
SCOTTISH STATUTORY INSTRUMENTS

2019 No. 81

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Miscellaneous) 2019

Amendment of Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986

3.—(1) The Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986(1) is amended in accordance with this paragraph.

(2) For every reference to “sheriff-clerk” substitute “sheriff clerk”.

(3) In rule 3 (interpretation)(2)—

(a) in paragraph (1), for the definition of “the Insolvency Rules” substitute—

““the Insolvency (CVAA) Rules” means the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018(3);

“the Insolvency (RWU) Rules” means the Insolvency (Scotland) (Receivership and Winding up) Rules 2018(4);” and

(b) in paragraph (2), for “or the Insolvency Rules” substitute “, the Insolvency (CVAA) Rules or the Insolvency (RWU) Rules”.

(4) In rule 4 (lodging of nominee’s report (Part 1, Chapter 2 of the Insolvency Rules))(5), in the cross-heading, for “(Part 1, Chapter 2 of the Insolvency Rules)” substitute “(company not in liquidation etc.)”.

(5) In rule 5 (lodging of nominee’s report (Part 1, Chapter 4 of the Insolvency Rules))(6), in the cross-heading, for “(Part 1, Chapter 4 of the Insolvency Rules)” substitute “(company in liquidation etc.)”.

(6) In rule 7 (report of meetings to approve arrangement)(7)—

(a) in the cross-heading, after “meetings” insert “and decisions”; and

(b) after “section 4(6)” insert “and a decision of the company’s creditors to be reported to the court under section 4(6A)(a)(8)”.

(7) For rule 8 (abstracts of supervisor’s receipts and payments and notices of completion of arrangement)(9) substitute—

(1) S.I. 1986/2297, last amended by S.S.I. 2017/202.

(2) Rule 3 was relevantly amended by S.S.I. 2013/171 and S.S.I. 2017/202.

(3) S.I. 2018/1082.

(4) S.S.I. 2018/347.

(5) Rule 4 was amended by S.S.I. 2003/388.

(6) Rule 5 was amended by S.S.I. 2003/388.

(7) Rule 7 was amended by S.S.I. 2003/388.

(8) Section 4(6A) is prospectively inserted by the Small Business, Enterprise and Employment Act 2015 (c.26), schedule 9, paragraph 4(7).

(9) Rule 8 was amended by S.S.I. 2003/388.

“Notice of termination or implementation of arrangement

8. A notice and copy of the supervisor’s report to be lodged with the court under rule 2.43(3) of the Insolvency (CVAA) Rules (termination or full implementation of CVA) must be sent to the sheriff clerk who must lodge it—

- (a) in a case to which rule 4 applies, with the nominee’s report lodged under that rule; or
- (b) in a case to which rule 5 applies, in the process of the petition to wind up the company or the petition for an order in respect of an administration which is in force in respect of it, as the case may be.”.

(8) In rule 9(1) (form of certain applications)—

- (a) for “the Insolvency Rules” substitute “the Insolvency (CVAA) Rules”;
- (b) for sub-paragraph (e) substitute—
 - “(e) rule 2.40(10) (to dispense with delivery of reports or summaries);”;
- (c) omit sub-paragraph (f).

(9) In rule 11 (notice of petition)(**10**), for “rule 2.3 of the Insolvency Rules” substitute “rule 3.6 of the Insolvency (CVAA) Rules (application)”.

(10) In rules 12 (applications during an administration)(**11**) and 14A(2) (time and date of lodging in an administration)(**12**), for “the Insolvency Rules” substitute “the Insolvency (CVAA) Rules”.

(11) In rule 17 (form of certain applications where receiver appointed)—

- (a) after paragraph (1) insert—
 - “(1A) An application under any provision of the Insolvency (RWU) Rules relating to receivers not specifically mentioned in this Part must be made by petition or, where the receiver was appointed by the court, by note in the process of the petition for appointment of a receiver.
 - (1B) An appeal against a decision of a receiver as to expenses of making a statement of affairs and statutory declaration or of a statement of concurrence under rule 2.10(2) of the Insolvency (RWU) Rules (statement of affairs: expenses) must be made by petition or, where the receiver was appointed by the court, by note in the process of the petition for appointment of a receiver.”; and

(b) in paragraph (2)—

- (i) for “the Insolvency Rules” substitute “the Insolvency (RWU) Rules”; and
- (ii) for sub-paragraph (b) substitute—
 - “(b) rule 2.16(3) (to extend the time for sending a summary of receipts and payments).”.

(12) In the heading of Part IV (winding up by the court of companies registered under the Companies Acts and of unregistered companies) omit “**by the court**”.

(13) In rule 22 (advertisement of appointment of liquidator) omit “once in one or more newspapers”.

(14) In rule 23 (provisional liquidators)(**13**)—

- (a) in paragraph (1)(b), after “company, the company” insert “or its directors, a person mentioned in rule 5.4(1)(g) or (h) of the Insolvency (RWU) Rules”;
- (b) in paragraph (4), for “The applicant” substitute “The sheriff clerk”; and

(10) Rule 11 was amended by [S.S.I. 2003/388](#) and [S.S.I. 2013/171](#).

(11) Rule 12 was amended by [S.S.I. 2003/388](#), [S.S.I. 2006/200](#) and [S.S.I. 2013/171](#).

(12) Rule 14A was inserted by [S.S.I. 2003/388](#).

(13) Rule 23 was amended by [S.S.I. 2003/388](#).

- (c) omit paragraph (5).
- (15) In rule 24 (applications and appeals in relation to a statement of affairs)—
- (a) at the end of the cross-heading, insert “**or accounts**”; and
 - (b) for paragraph (6) substitute—
 - “(6) An appeal under—
 - (a) rule 5.15(6) of the Insolvency (RWU) Rules (statement of affairs: expenses) against a refusal by the liquidator of an allowance towards the expense of preparing a statement of affairs;
 - (b) rule 5.15(6) as applied by rule 5.17(4) of the Insolvency (RWU) Rules (delivery of accounts to liquidator) against a refusal by the liquidator of an allowance towards the expense of preparing accounts,must be made by note in the process of the petition.
 - (7) A note under paragraph (6) must be served on the liquidator or provisional liquidator, as the case may be.”.
- (16) In rule 25 (appeals against adjudication of claims)(**14**)—
- (a) in paragraph (1)—
 - (i) for “rule 4.16B(6) of the Insolvency Rules” substitute “rule 7.19(5) of the Insolvency (RWU) Rules”; and
 - (ii) after “petition” insert “or, in a voluntary winding up where no previous application or appeal to the court has been made, by petition”;
 - (b) in paragraph (3), after “rule” insert “or service of the petition”; and
 - (c) in paragraph (4), after “note” insert “or petition”.
- (17) After rule 25 insert—

“Appeals against valuation of debts

- 25A.**—(1) An appeal under rule 7.23(4) of the Insolvency (RWU) Rules (appeal against valuation of debt by liquidator) against a valuation under paragraph (2)(a) of that rule must be made by note or, in a voluntary winding up where no previous application or appeal to the court has been made, by petition.
- (2) A note under paragraph (1) must be served on the liquidator.”.
- (18) In rule 26(2) (appointment of liquidator by the court), for “section 138(5)” substitute “sections 100(3), 108 or 138(5)(**15**)”.
- (19) For rule 27 (removal of liquidator) substitute—

“Removal of liquidator

- 27.**—(1) An application by a creditor of the company for an order—
- (a) under section 171(3)(b) of the Act of 1986 (order directing the summoning of a meeting to replace the liquidator)(**16**);
 - (b) under section 171(3A)(b) of that Act (order directing the instigation of qualifying decision procedure); or

(14) Rule 25(1) was substituted by [S.S.I. 2014/119](#).

(15) Section 138(5) is prospectively amended by the Small Business, Enterprise and Employment Act 2015 (c.26), schedule 9, paragraph 33(4) and partially in force for other purposes.

(16) Sections 171 and 172 are prospectively amended by the Small Business, Enterprise and Employment Act 2015 (c.26), schedule 9, paragraphs 42 and 43.

(c) under section 172 of that Act (order for removal of a liquidator), must be made by note in the process of the petition.

(2) Where the court orders the removal of a liquidator, the sheriff clerk must send two copies of the interlocutor to the former liquidator.”

(20) For rule 28 (applications in relation to remuneration of liquidator) substitute—

“Appeals and applications in relation to outlays and remuneration of liquidator

28.—(1) An appeal by a liquidator, any creditor or any contributory under rule 7.12(1) of the Insolvency (RWU) Rules (appeal against fixing of outlays and remuneration: creditors’ voluntary winding up and winding up by the court) must be made by note in the process of the petition or, in a voluntary winding up where no previous application or appeal to the court has been made, by petition.

(2) An application—

- (a) by a liquidator under rule 7.14 of the Insolvency (RWU) Rules (recourse to the court: creditors’ voluntary winding up and winding up by the court); or
- (b) by a creditor of the company under rule 7.15 of the Insolvency (RWU) Rules (creditors’ claim that remuneration is excessive: creditors’ voluntary winding up and winding up by the court),

must be made by note in the process of the petition or, in a voluntary winding up where no previous application or appeal to the court has been made, by petition.

(3) A note under—

- (a) paragraph (1) where the appeal is by a creditor or contributory;
- (b) paragraph (2)(b),

must be served on the liquidator.”

(21) In rule 29 (application to appoint a special manager), in paragraph (3), for “certified by the noter under rule 4.70(4) of the Insolvency Rules” substitute “together with a certificate as to the adequacy of the caution by the noter under rule 3.19(4), 4.38(4) or 5.42(4) of the Insolvency (RWU) Rules”.

(22) After rule 29 insert—

“Determinations of accounting periods

29A. An application for a determination of the court under rule 7.31(2)(c)(ii) of the Insolvency (RWU) Rules (determination of accounting period by the court) must be made by the liquidator by note or, in a voluntary winding up where no previous application or appeal to the court has been made, by petition.

Other applications – voluntary winding up

29B. An application under the Act of 1986 or rules made under that Act in relation to a voluntary winding up not mentioned in this Part must be—

- (a) where no previous application to the court in relation to a voluntary winding up has been made, by petition; or
- (b) where a petition for such an application has been lodged, by note in the process of that petition.”

(23) In rule 30 (other applications)(17), in the cross-heading, at the end insert “- **winding up by the court**”;

(24) In rule 31AA (limited disclosure of statement of affairs)(18), for “rules 1.50, 2.22, 3.2A or 4.8A of the Insolvency Rules” substitute “rules 2.11 or 3.45(1) of the Insolvency (CVAA) Rules or rules 2.11, 4.6 or 5.16 of the Insolvency (RWU) Rules”.

(25) After rule 31AA insert—

“Decision making

31AB.—(1) An application—

- (a) for an order under rule 5.12(1) of the Insolvency (CVAA) Rules or rule 8.12(1) of the Insolvency (RWU) Rules (notice of decision procedure by advertisement only);
- (b) for directions under rule 8.18(4) of the Insolvency (RWU) Rules (application for directions about decision procedure);
- (c) for a direction under rule 5.22 of the Insolvency (CVAA) Rules or rule 8.23 of the Insolvency (RWU) Rules (adjournment by chair);
- (d) for a direction under rule 5.33(3)(b) or 5.40(3)(b) of the Insolvency (CVAA) Rules or rule 8.36(3)(b) or 8.44(3)(b) of the Insolvency (RWU) Rules (direction as to validity of meeting with excluded person present);
- (e) for directions under rule 5.35(9) or 5.42(9) of the Insolvency (CVAA) Rules or rule 8.38(9) or 8.46(9) of the Insolvency (RWU) Rules (application to court for directions about action of appropriate person),

must be made by petition or, where a previous application or appeal to the court in relation to any company voluntary arrangement, liquidation, administration or receivership of the company has been made, by note in the process of that petition.

(2) An appeal under rule 5.32 of the Insolvency (CVAA) Rules or rule 8.35 of the Insolvency (RWU) Rules (appeals against decisions about creditors’ voting rights and majorities) must be made by petition or, where a previous application or appeal to the court in relation to any company voluntary arrangement, liquidation, administration or receivership of the company has been made, by note in the process of that petition.”.

(17) Rule 30 was amended by [S.S.I. 2006/200](#).

(18) Rule 31AA was inserted by [S.S.I. 2014/119](#).