
STATUTORY INSTRUMENTS

1986 No. 1915

The Insolvency (Scotland) Rules 1986

PART 7

PROVISIONS OF GENERAL APPLICATION

CHAPTER 1

MEETINGS

Scope of Chapter 1

7.1.—(1) This Chapter applies to any meetings held in insolvency proceedings other than meetings of a creditors' committee in administration or receivership, or of a liquidation committee.

(2) The Rules in this Chapter shall apply to any such meeting subject to any contrary provision in the Act or in the Rules, or to any direction of the court.

Summoning of meetings

7.2.—(1) In fixing the date, time and place for a meeting, the person summoning the meeting ("the convenor") shall have regard to the convenience of the persons who are to attend.

(2) Meetings shall in all cases be summoned for commencement between 10.00 and 16.00 hours on a business day, unless the court otherwise directs.

Notice of meeting

7.3.—(1) The convenor shall give not less than 21 days' notice of the date, time and place of the meeting to every person known to him as being entitled to attend the meeting.

(2) In paragraph (1), for the reference to 21 days, there shall be substituted a reference to 14 days in the following cases: -

- (a) any meeting of the company or of its creditors summoned under section 3 (to consider directors' proposal for voluntary arrangement);
- (b) a meeting of the creditors under section 23(1)(b) or 25(2)(b) (to consider administrator's proposals or proposed revisions); and
- (c) a meeting of creditors under section 67(2) (meeting of unsecured creditors in receivership).

(3) The convenor may also publish notice of the date, time and place of the meeting in a newspaper circulating in the area of the principal place of business of the company or in such other newspaper as he thinks most appropriate for ensuring that it comes to the notice of the persons who are entitled to attend the meeting. In the case of a creditors' meeting summoned by the administrator under section 23(1)(b), the administrator shall publish such a notice.

(4) Any notice under this Rule shall state -

- (a) the purpose of the meeting;

- (b) the persons who are entitled to attend and vote at the meeting;
- (c) the effects of Rule 7.9 or, as the case may be, 7.10 (Entitlement to Vote) and of the relevant provisions of Rule 7.12 (Resolutions);
- (d) in the case of a meeting of creditors or contributories, that proxies may be lodged at or before the meeting and the place where they may be lodged; and
- (e) in the case of a meeting of creditors, that claims may be lodged by those who have not already done so at or before the meeting and the place where they may be lodged.

Where a meeting of creditors is summoned specially for the purpose of removing the liquidator in accordance with section 171(2) or 172(2), or of receiving his resignation under Rule 4.28, the notice summoning it shall also include the information required by Rule 4.23(2) or, as the case may be, 4.28(2).

(5) With the notice given under paragraph (1), the convenor shall also send out a proxy form.

(6) In the case of any meeting of creditors or contributories, the court may order that notice of the meeting be given by public advertisement in such form as may be specified in the order and not by individual notice to the persons concerned. In considering whether to make such an order, the court shall have regard to the cost of the public advertisement, to the amount of the assets available and to the extent of the interest of creditors or contributories or any particular class of either.

Additional notices in certain cases

7.4.—(1) This Rule applies where a company goes, or proposes to go, into liquidation and it is -

- (a) a recognised bank or licensed institution within the meaning of the Banking Act 1979(1), or
- (b) an institution to which sections 16 and 18 of that Act apply as if it were a licensed institution.

(2) Notice of any meeting of the company at which it is intended to propose a resolution for its voluntary winding up shall be given by the directors to the Bank of England (“the Bank”) and to the Deposit Protection Board (“the Board”) as such notice is given to members of the company.

(3) Where a creditors' meeting is summoned by the liquidator under section 95 or 98, the same notice of meeting must be given to the Bank and Board as is given to the creditors under this Chapter.

(4) Where the company is being wound up by the court, notice of the first meetings of creditors and contributories within the meaning of Rule 4.12 shall be given to the Bank and the Board by the liquidator.

(5) Where in any winding up a meeting of creditors or contributories is summoned for the purpose of -

- (a) receiving the liquidator's resignation, or
- (b) removing the liquidator, or
- (c) appointing a new liquidator,

the person summoning the meeting and giving notice of it shall also give notice to the Bank and the Board.

(6) The Board is entitled to be represented at any meeting of which it is required by this Rule to be given notice; and Schedule 3 has effect with respect to the voting rights of the Board at such a meeting.

(1) 1979 c.37.

Chairman of meetings

7.5.—(1) The chairman at any meeting of creditors in insolvency proceedings shall be the responsible insolvency practitioner, or a person nominated by him in writing.

(2) A person nominated under this Rule must be either -

- (a) a person who is qualified to act as an insolvency practitioner in relation to the company, or
- (b) an employee of the administrator, receiver or liquidator, as the case may be, or his firm who is experienced in insolvency matters.

(3) This Rule also applies to meetings of contributories in a liquidation.

(4) At the first meeting of creditors or contributories in a winding up by the court, the interim liquidator shall be the chairman except that, where a resolution is proposed to appoint the interim liquidator to be the liquidator, another person may be elected to act as chairman for the purpose of choosing the liquidator.

(5) This Rule is subject to Rule 4.23(3) (meeting for removal of liquidator).

Meetings requisitioned

7.6.—(1) Subject to paragraph (8), this Rule applies to any request by a creditor or creditors for a meeting of creditors -

- (a) to an administrator under section 17(3), or
- (b) to a liquidator under section 142(3), 171(3) or 172(3),

or under any other provision of the Act or the Rules.

(2) Any such request shall be accompanied by -

- (a) a list of any creditors concurring with the request, showing the amounts of the respective claims against the company of the creditor making the request and the concurring creditors;
- (b) from each creditor concurring, written confirmation of his concurrence; and
- (c) a statement of the purpose of the proposed meeting.

(3) If the administrator or, as the case may be, the liquidator considers the request to be properly made in accordance with the Act or the Rules, he shall summon a meeting of the creditors to be held on a date not more than 35 days from the date of his receipt of the request.

(4) Expenses of summoning and holding a meeting under this Rule shall be paid by the creditor or creditors making the request, who shall deposit with the administrator caution for their payment.

(5) The sum to be deposited shall be such as the administrator or, as the case may be, the liquidator may determine and he shall not act without the deposit having been made.

(6) The meeting may resolve that the expenses of summoning and holding it are to be payable out of the assets of the company as an expense of the administration or, as the case may be, the liquidation.

(7) To the extent that any caution deposited under this Rule is not required for the payment of expenses of summoning and holding the meeting, it shall be repaid to the person or persons who made it.

(8) This Rule applies to requests by a contributory or contributories for a meeting of contributories, with the modification that, for the reference in paragraph (2) to the creditors' respective claims, there shall be substituted a reference to the contributories' respective values (being the amounts for which they may vote at any meeting).

(9) This Rule is without prejudice to the powers of the court under Rule 4.67(2) (voluntary winding up succeeded by winding up by the court).

Quorum

7.7.—(1) Subject to the next paragraph, a quorum is -

- (a) in the case of a creditors' meeting, at least one creditor entitled to vote;
- (b) in the case of a meeting of contributories, at least 2 contributories so entitled, or all the contributories, if their number does not exceed 2.

(2) For the purposes of this Rule, the reference to the creditor or contributories necessary to constitute a quorum is not confined to those persons present or duly represented under section 375 of the Companies Act but includes those represented by proxy by any person (including the chairman).

Adjournment

7.8.—(1) This Rule applies to meetings of creditors and to meetings of contributories.

(2) If, within a period of 30 minutes from the time appointed for the commencement of a meeting, a quorum is not present, then, unless the chairman otherwise decides, the meeting shall be adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(3) In the course of any meeting, the chairman may, in his discretion, and shall, if the meeting so resolves, adjourn it to such date, time and place as seems to him to be appropriate in the circumstances.

(4) Paragraph (3) is subject to Rule 4.23(3) where the liquidator or his nominee is chairman and a resolution has been proposed for the liquidator's removal.

(5) An adjournment under paragraph (1) or (2) shall not be for a period of more than 21 days.

(6) Where a meeting is adjourned, any proxies given for the original meeting may be used at the adjourned meeting.

Entitlement to vote (creditors)

7.9.—(1) This Rule applies to a creditors' meeting in any insolvency proceedings.

(2) A creditor is entitled to vote at any meeting if he has submitted his claim to the responsible insolvency practitioner and his claim has been accepted in whole or in part.

(3) Chapter 5 of Part 4 (claims in liquidation) shall apply for the purpose of determining a creditor's entitlement to vote at any creditors' meeting in any insolvency proceedings as it applies for the purpose of determining a creditor's entitlement to vote at a meeting of creditors in a liquidation, subject to the modifications specified in the following paragraphs and to any other necessary modification.

(4) For any reference in the said Chapter 5, or in any provision of the Bankruptcy Act as applied by Rule 4.16(1), to -

- (a) the liquidator, there shall be substituted a reference to the supervisor, administrator or receiver, as the case may be;
- (b) the liquidation, there shall be substituted a reference to the voluntary arrangement, administration or receivership as the case may be;
- (c) the date of commencement of winding up, there shall be substituted a reference -
 - (i) in the case of a meeting in a voluntary arrangement, to the date of the meeting or, where the company is being wound up or is subject to an administration order, the date of its going into liquidation or, as the case may be, of the administration order;and

- (ii) in the case of a meeting in the administration or receivership, to the date of the administration order or, as the case may be, the date of appointment of the receiver;
- (5) In the application to meetings of creditors other than in liquidation proceedings of Schedule 1 to the Bankruptcy Act, paragraph 5(2) and (3) (secured creditors) shall not apply.
- (6) This Rule is subject to Rule 7.4(6) and Schedule 3.

Entitlement to vote (members and contributories)

7.10.—(1) Members of a company or contributories at their meetings shall vote according to their rights attaching to their shares respectively in accordance with the articles of association.

(2) In the case of a meeting of members of the company in a voluntary arrangement, where no voting rights attach to a member's share, he is nevertheless entitled to vote either for or against the proposal or any modification of it.

(3) Reference in this Rule to a person's share include any other interests which he may have as a member of the company.

Chairman of meeting as proxy holder

7.11.—(1) Where the chairman at a meeting of creditors or contributories holds a proxy which requires him to vote for a particular resolution and no other person proposes that resolution -

- (a) he shall propose it himself, unless he considers that there is good reason for not doing so, and
- (b) if he does not propose it, he shall forthwith after the meeting notify the person who granted him the proxy of the reason why he did not do so.

(2) At any meeting in a voluntary arrangement, the chairman shall not, by virtue of any proxy held by him, vote to increase or reduce the amount of the remuneration or expenses of the nominee or the supervisor of the proposed arrangement, unless the proxy specifically directs him to vote in that way.

Resolutions

7.12.—(1) Subject to any contrary provision in the Act or the Rules, at any meeting of creditors, contributories or members of a company, a resolution is passed when a majority in value of those voting, in person or by proxy, have voted in favour of it.

(2) In a voluntary arrangement, at a creditors' meeting for any resolution to pass approving any proposal or modification, there must be at least three quarters in value of the creditors present or represented and voting, in person or by proxy, in favour of the resolution.

- (3) In a liquidation, in the case of a resolution for the appointment of a liquidator -
 - (a) if, on any vote, there are two nominees for appointment, the person for whom a majority in value has voted shall be appointed;
 - (b) if there are three 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 chairman of the meeting shall 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.

The chairman may, at any time, put to the meeting a resolution for the joint appointment of any two or more nominees.

(4) Where a resolution is proposed which affects a person in respect of his remuneration or conduct as a responsible insolvency practitioner, the vote of that person, or of his firm or of any partner or employee of his shall not be reckoned in the majority required for passing the resolution. This paragraph applies with respect to a vote given by a person either as creditor or contributory or member or as proxy for a creditor, contributory, or member.

Report of meeting

7.13.—(1) The chairman at any meeting shall cause a report to be made of the proceedings at the meeting which shall be signed by him.

(2) The report of the meeting shall include -

- (a) a list of all the creditors or, as the case may be, contributories who attended the meeting, either in person or by proxy;
- (b) a copy of every resolution passed; and
- (c) if the meeting established a creditors' committee or a liquidation committee, as the case may be, a list of the names and addresses of those elected to be members of the committee.

(3) The chairman shall keep a copy of the report of the meeting as part of the sederunt book in the insolvency proceedings.

CHAPTER 2

PROXIES AND COMPANY REPRESENTATION

Definition of “proxy”

7.14.—(1) For the purposes of the Rules, a person (“the principal”) may authorise another person (“the proxy-holder”) to attend, speak and vote as his representative at meetings of creditors or contributories or of the company in insolvency proceedings, and any such authority is referred to as a proxy.

(2) A proxy may be given either generally for all meetings in insolvency proceedings or specifically for any meeting or class of meetings.

(3) Only one proxy may be given by the principal for any one meeting; and it may only be given to one person, being an individual aged 18 or over. The principal may nevertheless nominate one or more other such persons to be proxy-holder in the alternative in the order in which they are named in the proxy.

(4) Without prejudice to the generality of paragraph (3), a proxy for a particular meeting may be given to whoever is to be the chairman of the meeting.

(5) A proxy may require the holder to vote on behalf of the principal on matters arising for determination at any meeting, or to abstain, either as directed or in accordance with the holder's own discretion; and it may authorise or require the holder to propose, in the principal's name, a resolution to be voted on by the meeting.

Form of proxy

7.15.—(1) With every notice summoning a meeting of creditors or contributories or of the company in insolvency proceedings there shall be sent out forms of proxy.

(2) A form of proxy shall not be sent out with the name or description of any person inserted in it.

(3) A proxy shall be in the form sent out with the notice summoning the meeting or in a form substantially to the same effect.

(4) A form of proxy shall be filled out and signed by the principal, or by some person acting under his authority and, where it is signed by someone other than the principal, the nature of his authority shall be stated on the form.

Use of proxy at meeting

7.16.—(1) A proxy given for a particular meeting may be used at any adjournment of that meeting.

(2) A proxy may be lodged at or before the meeting at which it is to be used.

(3) Where the responsible insolvency practitioner holds proxies to be used by him as chairman of the meeting, and some other person acts as chairman, the other person may use the insolvency practitioner's proxies as if he were himself proxy-holder.

Retention of proxies

7.17.—(1) Proxies used for voting at any meeting shall be retained by the chairman of the meeting.

(2) The chairman shall deliver the proxies forthwith after the meeting to the responsible insolvency practitioner (where he was not the chairman).

(3) The responsible insolvency practitioner shall retain all proxies in the sederunt book.

Right of inspection

7.18.—(1) The responsible insolvency practitioner shall, so long as proxies lodged with him are in his hands, allow them to be inspected at all reasonable times on any business day, by -

- (a) the creditors, in the case of proxies used at a meeting of creditors,
- (b) a company's members or contributories, in the case of proxies used at a meeting of the company or of its contributories.

(2) The reference in paragraph (1) to creditors is -

- (a) in the case of a company in liquidation, those creditors whose claims have been accepted in whole or in part, and
- (b) in any other case, persons who have submitted in writing a claim to be creditors of the company concerned,

but in neither case does it include a person whose claim has been wholly rejected for purposes of voting, dividend or otherwise.

(3) The right of inspection given by this Rule is also exercisable, in the case of an insolvent company, by its directors.

(4) Any person attending a meeting in insolvency proceedings is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents to be used in connection with that meeting.

Proxy-holder with financial interest

7.19.—(1) A proxy-holder shall not vote in favour of any resolution which would directly or indirectly place him, or any associate of his, in a position to receive any remuneration out of the insolvent estate, unless the proxy specifically directs him to vote in that way.

(2) This Rule applies also to any person acting as chairman of a meeting and using proxies in that capacity; and in its application to him, the proxy-holder is deemed an associate of his.

Representation of corporations

7.20.—(1) Where a person is authorised under section 375 of the Companies Act to represent a corporation at a meeting of creditors or contributories, he shall produce to the chairman of the meeting a copy of the resolution from which he derives his authority.

(2) The copy resolution must be executed in accordance with the provisions of section 36(3) of the Companies Act, or certified by the secretary or a director of the corporation to be a true copy.

CHAPTER 3

MISCELLANEOUS

Giving of notices, etc.

7.21.—(1) All notices required or authorised by or under the Act or the Rules to be given, sent or delivered must be in writing, unless it is otherwise provided, or the court allows the notice to be sent or given in some other way.

(2) Any reference in the Rules to giving, sending or delivering a notice or any such document means, without prejudice to any other way and unless it is otherwise provided, that the notice or document may be sent by post, and that, subject to Rule 7.22, any form of post may be used. Personal service of the notice or document is permissible in all cases.

(3) Where under the Act or the Rules a notice or other document is required or authorised to be given, sent or delivered by a person (“the sender”) to another (“the recipient”), it may be given, sent or delivered by any person duly authorised by the sender to do so to any person duly authorised by the recipient to receive or accept it.

(4) Where two or more persons are acting jointly as the responsible insolvency practitioner in any proceedings, the giving, sending or delivering of a notice or document to one of them is to be treated as the giving, sending or delivering of a notice or document to each or all.

Sending by post

7.22.—(1) For a document to be properly sent by post, it must be contained in an envelope addressed to the person to whom it is to be sent, and pre-paid for either first or second class post.

(2) Where first class post is used, the document is to be deemed to be received on the second business day after the date of posting, unless the contrary is shown.

(3) Where second class post is used, the document is to be deemed to be received on the fourth business day after the date of posting, unless the contrary is shown.

Certificate of giving notice, etc.

7.23.—(1) Where in any proceedings a notice or document is required to be given, sent or delivered by the responsible insolvency practitioner, the date of giving, sending or delivery of it may be proved by means of a certificate signed by him or on his behalf by his solicitor, or a partner or an employee of either of them, that the notice or document was duly given, posted or otherwise sent, or delivered on the date stated in the certificate.

(2) In the case of a notice or document to be given, sent or delivered by a person other than the responsible insolvency practitioner, the date of giving, sending or delivery of it may be proved by means of a certificate by that person that he gave, posted or otherwise sent or delivered the notice or document on the date stated in the certificate, or that he instructed another person (naming him) to do so.

(3) A certificate under this Rule may be endorsed on a copy of the notice to which it relates.

(4) A certificate purporting to be signed by or on behalf of the responsible insolvency practitioner, or by the person mentioned in paragraph (2), shall be deemed, unless the contrary is shown, to be sufficient evidence of the matters stated therein.

Validity of proceedings

7.24. Where in accordance with the Act or the Rules a meeting of creditors or other persons is summoned by notice, the meeting is presumed to have been duly summoned and held, notwithstanding that not all those to whom the notice is to be given have received it.

Evidence of proceedings at meetings

7.25. A report of proceedings at a meeting of the company or of the company's creditors or contributories in any insolvency proceedings, which is signed by a person describing himself as the chairman of that meeting, shall be deemed, unless the contrary is shown, to be sufficient evidence of the matters contained in that report.

Right to list of creditors and copy documents

7.26.—(1) Paragraph (2) applies to -

- (a) proceedings under Part II of the Act (company administration), and
- (b) proceedings in a creditors' voluntary winding up, or a winding up by the court.

(2) Subject to Rule 7.27, in any such proceedings, a creditor who has the right to inspect documents also has the right to require the responsible insolvency practitioner to furnish him with a list of the company's creditors and the amounts of their respective debts.

(3) Subject to Rule 7.27, where a person has the right to inspect documents, the right includes that of taking copies of those documents, on payment of the appropriate fee.

(4) In this Rule, the appropriate fee means 15 pence per A4 or A5 page and 30 pence per A3 page.

Confidentiality of documents

7.27.—(1) Where, in any insolvency proceedings, the responsible insolvency practitioner considers, in the case of a document forming part of the records of those proceedings, -

- (a) that it should be treated as confidential, or
- (b) that it is of such a nature that its disclosure would be calculated to be injurious to the interests of the company's creditors or, in the case of the winding up of a company, its members or the contributories in its winding up,

he may decline to allow it to be inspected by a person who would otherwise be entitled to inspect it.

(2) The persons who may be refused the right to inspect documents under this Rule by the responsible insolvency practitioner include the members of a creditors' committee in administration or in receivership, or of a liquidation committee.

(3) Where under this Rule the responsible insolvency practitioner refuses inspection of a document, the person who made that request may apply to the court for an order to overrule the refusal and the court may either overrule it altogether, or sustain it, either unconditionally or subject to such conditions, if any, as it thinks fit to impose.

Insolvency practitioner's caution

7.28.—(1) Wherever under the Rules any person has to appoint, or certify the appointment of, an insolvency practitioner to any office, he is under a duty to satisfy himself that the person appointed or to be appointed has caution for the proper performance of his functions.

(2) It is the duty -

- (a) of the creditors' committee in administration or in receivership,
- (b) of the liquidation committee in companies winding up, and
- (c) of any committee of creditors established for the purposes of a voluntary arrangement under Part I of the Act,

to review from time to time the adequacy of the responsible insolvency practitioner's caution.

(3) In any insolvency proceedings the cost of the responsible insolvency practitioner's caution shall be paid as an expense of the proceedings.

Punishment of offences

7.29.—(1) Schedule 4 has effect with respect to the way in which contraventions of the Rules are punishable on conviction.

(2) In that Schedule -

- (a) the first column specifies the provision of the Rules which creates an offence;
- (b) in relation to each such offence, the second column describes the general nature of the offence;
- (c) the third column indicates its mode of trial, that is to say whether the offence is punishable on conviction on indictment, or on summary conviction, or either in the one way or the other;
- (d) the fourth column shows the maximum punishment by way of fine or imprisonment which may be imposed on a person convicted of the offence in the mode of trial specified in relation to it in the third column (that is to say, on indictment or summarily), a reference to a period of years or months being to a maximum term of imprisonment of that duration; and
- (e) the fifth column shows (in relation to an offence for which there is an entry in that column) that a person convicted of the offence after continued contravention is liable to a daily default fine; that is to say, he is liable on a second or subsequent conviction of the offence to the fine specified in that column for each day on which the contravention is continued (instead of the penalty specified for the offence in the fourth column of that Schedule).

(3) Section 431 (summary proceedings), as it applies to Scotland, has effect in relation to offences under the Rules as to offences under the Act.

Forms for use in insolvency proceedings

7.30. The forms contained in Schedule 5, with such variations as circumstances require, are the forms to be used for the purposes of the provisions of the Act or the Rules which are referred to in those forms.

Fees, expenses, etc.

7.31. All fees, costs, charges and other expenses incurred in the course of insolvency proceedings are to be regarded as expenses of those proceedings.

Power of court to cure defects in procedure

7.32.—(1) Section 63 of the Bankruptcy Act (power of court to cure defects in procedure) shall apply in relation to any insolvency proceedings as it applies in relation to sequestration, subject to the modifications specified in paragraph (2) and to any other necessary modifications.

(2) For any reference in the said section 63 to any expression in column 1 below, there shall be substituted a reference to the expression in column 2 opposite thereto:-

<i>Column 1</i>	<i>Column 2</i>
This Act or any regulations made under it	The Act or the Rules
Permanent trustee	Responsible insolvency practitioner
Sequestration process	Insolvency proceedings
Debtor	Company
Sheriff	The court
Person who would be eligible to be elected under section 24 of this Act	Person who would be eligible to act as a responsible insolvency practitioner

Sederunt book

7.33.—(1) The responsible insolvency practitioner shall maintain a sederunt book during his term of office for the purpose of providing an accurate record of the administration of each insolvency proceedings.

(2) Without prejudice to the generality of the above paragraph, there shall be inserted in the sederunt book a copy of anything required to be recorded in it by any provision of the Act or of the Rules.

(3) The responsible insolvency practitioner shall make the sederunt book available for inspection at all reasonable hours by any interested person.

(4) Any entry in the sederunt book shall be sufficient evidence of the facts stated therein, except where it is founded on by the responsible insolvency practitioner in his own interest.