioned decision of creditors must contain a statement that the creditors may make a decision as in paragraph (4) of this rule.

(6) Where the creditors do not so decide, the expenses must be paid by the requesting creditor 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.

CHAPTER 5

Constitution of Meetings

Quorum at meetings

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

(2) In the case of a meeting of creditors, a quorum is at least one creditor entitled to vote.

(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 necessary to constitute a quorum includes those represented by proxy by any person (including the chair).

Chair at meetings

5.20. The chair of a meeting must be—

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

The chair – attendance, interventions and questions

5.21. 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 a meeting of creditors by any person attending who is not a creditor; and

decide what questions may be put to any present or former officer of the company.

CHAPTER 6

Adjournment and suspension of meetings

Adjournment by chair

5.22.—(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.

(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.

(3) But in a case relating to a proposed CVA, the chair may, and must if the meeting so resolves, adjourn a meeting held under paragraph 29(1) of Schedule A1 to a day which is not more than 14 days after the date on which the moratorium (including any extension) ends.

Adjournment in absence of chair

5.23.—(1) In an administration, 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

5.24. Where a meeting in an administration 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

5.25. 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 7

Creditors' voting rights and majorities

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

Creditors' voting rights

5.26.—(1) In an administration, 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 5.28 or 5.29;
- (b) the statement of claim and documentary evidence of debt were 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).

(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.

(4) In a decision relating to a proposed CVA every creditor, secured or unsecured, who has notice of the decision procedure is entitled to vote in respect of that creditor's debt.

(5) Where a decision is sought in an administration under rule 3.52(3)(b), rule 3.96(5) or rule 3.96(6), creditors are entitled to participate to the extent stated in those rules.

Claim made in proceedings in other member States

5.27.—(1) Where, in an administration,—

- (a) a creditor is entitled to vote under rule 5.26 (as determined, where that is the case, in accordance with rule 5.32);
- (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 an administration,—

- (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" mean main, secondary or territorial proceedings in another member State.

Calculation of voting rights

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

- (a) in an administration, as at the date on which the company entered administration, less—

- (i) any payments that have been made to the creditor after that date in respect of the claim, and
 - (ii) any adjustment by way of set-off which has been made in accordance with that principle or would have been made if that principle were applied on the date on which the votes are counted;
- (b) in a proposed CVA—
 - (i) at the date the company went into liquidation where the company is being wound up,
 - (ii) at the date the company entered administration (less any payments made to the creditor after that date in respect of the claim) where it is in administration,
 - (iii) at the beginning of the moratorium where a moratorium has been obtained (less any payments made to the creditor after that date in respect of the claim), or
 - (iv) where (i) to (iii) do not apply, at the decision date.
- (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) In relation to a proposed CVA, a debt of an unliquidated or unascertained amount is to be valued at £1 for the purposes of voting unless the convener or chair or an appointed person decides to put a higher value on it.
- (4) Where a debt is wholly secured its value for voting purposes is nil.
- (5) Where a debt is partly secured its value for voting purposes is the value of the unsecured part.
- (6) The value of the debt for voting purposes is its full value without deduction of the value of the security in the following cases—
 - (a) where the administrator has made a statement under paragraph 52(1)(b) of Schedule B1 and the administrator has been requested to seek a decision under paragraph 52(2) of that Schedule; and
 - (b) where, in a proposed CVA, there is a decision on whether to extend or further extend a moratorium or to bring a moratorium to an end before the end of the period of any extension.
- (7) 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.
- (8) A vote cast in a decision procedure which is not a meeting may not be changed.
- (9) Paragraph (7) 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: hire-purchase agreements

5.29.—(1) In an administration, a creditor under a hire-purchase agreement is entitled to vote in respect of the amount of the debt due and payable by the company on the date on which the company entered administration.

(2) In calculating the amount of any debt for the purpose of paragraph (1), no account is to be taken of any amount attributable to the exercise of any right under the relevant agreement so far as the right has become exercisable solely by virtue of—

- (a) the making of an administration application;

- (b) a notice of intention to appoint an administrator or any matter arising as a consequence of the notice; or
- (c) the company entering administration.

Procedure for admitting creditors' claims for voting

5.30.—(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

5.31.—(1) A decision is made by creditors when a majority (in value) of those voting have voted in favour of the proposed decision, except where this rule provides otherwise.

(2) In the case of an administration, a decision is not made if those voting against it include more than half in value of the creditors to whom notice of the decision procedure was delivered who are not, to the best of the convener's or chair's belief, persons connected with the company.

(3) Each of the following decisions in a proposed CVA is made when 75% or more (in value) of those responding vote in favour of it—

- (a) a decision approving a proposal or a modification;
- (b) a decision extending or further extending a moratorium; or
- (c) a decision bringing a moratorium to an end before the end of the period of any extension.

(4) In a proposed CVA a decision is not made if more than half of the total value of the unconnected creditors vote against it.

(5) For the purposes of paragraph (4)—

- (a) a creditor is unconnected unless the convener or chair decides that the creditor is connected with the company;
- (b) in deciding whether a creditor is connected reliance may be placed on the information provided in the company's statement of affairs or otherwise in accordance with these Rules; and
- (c) the total value of the unconnected creditors is the total value of those unconnected creditors whose claims have been admitted for voting.

Appeals against decisions under this Chapter

5.32.—(1) A decision of the convener or chair under this Chapter is subject to appeal to the court by a creditor.

(2) In a proposed CVA, an appeal to the court against a decision under this Chapter may also be made by a member of the company.

(3) 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 but, in a CVA, the court may only make an order if it considers that the circumstances which led to the appeal give rise to unfair prejudice or material irregularity.

(4) An appeal under this rule may not be made after the end of the period of 21 days beginning with the decision date.

(5) However, the previous paragraph does not apply in a proposed CVA where an appeal may not be made after the end of the period of 28 days beginning with the day on which the first of the reports required by section 4(6) or paragraph 30(3) of Schedule A1 was lodged with the court.

(6) The person who made the decision is not personally liable for costs incurred by any person in relation to an appeal under this rule unless the court makes an order to that effect.

CHAPTER 8

Exclusions from meetings

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

Action where person excluded

5.33.—(1) In this rule and rules 5.34 and 5.35, 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 5.35 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

5.34.—(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

- 5.35.**—(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 5.34, 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 two business days from the date of receiving the decision of the appropriate person.

CHAPTER 9

Records

Record of a decision

5.36.—(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) a list of the names of the creditors who participated in the decision procedure and their claims;
- (c) where a decision is taken on the election of members of a creditors' committee, the names and addresses of those elected;
- (d) a record of any change to the result of the resolution made under rule 5.35(6) and the reason for any such change; and
- (e) 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 insolvency proceedings;
- (b) state whether or not the decision was made; and
- (c) contain a list of the creditors who objected to the decision and their claims.

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

CHAPTER 10

Company meetings

Company meetings in administration

5.37.—(1) This rule applies to company meetings in an administration.

(2) 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 a 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.

(3) 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.

(4) In summoning any company meeting the administrator must have regard to the convenience of the members when fixing the venue.

(5) The chair of a company meeting in an administration must be either the administrator or an appointed person.

Remote attendance: notification requirements

5.38. When a meeting is to be summoned and held in accordance with section 246A(3)(2), 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 5.41;
- (b) the ability of a person within rule 5.42(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

5.39.—(1) This rule applies to a request to the convener of a meeting under section 246A(9)(3) 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 seven 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

5.40.—(1) In this rule and rules 5.41 and 5.42, 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;

(2) Section 246A was inserted by [S.I. 2010/18](#).

(3) Section 246A(9) is amended by paragraph 54(4) of Schedule 9 to the 2015 Act.

- (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 5.42 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 one hour.

Indication to excluded person

- 5.41.**—(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

- 5.42.**—(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 5.41, 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 two business days from the date of receiving the decision of the appropriate person.