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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 347**

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

**PART 4**

**CREDITORS' VOLUNTARY WINDING UP**

**CHAPTER 1**

Application of Part

**Application of Part 4**

**4.1.—**(1) This Part applies to a creditors' voluntary winding up.

(2) However where a company moves from administration to creditors' voluntary winding up by the registration of a notice under paragraph 83(3) of schedule B1 the following rules do not apply:—

4.2 to 4.7 (statement of affairs etc.);

4.11 to 4.15 (information to creditors and contributories and appointment of liquidator);

4.17 (report by directors etc.);

4.18 (decisions on nomination);

4.20 (appointment by creditors or by the company);

4.22 (appointment by the court (section 100(3) or 108), other than in respect of appointments under section 108).

**CHAPTER 2**

Statement of affairs and other information

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

**Statement of affairs made out by the liquidator under section 95(1A)<sup>M1</sup>**

[Note: section 95(4A)<sup>M2</sup> requires the statement of affairs to contain a statutory declaration by some or all of the directors.

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**Marginal Citations**

**M2** Section 95(4A) was inserted by [S.I. 2010/18](#) and prospectively amended for Scotland by [S.S.I. 2016/141, article 8](#).

**Marginal Citations**

- M1** Section 95(1A) is prospectively inserted by paragraph 19(2) of schedule 9 of the 2015 Act.  
**M2** Section 95(4A) was inserted by S.I. 2010/18 and prospectively amended for Scotland by S.S.I. 2016/141, article 8.

Note: the “official rate” referred to in paragraph (2)(c) is defined in section 251 as the rate referred to in section 189(4)). Also see section 189(5) and rule 7.26.]

**4.2.—**(1) This rule applies to the statement of affairs made out by the liquidator under section 95(1A) (effect of company's insolvency in members' voluntary winding up).

- (2) The statement of affairs must be headed “Statement of affairs” and must contain—
- (a) identification details for the company;
  - (b) a statement that it is a statement of the affairs of the company on a date which is specified, being the date of the opinion formed by the liquidator under section 95(1);
  - (c) a statement that as at that date, the liquidator formed the opinion that the company would be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors' declaration of solvency made under section 89; and
  - (d) the date it is made.

(3) The statutory declaration required by section 95(4A) must be a statutory declaration that the information provided in the statement of affairs is, to the best of the liquidator's knowledge and belief, accurate and complete.

**Statement of affairs made out by the directors under section 99(1)**

[Note: section 99(2A)<sup>M3</sup> requires the statement of affairs to contain a statutory declaration by some or all of the directors.]

**Marginal Citations**

- M3** Section 99(2A) was inserted by S.I. 2010/18 and prospectively amended for Scotland by S.S.I. 2016/141, article 9.

**Marginal Citations**

- M3** Section 99(2A) was inserted by S.I. 2010/18 and prospectively amended for Scotland by S.S.I. 2016/141, article 9.

**4.3.—**(1) This rule applies to the statement of affairs made out by the directors under section 99(1)<sup>M4</sup>.

- (2) The statement of affairs must be headed “Statement of affairs” and must contain—
- (a) identification details for the company;
  - (b) a statement that it is a statement of the affairs of the company on a date which is specified, being a date not more than 14 days before the date of the resolution for winding up; and
  - (c) the date it is made.

(3) The statutory declaration required by section 99(2A) must be a statutory declaration that the information provided in the statement of affairs is, to the best of the directors' knowledge and belief, accurate and complete.

(4) If a creditor requests a copy of the statement of affairs at a time when no liquidator is appointed the directors must deliver a copy to the creditor.

(5) The directors must deliver the statement of affairs to the liquidator as soon as reasonably practicable after the liquidator is appointed.

#### Marginal Citations

**M4** Section 99(1) is prospectively substituted by paragraph 23(2) of schedule 9 of the 2015 Act (c.26).

#### Additional requirements as to statements of affairs

**4.4.**—(1) A statement of affairs under section 95(1A) or 99(1) must also contain [<sup>F1</sup>the following and, in addition, when paragraph (1B) applies, the information specified in that paragraph]—

- (a) a list of the company's shareholders, with the following details about each one—
  - (i) name and postal address,
  - (ii) the type of shares held,
  - (iii) the nominal amount of the shares held,
  - (iv) the number of shares held,
  - (v) the amount per share called up, and
  - (vi) the total amount called up;
- (b) the total amount of shares called up held by all shareholders;
- (c) a summary of the assets of the company, setting out the book value and estimated realisable value of—
  - (i) any assets specifically secured,
  - (ii) any assets subject to a floating charge,
  - (iii) any assets not secured, and
  - (iv) the total value of all the assets available for preferential creditors;
- (d) a summary of the liabilities of the company, setting out—
  - (i) the amount of preferential debts,
  - (ii) an estimate of the deficiency with respect to preferential debts or the surplus available after paying the preferential debts,
  - (iii) an estimate of the prescribed part, if applicable,
  - (iv) an estimate of the total assets available to pay debts secured by floating charges,
  - (v) the amount of debts secured by floating charges,
  - (vi) an estimate of the deficiency with respect to debts secured by floating charges or the surplus available after paying the debts secured by fixed security or floating charges,
  - (vii) the amount of unsecured debts (excluding preferential debts),
  - (viii) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts,
  - (ix) any issued and called-up capital, and

- (x) an estimate of the deficiency with respect to, or surplus available to, members of the company;
- (e) a list of the company's creditors with the following particulars required by paragraph (2) indicating—
  - (i) any creditors under hire-purchase or conditional sale agreements,
  - (ii) any creditors who are consumers claiming amounts paid in advance of the supply of goods or services, and
  - (iii) any creditors claiming retention of title over property in the company's possession.

[<sup>F2</sup>(1A) Paragraph (1B) applies if a moratorium under Part A1 of the Act is, or has been, in force for the company at any time within the period of 12 weeks ending with the day on which the resolution for a voluntary winding up is passed.

(1B) Where this paragraph applies—

- (a) the statement of affairs must identify which of the debts owed by the company are:
  - (i) moratorium debts; or
  - (ii) priority pre-moratorium debts

within the meaning given in section 174A.

- (b) paragraph (1)(c)(iv) has effect as if the reference to preferential creditors included references to moratorium debts and priority pre-moratorium debts within the meaning given by section 174A.
- (c) paragraph (1)(d)(i),(ii) and (vii) have effect as if the reference to preferential debts included references to moratorium debts and priority pre-moratorium debts within the meaning given by section 174A.]

(2) The particulars required by this paragraph relating to each creditor are as follows:—

- (i) the name and postal address,
- (ii) amount of the debt owed to the creditor, (as required by section 95(4) or 99(2)),
- (iii) details of any security held by the creditor,
- (iv) the date the security was given, and
- (v) the value of the security.

(3) Paragraph (4) applies where the particulars required by paragraph (2) relate to creditors who are either—

- (a) employees or former employees of the company; or
- (b) consumers claiming amounts paid in advance for the supply of goods or services.

(4) Where this paragraph applies—

- (a) the statement of affairs itself must state separately for each of paragraphs (3)(a) and (b) the number of such creditors and the total of the debts owed to them; and
- (b) the particulars required by paragraph (2) in respect of those creditors must be set out in separate schedules to the statement of affairs for each of paragraphs (3)(a) and (b).

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#### Textual Amendments

- F1** Words in [rule 4.4\(1\)](#) inserted (1.10.2021) by [The Insolvency \(Scotland\) \(Receivership and Winding up\) \(Amendment\) Rules 2021 \(S.I. 2021/1025\)](#), [rules 1, 6\(2\)](#) (with [rules 4, 5](#))

**F2** Rule 4.4(1A)(1B) inserted (1.10.2021) by [The Insolvency \(Scotland\) \(Receivership and Winding up\) \(Amendment\) Rules 2021 \(S.I. 2021/1025\)](#), rules 1, **6(3)** (with rules 4, 5)

### Statement of affairs: statement of concurrence

**4.5.—**(1) The liquidator may require a director (“the relevant person”) to deliver to the liquidator a statement of concurrence.

(2) A statement of concurrence is a statement that the relevant person concurs in the statement of affairs submitted by another director.

(3) The liquidator must inform the director who has been required to submit a statement of affairs that the relevant person has been required to deliver a statement of concurrence.

(4) The director who has been required to submit the statement of affairs must deliver a copy to every relevant person who has been required to submit a statement of concurrence.

(5) A statement of concurrence—

(a) must identify the company; and

(b) may be qualified in relation to matters dealt with in the statement of affairs, where the relevant person —

(i) is not in agreement with the statement of affairs,

(ii) considers the statement of affairs to be erroneous or misleading, or

(iii) is without the direct knowledge necessary for concurring in it.

(6) A statement of concurrence must contain a statutory declaration by the relevant person required to submit it that the information provided in the statement of concurrence is, to the best of the relevant person's knowledge and belief, accurate and complete.

(7) The relevant person must deliver the required statement of concurrence to the liquidator before the end of the period of 5 business days (or such other period as the liquidator may agree) beginning with the day on which the relevant person receives the statement of affairs.

### Limited disclosure

**4.6.—**(1) This rule applies where the liquidator thinks that disclosure of the whole or part of a statement of affairs or a statement of concurrence would be likely to prejudice the conduct of the winding up or might reasonably be expected to lead to violence against any person.

(2) The liquidator may apply to the court for an order of limited disclosure in respect of the whole or any specified part of the—

(a) statement of affairs; or

(b) the statement of concurrence.

(3) The court may order that the whole or any specified part of the statement of affairs or the statement of concurrence must not be entered in the sederunt book.

(4) The court's order of limited disclosure may include directions regarding the disclosure of information in the statement of affairs or statement of concurrence to other persons.

(5) A creditor who seeks disclosure of the statement of affairs or statement of concurrence or a specified part of it in relation to which an order has been made under this Rule may apply to the court for an order that the liquidator disclose that statement of affairs or statement of concurrence or specified part of it.

(6) The court may attach to an order for disclosure any conditions as to confidentiality, duration and scope of the order in any material change of circumstances, and other matters as it sees fit.

(7) If there is a material change in circumstances rendering the limit on disclosure unnecessary, the liquidator must, as soon as reasonably practicable after the change, apply to the court for the order to be discharged or varied.

(8) This rule does not apply so far as section 95 or 99 does not permit limited disclosure.

### **Expenses of statement of affairs and decisions sought from creditors**

**4.7.—**(1) Any reasonable and necessary expenses of preparing the statement of affairs under section 99 may be paid out of the company's assets, either before or after the commencement of the winding up, as an expense of the liquidation.

(2) Any reasonable and necessary expenses of the decision procedure or deemed consent procedure to seek a decision from the creditors on the nomination of a liquidator under rule 4.14 (information to creditors and appointment of liquidator) may be paid out of the company's assets, either before or after the commencement of the winding up, as an expense of the liquidation.

(3) Where payment under paragraph (1) or (2) is made before the commencement of the winding up, the directors must deliver to the creditors with the statement of affairs a statement of the amount of the payment and the identity of the person to whom it was made.

(4) The liquidator appointed under section 100<sup>M5</sup> may make such a payment, but if there is a liquidation committee, the liquidator must deliver to the committee at least 5 business days' notice of the intention to make it.

(5) However such a payment may not be made to the liquidator, or to any associate of the liquidator, otherwise than with the approval of the liquidation committee, the creditors, or the court.

(6) This is without prejudice to the court's powers under rule 5.52 (voluntary winding up superseded by winding up by the court).

#### **Marginal Citations**

**M5** Section 100 is prospectively amended by paragraph 24 of schedule 9 of the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#) ("the 2015 Act") which inserts new subsections (1), (1A) and (1B).

### **Delivery of accounts to liquidator (section 235)**

**4.8.—**(1) A person who is specified in section 235(3) must deliver to the liquidator accounts of the company of such nature, as at such date, and for such period, as the liquidator requires.

(2) The period for which the liquidator may require accounts may begin from a date up to 3 years before the date of the resolution for winding up, or from an earlier date to which audited accounts of the company were last prepared.

(3) The accounts must, if the liquidator so requires, contain a statutory declaration by the person required to deliver them that the accounts are, to the best of the relevant person's knowledge and belief, accurate and complete.

(4) The accounts (containing a statutory declaration if so required) must be delivered to the liquidator within 21 days from the liquidator's request, or such longer period as the liquidator may allow.

### **Expenses of assistance in preparing accounts**

**4.9.—**(1) Where the liquidator requires a person to deliver accounts under rule 4.8, the liquidator may, with the approval of the liquidation committee (if there is one) and as an expense of the liquidation, employ a person or firm to assist that person in the preparation of the accounts.

(2) The person who is required to deliver accounts may request an allowance of all or part of the expenses to be incurred in employing a person or firm to assist in preparing the accounts.

(3) A request for an allowance must be accompanied by an estimate of the expenses involved.

(4) The liquidator must only authorise the employment of a named person or a named firm approved by the liquidator.

(5) The liquidator may, with the approval of the liquidation committee (if there is one), authorise such an allowance, payable as an expense of the liquidation.

### CHAPTER 3

#### Nomination and appointment of liquidators and information to creditors

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

#### **Application of the rules in this Chapter**

**4.10.**—(1) The rules in this Chapter apply as follows.

(2) Rules 4.11 to 4.13 only apply to a conversion from a members' voluntary winding up to a creditors' voluntary winding up.

(3) Rule 4.16 only applies where the administrator becomes the liquidator in a voluntary winding up which follows an administration.

(4) Rules 4.14, 4.15 and 4.17 only apply to a creditors' voluntary winding up which has not been commenced by a conversion from a members' voluntary winding up or an administration.

(5) Rules 4.18 and 4.19 apply to all creditors' voluntary windings up.

#### **Nomination of liquidator and information to creditors on conversion from members' voluntary winding up (section 96)**

**4.11.**—(1) This rule applies in respect of the conversion of a members' voluntary winding up to a creditors' voluntary winding up under section 96 <sup>M6</sup>.

(2) The liquidator must seek a nomination from the creditors for a liquidator in the creditors' voluntary winding up by—

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

(3) The liquidator must deliver to the creditors a copy of the statement of affairs required by section 95(1A) and Chapter 2 of this Part together with a notice which complies with rule 8.7 (deemed consent) or 8.8 (notices to creditors of decision procedure) so far as are relevant.

(4) The notice must also contain—

- (a) identification and contact details for the existing liquidator; and
- (b) a statement that if no person is nominated by the creditors then the existing liquidator will be the liquidator in the creditors' voluntary winding up.

(5) The decision date in the notice must be not later than 28 days from the date under section 95(1) that the liquidator formed the opinion that the company will be unable to pay its debts in full.

(6) Subject to paragraph (9), the creditors must be given at least 14 days' notice of the decision date.

(7) Paragraph (8) applies where—

- (a) the liquidator has sought a decision from creditors on the nomination of a liquidator by the deemed consent procedure; but

(b) the level of objections to the proposed nomination has meant, under section 246ZF, that no nomination is deemed to have been made.

(8) Where this paragraph applies, the liquidator must seek a nomination from creditors by way of a decision procedure in accordance with this rule, the decision date to be as soon as reasonably practicable, but no more than 28 days from the date that the level of objections had the effect that no nomination was deemed to have been made.

(9) Where paragraph (8) applies, the creditors must be given at least 7 days' notice of the decision date.

(10) Where the liquidator is required by rule 8.6 (physical meetings) to summon a physical meeting as a result of requests from creditors received in response to a notice delivered under this rule, the physical meeting must be summoned to take place—

- (a) within 28 days of the date on which the threshold for requiring a physical meeting was met; and
- (b) with at least 14 days' notice.

#### Marginal Citations

**M6** Section 96 is prospectively substituted by paragraph 20(1) of schedule 9 of the 2015 Act.

### Creditors' decision on appointment other than at a meeting (conversion from members' voluntary winding up)

**4.12.**—(1) This rule applies where the creditors' decision on the nomination of a liquidator in a conversion of a members' voluntary winding up into a creditors' voluntary winding up is intended to be sought otherwise than through a meeting or through the deemed consent procedure, including where the conditions in rule 4.11(7) are met and the liquidator, under rule 4.11(8), goes on to seek a nomination from creditors by way of a decision procedure other than a meeting.

(2) Instead of delivering a notice of the decision procedure or deemed consent procedure under rule 4.11, the liquidator must deliver a notice to creditors inviting them to make proposals for the nomination of a liquidator.

(3) Such a notice must—

- (a) identify any liquidator for whom a proposal which is in compliance with paragraph (4) has already been received;
- (b) explain that the liquidator is not obliged to seek the creditors' views on any proposal that does not meet the requirements of paragraphs (4) and (5); and
- (c) be accompanied by the statement of affairs unless that has previously been delivered to the creditor.

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

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

(6) Within 2 business days of the end of the period referred to in paragraph (5), the liquidator must send a notice to creditors of a decision procedure under rule 4.11.



### **Information to creditors and contributories (conversion of members' voluntary winding up to creditors' voluntary winding up)**

**4.13.**—(1) The liquidator must deliver to the creditors and contributories within 28 days of the conversion of a members' voluntary winding up to a creditors' voluntary winding up under section 96 a notice which must contain—

- (a) the date the winding up became a creditors' voluntary winding up;
- (b) a report of the decision procedure or deemed consent procedure which took place under rule 4.11; and
- (c) the information required by paragraph (3).

(2) The notice must be accompanied by a copy of the statement of affairs or a summary except where the notice is being delivered to a creditor to whom a copy of the statement of affairs has previously been delivered under section 95(1A) <sup>M7</sup>.

(3) The required information is an estimate to the best of the liquidator's knowledge and belief of—

- (a) the value of the prescribed part (whether or not the liquidator might be required under section 176A <sup>M8</sup> to make the prescribed part available for the satisfaction of unsecured debts); and
- (b) the value of the company's net property (as defined by section 176A(6)).

(4) The liquidator may exclude from an estimate under paragraph (3) information the disclosure of which could seriously prejudice the commercial interests of the company.

(5) If the exclusion of such information affects the calculation of an estimate, the report must say so.

(6) If the liquidator proposes to make an application to court under section 176A(5) the report must say so and give the reason for the application.

#### **Marginal Citations**

**M7** Section 95(1A) is prospectively inserted by paragraph 19(2) of schedule 9 of the 2015 Act which also omitted subsections (2) to (3) and (5) to (7).

**M8** Section 176A was inserted by the Enterprise Act 2002 (c.40), section 252.

### **Information to creditors and appointment of liquidator**

**4.14.**—(1) This rule applies in respect of the appointment of a liquidator under section 100.

(2) The directors of the company must deliver to the creditors a notice seeking their decision on the nomination of a liquidator by—

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

(3) The decision date for the decision of the creditors on the nomination of a liquidator must be not earlier than 3 business days after the notice under paragraph (2) is delivered but not later than 14 days after the resolution is passed to wind up the company.

(4) Where the directors have sought a decision from the creditors through the deemed consent procedure under paragraph (2)(a) but, pursuant to section 246ZF(5)(a) (deemed consent procedure), more than the specified number of creditors object so that the decision cannot be treated as having been made, the directors must then seek a decision from the creditors on the nomination of a

liquidator by holding a physical meeting under rule 8.6 as if a physical meeting had been required under section 246ZE(4) (decisions by creditors and contributories: general) <sup>M9</sup>.

(5) Where paragraph (4) applies, the meeting must not be held earlier than 3 business days after the notice under rule 8.6(3) is delivered or later than 14 days after the level of objections reaches that described in paragraph (4).

(6) A request for a physical meeting under section 246ZE must be made in accordance with rule 8.6 except that—

- (a) such a request may be made at any time between the delivery of the notice under paragraph (2) and the decision date under paragraph (3); and
- (b) the decision date where this paragraph applies must be not earlier than 3 business days after the notice under rule 8.6(3) is delivered and not later than 14 days after the level of requests reaches that described in section 246ZE.

(7) The directors must deliver to the creditors a copy of the statement of affairs required under section 99 not later than on the business day before the decision date.

(8) A notice delivered under paragraph (2), in addition to the information required by rules 8.7 (deemed consent) and 8.8 (notices to creditors of decision procedure), must contain—

- (a) the date the resolution to wind up is to be considered or was passed;
- (b) identification and contact details of any liquidator nominated by the company;
- (c) a statement of either—
  - (i) the name and address of a person qualified to act as an insolvency practitioner in relation to the company who during the period before the decision date, will furnish creditors free of charge with such information concerning the company's affairs as they may reasonably require, or
  - (ii) a place in the relevant locality where, on the 2 business days falling next before the decision date, a list of the names and addresses of the company's creditors will be available for inspection free of charge; and
- (d) where the notice is sent to creditors in advance of the copy of the statement of affairs, a statement that the directors, before the decision date and before the end of the period of 7 days beginning with the day after the day on which the company passed a resolution for winding up, are required by section 99—
  - (i) to make out a statement in the prescribed form as to the affairs of the company, and
  - (ii) send the statement to the company's creditors.

(9) Where the company's principal place of business in Scotland was situated in different localities at different times during the relevant period, the duty imposed by sub-paragraph (8)(c)(ii) above applies separately in relation to each of those localities.

(10) Where the company had no place of business in Scotland during the relevant period, the reference in paragraph (9) to the company's principal place of business in Scotland are replaced by references to its registered office.

(11) In paragraph (9), “the relevant period” means the period of 6 months immediately preceding the day on which the notices referred to in paragraph (2) were delivered.

(12) Where a virtual or physical meeting is held under this rule and a liquidator has already been nominated by the company, the liquidator or an appointed person must attend any meeting held under this rule and report on any exercise of the liquidator's powers under section 112, 165 or 166 <sup>M10</sup>.

(13) A director who is in default in seeking a decision on the nomination of a liquidator in accordance with this rule is guilty of an offence.

#### Marginal Citations

- M9** Section 246ZE was prospectively inserted by section 122 of the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#) (“the 2015 Act”).
- M10** In section 165, a new subsection (2) is prospectively inserted by section 120(2) of the 2015 Act; [section 166](#) is prospectively amended, subsection (4) omitted and a new subsection (5) inserted by paragraph 40 of schedule 9 of that Act.

#### Information to creditors and contributories

**4.15.**—(1) The liquidator must deliver to the creditors and contributories within 28 days of the appointment of the liquidator under section 100 a notice which must—

- (a) be accompanied by a statement of affairs or a summary where the notice is delivered to any contributory or creditor to whom the notice under rule 4.14 was not delivered;
- (b) a report on the decision procedure or deemed consent procedure under rule 4.14; and
- (c) be accompanied by the information required by paragraph (2).

(2) The required information is an estimate to the best of the liquidator's knowledge and belief of—

- (a) the value of the prescribed part (whether or not the liquidator might be required under section 176A to make the prescribed part available for the satisfaction of unsecured debts); and
- (b) the value of the company's net property (as defined by section 176A(6)).

(3) The liquidator may exclude from an estimate under paragraph (2) information the disclosure of which could seriously prejudice the commercial interests of the company.

(4) If the exclusion of such information affects the calculation of an estimate, the report must say so.

(5) If the liquidator proposes to make an application to court under section 176A(5) the report must say so and give the reason for the application.

#### Further information where administrator becomes liquidator (paragraph 83(3) of schedule B1)

**4.16.**—(1) This rule applies where an administrator becomes liquidator on the registration of a notice under paragraph 83(3) of schedule B1, and becomes aware of creditors not formerly known to that person as administrator.

(2) The liquidator must deliver to those creditors a copy of any statement delivered by the administrator to creditors in accordance with paragraph 49(4)<sup>M11</sup> of schedule B1 and rule 3.35 of the CVA and Administration Rules.

#### Marginal Citations

- M11** [Paragraph 49\(4\)](#) is prospectively amended by paragraph 10(2) of schedule 9 of the 2015 Act.

#### Report by director etc.

**4.17.**—(1) Where the statement of affairs sent to creditors under section 99(1) does not, or will not, state the company's affairs at the decision date for the creditors' nomination of a liquidator, the directors of the company must cause a report (written or oral) to be made to the creditors in

accordance with this rule on any material transactions relating to the company occurring between the date of the making of the statement and the decision date.

(2) In the case of a decision being taken through a meeting, the report must be made at the meeting by the director chairing the meeting or by another person with knowledge of the relevant matters.

(3) Where the deemed consent procedure is used, the report must be delivered to creditors as soon as reasonably practicable after the material transaction takes place in the same manner as the deemed consent procedure.

(4) Where the decision date is within the period of 3 business days from the delivery of a report under paragraph (3), this rule extends the decision date until the end of that period notwithstanding the requirement in rule 4.14(3) relating to the timing of the decision date.

(5) On delivery of a report under paragraph (3), the directors must notify the creditors of the effects of paragraph (4).

(6) A report under this rule must be recorded in the record of the decision under rule 8.40 (record of a decision).

### **Decisions on nomination**

**4.18.**—(1) In the case of a decision on the nomination of a liquidator—

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

(2) The convener or chair may at any time put to the meeting a resolution for the joint nomination of any 2 or more nominees.

### **Invitation to creditors to form a liquidation committee**

**4.19.**—(1) Where any decision is sought from the company's creditors—

- (a) in a creditors' voluntary winding up; or
- (b) where a members' voluntary winding up is converting to a creditors' voluntary winding up,

the convener of the decision must at the same time deliver to the creditors a notice inviting them to decide whether a liquidation committee should be established if sufficient creditors are willing to be members of the committee.

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

(3) The notice must—

- (a) state that nominations must be delivered to the convener by the specified date; and
- (b) state that nominations can only be accepted if the convener is satisfied as to the creditors' eligibility under rule 10.4 (eligibility for membership of creditors' or liquidation committee).

## **CHAPTER 4**

### **The liquidator**

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

### **Appointment by creditors or by the company**

[Note: under section 109 and paragraph 23 of schedule 8 of the Scotland Act 1998 a liquidator must also, within 14 days, publish in the Gazette and deliver to the Accountant in Bankruptcy notice of the liquidator's appointment. ]

**4.20.**—(1) This rule applies where a person is appointed as liquidator by creditors or the company.

(2) The liquidator's appointment takes effect from the date of the passing of the resolution of the company or, where the creditors decide to appoint a person who is not the person appointed by the company, from the relevant decision date.

(3) Their appointment must be certified by—

- (a) the convener or chair of the decision procedure or deemed consent procedure; or
- (b) in respect of an appointment by the company the chair of the company meeting or a director or the secretary of the company (in the case of a written resolution).

(4) The person who certifies the appointment must not do so unless and until the proposed liquidator (“the appointee”) has provided that person with a statement of being an insolvency practitioner qualified under the Act to be the liquidator and of consenting to act.

(5) The certificate must be authenticated and dated by the person who certifies the appointment and must contain—

- (a) identification details for the company;
- (b) identification and contact details for the person appointed as liquidator;
- (c) the date of the meeting of the company or conclusion of the decision procedure or deemed consent procedure when the liquidator was appointed;
- (d) a statement that the appointee—
  - (i) has provided a statement of being qualified to act as an insolvency practitioner in relation to the company,
  - (ii) has consented to act, and
  - (iii) was appointed liquidator of the company.

(6) Where 2 or more liquidators are appointed the certificate must also specify (as required by section 231) whether any act required or authorised under any enactment to be done by the liquidator is to be done by all or any one or more of them.

(7) The person who certifies the appointment must deliver the certificate as soon as reasonably practicable to the liquidator.

(8) The liquidator may within 28 days of the liquidator's appointment advertise notice of it (otherwise than in the Gazette) in such manner as the liquidator thinks fit.

(9) The notice must state—

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

[<sup>F3</sup>(10) In the case of a voluntary winding up where, immediately before the company goes into liquidation, a moratorium under Part A1 of the Act is in force for that company, the liquidator must deliver notice of their appointment to the monitor and such notice must be given within the period of 14 days beginning with the day on which liquidator is appointed.]

#### Textual Amendments

- F3** Rule 4.20(10) inserted (1.10.2021) by [The Insolvency \(Scotland\) \(Receivership and Winding up\) \(Amendment\) Rules 2021 \(S.I. 2021/1025\)](#), rules 1, **7(2)** (with rules 4, 5)

### Power to fill vacancy in office of liquidator

**4.21.** Where a vacancy in the office of liquidator occurs in the manner mentioned in section 104 a decision procedure to fill the vacancy may be initiated by any creditor or, if there was more than one liquidator, by the continuing liquidator or liquidators.

### Appointment by the court (section 100(3) or 108)

[Note: under section 109 and paragraph 23 of schedule 8 of the Scotland Act 1998 a liquidator must also, within 14 days, publish in the Gazette and deliver to the Accountant in Bankruptcy notice of the liquidator's appointment.]

**4.22.—(1)** This rule applies where the liquidator is appointed by the court under section 100(3) or 108.

(2) The court must not make the appointment unless and until the person being appointed liquidator has lodged in court a statement to the effect that that person is qualified to act as an insolvency practitioner in relation to the company and consents to act as liquidator.

(3) The liquidator's appointment is effective from the date of the order of appointment.

(4) Within 28 days from appointment the liquidator must—

- (a) deliver a notice of it to the creditors; or
- (b) if the court permits, and in accordance with the directions of the court, advertise the notice (otherwise than in the Gazette).

(5) Where the liquidator gives notice under paragraph (4)(a) the liquidator may, in addition, advertise the notice (otherwise than in the Gazette) in such manner as the liquidator thinks fit.

(6) Any notice under this rule must state—

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

[<sup>F4</sup>(7) In the case of a voluntary winding up where, immediately before the company goes into liquidation, a moratorium under Part A1 of the Act is in force for that company, the liquidator must deliver such notice of their appointment to the monitor and such notice must be given within the period of 14 days beginning with the day on which liquidator is appointed.]

#### Textual Amendments

- F4** Rule 4.22(7) inserted (1.10.2021) by [The Insolvency \(Scotland\) \(Receivership and Winding up\) \(Amendment\) Rules 2021 \(S.I. 2021/1025\)](#), rules 1, **8(2)** (with rules 4, 5)

### Liquidator's resignation and replacement

**4.23.—(1)** A liquidator may resign only—

- (a) on grounds of ill health;

- (b) because of the intention to cease to practise as an insolvency practitioner;
  - (c) because the further discharge of the duties of liquidator is prevented or made impractical by—
    - (i) a conflict of interest, or
    - (ii) a change of personal circumstances; or
  - (d) where 2 or more persons are acting as liquidator jointly and it is the opinion of both or all of them that it is no longer expedient that there should continue to be that number of joint liquidators.
- (2) Before resigning, the liquidator must deliver a notice to creditors, and invite the creditors by a decision procedure, or by deemed consent procedure, to consider whether a replacement should be appointed, except where the resignation is under sub-paragraph (1)(d).
- (3) The notice must—
- (a) state the liquidator's intention to resign;
  - (b) state that under rule 4.23(7) of these Rules the liquidator will be released 21 days after the date of delivery of the notice of resignation to AiB under section 171(5), unless the court orders otherwise; and
  - (c) comply with rules 8.7 (deemed consent) and 8.8 (notices to creditors of decision procedure) so far as are relevant.
- (4) The notice may suggest the name of a replacement liquidator.
- (5) The notice must be accompanied by a summary of the liquidator's receipts and payments.
- (6) The decision date must be not more than 5 business days before the date on which the liquidator intends to give notice of resignation to AiB under section 171(5).
- (7) The resigning liquidator's release is effective 21 days after the date on which the notice of resignation under section 171(5) is delivered to AiB, unless the court orders otherwise.

#### **Removal of liquidator by creditors**

[Note: in relation to release of the liquidator following removal from office by a decision of the company's creditors, see: where the company's creditors have not decided against the liquidator's release, section 173(2)(a)(ii); and where the company's creditors have decided against release, section 173(2)(b)(i).]

**4.24.—**(1) Where the creditors decide that the liquidator be removed, the convener of the decision procedure or the chair of the meeting (as the case may be) must as soon as reasonably practicable deliver the certificate of the liquidator's removal to the removed liquidator.

(2) The removed liquidator must deliver a notice of the removal to AiB as soon as reasonably practicable.

#### **Removal of liquidator by the court**

[Note: in relation to release of the liquidator following removal from office by the court see section 173(2)(b)(ii).]

**4.25.—**(1) This rule applies where an application is made to the court for the removal of the liquidator, or for an order directing the liquidator to initiate a decision procedure of creditors for the purpose of removing the liquidator.

- (2) The court may require the applicant to make a deposit or find caution for the expenses to be incurred by the liquidator on the application.
- (3) The applicant must, at least 14 days before the hearing, deliver to the liquidator—
- (a) a notice of the hearing stating the venue;
  - (b) a copy of the application; and
  - (c) a copy of any evidence on which the applicant intends to rely.
- (4) The expenses of the application are not payable as an expense of the liquidation unless the court orders otherwise.
- (5) Where the court removes the liquidator the order of removal may include such provision as the court thinks fit with respect to matters arising in connection with the removal.
- (6) The person removed must as soon as reasonably practicable after receiving a copy of the order of removal deliver a copy of the order of removal to AiB.
- (7) If the court appoints a new liquidator rule 4.22 applies.

### Deceased liquidator

[Note: in relation to release of a deceased liquidator, see section 173(2)(a)(iii)<sup>M12</sup> and paragraph 23 of schedule 8 of the Scotland Act 1998.]

#### Marginal Citations

**M12** Section 173 is prospectively amended by paragraph 44 of schedule 9 of the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#) (“the 2015 Act”).

#### Marginal Citations

**M12** Section 173 is prospectively amended by paragraph 44 of schedule 9 of the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#) (“the 2015 Act”).

- 4.26.**—(1) If the liquidator dies a notice of the fact and date of death must be delivered as soon as reasonably practicable—
- (a) where there is a liquidation committee, to the members of that committee; and
  - (b) to AiB.
- (2) The notice must be delivered by one of the following—
- (a) a surviving joint liquidator;
  - (b) a member of the deceased liquidator's firm (if the deceased was a member or employee of a firm);
  - (c) an officer of the deceased liquidator's company (if the deceased was an officer or employee of a company); or
  - (d) an executor of the deceased liquidator.
- (3) If such a notice has not been delivered within the 21 days following the liquidator's death then any other person may deliver the notice.



### **Loss of qualification as insolvency practitioner**

[Note: in relation to release of the liquidator where the liquidator vacates office on ceasing to be a person qualified to act as an insolvency practitioner in relation to the company (section 171(4)), see section 173(2)(b)(iii).]

**4.27.**—(1) This rule applies where the liquidator vacates office on ceasing to be qualified to act as an insolvency practitioner in relation to the company.

(2) A notice of the fact must be delivered as soon as reasonably practicable to AiB by one of the following—

- (a) the liquidator who has vacated office;
  - (b) a continuing joint liquidator;
  - (c) the recognised professional body which was the source of the vacating liquidator's authorisation to act (immediately before the liquidator vacated office).
- (3) Each notice must be authenticated and dated by the person delivering the notice.

### **Vacation of office on making of winding-up order**

**4.28.** Where the liquidator vacates office in consequence of the court making a winding-up order against the company, rule 4.29 applies in relation to the application to the Accountant of Court for release of the liquidator.

### **Application by former liquidator for release (section 173(2)(b) or (e))**

**4.29.**—(1) An application by a former liquidator to the Accountant of Court for release under section 173(2)(b) or (e) must contain—

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

(2) The application must be authenticated and dated by the former liquidator.

(3) When the Accountant of Court gives a release, the Accountant of Court must deliver—

- (a) a certificate of the release to the former liquidator; and
- (b) a notice of the release to AiB.

(4) Release is effective from the date of the certificate or such other date as the certificate specifies.

### **Final account prior to dissolution (section 106)**

**4.30.**—(1) The final account which the liquidator is required to make up under section 106(1) <sup>M13</sup> and deliver to members and creditors must comply with the requirements of rule 7.9.

(2) When the account is delivered to the creditors it must be accompanied by a notice which states—

- (a) that the company's affairs are fully wound up;

- (b) that a creditor may object to the release of the liquidator by giving notice in writing to the liquidator before the end of the prescribed period;
  - (c) that the prescribed period is the period ending 28 days after delivery of the notice;
  - (d) that the liquidator will vacate office under section 171 on delivering to the registrar of companies and AiB the final account and notice saying whether any creditor has objected to release; and
  - (e) that the liquidator will be released under section 173<sup>M14</sup> at the same time as vacating office unless any of the company's creditors objected to the liquidator's release.
- (3) The copy of the account which the liquidator delivers to the registrar of companies and AiB under section 106(3)(a) must be accompanied by a notice containing the statement required by section 106(3)(b) of whether any creditors have objected to the liquidator's release.
- (4) Where a creditor has objected to the liquidator's release rule 4.29 applies to an application by the liquidator to the Accountant of Court for release.
- (5) The liquidator is not obliged to prepare or deliver any progress report which may become due under these Rules in the period between the date to which the final account is made up and the date when the account is delivered to the registrar of companies and AiB under section 106(3)(a).

#### Marginal Citations

- M13** New section 106 is prospectively substituted by paragraph 29 of schedule 9 of the 2015 Act.
- M14** Section 173(2)(d) is prospectively amended and a new (2)(a), (b) and (e) and (2A) inserted by paragraph 44 of schedule 9 of the 2015 Act.

#### Liquidator's duties on vacating office (hand-over of assets etc.)

- 4.31.**—(1) This rule applies where a person appointed as liquidator (“the succeeding liquidator”) succeeds a previous liquidator (“the former liquidator”) as the liquidator.
- (2) When the succeeding liquidator's appointment takes effect the former liquidator must as soon as reasonably practicable deliver to the succeeding liquidator—
- (a) the assets (after deduction of any expenses properly incurred, and distributions made, by the former liquidator);
  - (b) the records of the winding up, including correspondence, statements of claim, evidence of debts and other documents relating to the winding up; and
  - (c) the company's documents and other records.
- (3) In doing so, the former liquidator must hand over—
- (a) such information relating to the affairs of the company and the course of the winding up as the succeeding liquidator considers reasonably required for the effective discharge of the succeeding liquidator's duties as liquidator; and
  - (b) all records and documents in the former liquidator's possession relating to the affairs of the company and its winding up.

#### Taking possession and realisation of company's assets

- 4.32.**—(1) The liquidator must—
- (a) as soon as reasonably practicable after the liquidator's appointment take possession of—
    - (i) the whole assets of the company; and

- (ii) any property, books, papers or records in the possession or control of the company or to which the company appears to be entitled; and
  - (b) make up and maintain an inventory and valuation of the assets of the company.
- (2) The liquidator is entitled to have access to, and to make copies of, all documents or records relating to the assets, property, business or financial affairs of the company—
- (a) sent by or on behalf of the company to a third party; and
  - (b) in that third party's hands.
- (3) If a person obstructs the liquidator in the liquidator's exercise, or attempted exercise, of a power conferred by paragraph (2), the court may, on the liquidator's application, order the person to cease obstructing the liquidator.
- (4) The liquidator may require delivery to the liquidator of any title deed or other document of the company, even if a right of lien is claimed over it.
- (5) Paragraph (4) is without prejudice to any preference of the holder of the lien.

### **Realisation of the company's heritable property**

- 4.33.**—(1) This rule applies to the sale of any part of the company's heritable property over which a heritable security is held by a creditor or creditors if the rights of the secured creditor are preferable to those of the liquidator.
- (2) The liquidator may sell that part only with the concurrence of every such creditor unless the liquidator obtains a sufficiently high price to discharge every such security.
- (3) Subject to paragraph (4), the following acts are precluded—
- (a) the taking of steps by a creditor to enforce the creditor's security over that part after the liquidator has intimated to the creditor an intention to sell it;
  - (b) the commencement by the liquidator of the procedure for the sale of that part after a creditor has intimated to the liquidator that the creditor intends to commence the procedure for its sale.
- (4) Where the liquidator or a creditor has given intimation under paragraph (3) but has unduly delayed in proceeding with the sale, then, if authorised by the court in the case of—
- (a) paragraph (3)(a), any creditor to whom intimation has been given may enforce the creditor's security;
  - (b) paragraph (3)(b), the liquidator may sell that part.
- (5) The validity of the title of any purchaser is not challengeable on the ground that there has been a failure to comply with a requirement of this rule.

### **Power of court to set aside certain transactions**

- 4.34.**—(1) If in the course of the liquidation the liquidator enters into any transaction with a person who is an associate of the liquidator, the court may, on the application of any interested person, set the transaction aside and order the liquidator to compensate the company for any loss suffered in consequence of it.
- (2) This does not apply if either—
- (a) the transaction was entered into with the prior consent of the court; or
  - (b) it is shown to the court's satisfaction that the transaction was for value, and that it was entered into by the liquidator without knowing, or having any reason to suppose, that the person concerned was an associate.

(3) Nothing in this rule is to be taken as prejudicing the operation of any rule of law relating to a trustee's dealings with trust property or the fiduciary obligations of any person.

#### **Rule against improper solicitation**

**4.35.**—(1) Where the court is satisfied that any improper solicitation has been used by or on behalf of the liquidator in obtaining proxies or procuring the liquidator's appointment, it may order that no remuneration be allowed as an expense of the liquidation to any person by whom, or on whose behalf, the solicitation was exercised.

(2) An order of the court under this rule overrides any resolution of the liquidation committee or the creditors, or any other provision of these Rules relating to the liquidator's remuneration.

#### **Permission for exercise of powers by liquidator**

**4.36.**—(1) Where these Rules require permission for the liquidator to exercise a power any permission given must not be a general permission but must relate to a particular proposed exercise of the liquidator's power.

(2) A person dealing with the liquidator in good faith and for value is not concerned to enquire whether any such permission has been given.

(3) Where the liquidator has done anything without such permission, the court or the liquidation committee may, for the purpose of enabling the liquidator to meet the liquidator's expenses out of the assets, ratify what the liquidator has done; but neither may do so unless satisfied that the liquidator has acted in a case of urgency and has sought ratification without undue delay.

(4) In this rule “permission” includes “sanction”.

### **CHAPTER 5**

#### **Special Manager**

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

#### **Application for and appointment of special manager (section 177)**

**4.37.**—(1) An application by the liquidator under section 177 for the appointment of a special manager must be supported by a report setting out the reasons for the application.

(2) The report must include the liquidator's estimate of the value of the business or property in relation to which the special manager is to be appointed.

(3) The court's order appointing a special manager must specify the duration of the special manager's appointment, being one of the following:—

- (a) for a fixed period stated in the order;
- (b) until the occurrence of a specified event; or
- (c) until the court makes a further order.

(4) The appointment of the special manager may be renewed by order of the court.

(5) The special manager's remuneration will be fixed from time to time by the court.

(6) The acts of the special manager are valid notwithstanding any defect in the special manager's appointment or qualifications.

## Caution

**4.38.**—(1) The appointment of the special manager does not take effect until the person appointed has found (or, if the court allows, undertaken to find) caution for the appointment to be given to the liquidator.

(2) A person appointed as special manager may find caution either specifically for a particular winding up, or generally for any winding up in relation to which that person may be appointed as special manager.

(3) The amount of the caution must be not less than the value of the business or property in relation to which the special manager is appointed, as estimated in the applicant's report under rule 4.37 which accompanied the application for appointment.

(4) When the special manager has found caution for the appointment to be given to the applicant that person must lodge with the court a certificate as to the adequacy of the caution.

(5) The cost of providing the caution must be paid in the first instance by the special manager; but the special manager is entitled to be reimbursed as an expense of the liquidation.

## Failure to give or keep up caution

**4.39.**—(1) If the special manager fails to find the required caution within the time allowed for that purpose in the order of appointment, or any extension of that time that may be allowed, the liquidator must report the failure to the court which may discharge the order appointing the special manager.

(2) If the special manager fails to keep up the caution, the liquidator must report the failure to the court, which may remove the special manager, and make such order as to expenses as it thinks just.

(3) If the court discharges the order appointing the special manager, or makes an order removing the special manager, the court must give directions as to whether any, and if so what, steps should be taken for the appointment of another special manager.

## Accounting

**4.40.**—(1) The special manager must produce accounts, containing details of the special manager's receipts and payments, for the approval of the liquidator.

(2) The account must be for—

- (a) each 3 month period for the duration of the special manager's appointment; and
- (b) any shorter period ending with the termination of the special manager's appointment.

(3) When the accounts have been approved, the special manager's receipts and payments must be added to those of the liquidator.

## Termination of appointment

**4.41.**—(1) If the liquidator is of the opinion that the appointment of the special manager is no longer necessary or beneficial for the company, the liquidator must apply to the court for directions, and the court may order the special manager's appointment to be terminated.

(2) The liquidator must also make such an application if the creditors decide that the appointment should be terminated.

**Changes to legislation:**

There are currently no known outstanding effects for the The Insolvency (Scotland) (Receivership and Winding up) Rules 2018, PART 4.