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STATUTORY INSTRUMENTS

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**2018 No. 1082**

The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018

PART 5

DECISION MAKING

CHAPTER 2

Decision procedures

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

**Interpretation**

**5.2.—(1)** In these Rules—

“decision date” means—

- (a) in the case of a decision to be made at a meeting, the date of the meeting;
- (b) in the case of a decision to be made either by a decision procedure other than a meeting or by the deemed consent procedure, the date the decision is to be made or deemed to have been made; and

a decision falling within sub-paragraph (b) is to be treated as made at 23:59 on the decision date;

“decision procedure” means a qualifying decision procedure prescribed by rule 5.3;

“electronic voting” includes any electronic system which enables a person to vote without the need to attend at a particular location to do so;

“physical meeting” means a meeting where the creditors are invited to be present together at the same place (whether or not it is possible to attend the meeting without being present at that place);

“virtual meeting” means a meeting where persons who are not invited to be physically present together may participate in the meeting including communicating directly with all the other participants in the meeting and voting (either directly or via a proxy-holder).

(2) The decision date is to be set at the discretion of the convener, but must be not less than 14 days from the date of delivery of the notice, except where the table in rule 5.11 requires a different period or the court directs otherwise.

**The prescribed decision procedures**

[Note: under section 246ZE a decision may not be made by a creditors’ meeting (a physical meeting) unless the prescribed proportion of the creditors request in writing that the decision be made by such a meeting.]

**5.3.—**(1) The following decision procedures are prescribed for the purpose of section 246ZE(1) by which a convener may seek a decision under the Act or these Rules from creditors—

- (a) correspondence;
- (b) electronic voting;
- (c) virtual meeting;
- (d) physical meeting;
- (e) any other decision making procedure which enables all creditors who are entitled to participate in the making of the decision to participate equally.

#### **Electronic voting**

**5.4.** Where the decision procedure uses electronic voting—

- (a) the notice delivered to creditors in accordance with rule 5.8 must give them any necessary information as to how to access the voting system including any password required;
- (b) except where electronic voting is being used at a meeting, the voting system must be a system capable of enabling a creditor to vote at any time between the notice being delivered and the decision date; and
- (c) in the course of a vote the voting system must not provide any creditor with information concerning the vote cast by any other creditor.

#### **Virtual meetings**

**5.5.** Where the decision procedure uses a virtual meeting the notice delivered to creditors in accordance with rule 5.8 must contain—

- (a) any necessary information as to how to access the virtual meeting including any telephone number, access code or password required; and
- (b) a statement that the meeting may be suspended or adjourned by the chair of the meeting (and must be adjourned if it is so resolved at the meeting).

#### **Physical meetings**

**5.6.—**(1) A request for a physical meeting under section 246ZE(3) may be made before or after the notice of the decision procedure or deemed consent procedure has been delivered, but must be made not later than five business days after the date on which the convener delivered the notice of the decision procedure or deemed consent procedure unless these Rules provide to the contrary.

(2) It is the convener's responsibility to check whether any requests for a physical meeting are submitted before the deadline and if so whether in aggregate they meet or surpass one of the thresholds requiring a physical meeting under section 246ZE(7).

(3) Where the prescribed proportion of creditors require a physical meeting the convener must summon the meeting by giving notice which complies with rule 5.8 so far as applicable and which must also contain a statement that the meeting may be suspended or adjourned by the chair of the meeting (and must be adjourned if it is so resolved at the meeting).

(4) In addition, the notice under paragraph (3) must inform the creditors that as a result of the requirement to hold a physical meeting the original decision procedure or the deemed consent procedure is superseded.

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(1) Section 246ZE was added by section 122 of the 2015 Act. Subsection (11) provides that “qualifying decision procedure” means a procedure prescribed or authorised under paragraph 8A of Schedule 8 to the Act.

(5) The convener must send the notice under paragraph (3) not later than three business days after one of the thresholds requiring a physical meeting has been met or surpassed.

(6) The convener—

- (a) may permit a creditor to attend a physical meeting remotely if the convener receives a request to do so in advance of the meeting; and
- (b) must include in the notice of the meeting a statement explaining the convener’s discretion to permit remote attendance.

(7) In this rule, attending a physical meeting “remotely” means attending and being able to participate in the meeting without being in the place where the meeting is held.

(8) For the purpose of determining whether the thresholds under section 246ZE(7) are met, the convener must calculate the value of the creditor’s debt by reference to rule 5.28.

### **Deemed consent**

[Note: the deemed consent procedure cannot be used to make a decision on remuneration of any person, or where the Act, these Rules, any other legislation or a court order requires a decision to be made by a decision procedure.]

**5.7.—**(1) This rule makes further provision about the deemed consent procedure to that set out in section 246ZF.

(2) A notice seeking deemed consent must, in addition to the requirements of section 246ZF, comply with the requirements of rule 5.8 so far as applicable and must also contain—

- (a) a statement that in order to object to the proposed decision a creditor must have delivered a notice, stating that the creditor so objects, to the convener not later than the decision date together with a statement of claim and documentary evidence of debt in accordance with these Rules, failing which the objection will be disregarded;
- (b) a statement that it is the convener’s responsibility to aggregate any objections to see if the threshold is met for the decision to be taken as not having been made; and
- (c) a statement that if the threshold is met the deemed consent procedure will terminate without a decision being made and if a decision is sought again on the same matter it will be sought by a decision procedure.

(3) In this rule, the threshold is met where the appropriate number of relevant creditors (as defined in section 246ZF(7)) have objected to the proposed decision.

(4) For the purpose of aggregating objections, the convener may presume the value of relevant creditors’ claims to be the value of claims by those creditors who, in the convener’s view, would have been entitled to vote had the decision been sought by a decision procedure in accordance with this Part, even where those creditors had not already met the criteria for such entitlement to vote.

(5) Rules 5.28, 5.29 and 5.30 apply to the admission or rejection of a claim for the purpose of the convener deciding whether or not an objection should count towards the total aggregated objections.

(6) A decision of the convener on the aggregation of objections under this rule is subject to appeal under rule 5.32 as if it were a decision under Chapter 7 of this Part.