

SCOTTISH STATUTORY INSTRUMENTS

2018 No. 347

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

PART 5

WINDING UP BY THE COURT

CHAPTER 3

Provisional liquidator

[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 appointment of provisional liquidator (section 135)

5.4.—(1) An application to the court for the appointment of a provisional liquidator under section 135 may be made by—

- (a) the petitioner;
- (b) a creditor of the company;
- (c) a contributory;
- (d) the company;
- (e) the directors of the company;
- (f) the Secretary of State; ^{F1}or
- ^{F2}(g)
- ^{F3}(h)
- (i) any person who under any enactment would be entitled to present a petition for the winding up of the company.

(2) The court must not make the appointment unless and until the person being appointed provisional 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 provisional liquidator.

F1 Word in rule 5.4(1)(f) inserted (31.12.2020) by S.I. 2019/146, **Sch. para. 137E(a)** (as inserted by [The Insolvency \(Amendment\) \(EU Exit\) \(No. 2\) Regulations 2019](#) (S.I. 2019/1459), reg. 1(2), **Sch. para. 6**; 2020 c. 1, **Sch. 5 para. 1(1)**)

F2 Rule 5.4(1)(g) omitted (31.12.2020) by virtue of S.I. 2019/146, **Sch. para. 137E(b)** (as inserted by [The Insolvency \(Amendment\) \(EU Exit\) \(No. 2\) Regulations 2019](#) (S.I. 2019/1459), reg. 1(2), **Sch. para. 6**; 2020 c. 1, **Sch. 5 para. 1(1)**)

F3 Rule 5.4(1)(h) omitted (31.12.2020) by virtue of S.I. 2019/146, **Sch. para. 137E(c)** (as inserted by [The Insolvency \(Amendment\) \(EU Exit\) \(No. 2\) Regulations 2019](#) (S.I. 2019/1459), reg. 1(2), **Sch. para. 6**; 2020 c. 1, **Sch. 5 para. 1(1)**)

Order of appointment of provisional liquidator – delivery of copy

5.5. The provisional liquidator must as soon as reasonably practicable after receipt of the copy of the order appointing the provisional liquidator deliver a copy of the order to—

- (a) the registrar of companies;
- (b) AiB;

[^{F4}(ba) where a moratorium under Part A1 of the Act is in force for the company, the monitor.]

- (c) the company (or the liquidator, if a liquidator was appointed for the company's voluntary winding up); and
- (d) any receiver of the whole or any part of the company's property.

F4 Rule 5.5(ba) inserted (1.10.2021) by [The Insolvency \(Scotland\) \(Receivership and Winding up\) \(Amendment\) Rules 2021 \(S.I. 2021/1025\)](#), rules 1, **9(2)** (with rules 4, 5)

Delivery of copy order of appointment of provisional liquidator – notice

[Note: for notice to accompany delivery of a copy of the order of appointment to (a) the registrar of companies and (b) the Accountant in Bankruptcy see Chapter 7 of Part 1.]

5.6.—(1) This rule applies where under rule 5.5 the provisional liquidator delivers a copy of the order of appointment to—

- (a) the company (or if a liquidator was appointed for the company's voluntary winding up, the liquidator);
- (b) any receiver of the whole or any part of the company's property.

(2) The provisional liquidator must deliver with the copy of the order a notice.

Notice of appointment of provisional liquidator

5.7.—(1) The provisional liquidator must as soon as reasonably practicable after receipt of the copy of the order of appointment give notice of appointment unless the court directs otherwise.

(2) The notice—

- (a) must be gazetted; and
- (b) may be advertised in such other manner as the provisional liquidator thinks fit.

(3) The notice must state—

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

Caution

5.8.—(1) The cost of providing the caution required under the Act must be paid in the first instance by the provisional liquidator, however—

- (a) if a winding-up order is not made, the person appointed is entitled to be reimbursed out of the property of the company, and the court may make an order on the company accordingly; and
- (b) if a winding-up order is made, the person appointed is entitled to be reimbursed as an expense of the liquidation.

(2) If the provisional liquidator fails to give or keep up the required caution, the court may remove the provisional liquidator, and make such order as to expenses as it thinks just.

(3) If an order is made under this rule removing the provisional liquidator, or discharging the order appointing the provisional liquidator, the court must give directions as to whether any, and if so what, steps should be taken for the appointment of another person in the place of the removed or discharged provisional liquidator.

Remuneration

5.9.—(1) The remuneration of the provisional liquidator is to be fixed by the court from time to time on the application of the provisional liquidator.

(2) The basis for fixing the amount of the remuneration payable to the provisional liquidator may be a commission calculated by reference to the value of the company's assets with which the provisional liquidator has had to deal.

(3) But there is in any event to be taken into account—

- (a) the work which, having regard to that value, was reasonably undertaken by the provisional liquidator;
- (b) the extent of the provisional liquidator's responsibilities in administering the company's assets.

(4) Without prejudice to any order the court may make as to expenses, the remuneration of the provisional liquidator must be paid to the provisional liquidator, and the amount of any expenses incurred by the provisional liquidator (including the remuneration and expenses of any special manager appointed under section 177) reimbursed—

- (a) if a winding-up order is not made, out of the property of the company; and
- (b) if a winding-up order is made, as an expense of the liquidation.

(5) Unless the court otherwise directs, where a winding up order is not made, the provisional liquidator may retain out of the company's property such sums or property as are or may be required for meeting the remuneration and expenses of the provisional liquidator.

Modifications etc. (not altering text)

C1 Rule 5.9(4) applied by [S.I. 1999/2979, reg. 14\(5\)\(a\)\(ii\)](#) (as amended (23.4.2019) by [The Financial Services and Markets \(Insolvency\) \(Amendment of Miscellaneous Enactments\) Regulations 2019 \(S.I. 2019/755\)](#), regs. 1, [2\(2\)\(b\)](#))

Termination of appointment

5.10.—(1) Subject to paragraph (2), the appointment of the provisional liquidator may be terminated by the court on the application of the provisional liquidator, or a person specified in rule 5.4(1).

(2) In relation to a winding-up petition under section 124A (petition by Secretary of State for winding up on grounds of public interest) the appointment of the provisional liquidator may be terminated by the court on the application of the provisional liquidator or the Secretary of State.

(3) If the provisional liquidator's appointment terminates, in consequence of the dismissal of the winding-up petition or otherwise, the court may give such directions as it thinks just relating to—

- (a) the accounts of the provisional liquidator's administration;
- (b) the expenses properly incurred by the provisional liquidator; or
- (c) any other matters which it thinks appropriate.

(4) The provisional liquidator must give notice of termination of the appointment as provisional liquidator, unless the termination is on the making of a winding-up order or the court directs otherwise.

(5) The notice referred to in paragraph (4) must be delivered as soon as reasonably practicable to—

- (a) the registrar of companies;
 - [^{F5}(aa) if a moratorium under Part A1 of the Act is in force for the company, the monitor;]
 - (b) AiB;
 - (c) the company (or the liquidator, if a liquidator was appointed for the company's voluntary winding up); and
 - (d) any receiver of the whole or any part of the company's property.
- (6) The notice under paragraph (4) must state—
- (a) that the appointment as provisional liquidator has been terminated;
 - (b) the date of that termination; and
 - (c) that the appointment terminated otherwise than on the making of a winding-up order.

<p>F5 Rule 5.10(5)(aa) inserted (1.10.2021) by The Insolvency (Scotland) (Receivership and Winding up) (Amendment) Rules 2021 (S.I. 2021/1025), rules 1, 10(2) (with rules 4, 5)</p>
--

Changes to legislation:

There are currently no known outstanding effects for the The Insolvency (Scotland) (Receivership and Winding up) Rules 2018, CHAPTER 3.