

---

STATUTORY INSTRUMENTS

---

**2018 No. 1082**

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

**PART 5**

**DECISION MAKING**

**CHAPTER 8**

**Exclusions from meetings**

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

**Action where person excluded**

**5.33.**—(1) In this rule and rules 5.34 and 5.35, an “excluded person” means a person who has taken all steps necessary to attend a virtual meeting or has been permitted by the convener to attend a physical meeting remotely under the arrangements which—

- (a) have been put in place by the convener of the meeting; but
- (b) do not enable that person to attend the whole or part of that meeting.

(2) Where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may—

- (a) continue the meeting;
- (b) declare the meeting void and convene the meeting again; or
- (c) declare the meeting valid up to the point where the person was excluded and adjourn the meeting.

(3) Where the chair continues the meeting, the meeting is valid unless—

- (a) the chair decides in consequence of a complaint under rule 5.35 to declare the meeting void and hold the meeting again; or
- (b) the court directs otherwise.

(4) Without prejudice to paragraph (2), where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may, at the chair’s discretion and without an adjournment, declare the meeting suspended for any period up to 1 hour.

**Indication to excluded person**

**5.34.**—(1) A creditor who claims to be an excluded person may request an indication of what occurred during the period of that person’s claimed exclusion.

(2) A request under paragraph (1) must be made in accordance with paragraph (3) as soon as reasonably practicable, and in any event, not later than 4pm on the business day following the day on which the exclusion is claimed to have occurred.

- (3) A request under paragraph (1) must be made to—
  - (a) the chair, where it is made during the course of the meeting; or
  - (b) the convener, where it is made after the meeting.

(4) Where satisfied that the person making the request is an excluded person, the person to whom the request is made under paragraph (3) must deliver the requested indication to the excluded person as soon as reasonably practicable, and in any event, not later than 4pm on the business day following the day on which the request was made under paragraph (1).

### **Complaint**

- 5.35.**—(1) A person may make a complaint who—
- (a) is, or claims to be, an excluded person; or
  - (b) attends the meeting and claims to have been adversely affected by the actual, apparent or claimed exclusion of another person.

- (2) A complaint under paragraph (1) must be made to the appropriate person who is—
  - (a) the chair, where it is made during the course of the meeting; or
  - (b) the convener, where it is made after the meeting.

(3) The complaint must be made as soon as reasonably practicable and, in any event, not later than 4pm on the business day following—

- (a) the day on which the person was, appeared, or claimed to be, excluded; or
- (b) where an indication is sought under rule 5.34, the day on which the complainant received the indication.

(4) The appropriate person must, as soon as reasonably practicable following receipt of the complaint—

- (a) consider whether there is an excluded person;
- (b) where satisfied that there is an excluded person, consider the complaint; and
- (c) where satisfied that there has been prejudice, take such action as the appropriate person considers fit to remedy the prejudice.

(5) Paragraph (6) applies where the appropriate person is satisfied that the complainant is an excluded person and—

- (a) a resolution was voted on at the meeting during the period of the person’s exclusion; and
- (b) the excluded person asserts how the excluded person intended to vote on the resolution.

(6) Where the appropriate person is satisfied that if the excluded person had voted as that person intended it would have changed the result of the resolution, then the appropriate person must, as soon as reasonably practicable—

- (a) count the intended vote as having been cast in that way;
- (b) amend the record of the result of the resolution;
- (c) where notice of the result of the resolution has been delivered to those entitled to attend the meeting, deliver notice to them of the change and the reason for it; and
- (d) where notice of the result of the resolution has yet to be delivered to those entitled to attend the meeting, the notice must include details of the change and the reason for it.

(7) Where satisfied that more than one complainant is an excluded person, the appropriate person must have regard to the combined effect of the intended votes.

(8) The appropriate person must deliver notice to the complainant of any decision as soon as reasonably practicable.

(9) A complainant who is not satisfied by the action of the appropriate person may apply to the court for directions and any application must be made no more than two business days from the date of receiving the decision of the appropriate person.