
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 347

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

PART 7

**WINDING UP - REPORTING, ACCOUNTS,
REMUNERATION, CLAIMS AND DISTRIBUTIONS**

Application of Part

7.1. This Part applies in winding up.

CHAPTER 1

Reporting

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

Reports by interim liquidator in a winding up by the court

7.2.—(1) The interim liquidator must in accordance with this rule deliver a report on the winding up and the state of the company's affairs to the creditors and contributories at least once after the making of the winding-up order.

(2) The report must be delivered—

- (a) before the interim liquidator delivers a notice inviting proposals for a liquidator under rule 5.22 (choosing a person to be liquidator); or
- (b) with that notice.

(3) The report must contain—

- (a) identification details for the proceedings;
- (b) contact details for the interim liquidator;
- (c) a summary of the circumstances leading to the appointment of the interim liquidator;
- (d) if a statement of the company's affairs has been submitted—
 - (i) a copy or summary of it, except so far as an order under rule 5.16 (limited disclosure) limits disclosure of it;
 - (ii) details of who provided the statement of affairs; and
 - (iii) any comments which the interim liquidator may have upon the statement of affairs;
- (e) if an order under rule 5.16 has been made—
 - (i) a statement of that fact; and
 - (ii) the date of the order;

- (f) if no statement of affairs has been submitted—
 - (i) an explanation as to why there is no statement of affairs;
 - (ii) a summary of the assets and liabilities of the company as known to the interim liquidator at the date of the report;
- (g) a full list of the company's creditors in accordance with paragraph (2) to (4) of rule 5.13 if either—
 - (i) no statement of affairs has been submitted, or
 - (ii) a statement of affairs has been submitted but it does not include such a list, or the interim liquidator believes the list included is less than full;
- (h) any estimates and statements required by rule 7.3; and
- (i) any other information of relevance to the creditors or contributories.

Reports by interim liquidator: estimate of prescribed part

7.3.—(1) The interim liquidator must include in a report under rule 7.2 estimates to the best of the interim liquidator's knowledge and belief of the value of—

- (a) the prescribed part (whether or not the liquidator might be required under section 176A^{M1} to make the prescribed part available for the satisfaction of unsecured debts); and
- (b) the company's net property (as defined by section 176A(6)).

(2) If the interim liquidator considers that it may be appropriate for the liquidator to make an application to court under section 176A(5) the report must say so and give the interim liquidator's reasons.

(3) The liquidator may exclude from an estimate under paragraph (1) 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 the estimate, the report must say so.

Marginal Citations

M1 [Section 176A](#) was inserted by the [Enterprise Act 2002 \(c.40\)](#), [section 252](#).

Progress reports: content

7.4.—(1) The liquidator's progress report in a winding up must contain—

- (a) identification details for the insolvency proceedings;
- (b) identification and contact details for the liquidator;
- (c) the date of appointment of the liquidator and any changes in the liquidator in accordance with paragraph (3);
- (d) details of progress during the period of the report, including a summary account of receipts and payments during the period of the report;
- (e) the information required—
 - (i) in the case of a members' voluntary winding up, by rule 7.5;
 - (ii) in the case of a creditors' voluntary winding up or a winding up by the court, by rule 7.6;
- (f) details of what assets remain to be realised;

- (g) where a distribution is to be made in accordance with Chapters 4 to 6 in respect of an accounting period, the scheme of division; and
 - (h) any other information of relevance to the creditors.
- (2) The receipts and payments account in a final progress report must state the amount paid to unsecured creditors by virtue of the application of section 176A.
- (3) A change in the liquidator is only required to be shown in the next report after the change.
- (4) Where an administration has converted to a voluntary winding up, the first progress report by the liquidator must include a note of any information received from the former administrator under rule 3.60(5) of the CVA and Administration Rules (moving from administration to creditors' voluntary winding up - matters occurring after the administrator's final progress report).

Remuneration and outlays etc.: members' voluntary winding up

- 7.5.**—(1) The information referred to in rule 7.4(1)(e)(i) is—
- (a) a statement of the nature and amounts of the liquidator's outlays during the period of the report; and
 - (b) an estimate of the remuneration due to the liquidator during the period of report and the basis or bases set out in rule 7.10(2)(a) to (c) (determination of outlays and remuneration: members' voluntary winding up) on which the estimate is based.
- (2) The progress report must also contain the information described in paragraph (1) for any previous period of report.

Remuneration and outlays etc.: creditors' voluntary winding up and winding up by the court

- 7.6.**—(1) The information referred to in rule 7.4(1)(e)(ii) is—
- (a) in respect of any accounting period ending during, or coinciding with the end of, the period of the report after the end of which the liquidator has made or intends to make a submission under rule 7.11(2)(a) to (c) (determination of outlays and remuneration: creditors' voluntary winding up and winding up by the court), the information referred to there;
 - (b) in respect of any accounting period ending during, or coinciding with the end of, the period of the report after the end of which the liquidator has not made and is not making a submission under rule 7.11(2)(a) to (c)—
 - (i) a statement of the nature and amounts of the liquidator's outlays during the accounting period; and
 - (ii) an estimate of the remuneration due to the liquidator during the accounting period and the basis or bases set out in rule 7.11(8)(a) to (c) on which the estimate is based.
- (2) Where paragraph (1)(b) applies the progress report must also contain the information described in that paragraph for any previous accounting period ending before the period of report unless the liquidator has made a submission under rule 7.11(2)(a) to (c) in respect of that accounting period.

Progress reports in voluntary winding up: timing and delivery

- 7.7.**—(1) This rule applies for the purposes of sections 92A ^{M2} and 104A ^{M3} and prescribes the periods for which reports must be made.
- (2) The liquidator's progress reports in a voluntary winding up must cover the periods of—
- (a) 12 months starting on the date the liquidator is appointed; and

(b) each subsequent period of 12 months.

(3) The periods for which progress reports are required under paragraph (2) are unaffected by any change in the liquidator.

(4) However where a liquidator ceases to act the succeeding liquidator must, as soon as reasonably practicable after being appointed, deliver a notice to the members (in a members' voluntary winding up) or to members and creditors (in a creditors' voluntary winding up) of any matters about which the succeeding liquidator thinks the members or creditors should be informed.

(5) A progress report is not required for any period which ends after a notice is delivered under rule 3.11 (delivery of draft final account to members in members' voluntary winding up) or after the date to which a final account is made up under section 106 ^{M4} and is delivered by the liquidator to members and creditors (creditors' voluntary winding up).

(6) The liquidator must deliver a copy of each progress report within 6 weeks after the end of the period covered by the report to—

- (a) AiB (who is a prescribed person for the purposes of sections 92A and 104A);
- (b) the members; and
- (c) in a creditors' voluntary liquidation, the creditors.

Marginal Citations

- M2** Section 92A was inserted by S.I. 2010/18 and prospectively amended by section 136(2) and paragraph 16 of schedule 9 of the Small Business, Enterprise and Employment Act 2015 (c.26) (“the 2015 Act”) and S.I. 2016/141, article 5.
- M3** Section 104A was inserted by S.I. 2010/18 and prospectively amended by section 136(3) and paragraph 27 of schedule 9 of the 2015 Act and S.I. 2016/141, article 6.
- M4** A new section 106 is substituted by paragraph 29 of schedule 9 of the 2015 Act. See also rule 4.30.

Progress reports in winding up by the court: timing and delivery

[Note: Where in this rule provision is applicable to the provisional liquidator the term provisional liquidator is used.]

7.8.—(1) Subject to paragraph (2), the liquidator's progress report in a winding up by the court must cover the periods of—

- (a) 12 months starting on the date on which the liquidator (including an interim liquidator) is appointed; and
- (b) each subsequent period of 12 months.

(2) Where a provisional liquidator is appointed under section 135, the liquidator's progress report must cover the periods of—

- (a) 12 months starting on the date on which the provisional liquidator is appointed; and
- (b) each subsequent period of 12 months.

(3) The periods for which progress reports are required under paragraphs (1) and (2) are unaffected by—

- (a) recall of the appointment of a provisional liquidator (prior to a winding up order being made);
- (b) termination of the appointment of a provisional liquidator and appointment of a liquidator (including an interim liquidator) on the making of a winding up order;

(c) any change in the provisional liquidator or liquidator.

(4) Where a liquidator ceases to act the succeeding liquidator must as soon as reasonably practicable after being appointed, deliver a notice to the creditors of any matters about which the succeeding liquidator thinks the creditors should be informed.

(5) A progress report is not required for any period which ends after the date to which a final account or report is made up under section 146^{M5} and is delivered by the liquidator to the creditors.

(6) The liquidator must deliver a copy of each progress report within 6 weeks after the end of the period covered by the report (or after the date on which the liquidator is appointed, whichever is the later) to—

- (a) AiB;
- (b) the members; and
- (c) the creditors.

Marginal Citations

M5 A new section 146 is prospectively substituted by paragraph 38 of schedule 9 of the 2015 Act.

CHAPTER 2

Final accounts

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

Contents of final account

7.9.—(1) The liquidator's final account under section 94, 106 or 146 must contain an account of the liquidator's administration of the winding up including—

- (a) a summary of the liquidator's receipts and payments, including details of the liquidator's remuneration and outlays; and
- (b) in the case of section 106 or 146, a statement as to the amount paid to unsecured creditors by virtue of section 176A.

(2) The final account or report to creditors or members must also contain—

- (a) details of the remuneration charged and expenses incurred by the liquidator during the period since the last progress report (if any);
- (b) a description of the things done by the liquidator in that period in respect of which the remuneration was charged and the expenses incurred; and
- (c) a summary of the receipts and payments during that period.

(3) Where the basis of remuneration has been fixed as a set amount, it is sufficient for the liquidator to state that amount and to give details of the expenses charged within the period in question.

CHAPTER 3

Liquidator's remuneration

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

Determination of outlays and remuneration: members' voluntary winding up

7.10.—(1) In a members' voluntary winding up, it is for the company in general meeting to determine the basis of remuneration.

(2) Subject to paragraph (3), the basis of remuneration must be fixed—

- (a) as a percentage of the value of the company's assets which are realised by the liquidator;
- (b) by reference to the work which was reasonably undertaken by the liquidator and the liquidator's staff in attending to matters arising in the winding up; or
- (c) as a set amount.

(3) The basis of remuneration may be fixed as any one or more of the bases set out in paragraph (2) (a) to (c) and different bases may be fixed in respect of different things done by the liquidator.

Determination of outlays and remuneration: creditors' voluntary winding up and winding up by the court

7.11.—(1) The liquidator's claims for the outlays reasonably incurred and for the liquidator's remuneration must be made in accordance with this rule (and subject to rules 7.12 to 7.15).

(2) The liquidator may within 14 days after the end of an accounting period submit to the liquidation committee or, if there is no liquidation committee, to the court in respect of that period and any other previous accounting period in which no submission has been made under this paragraph—

- (a) the liquidator's accounts of the liquidator's intromissions with the company's assets for audit;
- (b) a claim for the outlays reasonably incurred by the liquidator and for the liquidator's remuneration (where the liquidator intends to submit such a claim in respect of that accounting period); and
- (c) where funds are available after making allowance for contingencies, a scheme of division of the divisible funds (unless rule 7.31(8) applies).

(3) The liquidator may, at any time before the end of an accounting period submit to the liquidation committee (or if there is no liquidation committee, to the court) an interim claim in respect of that period or any other previous accounting period in which no submission has been made under paragraph (2) for:—

- (a) the outlays reasonably incurred by the liquidator; and
- (b) the liquidator's remuneration.

(4) If the liquidator submits an interim claim under paragraph (3), the liquidation committee or the court may make an interim determination in relation to the amount of the outlays and remuneration.

(5) If the liquidation committee or the court makes such an interim determination, it must take into account such an interim determination when making a determination under paragraph (7)(a)(ii).

(6) Accounts in respect of legal services incurred by the liquidator must, before payment, be submitted for taxation to the auditor of the court before which the liquidation is pending, unless—

- (a) the account has been agreed between the liquidator and the person entitled to payment in respect of that account; and
- (b) the liquidator is not an associate of that person.

(7) If the liquidator makes a submission under paragraph (2) to the liquidation committee or, if there is no liquidation committee the court, within 6 weeks after the end of an accounting period—

- (a) the liquidation committee or, as the case may be, the court—
 - (i) may audit the accounts; and

- (ii) must issue a determination fixing the amount of the outlays and remuneration payable to the liquidator; and
 - (b) the liquidator must make the audited accounts, scheme of division and the determination available for inspection by the creditors and contributories.
- (8) Subject to paragraph (9), the basis of remuneration must be fixed—
 - (a) as a percentage of the value of the company's assets which are realised by the liquidator;
 - (b) by reference to the work which was reasonably undertaken by the liquidator and the liquidator's staff in attending to matters arising in the winding up;
 - (c) as a set amount.
- (9) The basis of remuneration may be fixed as any one or more of the bases set out in paragraph (8) (a) to (c) and different bases may be fixed in respect of different things done by the liquidator.
- (10) In fixing the amount of the liquidator's remuneration and outlays in respect of any accounting period, the liquidation committee or, as the case may be, the court may take into account any adjustment which the liquidation committee or the court may wish to make in the amount of the remuneration and outlays fixed in respect of any earlier accounting period.

Appeal against fixing of outlays and remuneration: creditors' voluntary winding up and winding up by the court

7.12.—(1) Within 14 days after issue of a determination under rule 7.11(4) or (7)(a)(ii), by a liquidation committee, the liquidator, any creditor or any contributory may appeal against that determination, to the court.

(2) An appeal may only be made against a determination issued under rule 7.11(4) or (7)(a)(ii) by a creditor or contributory if notice is delivered to the liquidator of intention to appeal.

Recourse of liquidator to decision of creditors: creditors' voluntary winding up and winding up by the court

7.13. If the liquidator's outlays or remuneration has been fixed by the liquidation committee and the liquidator considers the amount to be insufficient, the liquidator may request that it be increased by the creditors by a decision procedure.

Recourse to the court: creditors' voluntary winding up and winding up by the court

7.14.—(1) If the liquidator considers that the outlays or remuneration fixed by the liquidation committee, or by decision of the creditors, is insufficient, the liquidator may apply to the court for an order increasing the amount of the outlays or the amount or rate of remuneration.

(2) The liquidator must give at least 14 days' notice of the liquidator's application to the members of the liquidation committee and the committee may nominate one or more members to appear or be represented, and to be heard, on the application.

(3) If there is no liquidation committee, the liquidator's notice of the liquidator's application must be sent to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.

(4) The court may, if it appears to be a proper case, order the expenses of the liquidator's application, including the expenses of any member of the liquidation committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid as an expense of the liquidation.

Creditors' claim that remuneration is excessive: creditors' voluntary winding up and winding up by the court

7.15.—(1) If the liquidator's outlays and remuneration have been fixed by the liquidation committee or by the creditors, any creditor or creditors of the company representing in value at least 25% of the creditors may apply to the court for an order that the liquidator's outlays or remuneration be reduced, on the grounds that they are, in all the circumstances, excessive.

(2) If the court considers the application to be well-founded, it must make an order fixing the outlays or remuneration at a reduced amount or rate.

(3) Unless the court orders otherwise, the expenses of the application must be paid by the applicant, and are not payable as an expense of the liquidation.

CHAPTER 4

Claims by creditors

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

Submission of claims

7.16.—(1) A creditor, in order to obtain an adjudication as to the creditor's entitlement to a dividend (so far as funds are available) out of the assets of the company in respect of any accounting period, must submit the creditor's claim to the liquidator not later than 8 weeks before the end of the accounting period.

(2) A creditor must submit a claim by producing to the liquidator—

- (a) a statement of claim as described in paragraph (3); and
- (b) documentary evidence of debt,

but the liquidator may dispense with the requirement in sub-paragraph (b) in respect of any debt or any class of debt.

(3) The statement of claim must—

- (a) be made out by, or under the direction of, the creditor and dated and authenticated by the creditor or a person authorised on the creditor's behalf;
- (b) state the creditor's name and address;
- (c) if the creditor is a company, identify the company;
- (d) state the name and address of any person authorised to act on behalf of the creditor;
- (e) state the total amount claimed in respect of all debts (under deduction of the value of any security as estimated by the creditor unless the creditor is surrendering or undertaking to surrender the security);
- (f) state whether or not the claim includes any outstanding uncapitalised interest at the date on which the company went into liquidation;
- (g) contain particulars of how and when the debt was incurred by the company, and where relevant the date on which payment of the debt became due;
- (h) contain particulars of any security^{M6} held, the subjects covered, the date on which it was given and the value which the creditor puts on it;
- (i) include details of any retention of title in relation to goods to which the debt relates;
- (j) state the nature and amount of any preference under schedule 6 of the Act claimed in respect of the debt;

^{F1}(k)

(l) include any details of any document by reference to which the debt can be substantiated; and

(m) state the name, postal address and authority of the person authenticating the statement of claim and documentary evidence of debt (if someone other than the creditor).

(4) A claim submitted by a creditor, which has been accepted in whole or in part by the liquidator for the purpose of drawing a dividend in respect of any accounting period, is to be deemed to have been resubmitted for the purpose of obtaining an adjudication as to the creditor's entitlement to a dividend in respect of an accounting period or, as the case may be, any subsequent accounting period.

(5) A creditor who has submitted a claim may at any time submit a further claim specifying a different amount for the claim, provided that a secured creditor is not entitled to produce a further claim specifying a different value for the security at any time after the liquidator has required the creditor to discharge, or convey or assign, the security under rule 7.24.

F1 Rule 7.16(3)(k) omitted (31.12.2020) by virtue of [S.I. 2019/146, Sch. para. 137F](#) (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\(1\)](#))

Marginal Citations

M6 See section 248 of the Act for the definition of “security”.

False claims or evidence

7.17. If a creditor produces under rule 7.16 a statement of claim or documentary evidence of debt or other evidence which is false—

- (a) the creditor is guilty of an offence unless the creditor shows that the creditor neither knew nor had reason to believe that the statement of claim or documentary evidence of debt or other evidence was false;
- (b) the company is guilty of an offence if the company—
 - (i) knew or became aware that the statement of claim or documentary evidence of debt or other evidence was false; and
 - (ii) failed as soon as practicable after acquiring such knowledge to report it to the liquidator.

Evidence of claims

7.18.—(1) The liquidator, for the purpose of being satisfied as to the validity or amount of a claim submitted by a creditor under rule 7.16, may require—

- (a) the creditor to produce further evidence; or
- (b) any other person who the liquidator believes can produce relevant evidence, to produce such evidence.

(2) If the creditor or other person refuses or delays to produce such evidence as required under paragraph (1), the liquidator may apply to the court for an order requiring the creditor or other person to attend for private examination before the court.

(3) On an application to it under paragraph (2) the court may make an order requiring the creditor or other person to attend for private examination before it on a date (being not earlier than 8 days nor later than 16 days after the date of the order) and at a time specified in the order.

(4) If a creditor or other person is for any good reason prevented from attending for examination, the court may grant a commission to take the examination (the commissioner being in this rule referred to as an “examining commissioner”).

(5) At any private examination under paragraph (3) or where the court grants a commission to take the examination under paragraph (4)—

- (a) a solicitor or counsel may act on behalf of the liquidator; or
- (b) the liquidator may appear on the liquidator's own behalf.

(6) The examination, whether before the court or an examining commissioner, must be taken on oath.

(7) A person who fails without reasonable excuse to comply with an order made under paragraph (3) is guilty of an offence.

(8) References in this rule to a creditor in a case where the creditor is one of the following entities:

—

- (a) a trust;
- (b) a partnership (including a dissolved partnership);
- (c) a body corporate or an unincorporated body;
- (d) a limited partnership (including a dissolved partnership) within the meaning of the Limited Partnerships Act 1907,

are to be construed, unless the context otherwise requires, as references to a person representing the entity.

Adjudication of claims

7.19.—(1) Where funds are available for payment of a dividend out of the company's assets in respect of an accounting period, the liquidator for the purpose of determining who is entitled to such a dividend must—

- (a) not later than 4 weeks before the end of the period, accept or reject every claim submitted or deemed to have been re-submitted under rule 7.16; and
- (b) at the same time make a decision on any matter requiring to be specified under paragraph (4)(a) or (b).

(2) On accepting or rejecting, under paragraph (1), every claim submitted or deemed to have been re-submitted, the liquidator must, as soon as reasonably practicable, send a list of every claim so accepted or rejected (including the amount of each claim and whether it has been accepted or rejected) to every creditor known to the liquidator.

(3) Where the liquidator rejects a claim, the liquidator must without delay notify the creditor giving reasons for the rejection.

(4) Where the liquidator accepts or rejects a claim, the liquidator must specify for that claim—

- (a) the amount of the claim accepted;
- (b) the category of debt, and the value of any security, as decided by the liquidator; and
- (c) if rejecting the claim, the reasons for doing so.

(5) Any member of the company or any creditor may, if dissatisfied with the acceptance or rejection of any claim (or, in relation to such acceptance or rejection, with a decision in respect of any matter requiring to be specified under paragraph (4)(a) or (b)) appeal to the court not later than 14 days before the end of the accounting period.

(6) Any reference in this rule to the acceptance or rejection of a claim is to be construed as a reference to the acceptance or rejection of the claim in whole or in part.

Entitlement to draw a dividend

7.20.—(1) A creditor who has had that creditor's claim accepted in whole or in part by the liquidator under rule 7.19(1) or on appeal under rule 7.19(5) is entitled to payment out of the company's assets of a dividend in respect of the accounting period for the purposes of which the claim is accepted.

(2) Such entitlement to payment arises only in so far as the company has funds available to make that payment, having regard to rule 7.27 (order of priority in distribution).

Liabilities and rights of co-obligants

7.21.—(1) Where a creditor has an obligant bound to the creditor along with the company for the whole or part of the debt, the obligant is not freed or discharged from liability for the debt by reason of the dissolution of the company or the creditor's voting or drawing a dividend or assenting to or not opposing—

(a) the dissolution of the company; or

(b) any composition with creditors.

(2) Paragraph (3) applies where—

(a) a creditor has had a claim accepted in whole or in part; and

(b) the obligant holds a security over any part of the company's assets,

(3) The obligant must account to the liquidator so as to put the company's assets in the same position as if the obligant had paid the debt to the creditor and thereafter had had the obligant's claim accepted in whole or in part in the liquidation after deduction of the value of the security.

(4) The obligant may require and obtain at the obligant's own expense from the creditor an assignation of the debt, on payment of the amount of the debt and on that being done may in respect of the debt submit a claim, and vote and draw a dividend, if otherwise legally entitled to do so.

(5) Paragraph (4) is without prejudice to any right, under any rule of law, of a co-obligant who has paid the debt.

(6) In this rule an “obligant” includes cautioner.

Amount which may be claimed generally

7.22.—(1) Subject to the provisions of this rule and rules 7.23 and 7.24, the amount in respect of which a creditor is entitled to claim is the accumulated sum of principal and any interest which is due on the debt as at the date on which the company went into liquidation.

(2) If a debt does not depend on a contingency but would not be payable but for the liquidation until after the date on which the company went into liquidation, the amount of the claim is to be calculated as if the debt were payable on the date on which the company went into liquidation but subject to the deduction of interest at the rate specified in paragraph (4) from that date until the date for payment of the debt.

(3) In calculating the amount of a creditor's claim, the creditor must deduct any discount (other than any discount for immediate or early settlement) which is allowable by contract or course of dealing between the creditor and the company or by the usage of trade.

(4) The rate of interest referred to in paragraph (2) is the official rate.

(5) Where the winding up was immediately preceded by an administration, the reference to the date on which the company went into liquidation in paragraph (1) and the second reference to that date in paragraph (2) are to be construed as references to the date the company entered administration.

Debts depending on contingency

7.23.—(1) Subject to paragraph (2), the amount which a creditor is entitled to claim is not to include a debt in so far as its existence or amount depends on a contingency.

(2) On an application by the creditor—

- (a) to the liquidator; or
- (b) if there is no liquidator, to the court,

the liquidator or court must put a value on the debt in so far as it is contingent.

(3) Where under paragraph (2) a value is put on the debt—

- (a) the amount in respect of which the creditor is then entitled to claim is to be that value but no more;
- (b) where the contingent debt is an annuity, a cautioner may not then be sued for more than that value.

(4) Any interested person may appeal to the court against a valuation under paragraph (2) by the liquidator, and the court may affirm or vary that valuation.

Secured debts

7.24.—(1) In calculating the amount of a secured creditor's claim the secured creditor is to deduct the value of any security as estimated by the secured creditor.

(2) If the secured creditor surrenders, or undertakes in writing to surrender, a security for the benefit of the company's assets, the secured creditor is not required to deduct the value of that security.

(3) The liquidator may, at any time after the expiry of 12 weeks from the date on which the company went into liquidation, require a secured creditor at the expense of the company's assets to discharge the security or convey or assign it to the liquidator on payment to the creditor of the value specified by the creditor.

(4) Where under paragraph (3) the liquidator makes payment to the creditor the amount in respect of which the creditor is then entitled to claim is to be any balance of the creditor's debt remaining after receipt of such payment.

(5) In calculating the amount of the claim of a creditor whose security has been realised the creditor must deduct the amount (less the expenses of realisation) which the creditor has received, or is entitled to receive, from the realisation.

Claims in foreign currency

7.25.—(1) A creditor may state the amount of the creditor's claim in a currency other than sterling where—

- (a) the creditor's claim is constituted by decree or other order made by a court ordering the company to pay to the creditor a sum expressed in a currency other than sterling; or
- (b) where it is not so constituted, the creditor's claim arises from a contract or bill of exchange in terms of which payment is, or may be required to be, made by the company to the creditor in a currency other than sterling.

(2) Where under paragraph (1) a claim is stated in a currency other than sterling the liquidator must convert it into sterling at a single rate for each currency determined by the liquidator by reference to the exchange rates prevailing in the London market at the close of business on the date on which the company went into liquidation.

CHAPTER 5

Official rate of interest

Specified rate of interest

7.26.—(1) This rule specifies the rate of interest for the purpose of section 189(4)(a) and (5) (rate of interest used in calculating the official rate of interest for the purposes of provisions of the Act).

(2) The rate specified is the rate of interest on a sheriff court decree or extract under section 9 of the Sheriff Courts (Scotland) Extracts Act 1892 ^{M7} as it may be amended by section 4 of the Administration of Justice (Scotland) Act 1972 ^{M8}.

Marginal Citations

M7 1892 c.17.

M8 1972 c.59. See S.I. 1993/769.

CHAPTER 6

Distribution of company's assets by 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.]

Order of priority in distribution

7.27.—(1) The funds of the company's assets must be distributed by the liquidator to meet the following expenses and debts in the order in which they are mentioned—

- (a) the expenses of the liquidation;
 - (b) any preferential debts within the meaning of section 386 ^{M9} (excluding any interest which has been accrued thereon to the date on which the company went into liquidation);
 - (c) ordinary debts, that is to say a debt which is neither a secured debt nor a debt mentioned in any other sub-paragraph of this paragraph;
 - (d) interest at the official rate, between the date on which the company went into liquidation and the date of payment, on—
 - (i) the preferential debts; and
 - (ii) the ordinary debts; and
 - (e) any postponed debt.
- (2) In paragraph (1)—
- (a) “postponed debt” means—
 - (i) a creditor's right to any alienation which has been reduced or restored to the company's assets under section 242 or to the proceeds of sale of such an alienation;
 - (ii) a claim arising by virtue of section 382(1)(a) of the Financial Services and Markets Act 2000 ^{M10} (restitution orders), unless it is also a claim arising by virtue of sub-paragraph (b) of that section (a person who has suffered loss etc.); or
 - (iii) a claim which by virtue of the Act or any other enactment is a claim the payment of which is to be postponed;

- (b) in sub-paragraph (d), where the liquidation was immediately preceded by an administration, the reference to the date on which the company went into liquidation is to be construed as the date the company entered administration.
- (3) The expenses of the liquidation mentioned in paragraph (1)(a) are payable in the order of priority mentioned in rule 7.28 (order of priority of expenses of liquidation).
- (4) Subject to section 175—
 - (a) any debt falling within any of sub-paragraphs (b) to (e) of paragraph (1) is to have the same priority as any other debt falling within the same sub-paragraph; and
 - (b) where the funds of the company's assets are inadequate to enable such debts to be paid in full, they are to abate in equal proportions.
- (5) Any surplus remaining, after all the expenses and debts mentioned in paragraph (1) have been paid in full, must (unless the articles of the company provide otherwise) be distributed among the members according to their rights and interests in the company.
- (6) Nothing in this rule affects—
 - (a) the right of a secured creditor which is preferable to the rights of the liquidator; or
 - (b) any preference of the holder of a lien over a title deed or other document which has been delivered to the liquidator in accordance with a requirement under rule 5.36(4).

Marginal Citations

- M9** Section 386 was amended by paragraph 18 of schedule 8 of the [Pension Schemes Act 1993 \(c.48\)](#), [section 13\(2\)](#) of the [Financial Services \(Banking Reform\) Act 2013 \(c.33\)](#), [S.I. 2003/2093](#), [S.I. 2014/3486](#) and [S.I. 2015/486](#).
- M10** [2000 c.8](#).

[^{F2}Priority of moratorium debts in a subsequent winding up

- 7.27A.**—(1) Where section 174A applies, the moratorium debts and priority pre-moratorium debts mentioned in subsection (2)(b) of that section are payable in the following order of priority—
- (a) amounts payable in respect of goods or services supplied during the moratorium under a contract where, but for section 233B(3) or (4), the supplier would not have had to make that supply;
 - (b) wages or salary arising under a contract of employment;
 - (c) other debts or other liabilities apart from the monitor's remuneration or expenses; and
 - (d) the monitor's remuneration or expenses.]

- F2** [Rule 7.27A](#) inserted (1.10.2021) by [The Insolvency \(Scotland\) \(Receivership and Winding up\) \(Amendment\) Rules 2021 \(S.I. 2021/1025\)](#), rules 1, [12\(1\)](#) (with rules 4, 5)

Order of priority of expenses of liquidation

7.28.—(1) All fees, costs, charges and other expenses incurred in the course of the liquidation are to be treated as expenses of the liquidation.

[^{F3}(1A) The costs of an application by the liquidator under rule 1A.24 of The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018 are to be treated as an expense of the liquidation unless the court orders otherwise.]

- (2) The expenses associated with the prescribed part must be paid out of the prescribed part.

(3) The expenses of the liquidation are payable out of the assets of the company in the following order of priority—

- (a) any outlays properly chargeable or incurred by the provisional liquidator or liquidator in carrying out the functions of the provisional liquidator or liquidator in the liquidation ^{F4} ..., except those outlays specifically mentioned in the following sub-paragraphs;
- (b) the cost, or proportionate cost, of any caution provided by a provisional liquidator, liquidator or special manager in accordance with the Act or these Rules;
- (c) the remuneration of the provisional liquidator (if any);
- (d) the expenses of the petitioner in the liquidation, and of any person appearing in the petition whose expenses are allowed by the court;
- (e) the remuneration of the special manager (if any);
- (f) any amount payable to a person employed or authorised, under Chapter 4 of Part 5, to assist in the preparation of a statement of affairs or of accounts;
- (g) the remuneration or emoluments of any person who has been employed by the liquidator to perform any services for the company, as required or authorised by or under the Act or these Rules;
- (h) the remuneration of the liquidator determined in accordance with rules 7.11 to 7.15;
- (i) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company (without regard to whether the realisation is effected by the liquidator, a secured creditor or otherwise).

F3 Rule 7.28(1A) inserted (1.10.2021) by [The Insolvency \(Scotland\) \(Receivership and Winding up\) \(Amendment\) Rules 2021 \(S.I. 2021/1025\)](#), rules 1, **13(2)** (with rules 4, 5)

F4 Words in rule 7.28(3)(a) omitted (31.12.2020) by virtue of [S.I. 2019/146, Sch. para. 137G](#) (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\(1\)](#))

Modifications etc. (not altering text)

C1 Rule 7.28 applied by [S.I. 2004/353, reg. 30\(1\)](#) (as amended (23.4.2019) by [The Financial Services and Markets \(Insolvency\) \(Amendment of Miscellaneous Enactments\) Regulations 2019 \(S.I. 2019/755\)](#), regs. 1, **4(8)(b)**)

C2 Rule 7.28 applied (with modifications) by [S.I. 2008/346, Sch. 2 para. 8](#) (as amended (23.4.2019) by [The Financial Services and Markets \(Insolvency\) \(Amendment of Miscellaneous Enactments\) Regulations 2019 \(S.I. 2019/755\)](#), regs. 1, **7(3)(a)**)

Winding up commencing as voluntary

7.29. In any winding up by the court which follows immediately on a voluntary winding up (whether members' voluntary or creditors' voluntary), such outlays and remuneration of the voluntary liquidator as the court may allow have the same priority as the outlays mentioned in rule 7.28(3)(a).

Saving for powers of the court (section 156)

7.30.—(1) The priorities laid down by rules 7.27 and 7.28 are subject to the power of the court to make orders under section 156, where the assets are insufficient to satisfy the liabilities.

(2) Nothing in those rules—

- (a) applies to or affects the power of any court, in proceedings by or against the company, to order expenses to be paid by the company, or the liquidator; or

- (b) affects the rights of any person to whom such expenses are ordered to be paid.

Estate to be distributed in respect of the accounting periods

[Note: Where in this rule provision is applicable to the provisional liquidator the term provisional liquidator is used.]

7.31.—(1) The liquidator must make up accounts of the liquidator's intromissions with the company's assets in respect of each accounting period.

(2) In this Rule, “accounting period” is to be construed as follows—

- (a) the first accounting period is the period of 6 months beginning with the date on which the liquidator is appointed (subject to paragraph (3));
- (b) the second accounting period is the period of 6 months beginning with the end of the first accounting period; and
- (c) any subsequent accounting period is the period of 12 months beginning with the end of the last accounting period except that—
 - (i) where the liquidator and the liquidation committee agree; or
 - (ii) where there is no liquidation committee, the court determines,
 the accounting period is to be such other period beginning with the end of the last accounting period as may be agreed or, as the case may be determined, it is to be that other period.

(3) Where a provisional liquidator is appointed under section 135 the first accounting period is the period of 6 months beginning with the date on which the provisional liquidator is appointed.

(4) An agreement or determination under paragraph (2)(c)—

- (a) may be made in respect of one or more than one accounting period;
- (b) may be made before the beginning of the accounting period in relation to which it has effect and, in any event, is not to have effect unless made before the day on which such accounting period would, but for the agreement or determination, have ended;
- (c) may provide for different accounting periods to be of different durations; and
- (d) may vary the time periods mentioned in—
 - (i) rule 7.16(1) and paragraphs (10) and (11) of this rule;
 - (ii) rule 7.19(1)(a) and (5); and
 - (iii) rule 7.35 (contents of notice to be delivered to creditors owed small debts etc.).

(5) Accounting periods are unaffected by any—

- (a) recall of the appointment of a provisional liquidator (prior to a winding up order being made);
- (b) termination of the appointment of a provisional liquidator and appointment of a liquidator (including an interim liquidator) on the making of a winding up order;
- (c) change in the provisional liquidator or liquidator.

(6) Subject to the following provisions of this rule, the liquidator must, if the funds of the company's assets are sufficient and after making an allowance for future contingencies, pay under rule 7.32 (payment of dividends) a dividend out of the company's assets to the creditors in respect of each accounting period.

(7) The liquidator may pay—

- (a) the expenses of the liquidation mentioned in rule 7.28(3)(a), other than the liquidator's own remuneration, at any time;
- (b) the preferential debts within the meaning of section 386 at any time but only with the consent of the liquidation committee or, if there is no liquidation committee, of the court.

[^{F5}(7A) Where section 174A of the Act applies, paragraph (7)(b) shall 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.]

(8) If the liquidator—

- (a) is not ready to pay a dividend in respect of an accounting period; or
- (b) considers it would be inappropriate to pay such a dividend because the expenses of doing so would be disproportionate to the amount of the dividend,

the liquidator may postpone such payment to a date not later than the time for payment of a dividend in respect of the next accounting period.

(9) Where an appeal is taken under rule 7.19(5) against the acceptance or rejection of a creditor's claim, the liquidator must, at the time of payment of dividends and until the appeal is determined, set aside an amount which would be sufficient, if the determination in the appeal were to provide for the claim being accepted in full, to pay a dividend in respect of that claim.

(10) Where a creditor—

- (a) has failed to produce evidence in support of a claim earlier than 8 weeks before the end of an accounting period on being required by the liquidator to do so under rule 7.18; and
- (b) has given a reason for such failure which is acceptable to the liquidator,

the liquidator must set aside, for such time as is reasonable to enable the creditor to produce that evidence or any other evidence that will enable the liquidator to be satisfied under rule 7.18, an amount which would be sufficient, if the claim were accepted in full, to pay a dividend in respect of that claim.

(11) Where a creditor submits a claim to the liquidator later than 8 weeks before the end of an accounting period but more than 8 weeks before the end of a subsequent accounting period in respect of which, after making allowance for contingencies, funds are available for the payment of a dividend, the liquidator must, if accepting the claim in whole or in part, pay to the creditor—

- (a) the same dividend or dividends as has or have already been paid to creditors of the same class in respect of any accounting period or periods; and
- (b) whatever dividend may be payable to that creditor in respect of the said subsequent accounting period.

(12) Paragraph (11)(a) is without prejudice to any dividend which has already been paid.

(13) In the declaration of and payment of a dividend, no payments are to be made more than once by virtue of the same debt.

^{F6}(14)

F5 Rule 7.31(7A) inserted (1.10.2021) by The Insolvency (Scotland) (Receivership and Winding up) (Amendment) Rules 2021 (S.I. 2021/1025), rules 1, **14(2)** (with rules 4, 5)

F6 Rule 7.31(14) omitted (31.12.2020) by virtue of S.I. 2019/146, **Sch. para. 137H** (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)**)

Payment of dividends

7.32.—(1) On the expiry of the period within which an appeal may be taken under rule 7.12 or, if an appeal is so taken, on the final determination of the last such appeal, the liquidator must pay to the creditors the dividends in accordance with the scheme of division.

(2) Any dividend—

- (a) allocated to a creditor which is not cashed or uplifted; or
- (b) dependent on a claim in respect of which an amount has been set aside under rule 7.31 (9) or (10),

must be deposited by the liquidator in an appropriate bank or institution.

(3) If a creditor's claim is revalued, the liquidator may—

- (a) in paying any dividend to that creditor, make such adjustment to it as the liquidator considers necessary to take account of that revaluation; or
- (b) require the creditor to repay to the liquidator the whole or part of a dividend already paid to that creditor.

Unclaimed dividends

7.33.—(1) Any person, producing evidence of that person's right, may apply to the Accountant of Court to receive a dividend deposited under section 193(2), if the application is made not later than 7 years after the date of deposit.

(2) If the Accountant of Court is satisfied of the person's right to the dividend, the Accountant of Court must authorise the bank or institution in which the deposit was made to pay to the person the amount of that dividend and of any interest which has accrued on the dividend.

(3) The Accountant of Court is, at the expiry of 7 years from the date of deposit of any unclaimed dividend or unapplied balance under section 193(2), to hand over the deposit receipt or other voucher relating to the dividend or balance to the Secretary of State.

(4) Where under paragraph (3) the Accountant of Court hands over the deposit receipt or other voucher, the Secretary of State is entitled to payment of the amount due (principal and interest) from the bank or institution in which the deposit was made.

Small debts

7.34.—(1) A creditor is deemed to have submitted a claim for the purposes of adjudication of entitlement to and payment of a dividend but not otherwise where—

- (a) the debt is a small debt;
- (b) notice has been delivered to the creditor under rule 7.35; and
- (c) the creditor has not advised the liquidator that the debt is incorrect or not owed in response to the notice.

(2) In this rule “small debt” means a debt (being the total amount owed to a creditor) which does not exceed £1,000 (which amount is prescribed for the purposes of paragraph 13A ^{M11} of schedule 8 of the Act and paragraph 18A of schedule 9 of the Act ^{M12}).

Marginal Citations

M11 Paragraph 13A is prospectively inserted into schedule 8 by section 131 of the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#) (“the 2015 Act”).

M12 Paragraph 18A is prospectively inserted into schedule 9 by section 132 of the 2015 Act.

Contents of notice to be delivered to creditors owed small debts etc.

7.35.—(1) The liquidator may treat a debt, which is a small debt according to the accounting records or the statement of affairs of the company, as if it were accepted under rule 7.19 for the purpose of paying a dividend.

(2) Where the liquidator intends to treat such a debt as if it were accepted under rule 7.19 for the purpose of payment of a dividend, the liquidator must not later than 12 weeks before the end of the accounting period deliver to the creditor a notice.

(3) The notice must—

- (a) state the amount of the debt which the liquidator believes to be owed to the creditor according to the accounting records or statement of affairs of the company;
- (b) state that the liquidator will treat the debt which is stated in the notice, being for £1,000 or less, as accepted for the purpose of payment of a dividend unless the creditor advises the liquidator that the amount of the debt is incorrect or that no debt is owed;
- (c) require the creditor to notify the liquidator by not later than 8 weeks before the end of the accounting period if the amount of the debt is incorrect or if no debt is owed; and
- (d) inform the creditor that where the creditor advises the liquidator that the amount of the debt is incorrect the creditor must also submit not later than 8 weeks before the end of the accounting period a statement of claim and documentary evidence of debt (see rule 7.16) in order to receive a dividend.

Changes to legislation:

There are currently no known outstanding effects for the The Insolvency (Scotland) (Receivership and Winding up) Rules 2018, PART 7.