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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 347**

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

**PART 5**

**WINDING UP BY THE COURT**

**CHAPTER 8**

Public examination of company officers and others (section 133)

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

**Request by a creditor for a public examination (section 133(2))**

**5.46.**—(1) A request made under section 133(2) by a creditor to the liquidator for the public examination of a person must contain—

- (a) identification details for the company;
  - (b) the name and postal address of the creditor;
  - (c) the name and postal address of the proposed examinee;
  - (d) a description of the relationship which the proposed examinee has, or has had, with the company;
  - (e) a request by the creditor to the liquidator to apply to the court for a public examination of the proposed examinee under section 133(2);
  - (f) the amount of the creditor's claim in the winding up;
  - (g) a statement that the total amount of the creditor's and any concurring creditors' claims is believed to represent not less than  $\frac{1}{2}$  in value of the debts of the company;
  - (h) a statement that the creditor understands the requirement to deposit with the liquidator such sum as the liquidator may determine to be appropriate by way of caution for the expenses of holding a public examination; and
  - (i) a statement that the creditor believes that a public examination is required for the reason stated in the request.
- (2) The request must be authenticated and dated by the creditor.
- (3) The request must be accompanied by—
- (a) a list of the creditors concurring with the request and the amounts of their respective claims in the winding up, with their respective values; and
  - (b) from each concurring creditor, confirmation of the creditor's concurrence.

### **Request by a contributory for a public examination (section 133(2))**

**5.47.**—(1) A request made under section 133(2) by a contributory to the liquidator for the public examination of a person must contain—

- (a) identification details for the company;
  - (b) the name and postal address of the contributory;
  - (c) the name and postal address of the proposed examinee;
  - (d) a description of the relationship which the proposed examinee has, or has had, with the company;
  - (e) a request by the contributory to the liquidator to apply to the court for a public examination of the proposed examinee under section 133(2);
  - (f) the number of shares held in the company by the contributory;
  - (g) the number of votes to which the contributory is entitled;
  - (h) a statement that the total amount of the contributory's and any concurring contributories' shares and votes is believed to represent not less than  $\frac{3}{4}$  in value of the company's contributories;
  - (i) a statement that the contributory understands the requirement to deposit with the liquidator such sum as the liquidator may determine to be appropriate by way of caution for the expenses of holding a public examination; and
  - (j) a statement that the contributory believes that a public examination is required for the reason specified in the request.
- (2) The request must be authenticated and dated by the contributory.
- (3) The request must be accompanied by—
- (a) a list of the contributories concurring with the request and the number of shares and votes each holds in the company; and
  - (b) from each concurring contributory, confirmation of the concurrence and of the number of shares and votes held in the company.

### **Further provisions about requests by a creditor or contributory for a public examination**

**5.48.**—(1) A request by a creditor or contributory for a public examination does not require the support of concurring creditors or contributories if the requisitioning creditor's debt or, as the case may be, requisitioning contributory's shares, is sufficient alone under section 133(2).

(2) Before the liquidator makes the requested application, the creditor or contributory requesting the examination must deposit with the liquidator such sum (if any) as the liquidator determines is appropriate as caution for the expenses of the public examination (if ordered).

- (3) The liquidator must make the application for the examination—
- (a) within 28 days of receiving the creditor's or contributory's request (if no caution is required under paragraph (2)); or
  - (b) within 28 days of the creditor or contributory (as the case may be) depositing the required caution.

(4) However if the liquidator thinks the request is unreasonable, the liquidator may apply to the court for an order to be relieved from making the application.

(5) If the application for an order under paragraph (4) is made without notice to any other party and the court makes such an order then the liquidator must deliver a notice of the order as soon as reasonably practicable to the creditors or contributories who requested the examination.

(6) If the court dismisses the liquidator's application under paragraph (4), the liquidator must make the application under section 133(2) as soon as reasonably practicable.

### Notice of the public examination

**5.49.**—(1) Where the court orders the public examination of any person under section 133(1) then, unless the court orders otherwise, the liquidator—

- (a) must give at least 14 days' notice of the examination to—
    - (i) the special manager (if a special manager has been appointed); and
    - (ii) the creditors and all the contributories of the company who are known to the liquidator (subject to any contrary direction of the court); and
  - (b) may, in addition, at least 14 days before the date fixed for the examination—
    - (i) gazette the notice;
    - (ii) advertise the notice in such other manner as the liquidator thinks fit; or
    - (iii) both gazette the notice and advertise it in such other manner as the liquidator thinks fit.
- (2) The notice must state—
- (a) the purpose of the public examination; and
  - (b) the venue.

(3) Unless the court directs otherwise, notice under paragraph (1)(b) must not be given until at least 5 business days have elapsed since the examinee was served with the order.

### Examinee unfit for examination

**5.50.**—(1) Where the examinee is a person who lacks capacity within the meaning of the Adults with Incapacity (Scotland) Act 2000 <sup>M1</sup> (“the 2000 Act”) or is unfit to undergo or attend for public examination, the court may—

- (a) sist the order for the examinee's public examination; or
  - (b) order that it is to be conducted in such manner and at such place as it thinks just.
- (2) The applicant for an order under paragraph (1) must be—
- (a) a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the examinee; or
  - (b) a person who appears to the court to be a suitable person to make the application.

(3) The application must, unless the examinee is a person who lacks capacity within the meaning of the 2000 Act, be supported by the affidavit of a registered medical practitioner as to the examinee's mental and physical condition.

(4) At least 5 business days' notice of the application must be given to the liquidator.

#### Marginal Citations

**M1** 2000 asp 4.

### Expenses of examination

**5.51.** Where public examination of the examinee has been ordered by the court on a request by a creditor under rule 5.46 or by a contributory under rule 5.47, the court may order that some or all of

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**Changes to legislation:** *There are currently no known outstanding effects for the The Insolvency (Scotland) (Receivership and Winding up) Rules 2018, CHAPTER 8. (See end of Document for details)*

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the expenses of the examination are to be paid out of the deposit required under those rules, instead of as an expense of the liquidation.

**Changes to legislation:**

There are currently no known outstanding effects for the The Insolvency (Scotland) (Receivership and Winding up) Rules 2018, CHAPTER 8.