SCOTTISH STATUTORY INSTRUMENTS

2018 No. 347

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

Citation and commencement

1. These Rules may be cited as the Insolvency (Scotland) (Receivership and Winding up) Rules 2018 and come into force on 6th April 2019.

Revocations

2. The enactments listed in the first column of the table in schedule 1 are revoked to the extent specified in the third column of that table.

Extent and application

3.—(1) These Rules extend to Scotland only.

(2) These Rules as they relate to receivership under Part 3 of the Insolvency Act 1986 apply to receivers appointed under section 51 of that Act (Receivers (Scotland)).

(3) These Rules as they relate to winding up under Parts 4 and 5 of the Act apply in relation to companies which the courts in Scotland have jurisdiction to wind up.

Transitional and savings provisions

4. The transitional and savings provisions set out in schedule 2 have effect.

Punishment of offences

5. Schedule 3 sets out the maximum penalties for offences under these Rules.

PART 1

SCOPE, INTERPRETATION, TIME AND RULES ABOUT DOCUMENTS

CHAPTER 1

Scope of these Rules

Scope

1.1.—(1) These Rules are made to give effect in Scotland in relation to receivership and winding up to—

(a) Parts 3 to 7 of the Insolvency Act 1986; and

(b) the EU Regulation.

(2) Consequently references to insolvency proceedings and requirements relating to such proceedings are, unless the context requires otherwise, limited to insolvency proceedings in respect of Parts 3 to 5 of the Act and the EU Regulation (whether or not court proceedings).

CHAPTER 2

Interpretation

[Note: the terms which are defined in rule 1.2 include some terms defined by the Act for limited purposes which are applied generally by these Rules. Such terms have the meaning given by the Act for those limited purposes.]

Defined terms

1.2.—(1) In these Rules unless the context otherwise requires—

"the Act" means the Insolvency Act 1986, and—

(a) a reference to a numbered section without mention of another Act is to that section of the Act; and

(b) a reference to schedule B1 is to that schedule of the Act;

"Companies Act" means the Companies Act 2006(**1**);

"Accountant in Bankruptcy" (or "AiB") is to be construed in accordance with section 199 of the Bankruptcy (Scotland) Act 2016(**2**);

"appointed person" means a person who meets the requirements in paragraph (2) who is appointed by an office-holder;

"Article 1.2 undertaking" means one of the following within the meaning of Article 1.2 of the EU Regulation—

(a) an insurance undertaking;

(b) a credit institution;

(c) an investment undertaking which provides services involving the holding of funds or securities for third parties;

(d) a collective investment undertaking;

[Note "associate" is defined in section 435];

"attendance" and "attend"—

a person attends by being present, by attending remotely in accordance with section 246A(**3**) or rule 8.6, or by participating in a virtual meeting; and a person may attend a meeting in person, by proxy or by corporate representative (in accordance with section 434B of the Act(**4**) or section 323 of the Companies Act, as applicable);

"authenticate" means to authenticate in accordance with rule 1.6;

"authorised deposit-taker" means a person with permission under Part 4A of the Financial Services and Markets Act 2000(**5**) to accept deposits; this definition must be read with—

(**1**) 2006 c.46; relevant amendments are noted where reference is made to specific provisions which have been amended.
(**2**) 2016 asp 21.
(**3**) Section 246A is inserted by S.I. 2010/18 and prospectively amended for Scotland by paragraph 54 of schedule 9 of the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act") and article 5 of the Public Services Reform (Corporate Insolvency and Bankruptcy) (Scotland) Order 2017 (S.S.I. 2017/209). The 2015 Act amendments to this and other provisions of the Insolvency Act 1986 are in force for limited purposes (S.I. 2015/1329) and will be commenced for remaining purposes for the application of these Rules.
(**4**) Section 434B was inserted by S.I. 2008/948, schedule 1, paragraph 105 and prospectively amended by paragraph 57 of schedule 9 of the 2015 Act.
(**5**) 2000 c.8. Part 4A was inserted before Part 4 by section 11(2) of the Financial Services Act 2012 (c.21).

(a) section 22 of that Act(**6**) and any relevant order under that section; and

(b) schedule 2 of that Act;

"blank proxy" is to be interpreted in accordance with rule 9.3;

[Note: "business day" is defined in section 251];

"centre of main interests" has the same meaning as in the EU Regulation;

[Note: "connected" used of a person in relation to a company is defined in section 249 of the Act];

"consumer" means an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession;

[Note: "contributory" is defined in section 79];

"convener" means an office-holder or other person who seeks a decision in accordance with Part 8 (decision making) of these Rules;

[Note: "the court" is defined in section 251];

"CVA" means a voluntary arrangement in relation to a company under Part 1 of the Act;

"CVA and Administration Rules" means the Insolvency (Scotland) (Company Voluntary Arrangement and Administration) Rules 2018(**7**);

"decision date" and "decision procedure" are to be interpreted in accordance with rule 8.2;

[Note: "deemed consent procedure" is defined in section 246ZF(**8**) (also see rule 8.7)];

"deliver" and "delivery" are to be interpreted in accordance with Chapter 9 of Part 1 of these Rules;

"deliver to the creditors" and similar expressions in these Rules and the Act are to be interpreted in accordance with rule 1.33;

"document" includes a written notice or statement or anything else in writing capable of being delivered to a recipient;

[Note: "EU Regulation" is defined in section 436 as "Regulation (EU) 2015/848 of the European Parliament and the Council of 20 May 2015 on insolvency proceedings(**9**)"];

[Note: "the Gazette" has the meaning given in section 251];

"Gazette notice" means a notice which is, has been or is to be gazetted;

"to gazette" means to advertise in the Gazette, whether electronically or otherwise;

[Note: "hire-purchase agreement" is defined by section 436(1) as having the same meaning as in the Consumer Credit Act 1974(**10**)];

"identification details" and similar references to information identifying persons, proceedings, etc. are to be interpreted in accordance with rule 1.7;

"insolvent estate" means the company's assets;

"IP number" means the number assigned to an office-holder as an insolvency practitioner by the Secretary of State;

"local creditor*"* has the same meaning as in Article 2(11) of the EU Regulation;

(**6**) Section 22 is amended by section 7 of the Financial Services Act 2012 (c.21).
(**7**) S.I. 2018/1082.
(**8**) Section 246ZF is prospectively inserted for Scotland by section 122 of the 2015 Act.
(**9**) OJ L 141, 5.6.2015, p.19.
(**10**) 1974 c.39.

"main proceedings" means proceedings opened in accordance with Article 3(1) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of the EU Regulation and which—

(a) in relation to Scotland, are set out in Annex A to that Regulation under the heading "United Kingdom"; and

(b) in relation to another member State, are set out in Annex A under the heading relating to that member State(**11**);

"meeting" in relation to a company's creditors or contributories means either a "physical meeting" or a "virtual meeting";

"member State liquidator" means a person falling within the definition of "insolvency practitioner" in Article 2(5) of the EU Regulation appointed in proceedings to which the EU Regulation applies in a member State other than the United Kingdom;

"nominated person" means a person who has been required under section 66 or 131 to make out and submit a statement as to the affairs of a company in receivership or being wound up by the court;

"non-EU proceedings" means insolvency proceedings which are not main, secondary or territorial proceedings;

"office-holder" means a person who under the Act or these Rules holds an office in relation to insolvency proceedings and includes a nominee;

"the official rate", in relation to interest, is defined in section 251(**12**);

"petitioner" includes a person who has been substituted as such;

"physical meeting" has the meaning given by rule 8.2;

"prescribed part" has the same meaning as in section 176A(2)(a)(**13**) and the Insolvency Act 1986 (Prescribed Part) Order 2003(**14**);

"progress report" means a report which complies with Chapter 1 of Part 7 (reporting, accounts, remuneration, claims and distributions);

[Note: "property" is defined in section 436(1)];

"proxy" and "proxy-holder" are to be interpreted in accordance with rule 9.2;

"qualified to act as an insolvency practitioner", in relation to a company, is to be interpreted in accordance with Part 13 of the Act(**15**);

[Note: "records" is defined in section 436(1)];

"secondary proceedings" means proceedings opened in accordance with Article 3(2) and (3) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of the EU Regulation and which—

(a) in relation to Scotland, are set out in Annex A to that Regulation under the heading "United Kingdom"; and

(b) in relation to another member State, are set out in Annex A under the heading relating to that member State(**16**);

(**11**) Where these Rules require reasons for a statement that proceedings are 'main proceedings' etc. the information required is set out in rule 1.7.
(**12**) Rule 7.26 specifies a rate used in calculating the official rate in accordance with section 189(4) and (5) of the Act.
(**13**) Section 176A was inserted by the Enterprise Act 2002 (c.40), section 252.
(**14**) S.I. 2003/2097.
(**15**) Part 13 was amended by the Deregulation Act 2015 (c.20), section 17 and the Small Business, Enterprise and Employment Act 2015 (c.26), sections 115 and 137 to 143. Other amendments not relevant to this instrument have been made to Part 13.
(**16**) Where these Rules require reasons for a statement that proceedings are 'secondary proceedings' etc. the information required is set out in rule 1.8.

"serve" and "service" are to be interpreted in respect of a particular document by reference to the Rules of Court;

"standard contents" means—

(a) for a Gazette notice, the standard contents set out in Chapter 5 of Part 1;

(b) for a notice to be advertised other than in the Gazette, the standard contents set out in Chapter 6 of Part 1;

(c) for a document to be delivered to—

(i) the registrar of companies;

(ii) AiB;

the standard contents set out in Chapter 7 of Part 1;

(d) for notices to be delivered to other persons, the standard contents set out in Chapter 8 of Part 1;

"standard fee for copies" means 15 pence per A4 or A5 page or 30 pence per A3 page;

"statement of claim" is to be interpreted in accordance with rule 7.16;

"temporary administrator" means a temporary administrator referred to in Article 52 of the EU Regulation;

"territorial proceedings" means proceedings opened in accordance with Article 3(2) and (4) of the EU Regulation which fall within the definition of insolvency proceedings in Article 2(4) of the EU Regulation and—

(a) in relation to Scotland, are set out in Annex A to that Regulation under the heading "United Kingdom"; and

(b) in relation to another member State, are set out in Annex A under the heading relating to that member State(**17**);

"venue" in relation to any proceedings, attendance before the court, decision procedure or meeting means the time, date and place or platform for the proceedings, attendance, decision procedure or meeting;

"virtual meeting" has the meaning given by rule 8.2;

"winding up by the court" means a winding up under section 122, 124A(**18**) or 221;

[Note: "writing" is to be construed in accordance with section 436B(**19**)];

"written resolution" in respect of a private company means a written resolution passed in accordance with Chapter 2 of Part 13 of the Companies Act.

(2) An appointed person in relation to a company must be—

(a) qualified to act as an insolvency practitioner in relation to that company; or

(b) a person experienced in insolvency matters who is—

(i) a member or employee of the office-holder's firm, or

(ii) an employee of the office-holder.

(3) A fee or remuneration is chargeable when the work to which it relates is done.

(**17**) Where these Rules require reasons for a statement that proceedings are 'territorial proceedings' etc. the information required is set out in rule 1.8.

(**18**) Section 124A was inserted by section 60 of the Companies Act 1989 (c.40) and amended by article 305 of S.I. 2001/3649 and section 25 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27).

(**19**) Section 436B(1) of the Act provides that a reference in the Act to a thing in writing includes that thing in electronic form; subsection (2) excludes certain sections of the Act from the application of subsection (1). Section 436B was inserted by S.I. 2010/18. Section 436B(2) is prospectively amended for Scotland by S.S.I. 2016/141, article 13.

CHAPTER 3

Calculation of time periods

Periods of time expressed in days

1.3.—(1) This rule applies to the calculation of a period of time expressed in days.

(2) A period of time expressed as a number of days is to be computed as clear days.

(3) In this rule, "clear days" means that in computing the number of days—

(a) the day on which the period begins; and

(b) if the end of the period is defined by reference to an event, the day on which that event occurs,

are not included.

Periods of time expressed in months

1.4.—(1) This rule applies to the calculation of a period of time expressed in months.

(2) The beginning and the end of a period expressed in months are to be determined as follows—

(a) if the beginning of the period is specified—

(i) the month in which the period ends is the specified number of months after the month in which it begins; and

(ii) the date in the month on which the period ends is—

(aa) the day before the date corresponding to the date in the month on which it begins, or

(bb) if there is no such date in the month in which it ends, the last day of that month;

(b) if the end of the period is specified—

(i) the month in which the period begins is the specified number of months before the month in which it ends; and

(ii) the date in the month on which the period begins is—

(aa) the day after the date corresponding to the date in the month on which it ends, or

(bb) if there is no such date in the month in which it begins, the last day of that month.

CHAPTER 4

Form and content of documents

Requirement for writing and form of documents

1.5.—(1) A notice or statement must be in writing unless the Act or these Rules provide otherwise.

(2) A document in electronic form must be capable of being—

(a) read by the recipient in electronic form; and

(b) reproduced by the recipient in hard-copy form.

Authentication

1.6.—(1) A document in electronic form is authenticated—

(a) if the identity of the sender is confirmed in a manner specified by the recipient; or

(b) where the recipient has not so specified, if the communication contains or is accompanied by a statement of the identity of the sender and the recipient has no reason to doubt the truth of that statement.

(2) A document in hard copy form is authenticated if it is signed.

(3) If a document is authenticated by the signature of an individual on behalf of—

(a) a body of persons, the document must also state the position of that individual in relation to the body;

(b) a body corporate of which the individual is the sole member, the document must also state that fact.

Information required to identify persons and insolvency proceedings etc.

1.7.—(1) Where the Act or these Rules require a document to identify, or to contain identification details in respect of, a person or insolvency proceedings, or to provide contact details for an office-holder, the information set out in the table must be given.

(2) Where a requirement relates to a proposed office-holder, the information set out in the table in respect of an office-holder must be given with any necessary adaptations.

Company where it is the subject of the insolvency proceedings	In the case of a registered company— (a) the registered name; (b) for a company incorporated in Scotland under the Companies Act or a previous Companies Act, its registered number; (c) for a company incorporated outside the United Kingdom— (i) the country or territory in which it is incorporated, (ii) the number, if any, under which it is registered, and (iii) the number, if any, under which it is registered as an overseas company under Part 34 of the Companies Act. In the case of an unregistered company— (d) its name; and (e) the postal address of any principal place of business.
Company other than one which is the subject of the insolvency proceedings	In the case of a registered company— (f) the registered name; (g) for a company incorporated in any part of the United Kingdom under the Companies Act or a previous Companies Act, its registered number; (h) for a company incorporated outside the United Kingdom—

	(i) the country or territory in which it is incorporated, (ii) the number, if any, under which it is registered; and (iii) the number, if any, under which it is registered as an overseas company under Part 34 of the Companies Act; In the case of an unregistered company— (i) its name, and (j) the postal address of any principal place of business.
Office-holder	(k) the name of the office-holder; and (l) the nature of the appointment held by the office-holder.
Contact details for an office-holder	(m) a postal address for the office-holder; and (n) either an email address, or a telephone number, through which the office-holder may be contacted.
Insolvency proceedings	(o) information identifying the company to which the insolvency proceedings relate; (p) if the insolvency proceedings are, or are to be, conducted in a court— (i) the full name of the court and, if applicable, (ii) any number assigned to those insolvency proceedings by the court.

Reasons for stating that insolvency proceedings are or will be main, secondary etc. under the EU Regulation

1.8. Where these Rules require reasons to be given for a statement that proceedings are or will be main, secondary or territorial or non-EU proceedings, the reasons must include—

(a) the company's centre of main interests;

(b) the place of the company's registered office within the meaning of Article 3(1) of the EU Regulation and where appropriate an explanation why this is not the same as the centre of main interests;

(c) a statement that there is no registered office if that be the case in non-EU proceedings.

Prescribed format of documents

1.9.—(1) Where a rule sets out the required contents of a document any title required by the rule must appear at the beginning of the document.

(2) Any other contents required by the rule (or rules where more than one apply to a particular document) must be provided in the order listed in the rule (or rules) or in another order which the maker of the document considers would be convenient for the intended recipient.

Variations from prescribed contents

1.10.—(1) Where a rule sets out the required contents of a document, the document may depart from the required contents if—

(a) the circumstances require such a departure (including where the requirement is not applicable in the particular case); or

(b) the departure (whether or not intentional) is immaterial.

(2) However this rule does not apply to the required content of a statutory demand on a company set out in rule 5.3.

CHAPTER 5

Standard contents of Gazette notices and the Gazette as evidence etc.

[Note: (1) the requirements in Chapter 5 must be read with rule 1.7 which sets out the information required to identify an office-holder, a company etc.

Note: (2) this Chapter does not apply to the notice of a liquidator's appointment prescribed under section 109 by S.I. 1987/752.]

Contents of notices to be gazetted under the Act or Rules

1.11.—(1) Where, in accordance with the Act or these Rules, a notice is to be gazetted, the notice must contain the standard contents set out in this Chapter (in addition to any content specifically required by the Act or any other provision of these Rules).

(2) Information which this Chapter requires to be included in a Gazette notice may be omitted if it is not reasonably practicable to obtain it.

Standard contents of Gazette notices

1.12.—(1) A Gazette notice must identify the insolvency proceedings and, if it is relevant to the particular notice, identify the office-holder and state—

(a) the office-holder's contact details;

(b) the office-holder's IP number;

(c) the name of any person other than the office-holder who may be contacted about the insolvency proceedings; and

(d) the date of the office-holder's appointment.

(2) A Gazette notice relating to a registered company must also state—

(a) its registered office;

(b) any principal trading address if this is different from its registered office;

(c) any name under which it was registered in the period of 12 months before the date of the commencement of the insolvency proceedings which are the subject of the Gazette notice; and

(d) any other name or style (not being a registered name)—

(i) under which the company carried on business, and

(ii) in which any debt owed to a creditor was incurred.

(3) A Gazette notice relating to an unregistered company must also identify the company and specify any name or style—

(a) under which the company carried on business; and

(b) in which any debt owed to a creditor was incurred.

(4) Paragraph (1) does not apply to a notice under rule 12.4(3) (permission to act as a director: first excepted case).

The Gazette: evidence, variations, errors and timing

1.13.—(1) Where a notice is gazetted under the Act or these Rules a copy of the Gazette containing the notice is evidence of any facts stated in the notice.

(2) Where the Act or these Rules require an order of the court to be gazetted, a copy of the Gazette containing the notice of the order may be produced in any proceedings as conclusive evidence that the order was made on the date specified in the Gazette notice.

(3) Where an order of the court which is gazetted has been varied, or any matter has been erroneously or inaccurately gazetted, the person whose responsibility it was to gazette the order or other matter must, as soon as is reasonably practicable, cause the variation to be gazetted or a further entry to be made in the Gazette for the purpose of correcting the error or inaccuracy.

(4) A Gazette notice, variation or correction is taken to be gazetted or published on the date it first appears in either electronic or hard copy form.

CHAPTER 6

Standard contents of notices advertised otherwise than in the Gazette

[Note: the requirements in Chapter 6 must be read with rule 1.7 which sets out the information required to identify an office-holder, a company etc.]

Standard contents of notices advertised otherwise than in the Gazette

1.14.—(1) Where, in accordance with the Act or these Rules, a notice is to be advertised otherwise than in the Gazette, the notice must contain the standard contents set out in this rule (in addition to any content specifically required by the Act or any other provision of these Rules).

(2) A notice relating to a company must also identify the insolvency proceedings and state—

(a) the company's principal trading address;

(b) any name under which the company was registered in the 12 months before the date of the commencement of the insolvency proceedings which are the subject of the notice; and

(c) any name or style (not being a registered name)—

(i) under which the company carried on business, and

(ii) in which any debt owed to a creditor was incurred.

(3) A notice must, if it is relevant to the particular notice, identify the office-holder and specify the office-holder's contact details.

(4) Information which this rule requires to be included in a notice may be omitted if it is not reasonably practicable to obtain it.

Non-Gazette notices: clear and comprehensible

1.15. Information which this Chapter requires to be stated in a notice must be so stated in a way that is clear and comprehensible.

CHAPTER 7

Standard contents of documents to be delivered to the registrar of companies and the Accountant in Bankruptcy

[Note: the requirements in Chapter 7 must be read with rule 1.7 which sets out the information required to identify an office-holder, a company etc.]

Standard contents of documents delivered to the registrar of companies and the Accountant in Bankruptcy

1.16.—(1) Where the Act or these Rules require a document to be delivered to—

(a) the registrar of companies; or

(b) AiB,

the document must contain the standard contents set out in this Chapter (in addition to any content specifically required by the Act or any other provision of these Rules).

(2) A document of more than one type must satisfy the requirements which apply to each.

Registrar of companies and Accountant in Bankruptcy: covering notices

1.17.—(1) This rule applies where the Act or these Rules require an office-holder to deliver any of the documents mentioned in paragraph (2) to (one or both of)—

(a) the registrar of companies; or

(b) AiB.

(2) The documents are—

(a) an account (including a final account) or a summary of receipts and payments;

(b) an receiver's report under section 67(1);

(c) a court order;

(d) a declaration of solvency;

(e) notice of the liquidator's resignation under section 171(5);

(f) notice of the liquidator's death under rule 3.8;

(g) notice to AiB that a liquidator has vacated office on loss of qualification to act under rule 5.31(2)(b);

(h) any report including a progress report (including a final progress report);

(i) an undertaking given under Article 36 of the EU Regulation.

(3) The office-holder must deliver with a document mentioned in paragraph (1) and (2) a notice containing the standard contents required by this Part.

(4) Such a notice may relate to more than one document where those documents relate to the same insolvency proceedings and are delivered together to the registrar of companies or delivered together to AiB.

Standard contents of all documents

1.18.—(1) A document to be delivered to the registrar of companies or AiB must—

(a) identify the company;

(b) state—

(i) the nature of the document,

(ii) the section (or paragraph) of the Act or the rule under which the document is delivered,

(iii) the date of the document,

(iv) the name and address of the person delivering the document, and

(v) the capacity in which that person is acting in relation to the company; and

(c) be authenticated by the person delivering the document.

(2) Where the person delivering the document is the office-holder, the address may be omitted if it was previously notified to the same authority (the registrar or AiB) in the insolvency proceedings, and is unchanged.

Standard contents of documents relating to the office of office-holders

1.19.—(1) A document relating to the office of the office-holder must also identify the office-holder and state—

(a) the date of the event of which notice is delivered or of the notice (as applicable);

(b) where the document relates to an appointment, the person, body or court making the appointment;

(c) where the document relates to the termination of an appointment, the reason for that termination; and

(d) the contact details for the office-holder.

(2) Where the person delivering the document is the office-holder, the address may be omitted if in the insolvency proceedings—

(a) in the case of delivery to the registrar of companies it has previously been notified to the registrar of companies;

(b) in the case of delivery to AiB it has previously been notified to AiB,

and the address is unchanged.

Standard contents of documents relating to other documents

1.20. A document relating to another document must also state—

(a) the nature of the other document;

(b) the date of the other document; and

(c) where the other document relates to a period of time, the period of time to which it relates.

Standard contents of documents relating to court orders

1.21. A document relating to a court order must also specify—

(a) the nature of the order;

(b) the name of the court; and

(c) the date of the order.

Standard contents of returns or reports of decisions

1.22. A return or report of a decision procedure, deemed consent procedure or meeting must also state—

(a) the purpose of the procedure or meeting;

(b) a description of the procedure or meeting used;

(c) in the case of a decision procedure or meeting, the venue;

(d) in the case of a deemed consent procedure, the date the decision was deemed to have been made;

(e) whether, in the case of a meeting, the required quorum was in place; and

(f) the outcome (including any decisions made or resolutions passed).

Standard contents of returns or reports of matters considered by company members by written resolution

1.23. A return or report of a matter, consideration of which has been sought from the members of a company by written resolution, must also state—

(a) the purpose of the consideration; and

(b) the outcome of the consideration (including any resolutions passed).

Standard contents of documents relating to other events

1.24. A document relating to any other event must also state—

(a) the nature of the event, including the section (or paragraph) of the Act or the rule under which it took place; and

(b) the date on which the event occurred.

CHAPTER 8

Standard contents of notices for delivery to other persons etc.

[Note: the requirements in Chapter 8 must be read with rule 1.7 which sets out the information required to identify an office-holder, a company etc.]

Standard contents of notices to be delivered to persons other than the registrar of companies or Accountant in Bankruptcy

1.25.—(1) Where the Act or these Rules require a notice to be delivered to a person other than the registrar of companies or AiB in respect of insolvency proceedings under Parts 3 to 5 of the Act or the EU Regulation, the notice must contain the standard contents set out in this Chapter (in addition to any content specifically required by the Act or another provision of these Rules).

(2) A notice of more than one type must satisfy the requirements which apply to each.

(3) The requirements in respect of a document which is to be delivered to another person at the same time as the registrar of companies or AiB may be satisfied by delivering to that other person a copy of the document delivered to the registrar or AiB.

Standard contents of all notices

1.26. A notice must—

(a) state the nature of the notice;

(b) identify the insolvency proceedings;

(c) state the section (or paragraph) of the Act or the rule under which the notice is given; and

(d) in the case of a notice delivered by the office-holder, state the contact details for the office-holder.

Standard contents of notices relating to the office of office-holders

1.27. A notice relating to the office of the office-holder must also identify the office-holder and state—

(a) the date of the event of which notice is delivered;

(b) where the notice relates to an appointment, the person, body or court making the appointment; and

(c) where the notice relates to the termination of an appointment, the reason for that termination.

Standard contents of notices relating to documents

1.28. A notice relating to a document must also state—

(a) the nature of the document;

(b) the date of the document; and

(c) where the document relates to a period of time, the period of time to which the document relates.

Standard contents of notices relating to court proceedings or orders

1.29. A notice relating to court proceedings must also identify those proceedings and if the notice relates to a court order state—

(a) the nature of the order; and

(b) the date of the order.

Standard contents of notices of the results of decisions

1.30. A notice of the result of a decision procedure, deemed consent procedure or meeting must also state—

(a) the purpose of the procedure or meeting;

(b) a description of the procedure or meeting used;

(c) in the case of a decision procedure or meeting, the venue;

(d) in the case of a deemed consent procedure, the date the decision was deemed to have been made;

(e) whether, in the case of a meeting, the required quorum was in place; and

(f) the outcome (including any decisions made or resolutions passed).

Standard contents of returns or reports of matters considered by company members by written resolution

1.31. A return or report of a matter, consideration of which has been sought from the members of a company by written resolution, must also specify—

(a) the purpose of the consideration; and

(b) the outcome of the consideration (including any resolutions passed).

CHAPTER 9

Delivery of documents and opting out (sections 246C and 248A(**20**))

Application of Chapter

[Note: the registrar's rules include provision for the electronic delivery of documents.]

(**20**) Section 246C was prospectively inserted for Scotland by section 124(3) of the Small Business, Enterprise and Employment Act 2015 (c.26) and section 248A by section 124(4) of that Act.

1.32.—(1) Subject to paragraph (2), this Chapter applies where a document is required under the Act or these Rules to be delivered, lodged, forwarded, furnished, given, sent, or submitted in respect of insolvency proceedings under Parts 3 to 5 of the Act or the EU Regulation unless the Act, a rule or an order of the court makes different provision.

(2) Rules 1.41 and 1.43 to 1.46 do not apply to—

(a) the lodging of any petition or application or other document with the court;

(b) the service of any application or other document lodged with the court;

(c) the service of any order of the court; or

(d) the delivery of a document to the registrar of companies or AiB, except in accordance with paragraph (3) or (4).

(3) In respect of delivery of a document to the registrar of companies—

(a) subject to sub-paragraph (b) only the following rules in this Chapter apply: rules 1.38 (postal delivery of documents), 1.39 (delivery by document exchange), 1.40 (personal delivery) and 1.47 (proof of delivery of documents);

(b) requirements imposed under section 1068 and rules made under section 1117 of the Companies Act apply to determine the date when any document is received by the registrar of companies.

(4) In respect of delivery of a document to AiB, of the rules in this Chapter only those mentioned in paragraph (3)(a) apply.

(5) Where a document is required or permitted to be served at a company's registered office service may be effected at a previous registered office in accordance with section 87(2) of the Companies Act.

(6) In the case of an overseas company service may be effected in any manner provided for by section 1139(2) of the Companies Act.

Delivery to the creditors and opting out

1.33.—(1) Where the Act or a rule requires an office-holder to deliver a document to the creditors, or the creditors in a class, the requirement is satisfied by the delivery of the document to all such creditors of whose address the office-holder is aware other than opted-out creditors unless the opt out does not apply.

(2) Where a creditor has opted out from receiving documents, the opt out does not apply to—

(a) a notice which the Act requires to be delivered to all creditors without expressly excluding opted-out creditors;

(b) a notice of a change in the office-holder or the contact details for the office-holder;

(c) a notice as provided for by section 246C(2) (notices of distributions, intended distributions and notices required to be given by court order); or

(d) a document which these Rules require to accompany a notice within sub-paragraphs (a) to (c).

(3) The office-holder must begin to treat a creditor as an opted-out creditor as soon as reasonably practicable after delivery of the creditor's election to opt out.

(4) An office-holder in any consecutive insolvency proceedings of a different kind under Parts 3 to 5 of the Act in respect of the same company who is aware that a creditor was an opted-out creditor in the earlier insolvency proceedings must treat the creditor as an opted out creditor in the consecutive insolvency proceedings.

Creditor's election to opt out

1.34.—(1) A creditor may at any time elect to be an opted-out creditor.

(2) The creditor's election to opt out must be by a notice in writing authenticated and dated by the creditor.

(3) The creditor must deliver the notice to the office-holder.

(4) A creditor becomes an opted-out creditor when the notice is delivered to the office-holder.

(5) An opted-out creditor—

(a) will remain an opted-out creditor for the duration of the insolvency proceedings unless the opt out is revoked; and

(b) is deemed to be an opted-out creditor in respect of any consecutive insolvency proceedings under Parts 3 to 5 of the Act of a different kind relating to the same company.

(6) The creditor may at any time revoke the election to opt out by a further notice in writing, authenticated and dated by the creditor and delivered to the office-holder.

(7) The creditor ceases to be an opted-out creditor from the date the notice is delivered to the office-holder.

Office-holder to provide information to creditors on opting out

1.35.—(1) The office-holder must, in the first communication with a creditor, inform the creditor in writing that the creditor may elect to opt out of receiving further documents relating to the insolvency proceedings.

(2) The communication must contain—

(a) identification and contact details for the office-holder;

(b) a statement that the creditor has the right to elect to opt out of receiving further documents about the insolvency proceedings unless—

(i) the Act requires a document to be delivered to all creditors without expressly excluding opted-out creditors,

(ii) the document is a notice relating to a change in the office-holder or the office-holder's contact details, or

(iii) the document is a notice of a dividend or proposed dividend; or

(iv) the document is a notice which the court orders to be sent to all creditors or all creditors of a particular category to which the creditor belongs;

(c) a statement that opting out will not affect the creditor's entitlement to receive dividends should any be paid to creditors;

(d) a statement that unless these Rules provide to the contrary opting out will not affect any right the creditor may have to vote in a decision procedure or to participate in a deemed consent procedure in the insolvency proceedings although the creditor will not receive notice of it;

(e) a statement that a creditor who opts out will be treated as having opted out in respect of any consecutive insolvency proceedings of a different kind in respect of the same company; and

(f) information about how the creditor may elect to be or cease to be an opted-out creditor.

Delivery of documents to authorised recipients

1.36. Where under the Act or these Rules a document is to be delivered to a person (other than by being served on that person), it may be delivered instead to any other person authorised in writing to accept delivery on behalf of the first-mentioned person.

Delivery of documents to joint office-holders

1.37. Where there are joint office-holders in insolvency proceedings, delivery of a document to one of them is to be treated as delivery to all of them.

Postal delivery of documents

1.38.—(1) A document is delivered if it is sent by post in accordance with the provisions of this rule.

(2) A document delivered by post may be delivered to the last known address of a person.

(3) First class or second class post may be used to deliver a document.

(4) Unless the contrary is shown—

(a) a document sent by first class post is to be treated as delivered on the second business day after the day on which it is posted;

(b) a document sent by second class post is to be treated as delivered on the fourth business day after the day on which it is posted;

(c) where a post-mark appears on the envelope in which a document was posted, the date of that post-mark is to be treated as the date on which the document was posted.

(5) In this rule "post-mark" means a mark applied by a postal operator which records the date on which a letter entered the postal system of the postal operator.

Delivery by document exchange

1.39.—(1) A document is delivered to a member of a document exchange if it is delivered to that document exchange.

(2) Unless the contrary is shown, a document is treated as delivered—

(a) one business day after the day it is delivered to the document exchange where the sender and the intended recipient are members of the same document exchange; or

(b) two business days after the day it is delivered to the departure facility of the sender's document exchange where the sender and the intended recipient are members of different document exchanges.

Personal delivery of documents

1.40.—(1) A document is delivered if it is personally delivered in accordance with this rule.

(2) In the case of an individual, a document is personally delivered if it is left with that individual.

(3) In the case of a legal person, a document is personally delivered if it is left with an individual at the registered office, other official address or a place of business of that legal person.

Electronic delivery of documents

1.41.—(1) A document is delivered if it is sent by electronic means and the following conditions apply.

(2) The conditions are that the intended recipient of the document has—

(a) given actual or deemed consent for the electronic delivery of the document;

(b) not revoked that consent before the document is sent; and

(c) provided an electronic address for the delivery of the document.

(3) Consent may relate to a specific case or generally.

(4) For the purposes of paragraph (2)(a) an intended recipient is deemed to have consented to the electronic delivery of a document where the intended recipient and the company who is the subject of the insolvency proceedings had customarily communicated with each other by electronic means before the insolvency proceedings commenced.

(5) Unless the contrary is shown, a document is to be treated as delivered by electronic means to an electronic address where the sender can produce a copy of the electronic communication which—

(a) contains the document; and

(b) shows the time and date the communication was sent and the electronic address to which it was sent.

(6) Unless the contrary is shown, a document sent electronically is treated as delivered to the electronic address to which it is sent at 9.00 am on the next business day after it was sent.

Electronic delivery of documents to the court

1.42.—(1) A document may not be delivered to a court by electronic means unless this is expressly permitted by Rules of Court.

(2) A document delivered by electronic means is to be treated as delivered to the court at the time it is recorded by the court as having been received or otherwise as the Rules of Court provide.

Electronic delivery by office-holders

1.43.—(1) Where an office-holder delivers a document by electronic means, the document must contain, or be accompanied by, a statement that the recipient may request a hard copy of the document and a telephone number, email address and postal address that may be used to make that request.

(2) An office-holder who receives such a request must deliver a hard copy of the document to the recipient free of charge within 5 business days of receipt of the request.

Use of website by office-holder to deliver a particular document (section 246B)

1.44.—(1) This rule applies for the purposes of sections 246B(**21**) (use of websites).

(2) An office-holder who proposes to satisfy the requirement to deliver a document to any person by making it available on a website in accordance with section 246B(1) must deliver a notice to that person which contains—

(a) a statement that the document is available for viewing and downloading on a website;

(b) the website's address and any password necessary to view and download the document; and

(c) a statement that that person may request a hard copy of the document together with a telephone number, email address and postal address which may be used to make that request.

(3) An office-holder who receives such a request must deliver a hard copy of the document to the person who made the request free of charge within 5 business days of receipt of the request.

(4) A document to which a notice under paragraph (2) relates must—

(**21**) Section 246B was inserted by S.I. 2010/18 and prospectively amended for Scotland by S.S.I. 2016/141.

(a) remain available on the website for the period required by rule 1.46; and

(b) be in a format that enables it to be downloaded within a reasonable time of an electronic request being made for it to be downloaded.

(5) A document which is delivered to a person by means of a website in accordance with this rule, is deemed to have been delivered—

(a) when it is first made available on the website; or

(b) when the notice under paragraph (2) is delivered to that person, if that is later.

(6) Section 246B(1) does not apply to a notice under paragraph (2).

(7) In this rule "document" includes any notice or information in any other form.

General use of website to deliver documents

1.45.—(1) The office-holder may deliver a notice to each person to whom a document will be required to be delivered in the insolvency proceedings which contains—

(a) a statement that future documents in the insolvency proceedings other than those mentioned in paragraph (2) will be made available for viewing and downloading on a website without notice to the recipient and that the office-holder will not be obliged to deliver any such documents to the recipient of the notice unless it is requested by that person;

(b) a telephone number, email address and postal address which may be used to make a request for a hard copy of a document;

(c) a statement that the recipient of the notice may at any time request a hard copy of—

(i) any document available for viewing on the website,

(ii) any document which may be made available there in the future, and

(d) the address of the website, and any password required to view and download a relevant document from that site.

(2) A statement under paragraph (1)(a) does not apply to the following documents:—

(a) a document for which personal delivery is required;

(b) any document relating to adjudication of creditors' claims or payment of dividend; and

(c) a document which is not delivered generally.

(3) A document is delivered generally if it is delivered to some or all of the following classes of persons:—

(a) members,

(b) contributories,

(c) creditors;

(d) any class of members, contributories or creditors.

(4) An office-holder who has delivered a notice under paragraph (1) is under no obligation—

(a) to notify a person to whom the notice has been delivered when a document to which the notice applies has been made available on the website; or

(b) to deliver a hard copy of such a document unless a request is received under paragraph (1)(c).

(5) An office-holder who receives a request under paragraph (1)(c)—

(a) in respect of a document which is already available on the website must deliver a hard copy of the document to the recipient free of charge within 5 business days of receipt of the request; and

(b) in respect of all future documents must deliver each such document in accordance with the requirements for delivery of such a document in the Act and these Rules.

(6) A document to which a statement under paragraph (1)(a) applies must—

(a) remain available on the website for the period required by rule 1.46; and

(b) be in such a format as to enable it to be downloaded within a reasonable time of an electronic request being made for it to be downloaded.

(7) A document which is delivered to a person by means of a website in accordance with this rule, is deemed to have been delivered—

(a) when the relevant document was first made available on the website; or

(b) when the notice under paragraph (1) is delivered to that person, if that is later.

(8) Paragraph (7) does not apply in respect of a person who has made a request under paragraph (1)(c)(ii) for hard copies of all future documents.

Retention period for documents made available on websites

1.46.—(1) This rule applies to a document which is made available on a website under rules 1.44 and 1.45.

(2) Such a document must continue to be made available on the website until 2 months after the end of the particular insolvency proceedings or the release of the last person to hold office as the office-holder in those insolvency proceedings, whichever is later.

Proof of delivery of documents

1.47.—(1) A certificate complying with this rule is proof that a document has been duly delivered to the recipient in accordance with this Chapter unless the contrary is shown.

(2) A certificate must state the method of delivery and the date of the sending, posting or delivery (as the case may be).

(3) In the case of an office-holder the certificate must be given by—

(a) the office-holder;

(b) the office-holder's solicitor; or

(c) a partner or an employee of either of them.

(4) In the case of a person other than an office-holder the certificate must be given by that person and must state—

(a) that the document was delivered by that person; or

(b) that another person (named in the certificate) was instructed to deliver it.

(5) A certificate under this rule may be endorsed on a copy of the document to which it relates.

Delivery of statements of claim and documentary evidence of debt

1.48.—(1) Once a statement of claim or documentary evidence of debt has been delivered to an office-holder in accordance with these Rules it need not be delivered again.

(2) Accordingly, where these Rules require such delivery by a certain time, that requirement is satisfied if that statement or evidence has already been delivered.

(3) This rule also applies where a creditor in insolvency proceedings is deemed to have submitted a claim in administration proceedings which immediately preceded the insolvency proceedings.

CHAPTER 10

Inspection of documents, copies and provision of information

Right to copies of documents

1.49. Where the Act, in relation to proceedings under Parts 3 to 5 of the Act, or these Rules give a person the right to inspect documents, that person has a right to be supplied on request with copies of those documents on payment of the standard fee for copies.

Charges for copies of documents provided by the office-holder

1.50. Except where prohibited by these Rules, an office-holder is entitled to require the payment of the standard fee for copies of documents requested by a creditor, member, contributory or member of a liquidation or creditors' committee.

Offence in relation to inspection of documents

1.51.—(1) It is an offence for a person who does not have a right under these Rules to inspect a relevant document falsely to claim to be a creditor, a member of a company or a contributory of a company with the intention of gaining sight of the document.

(2) A relevant document is one which is on the court file or held by the office-holder or any other person and which a creditor, a member of a company or a contributory of a company has the right to inspect under these Rules.

Right to list of creditors

1.52.—(1) This rule applies to—

(a) creditors' voluntary winding up; and

(b) winding up by the court.

(2) A creditor has the right to require the office-holder to provide a list of the names and addresses of the creditors and the amounts of their respective debts.

(3) The office-holder on being required to provide such a list—

(a) must deliver it to the person requiring the list as soon as reasonably practicable; and

(b) may charge the standard fee for copies for a hard copy.

(4) The office-holder may omit the name and address of a creditor if the office-holder thinks its disclosure would be prejudicial to the conduct of the insolvency proceedings or might reasonably be expected to lead to violence against any person.

(5) In such a case the list must include—

(a) the amount of that creditor's debt; and

(b) a statement that the name and address of the creditor has been omitted for that debt.

Confidentiality of documents: grounds for refusing inspection

1.53.—(1) Where an office-holder considers that a document forming part of the records of the insolvency proceedings—

(a) should be treated as confidential; or

(b) is of such a nature that its disclosure would be prejudicial to the conduct of the insolvency proceedings or might reasonably be expected to lead to violence against any person;

the office-holder may decline to allow it to be inspected by a person who would otherwise be entitled to inspect it.

(2) The persons to whom the office-holder may refuse inspection include members of a liquidation committee or a creditors' committee.

(3) Where the office-holder refuses inspection of a document, the person wishing to inspect it may apply to the court which may reconsider the office-holder's decision.

(4) The court's decision may be subject to such conditions (if any) as it thinks just.

Sederunt book

1.54.—(1) The office-holder must maintain a sederunt book during the office-holder's term of office for the purpose of providing an accurate record of the insolvency proceedings.

(2) The office-holder must include in the sederunt book—

(a) the information listed in schedule 4; and

(b) a copy of anything else required to be recorded in it by any provision of the Act or these Rules.

(3) The office-holder must make the sederunt book available for inspection at all reasonable hours by any interested person.

(4) Any entry in the sederunt book is sufficient evidence of the facts stated in it, except where it is relied upon by the office-holder in the office-holder's own interest.

(5) The office-holder must retain, or make arrangements for retention of, the sederunt book for the period specified in regulation 13(5) of the Insolvency Practitioners Regulations 2005(**22**).

(6) Where the sederunt book is maintained in electronic form it must be capable of reproduction in hard copy form.

Transfer and disposal of company's books, papers and other records

1.55.—(1) Where insolvency proceedings have terminated and other insolvency proceedings under Parts 2 to 5 of the Act have commenced in relation to the same company, the office-holder appointed in the original proceedings, must, before the expiry of the earlier of—

(a) the period of 30 days beginning with the date the office-holder in the subsequent insolvency proceedings makes a request to the original office-holder to do so; or

(b) the period of 6 months after the relevant date,

deliver to the office-holder appointed in the subsequent proceedings the books, papers and other records of the company.

(2) In the case of receivership, where—

(a) the original proceedings have terminated; and

(b) no subsequent proceedings have commenced within the period of 6 months after the relevant date in relation to the original proceedings,

the receiver may dispose of the books, papers and records of the company after the expiry of the period of 6 months referred to in sub-paragraph (b), but only in accordance with paragraph (3).

(**22**) S.I. 2005/524. Such records must be preserved until the later of the sixth anniversary of the date of the grant of the insolvency practitioner's release or discharge, or of the date on which any security or caution maintained expires or otherwise ceases to have effect.

(3) Directions to that effect may be given by—

(a) the members of the company by extraordinary resolution; or

(b) the court.

(4) Where a company is being wound up, the liquidator must dispose of the books, papers and records of the company either in accordance with—

(a) in the case of a winding up by the court, directions of the liquidation committee, or, if there is no such committee, directions of the court;

(b) in the case of a members' voluntary winding up, directions of the members by extraordinary resolution; and

(c) in the case of a creditors' voluntary winding up, directions of the liquidation committee, or, if there is no such committee, of the creditors given at or before the end of the period within which a creditor may object to release of the liquidator following a final account under section 106 (see rule 4.30(2)(c) and (d)),

or, if, by the date which is 12 months after the dissolution of the company, no such directions have been given, after that date in such a way as the liquidator deems appropriate.

(5) In this Rule, "the relevant date" means—

(a) in the case of a receivership, the date on which the receiver resigns and the receivership terminates without a further receiver being appointed; and

(b) in the case of a winding up, the date of dissolution of the company.

CHAPTER 11

Formal defects

Power to cure defects in procedure

1.56.—(1) The court may, on the application of any person having an interest—

(a) if there has been a failure to comply with any requirement of the Act or the Rules, make an order waiving any such failure and, so far as practicable, restoring any person prejudiced by the failure to the position that person would have been in but for the failure;

(b) if for any reason anything required or authorised to be done in, or in connection with, the insolvency proceedings cannot be done, make such order as may be necessary to enable that thing to be done.

(2) The court, in an order under paragraph (1), may impose such conditions, including conditions as to expenses, as the court thinks fit and may in particular—

(a) authorise or dispense with the performance of any act in the insolvency proceedings;

(b) appoint as office-holder in the insolvency proceedings any person who would be eligible to act in that capacity, whether or not in place of an existing office-holder;

(c) extend or waive any time limit specified in or under the Act or the Rules.

(3) An application under paragraph (1) which is made to the sheriff—

(a) may at any time be remitted by the sheriff to the Court of Session;

(b) must be so remitted if the Court of Session so directs on an application by any person,

if the sheriff or the Court of Session, as the case may be, considers that the remit is desirable because of the importance or complexity of the matters raised by the application.

Formal defects

1.57. No insolvency proceedings are invalidated by any formal defect or irregularity unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of the court.

PART 2

RECEIVERSHIP

CHAPTER 1

Appointment of receiver by the holder of the floating charge under section 51(1)

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

Receipt of instrument of appointment and acceptance of appointment

2.1.—(1) This rule applies where a person is appointed a receiver by the holder of a floating charge under section 51(1)(**23**) by an instrument of appointment under section 53(1)(**24**).

(2) The person's acceptance (which need not be in writing) of the appointment for the purposes of paragraph (a) of section 53(6) must be intimated by the person to the holder of the floating charge or the holder's agent within the period specified in that paragraph.

(3) The person must, as soon as possible after the person's acceptance of the appointment, endorse a written docquet of acceptance of the appointment on the instrument of appointment.

(4) The written docquet evidencing receipt of the instrument of appointment required by section 53(6)(b) must also be endorsed on the instrument of appointment.

(5) The person must, as soon as possible after the person's acceptance of the appointment, deliver a copy of the endorsed instrument of appointment to the holder of the floating charge or the holder's agent.

(6) Where 2 or more persons are appointed joint receivers—

(a) where the written docquet evidencing receipt of the instrument of appointment and the written docquet of acceptance of the appointment are endorsed by each of the joint receivers, or 2 or more of them, on the same instrument of appointment, it is the joint receiver who last endorses the joint receiver's written docquets who is required by paragraph (5) to deliver a copy of the instrument of appointment to the holder of the floating charge or the holder's agent; and

(b) section 53(6) applies subject to the following modifications—

(i) the appointment of any of the joint receivers is of no effect unless the appointment is accepted by all of them in accordance with section 53(6)(a) and paragraph (2); and

(ii) the appointment of the persons as joint receivers is deemed to be made on the day on and at the time at which the instrument of appointment is received by the last of them, as evidenced by the written docquet evidencing receipt of the instrument of appointment required by section 53(6)(b) and paragraph (4).

(**23**) Section 51(1) was amended by S.S.I. 2011/140.

(**24**) Section 53(1) was amended by the Requirements of Writing (Scotland) Act 1995 (c.7), schedule 4, para. 58(a) and modified by the Scotland Act 1998, schedule 8, paragraph 23, resulting in reference to the Accountant in Bankruptcy as well as the registrar of companies.

Certified copy instrument of appointment

2.2.—(1) The certified copy instrument of appointment which is required to be delivered to the registrar of companies and AiB by or on behalf of the person making the appointment under section 53(1) must be a certified copy of the instrument of appointment with the written docquet evidencing receipt of the instrument of appointment and the written docquet of acceptance endorsed on it(**25**).

(2) The certified copy instrument of appointment must be certified to be a correct copy by or on behalf of the person making the appointment.

Notice under section 53(1)

2.3.—(1) The notice which is required to be delivered to the registrar of companies and AiB by or on behalf of the person making the appointment under section 53(1) must—

(a) state the name and address of the holder of the floating charge;

(b) state that the receiver was appointed by the holder of the floating charge as receiver of that part of the property of the company which is subject to the floating charge;

(c) contain the information about the floating charge described in paragraph (2);

(d) contain the information about the circumstances justifying the appointment described in paragraph (3).

(2) The information about the floating charge is—

(a) the name of the person first named in the charge among the persons entitled to the benefit of it (or, in the case of a series of secured debentures, the name of the holder of the first such debenture to be issued);

(b) the amount secured by the charge;

(c) the date of registration of the charge.

(3) The information about the circumstances justifying the appointment is—

(a) where the circumstances justifying the appointment are provided for in the instrument creating the floating charge, the event which by the provisions of the instrument entitles the holder of the floating charge to make the appointment; or

(b) where the circumstances justifying the appointment are not provided for in the instrument creating the floating charge, which of the events in section 52(1) entitles the holder of the floating charge to make the appointment.

CHAPTER 2

Appointment of receiver by the court under section 51(2)

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

Notice under section 54(3)(26)

2.4.—(1) The notice which is required to be delivered to the registrar of companies and AiB by or on behalf of the petitioner under section 54(3) must—

(a) state the name and address of the holder of the floating charge;

(**25**) Rule 2.2 is included in the Rules by virtue of article 2 of the Public Services Reform (Scotland) Order 2017 (S.S.I. 2017/209) - see section 70 and 71 of the Act.

(**26**) **Rule 2.4 is included in the Rules by virtue of article 2 of S.S.I. 2017/209 - see section 70 and 71 of the Act.**

(b) state that the receiver was appointed by the court on behalf of the holder of the floating charge as receiver of that part of the property of the company which is subject to the floating charge;

(c) contain the information about the floating charge described in paragraph (2);

(d) contain the information about the circumstances justifying the appointment described in paragraph (3).

(2) The information about the floating charge is—

(a) the name of the person first named in the charge among the persons entitled to the benefit of it (or, in the case of a series of secured debentures, the name of the holder of the first such debenture to be issued);

(b) the amount secured by the charge;

(c) the date of registration of the charge.

(3) The information about the circumstances justifying the appointment is—

(a) where the circumstances justifying the appointment are provided for in the instrument creating the floating charge, the event which by the provisions of the instrument entitles the holder of the floating charge to make the appointment; or

(b) where the circumstances justifying the appointment are not provided for in the instrument creating the floating charge, which of the events in section 52(2) entitles the holder of the floating charge to make the appointment.

CHAPTER 3

Information to be given by receiver when appointed (section 65(1))

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

Notice of appointment of receiver(27)

2.5.—(1) The notice which the receiver is required under section 65(1) to send to the company and, unless the court otherwise directs, the creditors of the company (so far as the receiver is aware of their addresses), must contain—

(a) identification details for the company;

(b) the registered office of the company;

(c) any principal trading address of the company if this is different from its registered office;

(d) any other name under which the company was registered in the period of 12 months before the date of the receiver's appointment;

(e) any other name or style (not being a registered name)—

(i) under which the company has carried on business, and

(ii) in which any debt owed to a creditor was incurred;

(f) identification details for the receiver;

(g) contact details for the receiver;

(h) the receiver's IP number;

(i) the name of any person other than the receiver who may be contacted about the insolvency proceedings;

(j) the date of the receiver's appointment;

(27) **Rule 2.5 is included in the Rules by virtue of article 2 of S.S.I. 2017/209 - see section 70 and 71 of the Act.**

(k) the name of the person who made the appointment;

(l) the information about the property over which the receiver is appointed described in paragraph (3).

(2) The notice which the receiver is required under section 65(1) to publish must contain—

(a) the information under sub-paragraph (a) to (l) of paragraph (1) above; and

(b) where applicable, the name of the court making the appointment and any number assigned to those proceedings by the court.

(3) The information about the property over which the receiver is appointed is—

(a) where the receiver is appointed over the whole or substantially the whole of the company's property, a statement to that effect; or

(b) where the receiver is not appointed over the whole or substantially the whole of the company's property, a description of the property of the company over which the receiver is appointed.

CHAPTER 4

Statement of Affairs

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

Interpretation

2.6. In this Chapter—

"nominated person" means a relevant person who has been required by the receiver to make out and deliver to the receiver a statement of affairs; and

"relevant person" means a person mentioned in section 66(3).

Requirement to provide a statement of affairs (section 66(1))(28)

2.7.—(1) A requirement under section 66(1) for a nominated person to make out and submit to the receiver a statement of the affairs of the company must be made by a notice delivered to such a person.

(2) The notice must be headed "Notice requiring statement of affairs" and must—

(a) identify the company immediately below the heading;

(b) identify the receiver;

(c) state the date of the receiver's appointment;

(d) state the name of the nominated person;

(e) require the nominated person to prepare and submit to the receiver a statement of the affairs of the company on a specified date, being the date of the receiver's appointment;

(f) inform each nominated person of—

(i) the name and address of any other nominated person to whom a notice has been delivered;

(ii) the date by which the statement must be delivered to the receiver; and

(iii) the effect of section 66(6) (penalty for non-compliance).

(28) **Rule 2.7 is included in the Rules by virtue of article 2 of S.S.I. 2017/209 - see section 70 and 71 of the Act.**

(3) The receiver must inform each nominated person that a document for the preparation of the statement of affairs capable of completion in compliance with rule 2.8 can be supplied if requested.

Statement of affairs: contents and delivery (section 66(2))(29)

2.8.—(1) The statement of affairs must be headed "Statement of affairs" and must state that it is a statement of the affairs of the company on a specified date, being the date of the receiver's appointment.

(2) The statement of affairs must contain, in addition to the matters required by section 66(2)—

(a) a summary of the assets of the company, setting out the book value and the estimated realisable value of—

(i) any assets specifically secured;

(ii) any assets subject to a floating charge;

(iii) any assets not secured;

(iv) the total assets available for preferential creditors;

(b) a summary of the liabilities of the company, setting out—

(i) the amount of preferential debts;

(ii) an estimate of the deficiency with respect to preferential debts or the surplus available after paying the preferential debts;

(iii) an estimate of the prescribed part, if applicable;

(iv) an estimate of the total assets available to pay debts secured by floating charges;

(v) the amount of debts secured by floating charges;

(vi) an estimate of the deficiency with respect to debts secured by floating charges or the surplus available after paying the debts secured by floating charges;

(vii) the amount of unsecured debts (excluding preferential debts and any deficiency with respect to debts secured by floating charges);

(viii) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts (excluding preferential debts and any deficiency with respect to debts secured by fixed securities and floating charges);

(ix) any issued and called-up capital;

(x) an estimate of the deficiency with respect to, or surplus available to, members of the company;

(c) a list of the company's creditors (as required by section 66(2)) with the further particulars required by paragraph (3) indicating—

(i) any creditors under hire-purchase or conditional sale agreements;

(ii) any creditors who are consumers claiming amounts paid in advance for the supply of goods or services; and

(iii) any creditors claiming retention of title over property in the company's possession.

(3) The particulars required by this paragraph are as follows and must be given in this order—

(a) the name and postal address;

(b) the amount of the debt owed to the creditor;

(c) details of any security held by the creditor;

(29) Section 66(2) is prospectively amended by S.S.I. 2016/141, article 4. Rule 2.8 is included in the Rules by virtue of article 2 of S.S.I. 2017/209 - see section 70 and 71 of the Act.

(d) the date the security was given; and

(e) the value of the security.

(4) Paragraph (5) applies where the particulars required by paragraph (3) relate to creditors who are either—

(a) employees or former employees of the company; or

(b) consumers claiming amounts paid in advance for the supply of goods or services.

(5) Where this paragraph applies—

(a) the statement of affairs must state separately for each of paragraph (4)(a) and (b) the number of such creditors and the total of the debts owed to them; and

(b) the particulars required by paragraph (3) must be set out in separate schedules to the statement of affairs for each of paragraph (4)(a) and (b).

(6) The statutory declaration required by section 66(2)(**30**) must be a statutory declaration that the information provided in the statement of affairs is, to the best of the nominated person's knowledge and belief, accurate and complete.

(7) The nominated person who makes the statutory declaration required by section 66(2) and paragraph (6) (or one of them, if more than one) must deliver the statement of affairs to the receiver.

Statement of affairs: statement of concurrence

2.9.—(1) The receiver may require a relevant person to deliver to the receiver a statement of concurrence.

(2) A statement of concurrence is a statement that the relevant person concurs in the statement of affairs submitted by a nominated person.

(3) The receiver must inform the nominated person who has been required to submit a statement of affairs that the relevant person has been required to deliver a statement of concurrence.

(4) The nominated person must deliver a copy of the statement of affairs to every relevant person who has been required to deliver a statement of concurrence.

(5) A statement of concurrence—

(a) must identify the company; and

(b) may be qualified in relation to matters dealt with in the statement of affairs where the relevant person—

(i) is not in agreement with the statement of affairs;

(ii) considers the statement to be erroneous or misleading; or

(iii) is without the direct knowledge necessary for concurring in it.

(6) A statement of concurrence must contain a statutory declaration by the relevant person required to submit it that the information provided in the statement of concurrence is, to the best of the relevant person's knowledge and belief, accurate and complete.

(7) The relevant person must deliver the required statement of concurrence to the receiver before the end of the period of 5 business days (or such other period as the receiver may agree) beginning with the day on which the relevant person receives the statement of affairs.

Statement of affairs: expenses

2.10.—(1) The receiver must pay as an expense of the receivership the expenses which the receiver considers to have been reasonably incurred by—

(**30**) Section 66(2) is prospectively amended to require a statutory declaration by S.S.I. 2016/141, article 4.

(a) a nominated person in making a statement of affairs and statutory declaration; or

(b) a relevant person in making a statement of concurrence.

(2) Any decision by the receiver under this rule is subject to appeal to the court.

Limited disclosure

2.11.—(1) This rule applies where the receiver thinks that disclosure of the whole or part of a statement of affairs or a statement of concurrence would be likely to prejudice the conduct of the receivership or might reasonably be expected to lead to violence against any person.

(2) The receiver may apply to the court for an order of limited disclosure in respect of the whole or any specified part of the—

(a) statement of affairs; or

(b) the statement of concurrence.

(3) The court may order that the whole or any specified part of the statement of affairs or the statement of concurrence must not be entered in the sederunt book.

(4) The court's order of limited disclosure may include directions regarding the disclosure of information in the statement of affairs or statement of concurrence to other persons.

(5) A creditor who seeks disclosure of the statement of affairs or statement of concurrence or a specified part of it in relation to which an order has been made under this Rule may apply to the court for an order that the receiver disclose that statement of affairs or statement of concurrence or specified part of it.

(6) The court may attach to an order for disclosure any conditions as to confidentiality, duration and scope of the order in any material change of circumstances, and other matters as it sees fit.

(7) If there is a material change in circumstances rendering the limit on disclosure unnecessary, the receiver must, as soon as reasonably practicable after the change, apply to the court for the order to be discharged or varied.

CHAPTER 5

Receiver's report

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

Receiver's report under section 67(1): content (prescribed part)(31)

2.12.—(1) The receiver's report under section 67(1) must state (in addition to the matters required by section 67(1)) estimates to the best of the receiver's knowledge and belief of —

(a) the value of the prescribed part (whether or not the receiver might be required under section 176A(**32**) to make the prescribed part available for the satisfaction of unsecured debts); and

(b) the value of the company's net property (as defined by section 176A(6)).

(2) The receiver may exclude from an estimate under paragraph (1) information the disclosure of which could seriously prejudice the commercial interests of the company.

(3) If the exclusion of such information affects the calculation of an estimate, the report must say so.

(**31**) **Rule 2.12 is included in the Rules by virtue of article 2 of S.S.I. 2017/209 - see section 70 and 71 of the Act.**
(**32**) Section 176A was inserted by the Enterprise Act 2002 (c.40), section 252.

(4) If the receiver proposes to make an application to court under section 176A(5) the report must say so and give the reason for the application.

Receiver's report under section 67(1): notice

2.13.—(1) This rule applies where the receiver sends the report under section 67(1) to—

(a) the holder of the floating charge by virtue of which the receiver was appointed; or

(b) any trustees for secured creditors, other than opted-out creditors, of the company and (so far as the receiver is aware of their addresses) such creditors.

(2) The receiver must deliver with the report a notice.

(3) The notice must contain—

(a) identification details for the office-holder; and

(b) identification details for the company.

Unsecured creditors request for copy report (section 67(2)(b))(33)

2.14. A notice under section 67(2)(b) stating an address to which unsecured creditors should write for copies of a receiver's report under that section—

(a) may be advertised in such manner as the receiver thinks fit; and

(b) must—

(i) contain identification details for the company; and

(ii) be accompanied by a notice under rule 2.15.

Receiver's report – notice to unsecured creditors and invitation to form a creditors' committee

2.15.—(1) This rule applies where under section 67(2)(a) the receiver sends a copy of the report under section 67(1) to all unsecured creditors of the company (so far as the receiver is aware of their addresses), other than opted-out creditors.

(2) The receiver must deliver with the copy report, a notice inviting the creditors to decide whether a creditors' committee should be established if sufficient creditors are willing to be members of the committee.

(3) The notice must also invite nominations for membership of the committee, such nominations to be received by the receiver by a date to be specified in the notice.

(4) The notice must—

(a) contain identification details for the company; and

(b) state that any nominations—

(i) must be delivered to the receiver by the specified date; and

(ii) can only be accepted if the receiver is satisfied as to the creditor's eligibility under rule 10.4.

CHAPTER 6

Receiver's summary of receipts and payments

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

(33) **Rule 2.14 is included in the Rules by virtue of article 2 of S.S.I. 2017/209 - see section 70 and 71 of the Act.**

Summary of receipts and payments

2.16.—(1) The receiver must deliver a summary of receipts and payments as receiver to—

(a) AiB;

(b) the company (and if it is then subject to other insolvency proceedings under Parts 1 to 5 of the Act, the office-holder in relation to those insolvency proceedings);

(c) the holder of the floating charge by virtue of which the receiver is appointed; and

(d) each member of the creditors' committee.

(2) The summary must be delivered to those persons within 2 months after—

(a) the end of the period of 12 months from the date of being appointed;

(b) the end of every subsequent period of 12 months; and

(c) ceasing to act as receiver (unless there is a joint receiver who continues in office).

(3) The court may, on the receiver's application, extend the period of 2 months referred to in paragraph (2).

(4) The summary must—

(a) contain identification details for the company;

(b) contain identification details for the receiver;

(c) contain contact details for the receiver;

(d) state the date of the receiver's appointment.

(5) The summary must show receipts and payments—

(a) during the relevant period of 12 months, or

(b) where the receiver has ceased to act, during the period—

(i) from the end of the last 12 month period to the time when the receiver so ceased, or

(ii) if there has been no previous summary, since being appointed.

(6) This rule is without prejudice to the receiver's duty to produce proper accounts otherwise than as above.

(7) A receiver who makes default in complying with this rule is guilty of an offence.

CHAPTER 7

Cessation of appointment of receiver

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

Resignation(34)

2.17.—(1) A receiver must deliver notice of intention to resign at least 5 business days before the date the resignation is intended to take effect to—

(a) the holder of the floating charge by virtue of which the receiver is appointed;

(b) the holder of any other floating charge and any receiver appointed by that holder;

(c) any other receiver appointed by the court;

(d) the company (and if it is then subject to other insolvency proceedings under Parts 1 to 5 of the Act, the office-holder in relation to those insolvency proceedings); and

(34) **Rule 2.17 is included in the Rules by virtue of article 2 of S.S.I. 2017/209 - see section 70 and 71 of the Act.**

(e) the members of the creditors' committee.

(2) Notice given under this rule must specify the date on which the receiver intends the resignation to take effect.

Deceased receiver: notice

2.18.—(1) If the receiver dies a notice of the fact and date of death must be delivered as soon as reasonably practicable to—

(a) the holder of the floating charge by virtue of which the receiver is appointed;

(b) the holder of any other floating charge and any receiver appointed by that holder;

(c) any other receiver appointed by the court (unless delivery is by a surviving joint receiver);

(d) the registrar of companies;

(e) AiB;

(f) the company (and if it is then subject to other insolvency proceedings under Parts 1 to 5 of the Act, the office-holder in relation to those insolvency proceedings); and

(g) the members of the creditors' committee.

(2) The notice must be delivered by one of the following:—

(a) a surviving joint receiver;

(b) a member of the deceased receiver's firm (if the deceased was a member or employee of a firm);

(c) an officer of the deceased receiver's company (if the deceased was an officer or employee of a company); or

(d) an executor of the deceased receiver.

(3) If such a notice has not been delivered within 21 days following the receiver's death then any other person may deliver the notice.

Other vacation of office

[Note: this requirement to give notice is in addition to the requirement to give notice (containing applicable standard contents under Chapter 6 of Part 1) to the registrar of companies and the Accountant in Bankruptcy under section 62(5).]

2.19.—(1) This rule applies where a receiver vacates office—

(a) in circumstances set out in paragraph 41 of schedule B1 (administration);

(b) on completion of the receivership; or

(c) in consequence of ceasing to be qualified to act as an insolvency practitioner in relation to the company.

(2) The receiver must, on vacating office, as soon as reasonably practicable deliver a notice of doing so to—

(a) the holder of the floating charge by virtue of which the receiver is appointed;

(b) the holder of any other floating charge and any receiver appointed by that holder;

(c) the company (and if it is then subject to other insolvency proceedings under Parts 1 to 5 of the Act, the office-holder in relation to those proceedings); and

(d) the members of the creditors' committee.

(3) Where the receiver vacates office in the circumstances described in paragraph (1)(a) the receiver is not required under paragraph (2)(c) to deliver notice of doing so to the administrator.

CHAPTER 8

Receivers and the prescribed part

Receiver to deal with prescribed part

2.20.—(1) Where a receiver is appointed over the whole or any part of the property of a company and section 176A(2)(**35**) applies, the receiver must deliver to any administrator or liquidator the sums representing the prescribed part.

(2) If there is no administrator or liquidator the receiver must—

(a) apply to the court for directions as to the manner in which to discharge the duty under section 176A(2)(a); and

(b) act in accordance with any directions given.

PART 3

MEMBERS' VOLUNTARY WINDING UP

CHAPTER 1

Statutory declaration of solvency (section 89)

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

Statutory declaration of solvency: requirements additional to those in section 89

[Note: the "official rate" referred to in paragraph (1)(b) is defined in section 251 as the rate referred to in section 189(4). Also see section 189(5) and rule 7.26.]

3.1.—(1) The statutory declaration of solvency required by section 89 must identify the company and state—

(a) the name and a postal address for each director making the declaration (which may be the director's service address provided for by section 163 of the Companies Act);

(b) either—

(i) that all of the directors; or

(ii) that a majority of the directors,

have made a full inquiry into the company's affairs and that, having done so, they have formed the opinion that the company will be able to pay its debts in full together with interest at the official rate within a specified period (which must not exceed 12 months) from the commencement of the winding up; and

(c) that the declaration is accompanied by a statement of the company's assets and liabilities as at a date which is stated (being the latest practicable date before the making of the declaration as required by section 89(2)(b)).

(2) The statement of the company's assets and liabilities must contain—

(a) the date of the statement;

(**35**) Section 176A was inserted by the Enterprise Act 2002 (c.40), section 252.

(b) a statement that the statement shows the assets of the company at estimated realisable values and liabilities of the company expected to rank as at the date referred to in sub-paragraph (1)(c);

(c) a summary of the assets of the company, setting out the estimated realisable value of—

(i) any assets specifically secured,

(ii) any assets subject to a floating charge,

(iii) any assets not secured; and

(iv) the total value of all the assets available to preferential creditors;

(d) the value of each of the following secured liabilities of the company expected to rank for payment—

(i) liabilities secured on specific assets, and

(ii) liabilities secured by floating charges;

(e) a summary of the unsecured liabilities of the company expected to rank for payment;

(f) the estimated expenses of the liquidation;

(g) the estimated amount of interest accruing until payment of debts in full; and

(h) the estimated value of any surplus after paying debts in full together with interest at the official rate.

CHAPTER 2

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.]

Appointment by the company

[Note: under section 109 and paragraph 23 of schedule 8 of the Scotland Act 1998 a liquidator must also, within 14 days, publish in the Gazette and deliver to the Accountant in Bankruptcy notice of the liquidator's appointment.]

3.2.—(1) This rule applies where the liquidator is appointed by the company.

(2) The chair of the meeting, or a director or the secretary of the company in the case of a written resolution of a private company, must certify the appointment when the appointee has provided to the person certifying the appointment a statement to the effect that the appointee is an insolvency practitioner qualified under the Act to be the liquidator and consents to act.

(3) The certificate must be authenticated and dated by the person who certifies the appointment and must contain—

(a) identification details for the company;

(b) identification and contact details for the person appointed as liquidator;

(c) the date the liquidator was appointed; and

(d) a statement that the appointee—

(i) provided a statement of being qualified to act as an insolvency practitioner in relation to the company,

(ii) has consented to act, and

(iii) was appointed liquidator of the company.

(4) Where 2 or more liquidators are appointed the certificate must also specify (as required by section 231) whether any act required or authorised under any enactment to be done by the liquidator is to be done by all or any one or more of them.

(5) The person who certifies the appointment must deliver the certificate as soon as reasonably practicable to the liquidator.

(6) Not later than 28 days from the liquidator's appointment, the liquidator must deliver notice of the appointment to the creditors of the company.

(7) The liquidator may within 28 days of the liquidator's appointment advertise notice of it (otherwise than in the Gazette) in such manner as the liquidator thinks fit.

(8) The notice referred to in paragraph (7) must state—

(a) that a liquidator has been appointed; and

(b) the date of the appointment.

Meetings in members' voluntary winding up of authorised deposit-takers

3.3.—(1) This rule applies to a meeting of the members of an authorised deposit-taker at which it is intended to propose a resolution for its winding up.

(2) Notice of such a meeting of the company must be delivered by the directors to the Financial Conduct Authority and to the scheme manager established under section 212(1) of the Financial Services and Markets Act 2000(**36**).

(3) The notice to the Financial Conduct Authority and the scheme manager must be the same as delivered to members of the company.

(4) The scheme manager is entitled to be represented at any meeting of which it is required by this rule to be given notice.

Appointment by the court (section 108)

[Note: under section 109 and paragraph 23 of schedule 8 of the Scotland Act 1998 a liquidator must also, within 14 days, publish in the Gazette and deliver to the Accountant in Bankruptcy notice of the liquidator's appointment.]

3.4.—(1) This rule applies where the liquidator is appointed by the court under section 108.

(2) The court must not make the appointment unless and until the person being appointed liquidator has lodged in court a statement to the effect that that person is qualified to act as an insolvency practitioner in relation to the company and consents to act as liquidator.

(3) The liquidator's appointment is effective from the date of the order of appointment.

(4) Not later than 28 days from the liquidator's appointment, the liquidator must deliver notice of the appointment to the creditors of the company.

Liquidator's resignation

3.5.—(1) A liquidator may resign only—

(a) on grounds of ill health;

(b) because of the intention to cease to practise as an insolvency practitioner;

(c) because the further discharge of the duties of liquidator is prevented or made impractical by—

(**36**) 2000 c.8.

(i) a conflict of interest, or

(ii) a change of personal circumstances;

(d) where 2 or more persons are acting as liquidator jointly and it is the opinion of both or all of them that it is no longer expedient that there should continue to be that number of joint liquidators.

(2) Before resigning, the liquidator must deliver a notice to the members of the company—

(a) stating the liquidator's intention to resign; and

(b) calling a meeting for the members to consider whether a replacement should be appointed,

except where the resignation is under sub-paragraph (1)(d).

(3) The notice may suggest the name of a replacement liquidator.

(4) The notice must be accompanied by a summary of the liquidator's receipts and payments.

(5) The date of the meeting must be not more than 5 business days before the date on which the liquidator intends to give notice of resignation to AiB under section 171(5).

(6) The resigning liquidator's release is effective 21 days after the date of delivery of the notice of resignation to AiB under section 171(5), unless the court orders otherwise.

Removal of liquidator by company meeting

[Note: in relation to release of the liquidator following removal from office by a general meeting of the company, see section 173(2)(a)(i)(**37**).]

3.6. A liquidator removed by a meeting of the company must as soon as reasonably practicable deliver notice of the removal to AiB.

Removal of liquidator by the court

[Note: in relation to release of the liquidator following removal from office by the court see section 173(2)(b)(ii) (**38**).]

3.7.—(1) This rule applies where an application is made to the court for the removal of the liquidator, or for an order directing the liquidator to summon a company meeting for the purpose of removing the liquidator.

(2) The court may require the applicant to make a deposit or give caution for the expenses to be incurred by the liquidator on the application.

(3) The applicant must, at least 14 days before the hearing, deliver to the liquidator—

(a) a notice of the hearing stating the venue;

(b) a copy of the application; and

(c) a copy of any evidence on which the applicant intends to rely.

(4) The expenses of the application are not payable as an expense of the liquidation unless the court orders otherwise.

(5) Where the court removes the liquidator the order of removal may include such provision as the court thinks fit with respect to matters arising in connection with the removal.

(6) The person removed must as soon as reasonably practicable after receiving a copy of the order of removal deliver a copy of the order of removal to AiB.

(**37**) A new section 173(2)(a) is prospectively inserted by paragraph 44(2) of schedule 9 of the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act").

(**38**) A new section 173(2)(b) is prospectively substituted by paragraph 44(2) of schedule 9 of the 2015 Act.

(7) If the court appoints a new liquidator, rule 3.4 (appointment by the court) applies.

Deceased liquidator

[Note: in relation to release of a deceased liquidator, see section 173(2)(a)(iii) and paragraph 23 of schedule 8 of the Scotland Act 1998.]

3.8.—(1) If the liquidator dies a notice of the fact and date of death must be delivered as soon as reasonably practicable to—

(a) one of the company's directors; and

(b) AiB.

(2) One of the following must deliver the notice—

(a) a surviving joint liquidator;

(b) a member of the deceased liquidator's firm (if the deceased was a member or employee of a firm);

(c) an officer of the deceased liquidator's company (if the deceased was an officer or employee of a company); or

(d) an executor of the deceased liquidator.

(3) If such notice has not been delivered within the 21 days following the liquidator's death then any other person may deliver the notice.

Loss of qualification as insolvency practitioner

[Note: in relation to release of the liquidator where the liquidator vacates office on ceasing to be a person qualified to act as an insolvency practitioner in relation to the company (section 171(4)), see section 173(2)(b)(iii)).]

3.9.—(1) This rule applies where the liquidator vacates office on ceasing to be qualified to act as an insolvency practitioner in relation to the company.

(2) A notice of the fact must be delivered as soon as reasonably practicable to AiB by one of the following:—

(a) the liquidator who has vacated office;

(b) a continuing joint liquidator; or

(c) the recognised professional body which was the source of the vacating liquidator's authorisation to act (immediately before the liquidator vacated office).

(3) The notice must be authenticated and dated by the person delivering the notice.

Application by former liquidator to the Accountant of Court for release (section 173(2)(b))(39)

3.10.—(1) This rule applies to a liquidator who—

(a) is removed by the court;

(b) vacates office on ceasing to be qualified to act as an insolvency practitioner in relation to the company; or

(c) vacates office in consequence of the court making a winding-up order against the company.

(39) A new section 173(2)(b) is prospectively inserted by paragraph 44(2) of schedule 9 of the 2015 Act.

(2) Where the former liquidator applies to the Accountant of Court for release the application must contain—

(a) identification details for the insolvency proceedings;

(b) identification and contact details for the former liquidator;

(c) details of the circumstances under which the former liquidator has ceased to act as liquidator; and

(d) a statement that the former liquidator is applying to the Accountant of Court for a certificate of the former liquidator's release as liquidator as a result of the circumstances specified in the application.

(3) The application must be authenticated and dated by the former liquidator.

(4) When the Accountant of Court gives a release, the Accountant of Court must deliver—

(a) a certificate of the release to the former liquidator; and

(b) a notice of the release to AiB.

(5) Release is effective from the date of the certificate or such other date as the certificate specifies.

Delivery of draft final account to members (section 94)

3.11.—(1) The liquidator must deliver a notice to the members accompanied by the draft final account required by section 94(1)(**40**) and rule 7.9 giving them a minimum of 8 weeks' notice of a specified date on which the liquidator intends to deliver the final account as required by section 94(2).

(2) The notice must inform the members that when the company's affairs are fully wound up—

(a) the liquidator will make up the final account and deliver it to the members; and

(b) when the final account is delivered to the registrar of companies and AiB under section 94(3)(**41**) the liquidator will vacate office under section 171(6)(**42**) and be released under section 173(2)(d)(**43**).

(3) However the liquidator may conclude that the company's affairs are fully wound up before the period referred to in paragraph (1) has expired if every member confirms in writing to the liquidator that they do not intend to make any such request or application.

Final account prior to dissolution (section 94)

3.12.—(1) The final account which the liquidator is required to make up under section 94 must comply with the requirements of rule 7.9.

(2) When the account is delivered to the members under section 94(2) it must be accompanied by a notice which states that—

(a) the company's affairs are fully wound up;

(b) the liquidator having delivered copies of the account to the members must, within 14 days of the date on which the account is made up, deliver a copy of the account to the registrar of companies and AiB; and

(c) the liquidator will vacate office under section 171(6) and be released under section 173(2)(d) on delivering the final account to the registrar of companies and AiB.

(**40**) A new section 94 is prospectively inserted by paragraph 18 of schedule 9 of the 2015 Act (c.26).
(**41**) Section 94(3) is modified by paragraph 23 of schedule 8 of the Scotland Act 1998 (c.46).
(**42**) A new section 171(6) is prospectively inserted by paragraph 42(4) of schedule 9 of the Small Business, Enterprise and Employment Act 2015.
(**43**) Section 173(2)(d) is prospectively amended by paragraph 44 of schedule 9 of the Small Business, Enterprise and Employment Act 2015.

(3) The copy of the account which the liquidator must deliver to the registrar of companies and AiB under section 94(3) must be accompanied by a notice stating that the liquidator has delivered the final account of the winding up to the members in accordance with section 94(2).

Liquidator's duties on vacating office (hand-over of assets etc.)

3.13.—(1) This rule applies where a person appointed as liquidator ("the succeeding liquidator") succeeds a previous liquidator ("the former liquidator") as the liquidator.

(2) When the succeeding liquidator's appointment takes effect the former liquidator must as soon as reasonably practicable deliver to the succeeding liquidator—

(a) the assets (after deduction of any expenses properly incurred, and distributions made, by the former liquidator);

(b) the records of the winding up, including correspondence, statements of claim, evidence of debts and other documents relating to the winding up; and

(c) the company's documents and other records.

(3) In doing so, the former liquidator must hand over—

(a) such information relating to the affairs of the company and the course of the winding up as the succeeding liquidator considers reasonably required for the effective discharge of the succeeding liquidator's duties as liquidator; and

(b) all records and documents in the former liquidator's possession relating to the affairs of the company and its winding up.

Taking possession and realisation of company's assets

3.14.—(1) The liquidator must—

(a) as soon as reasonably practicable after the liquidator's appointment take possession of—

(i) the whole assets of the company; and

(ii) any property, books, papers or records in the possession or control of the company or to which the company appears to be entitled; and

(b) make up and maintain an inventory and valuation of the assets of the company.

(2) The liquidator is entitled to have access to, and to make copies of, all documents or records relating to the assets, property, business or financial affairs of the company—

(a) sent by or on behalf of the company to a third party; and

(b) in that third party's hands.

(3) If a person obstructs the liquidator in the liquidator's exercise, or attempted exercise, of a power conferred by paragraph (2), the court may, on the liquidator's application, order the person to cease obstructing the liquidator.

(4) The liquidator may require delivery to the liquidator of any title deed or other document of the company, even if a right of lien is claimed over it.

(5) Paragraph (4) is without prejudice to any preference of the holder of the lien.

Realisation of the company's heritable property

3.15.—(1) This rule applies to the sale of any part of the company's heritable property over which a heritable security is held by a creditor or creditors if the rights of the secured creditor are preferable to those of the liquidator.

(2) The liquidator may sell that part only with the concurrence of every such creditor unless the liquidator obtains a sufficiently high price to discharge every such security.

(3) Subject to paragraph (4), the following acts are precluded—

(a) the taking of steps by a creditor to enforce the creditor's security over that part after the liquidator has intimated to the creditor an intention to sell it;

(b) the commencement by the liquidator of the procedure for the sale of that part after a creditor has intimated to the liquidator that the creditor intends to commence the procedure for its sale.

(4) Where the liquidator or a creditor has given intimation under paragraph (3) but has unduly delayed in proceeding with the sale, then, if authorised by the court in the case of—

(a) paragraph (3)(a), any creditor to whom intimation has been given may enforce the creditor's security;

(b) paragraph (3)(b), the liquidator may sell that part.

(5) The validity of the title of any purchaser is not challengeable on the ground that there has been a failure to comply with a requirement of this rule.

Power of court to set aside certain transactions entered into by liquidator

3.16.—(1) If in the course of the liquidation the liquidator enters into any transaction with a person who is an associate of the liquidator, the court may, on the application of any interested person , set the transaction aside and order the liquidator to compensate the company for any loss suffered in consequence of it.

(2) This does not apply if either—

(a) the transaction was entered into with the prior consent of the court; or

(b) it is shown to the court's satisfaction that the transaction was for value, and that it was entered into by the liquidator without knowing, or having any reason to suppose, that the person concerned was an associate.

(3) Nothing in this rule is to be taken as prejudicing the operation of any rule of law relating to a trustee's dealings with trust property, or the fiduciary obligations of any person.

Rule against improper solicitation by or on behalf of the liquidator

3.17.—(1) Where the court is satisfied that any improper solicitation has been used by or on behalf of the liquidator in obtaining proxies or procuring the liquidator's appointment, it may order that no remuneration be allowed as an expense of the liquidation to any person by whom, or on whose behalf, the solicitation was exercised.

(2) An order of the court under this rule overrides any resolution of the members, or any other provision of these Rules relating to the liquidator's remuneration.

CHAPTER 3

Special manager

Application for and appointment of special manager (section 177)

3.18.—(1) An application by the liquidator under section 177 for the appointment of a special manager must be supported by a report setting out the reasons for the application.

(2) The report must include the liquidator's estimate of the value of the business or property in relation to which the special manager is to be appointed.

(3) The court's order appointing a special manager must specify the duration of the special manager's appointment, being one of the following—

(a) for a fixed period stated in the order;

(b) until the occurrence of a specified event; or

(c) until the court makes a further order.

(4) The appointment of the special manager may be renewed by order of the court.

(5) The special manager's remuneration will be fixed from time to time by the court.

(6) The acts of the special manager are valid notwithstanding any defect in the special manager's appointment or qualifications.

Caution

3.19.—(1) The appointment of the special manager does not take effect until the person appointed has found (or, if the court allows, undertaken to find) caution for the appointment to be given to the liquidator.

(2) A person appointed as special manager may find caution either specifically for a particular winding up, or generally for any winding up in relation to which that person may be appointed as special manager.

(3) The amount of the caution must be not less than the value of the business or property in relation to which the special manager is appointed, as estimated in the applicant's report which accompanied the application for appointment.

(4) When the special manager has found caution for the appointment to be given to the applicant that person must lodge with the court a certificate as to the adequacy of the caution.

(5) The cost of finding the caution must be paid in the first instance by the special manager, but the special manager is entitled to be reimbursed as an expense of the liquidation.

Failure to find or maintain caution

3.20.—(1) If the special manager fails to find the required caution within the time allowed for that purpose by the order of appointment, or any extension of that time that may be allowed, the liquidator must report the failure to the court, which may discharge the order appointing the special manager.

(2) If the special manager fails to maintain the caution, the liquidator must report the failure to the court, which may remove the special manager, and make such order as to expenses as it thinks just.

(3) If the court discharges the order appointing the special manager, or makes an order removing the special manager, the court must give directions as to whether any, and if so what, steps should be taken for the appointment of another special manager.

Accounting

3.21.—(1) The special manager must produce accounts, containing details of the special manager's receipts and payments, for the approval of the liquidator.

(2) The accounts must be for—

(a) each 3 month period for the duration of the special manager's appointment; and

(b) any shorter period ending with the termination of the special manager's appointment.

(3) When the accounts have been approved, the special manager's receipts and payments must be added to those of the liquidator.

Termination of appointment

3.22.—(1) If the liquidator is of the opinion that the appointment of the special manager is no longer necessary or beneficial for the company, the liquidator must apply to the court for directions, and the court may order the special manager's appointment to be terminated.

(2) The liquidator must make the same application if the members pass a resolution requesting that the appointment should be terminated.

CHAPTER 4

Conversion to creditors' voluntary winding up

Statement of affairs (section 95)

3.23. The rules in Chapter 2 of Part 4 apply to the statement of affairs made out by the liquidator under section 95(1A)(**44**) where the liquidator is of the opinion that the company will be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors' declaration under section 89.

PART 4

CREDITORS' VOLUNTARY WINDING UP

CHAPTER 1

Application of Part

Application of Part 4

4.1.—(1) This Part applies to a creditors' voluntary winding up.

(2) However where a company moves from administration to creditors' voluntary winding up by the registration of a notice under paragraph 83(3) of schedule B1 the following rules do not apply:—

4.2 to 4.7 (statement of affairs etc.);

4.11 to 4.15 (information to creditors and contributories and appointment of liquidator);

4.17 (report by directors etc.);

4.18 (decisions on nomination);

4.20 (appointment by creditors or by the company);

4.22 (appointment by the court (section 100(3) or 108), other than in respect of appointments under section 108).

CHAPTER 2

Statement of affairs and other information

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

(**44**) Section 95(1A) is prospectively inserted by paragraph 19(2) of schedule 9 of the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act") which also omitted subsections (2) to (3) and (5) to (7). Section 95(4A) inserted by S.I. 2010/18 is prospectively amended by S.S.I. 2016/141, article 8.

Statement of affairs made out by the liquidator under section 95(1A)(45)

[Note: section 95(4A)(**46**) requires the statement of affairs to contain a statutory declaration by some or all of the directors.

Note: the "official rate" referred to in paragraph (2)(c) is defined in section 251 as the rate referred to in section 189(4)). Also see section 189(5) and rule 7.26.]

4.2.—(1) This rule applies to the statement of affairs made out by the liquidator under section 95(1A) (effect of company's insolvency in members' voluntary winding up).

(2) The statement of affairs must be headed "Statement of affairs" and must contain—

(a) identification details for the company;

(b) a statement that it is a statement of the affairs of the company on a date which is specified, being the date of the opinion formed by the liquidator under section 95(1);

(c) a statement that as at that date, the liquidator formed the opinion that the company would be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors' declaration of solvency made under section 89; and

(d) the date it is made.

(3) The statutory declaration required by section 95(4A) must be a statutory declaration that the information provided in the statement of affairs is, to the best of the liquidator's knowledge and belief, accurate and complete.

Statement of affairs made out by the directors under section 99(1)

[Note: section 99(2A)(**47**) requires the statement of affairs to contain a statutory declaration by some or all of the directors.]

4.3.—(1) This rule applies to the statement of affairs made out by the directors under section 99(1)(**48**).

(2) The statement of affairs must be headed "Statement of affairs" and must contain—

(a) identification details for the company;

(b) a statement that it is a statement of the affairs of the company on a date which is specified, being a date not more than 14 days before the date of the resolution for winding up; and

(c) the date it is made.

(3) The statutory declaration required by section 99(2A) must be a statutory declaration that the information provided in the statement of affairs is, to the best of the directors' knowledge and belief, accurate and complete.

(4) If a creditor requests a copy of the statement of affairs at a time when no liquidator is appointed the directors must deliver a copy to the creditor.

(5) The directors must deliver the statement of affairs to the liquidator as soon as reasonably practicable after the liquidator is appointed.

Additional requirements as to statements of affairs

4.4.—(1) A statement of affairs under section 95(1A) or 99(1) must also contain—

(**45**) **Section 95(1A) is prospectively inserted by paragraph 19(2) of schedule 9 of the 2015 Act.**
(**46**) Section 95(4A) was inserted by S.I. 2010/18 and prospectively amended for Scotland by S.S.I. 2016/141, article 8.
(**47**) Section 99(2A) was inserted by S.I. 2010/18 and prospectively amended for Scotland by S.S.I. 2016/141, article 9.
(**48**) Section 99(1) is prospectively substituted by paragraph 23(2) of schedule 9 of the 2015 Act (c.26).

(a) a list of the company's shareholders, with the following details about each one—

(i) name and postal address,

(ii) the type of shares held,

(iii) the nominal amount of the shares held,

(iv) the number of shares held,

(v) the amount per share called up, and

(vi) the total amount called up;

(b) the total amount of shares called up held by all shareholders;

(c) a summary of the assets of the company, setting out the book value and estimated realisable value of—

(i) any assets specifically secured,

(ii) any assets subject to a floating charge,

(iii) any assets not secured, and

(iv) the total value of all the assets available for preferential creditors;

(d) a summary of the liabilities of the company, setting out—

(i) the amount of preferential debts,

(ii) an estimate of the deficiency with respect to preferential debts or the surplus available after paying the preferential debts,

(iii) an estimate of the prescribed part, if applicable,

(iv) an estimate of the total assets available to pay debts secured by floating charges,

(v) the amount of debts secured by floating charges,

(vi) an estimate of the deficiency with respect to debts secured by floating charges or the surplus available after paying the debts secured by fixed security or floating charges,

(vii) the amount of unsecured debts (excluding preferential debts),

(viii) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts,

(ix) any issued and called-up capital, and

(x) an estimate of the deficiency with respect to, or surplus available to, members of the company;

(e) a list of the company's creditors with the following particulars required by paragraph (2) indicating—

(i) any creditors under hire-purchase or conditional sale agreements,

(ii) any creditors who are consumers claiming amounts paid in advance of the supply of goods or services, and

(iii) any creditors claiming retention of title over property in the company's possession.

(2) The particulars required by this paragraph relating to each creditor are as follows:—

(i) the name and postal address,

(ii) amount of the debt owed to the creditor, (as required by section 95(4) or 99(2)),

(iii) details of any security held by the creditor,

(iv) the date the security was given, and

(v) the value of the security.

(3) Paragraph (4) applies where the particulars required by paragraph (2) relate to creditors who are either—

(a) employees or former employees of the company; or

(b) consumers claiming amounts paid in advance for the supply of goods or services.

(4) Where this paragraph applies—

(a) the statement of affairs itself must state separately for each of paragraphs (3)(a) and (b) the number of such creditors and the total of the debts owed to them; and

(b) the particulars required by paragraph (2) in respect of those creditors must be set out in separate schedules to the statement of affairs for each of paragraphs (3)(a) and (b).

Statement of affairs: statement of concurrence

4.5.—(1) The liquidator may require a director ("the relevant person") to deliver to the liquidator a statement of concurrence.

(2) A statement of concurrence is a statement that the relevant person concurs in the statement of affairs submitted by another director.

(3) The liquidator must inform the director who has been required to submit a statement of affairs that the relevant person has been required to deliver a statement of concurrence.

(4) The director who has been required to submit the statement of affairs must deliver a copy to every relevant person who has been required to submit a statement of concurrence.

(5) A statement of concurrence—

(a) must identify the company; and

(b) may be qualified in relation to matters dealt with in the statement of affairs, where the relevant person —

(i) is not in agreement with the statement of affairs,

(ii) considers the statement of affairs to be erroneous or misleading, or

(iii) is without the direct knowledge necessary for concurring in it.

(6) A statement of concurrence must contain a statutory declaration by the relevant person required to submit it that the information provided in the statement of concurrence is, to the best of the relevant person's knowledge and belief, accurate and complete.

(7) The relevant person must deliver the required statement of concurrence to the liquidator before the end of the period of 5 business days (or such other period as the liquidator may agree) beginning with the day on which the relevant person receives the statement of affairs.

Limited disclosure

4.6.—(1) This rule applies where the liquidator thinks that disclosure of the whole or part of a statement of affairs or a statement of concurrence would be likely to prejudice the conduct of the winding up or might reasonably be expected to lead to violence against any person.

(2) The liquidator may apply to the court for an order of limited disclosure in respect of the whole or any specified part of the—

(a) statement of affairs; or

(b) the statement of concurrence.

(3) The court may order that the whole or any specified part of the statement of affairs or the statement of concurrence must not be entered in the sederunt book.

(4) The court's order of limited disclosure may include directions regarding the disclosure of information in the statement of affairs or statement of concurrence to other persons.

(5) A creditor who seeks disclosure of the statement of affairs or statement of concurrence or a specified part of it in relation to which an order has been made under this Rule may apply to the court for an order that the liquidator disclose that statement of affairs or statement of concurrence or specified part of it.

(6) The court may attach to an order for disclosure any conditions as to confidentiality, duration and scope of the order in any material change of circumstances, and other matters as it sees fit.

(7) If there is a material change in circumstances rendering the limit on disclosure unnecessary, the liquidator must, as soon as reasonably practicable after the change, apply to the court for the order to be discharged or varied.

(8) This rule does not apply so far as section 95 or 99 does not permit limited disclosure.

Expenses of statement of affairs and decisions sought from creditors

4.7.—(1) Any reasonable and necessary expenses of preparing the statement of affairs under section 99 may be paid out of the company's assets, either before or after the commencement of the winding up, as an expense of the liquidation.

(2) Any reasonable and necessary expenses of the decision procedure or deemed consent procedure to seek a decision from the creditors on the nomination of a liquidator under rule 4.14 (information to creditors and appointment of liquidator) may be paid out of the company's assets, either before or after the commencement of the winding up, as an expense of the liquidation.

(3) Where payment under paragraph (1) or (2) is made before the commencement of the winding up, the directors must deliver to the creditors with the statement of affairs a statement of the amount of the payment and the identity of the person to whom it was made.

(4) The liquidator appointed under section 100(**49**) may make such a payment, but if there is a liquidation committee, the liquidator must deliver to the committee at least 5 business days' notice of the intention to make it.

(5) However such a payment may not be made to the liquidator, or to any associate of the liquidator, otherwise than with the approval of the liquidation committee, the creditors, or the court.

(6) This is without prejudice to the court's powers under rule 5.52 (voluntary winding up superseded by winding up by the court).

Delivery of accounts to liquidator (section 235)

4.8.—(1) A person who is specified in section 235(3) must deliver to the liquidator accounts of the company of such nature, as at such date, and for such period, as the liquidator requires.

(2) The period for which the liquidator may require accounts may begin from a date up to 3 years before the date of the resolution for winding up, or from an earlier date to which audited accounts of the company were last prepared.

(3) The accounts must, if the liquidator so requires, contain a statutory declaration by the person required to deliver them that the accounts are, to the best of the relevant person's knowledge and belief, accurate and complete.

(4) The accounts (containing a statutory declaration if so required) must be delivered to the liquidator within 21 days from the liquidator's request, or such longer period as the liquidator may allow.

(**49**) Section 100 is prospectively amended by paragraph 24 of schedule 9 of the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act") which inserts new subsections (1), (1A) and (1B).

Expenses of assistance in preparing accounts

4.9.—(1) Where the liquidator requires a person to deliver accounts under rule 4.8, the liquidator may, with the approval of the liquidation committee (if there is one) and as an expense of the liquidation, employ a person or firm to assist that person in the preparation of the accounts.

(2) The person who is required to deliver accounts may request an allowance of all or part of the expenses to be incurred in employing a person or firm to assist in preparing the accounts.

(3) A request for an allowance must be accompanied by an estimate of the expenses involved.

(4) The liquidator must only authorise the employment of a named person or a named firm approved by the liquidator.

(5) The liquidator may, with the approval of the liquidation committee (if there is one), authorise such an allowance, payable as an expense of the liquidation.

CHAPTER 3

Nomination and appointment of liquidators and information to creditors

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

Application of the rules in this Chapter

4.10.—(1) The rules in this Chapter apply as follows.

(2) Rules 4.11 to 4.13 only apply to a conversion from a members' voluntary winding up to a creditors' voluntary winding up.

(3) Rule 4.16 only applies where the administrator becomes the liquidator in a voluntary winding up which follows an administration.

(4) Rules 4.14, 4.15 and 4.17 only apply to a creditors' voluntary winding up which has not been commenced by a conversion from a members' voluntary winding up or an administration.

(5) Rules 4.18 and 4.19 apply to all creditors' voluntary windings up.

Nomination of liquidator and information to creditors on conversion from members' voluntary winding up (section 96)

4.11.—(1) This rule applies in respect of the conversion of a members' voluntary winding up to a creditors' voluntary winding up under section 96(**50**).

(2) The liquidator must seek a nomination from the creditors for a liquidator in the creditors' voluntary winding up by—

(a) a decision procedure; or

(b) the deemed consent procedure.

(3) The liquidator must deliver to the creditors a copy of the statement of affairs required by section 95(1A) and Chapter 2 of this Part together with a notice which complies with rule 8.7 (deemed consent) or 8.8 (notices to creditors of decision procedure) so far as are relevant.

(4) The notice must also contain—

(a) identification and contact details for the existing liquidator; and

(b) a statement that if no person is nominated by the creditors then the existing liquidator will be the liquidator in the creditors' voluntary winding up.

(**50**) Section 96 is prospectively substituted by paragraph 20(1) of schedule 9 of the 2015 Act.

(5) The decision date in the notice must be not later than 28 days from the date under section 95(1) that the liquidator formed the opinion that the company will be unable to pay its debts in full.

(6) Subject to paragraph (9), the creditors must be given at least 14 days' notice of the decision date.

(7) Paragraph (8) applies where—

(a) the liquidator has sought a decision from creditors on the nomination of a liquidator by the deemed consent procedure; but

(b) the level of objections to the proposed nomination has meant, under section 246ZF, that no nomination is deemed to have been made.

(8) Where this paragraph applies, the liquidator must seek a nomination from creditors by way of a decision procedure in accordance with this rule, the decision date to be as soon as reasonably practicable, but no more than 28 days from the date that the level of objections had the effect that no nomination was deemed to have been made.

(9) Where paragraph (8) applies, the creditors must be given at least 7 days' notice of the decision date.

(10) Where the liquidator is required by rule 8.6 (physical meetings) to summon a physical meeting as a result of requests from creditors received in response to a notice delivered under this rule, the physical meeting must be summoned to take place—

(a) within 28 days of the date on which the threshold for requiring a physical meeting was met; and

(b) with at least 14 days' notice.

Creditors' decision on appointment other than at a meeting (conversion from members' voluntary winding up)

4.12.—(1) This rule applies where the creditors' decision on the nomination of a liquidator in a conversion of a members' voluntary winding up into a creditors' voluntary winding up is intended to be sought otherwise than through a meeting or through the deemed consent procedure, including where the conditions in rule 4.11(7) are met and the liquidator, under rule 4.11(8), goes on to seek a nomination from creditors by way of a decision procedure other than a meeting.

(2) Instead of delivering a notice of the decision procedure or deemed consent procedure under rule 4.11, the liquidator must deliver a notice to creditors inviting them to make proposals for the nomination of a liquidator.

(3) Such a notice must—

(a) identify any liquidator for whom a proposal which is in compliance with paragraph (4) has already been received;

(b) explain that the liquidator is not obliged to seek the creditors' views on any proposal that does not meet the requirements of paragraphs (4) and (5); and

(c) be accompanied by the statement of affairs unless that has previously been delivered to the creditor.

(4) Any proposal must state the name and contact details of the proposed liquidator, and contain a statement that the proposed liquidator is qualified to act as an insolvency practitioner in relation to the company and has consented to act as liquidator of the company.

(5) Any proposal must be received by the liquidator within 5 business days of the date of the notice under paragraph (2).

(6) Within 2 business days of the end of the period referred to in paragraph (5), the liquidator must send a notice to creditors of a decision procedure under rule 4.11.

Information to creditors and contributories (conversion of members' voluntary winding up to creditors' voluntary winding up)

4.13.—(1) The liquidator must deliver to the creditors and contributories within 28 days of the conversion of a members' voluntary winding up to a creditors' voluntary winding up under section 96 a notice which must contain—

(a) the date the winding up became a creditors' voluntary winding up;

(b) a report of the decision procedure or deemed consent procedure which took place under rule 4.11; and

(c) the information required by paragraph (3).

(2) The notice must be accompanied by a copy of the statement of affairs or a summary except where the notice is being delivered to a creditor to whom a copy of the statement of affairs has previously been delivered under section 95(1A)(**51**).

(3) The required information is an estimate to the best of the liquidator's knowledge and belief of—

(a) the value of the prescribed part (whether or not the liquidator might be required under section 176A(**52**) to make the prescribed part available for the satisfaction of unsecured debts); and

(b) the value of the company's net property (as defined by section 176A(6)).

(4) The liquidator may exclude from an estimate under paragraph (3) information the disclosure of which could seriously prejudice the commercial interests of the company.

(5) If the exclusion of such information affects the calculation of an estimate, the report must say so.

(6) If the liquidator proposes to make an application to court under section 176A(5) the report must say so and give the reason for the application.

Information to creditors and appointment of liquidator

4.14.—(1) This rule applies in respect of the appointment of a liquidator under section 100.

(2) The directors of the company must deliver to the creditors a notice seeking their decision on the nomination of a liquidator by—

(a) the deemed consent procedure; or

(b) a virtual meeting.

(3) The decision date for the decision of the creditors on the nomination of a liquidator must be not earlier than 3 business days after the notice under paragraph (2) is delivered but not later than 14 days after the resolution is passed to wind up the company.

(4) Where the directors have sought a decision from the creditors through the deemed consent procedure under paragraph (2)(a) but, pursuant to section 246ZF(5)(a) (deemed consent procedure), more than the specified number of creditors object so that the decision cannot be treated as having been made, the directors must then seek a decision from the creditors on the nomination of a liquidator by holding a physical meeting under rule 8.6 as if a physical meeting had been required under section 246ZE(4) (decisions by creditors and contributories: general)(**53**).

(**51**) Section 95(1A) is prospectively inserted by paragraph 19(2) of schedule 9 of the 2015 Act which also omitted subsections (2) to (3) and (5) to (7).
(**52**) Section 176A was inserted by the Enterprise Act 2002 (c.40), section 252.
(**53**) Section 246ZE was prospectively inserted by section 122 of the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act").

(5) Where paragraph (4) applies, the meeting must not be held earlier than 3 business days after the notice under rule 8.6(3) is delivered or later than 14 days after the level of objections reaches that described in paragraph (4).

(6) A request for a physical meeting under section 246ZE must be made in accordance with rule 8.6 except that—

(a) such a request may be made at any time between the delivery of the notice under paragraph (2) and the decision date under paragraph (3); and

(b) the decision date where this paragraph applies must be not earlier than 3 business days after the notice under rule 8.6(3) is delivered and not later than 14 days after the level of requests reaches that described in section 246ZE.

(7) The directors must deliver to the creditors a copy of the statement of affairs required under section 99 not later than on the business day before the decision date.

(8) A notice delivered under paragraph (2), in addition to the information required by rules 8.7 (deemed consent) and 8.8 (notices to creditors of decision procedure), must contain—

(a) the date the resolution to wind up is to be considered or was passed;

(b) identification and contact details of any liquidator nominated by the company;

(c) a statement of either—

(i) the name and address of a person qualified to act as an insolvency practitioner in relation to the company who during the period before the decision date, will furnish creditors free of charge with such information concerning the company's affairs as they may reasonably require, or

(ii) a place in the relevant locality where, on the 2 business days falling next before the decision date, a list of the names and addresses of the company's creditors will be available for inspection free of charge; and

(d) where the notice is sent to creditors in advance of the copy of the statement of affairs, a statement that the directors, before the decision date and before the end of the period of 7 days beginning with the day after the day on which the company passed a resolution for winding up, are required by section 99—

(i) to make out a statement in the prescribed form as to the affairs of the company, and

(ii) send the statement to the company's creditors.

(9) Where the company's principal place of business in Scotland was situated in different localities at different times during the relevant period, the duty imposed by sub-paragraph (8)(c)(ii) above applies separately in relation to each of those localities.

(10) Where the company had no place of business in Scotland during the relevant period, the reference in paragraph (9) to the company's principal place of business in Scotland are replaced by references to its registered office.

(11) In paragraph (9), "the relevant period" means the period of 6 months immediately preceding the day on which the notices referred to in paragraph (2) were delivered.

(12) Where a virtual or physical meeting is held under this rule and a liquidator has already been nominated by the company, the liquidator or an appointed person must attend any meeting held under this rule and report on any exercise of the liquidator's powers under section 112, 165 or 166(**54**).

(13) A director who is in default in seeking a decision on the nomination of a liquidator in accordance with this rule is guilty of an offence.

(**54**) In section 165, a new subsection (2) is prospectively inserted by section 120(2) of the 2015 Act; section 166 is prospectively amended, subsection (4) omitted and a new subsection (5) inserted by paragraph 40 of schedule 9 of that Act.

Information to creditors and contributories

4.15.—(1) The liquidator must deliver to the creditors and contributories within 28 days of the appointment of the liquidator under section 100 a notice which must—

(a) be accompanied by a statement of affairs or a summary where the notice is delivered to any contributory or creditor to whom the notice under rule 4.14 was not delivered;

(b) a report on the decision procedure or deemed consent procedure under rule 4.14; and

(c) be accompanied by the information required by paragraph (2).

(2) The required information is an estimate to the best of the liquidator's knowledge and belief of—

(a) the value of the prescribed part (whether or not the liquidator might be required under section 176A to make the prescribed part available for the satisfaction of unsecured debts); and

(b) the value of the company's net property (as defined by section 176A(6)).

(3) The liquidator may exclude from an estimate under paragraph (2) 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 an estimate, the report must say so.

(5) If the liquidator proposes to make an application to court under section 176A(5) the report must say so and give the reason for the application.

Further information where administrator becomes liquidator (paragraph 83(3) of schedule B1)

4.16.—(1) This rule applies where an administrator becomes liquidator on the registration of a notice under paragraph 83(3) of schedule B1, and becomes aware of creditors not formerly known to that person as administrator.

(2) The liquidator must deliver to those creditors a copy of any statement delivered by the administrator to creditors in accordance with paragraph 49(4)(**55**) of schedule B1 and rule 3.35 of the CVA and Administration Rules.

Report by director etc.

4.17.—(1) Where the statement of affairs sent to creditors under section 99(1) does not, or will not, state the company's affairs at the decision date for the creditors' nomination of a liquidator, the directors of the company must cause a report (written or oral) to be made to the creditors in accordance with this rule on any material transactions relating to the company occurring between the date of the making of the statement and the decision date.

(2) In the case of a decision being taken through a meeting, the report must be made at the meeting by the director chairing the meeting or by another person with knowledge of the relevant matters.

(3) Where the deemed consent procedure is used, the report must be delivered to creditors as soon as reasonably practicable after the material transaction takes place in the same manner as the deemed consent procedure.

(4) Where the decision date is within the period of 3 business days from the delivery of a report under paragraph (3), this rule extends the decision date until the end of that period notwithstanding the requirement in rule 4.14(3) relating to the timing of the decision date.

(**55**) Paragraph 49(4) is prospectively amended by paragraph 10(2) of schedule 9 of the 2015 Act.

(5) On delivery of a report under paragraph (3), the directors must notify the creditors of the effects of paragraph (4).

(6) A report under this rule must be recorded in the record of the decision under rule 8.40 (record of a decision).

Decisions on nomination

4.18.—(1) In the case of a decision on the nomination of a liquidator—

(a) if on any vote there are 2 nominees, the person who obtains the most support is appointed;

(b) if there are 3 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 convener or chair must 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.

(2) The convener or chair may at any time put to the meeting a resolution for the joint nomination of any 2 or more nominees.

Invitation to creditors to form a liquidation committee

4.19.—(1) Where any decision is sought from the company's creditors—

(a) in a creditors' voluntary winding up; or

(b) where a members' voluntary winding up is converting to a creditors' voluntary winding up,

the convener of the decision must at the same time deliver to the creditors a notice inviting them to decide whether a liquidation committee should be established if sufficient creditors are willing to be members of the committee.

(2) The notice must also invite nominations for membership of the committee, such nominations to be received by a date specified in the notice.

(3) The notice must—

(a) state that nominations must be delivered to the convener by the specified date; and

(b) state that nominations can only be accepted if the convener is satisfied as to the creditors' eligibility under rule 10.4 (eligibility for membership of creditors' or liquidation committee).

CHAPTER 4

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.]

Appointment by creditors or by the company

[Note: under section 109 and paragraph 23 of schedule 8 of the Scotland Act 1998 a liquidator must also, within 14 days, publish in the Gazette and deliver to the Accountant in Bankruptcy notice of the liquidator's appointment.]

4.20.—(1) This rule applies where a person is appointed as liquidator by creditors or the company.

(2) The liquidator's appointment takes effect from the date of the passing of the resolution of the company or, where the creditors decide to appoint a person who is not the person appointed by the company, from the relevant decision date.

(3) Their appointment must be certified by—

(a) the convener or chair of the decision procedure or deemed consent procedure; or

(b) in respect of an appointment by the company the chair of the company meeting or a director or the secretary of the company (in the case of a written resolution).

(4) The person who certifies the appointment must not do so unless and until the proposed liquidator ("the appointee") has provided that person with a statement of being an insolvency practitioner qualified under the Act to be the liquidator and of consenting to act.

(5) The certificate must be authenticated and dated by the person who certifies the appointment and must contain—

(a) identification details for the company;

(b) identification and contact details for the person appointed as liquidator;

(c) the date of the meeting of the company or conclusion of the decision procedure or deemed consent procedure when the liquidator was appointed;

(d) a statement that the appointee—

(i) has provided a statement of being qualified to act as an insolvency practitioner in relation to the company,

(ii) has consented to act, and

(iii) was appointed liquidator of the company.

(6) Where 2 or more liquidators are appointed the certificate must also specify (as required by section 231) whether any act required or authorised under any enactment to be done by the liquidator is to be done by all or any one or more of them.

(7) The person who certifies the appointment must deliver the certificate as soon as reasonably practicable to the liquidator.

(8) The liquidator may within 28 days of the liquidator's appointment advertise notice of it (otherwise than in the Gazette) in such manner as the liquidator thinks fit.

(9) The notice must state—

(a) that a liquidator has been appointed; and

(b) the date of the appointment.

Power to fill vacancy in office of liquidator

4.21. Where a vacancy in the office of liquidator occurs in the manner mentioned in section 104 a decision procedure to fill the vacancy may be initiated by any creditor or, if there was more than one liquidator, by the continuing liquidator or liquidators.

Appointment by the court (section 100(3) or 108)

[Note: under section 109 and paragraph 23 of schedule 8 of the Scotland Act 1998 a liquidator must also, within 14 days, publish in the Gazette and deliver to the Accountant in Bankruptcy notice of the liquidator's appointment.]

4.22.—(1) This rule applies where the liquidator is appointed by the court under section 100(3) or 108.

(2) The court must not make the appointment unless and until the person being appointed liquidator has lodged in court a statement to the effect that that person is qualified to act as an insolvency practitioner in relation to the company and consents to act as liquidator.

(3) The liquidator's appointment is effective from the date of the order of appointment.

(4) Within 28 days from appointment the liquidator must—

(a) deliver a notice of it to the creditors; or

(b) if the court permits, and in accordance with the directions of the court, advertise the notice (otherwise than in the Gazette).

(5) Where the liquidator gives notice under paragraph (4)(a) the liquidator may, in addition, advertise the notice (otherwise than in the Gazette) in such manner as the liquidator thinks fit.

(6) Any notice under this rule must state—

(a) that a liquidator has been appointed; and

(b) the date of the appointment.

Liquidator's resignation and replacement

4.23.—(1) A liquidator may resign only—

(a) on grounds of ill health;

(b) because of the intention to cease to practise as an insolvency practitioner;

(c) because the further discharge of the duties of liquidator is prevented or made impractical by—

(i) a conflict of interest, or

(ii) a change of personal circumstances; or

(d) where 2 or more persons are acting as liquidator jointly and it is the opinion of both or all of them that it is no longer expedient that there should continue to be that number of joint liquidators.

(2) Before resigning, the liquidator must deliver a notice to creditors, and invite the creditors by a decision procedure, or by deemed consent procedure, to consider whether a replacement should be appointed, except where the resignation is under sub-paragraph (1)(d).

(3) The notice must—

(a) state the liquidator's intention to resign;

(b) state that under rule 4.23(7) of these Rules the liquidator will be released 21 days after the date of delivery of the notice of resignation to AiB under section 171(5), unless the court orders otherwise; and

(c) comply with rules 8.7 (deemed consent) and 8.8 (notices to creditors of decision procedure) so far as are relevant.

(4) The notice may suggest the name of a replacement liquidator.

(5) The notice must be accompanied by a summary of the liquidator's receipts and payments.

(6) The decision date must be not more than 5 business days before the date on which the liquidator intends to give notice of resignation to AiB under section 171(5).

(7) The resigning liquidator's release is effective 21 days after the date on which the notice of resignation under section 171(5) is delivered to AiB, unless the court orders otherwise.

Removal of liquidator by creditors

[Note: in relation to release of the liquidator following removal from office by a decision of the company's creditors, see: where the company's creditors have not decided against the liquidator's release, section 173(2)(a)(ii); and where the company's creditors have decided against release, section 173(2)(b)(i).]

4.24.—(1) Where the creditors decide that the liquidator be removed, the convener of the decision procedure or the chair of the meeting (as the case may be) must as soon as reasonably practicable deliver the certificate of the liquidator's removal to the removed liquidator.

(2) The removed liquidator must deliver a notice of the removal to AiB as soon as reasonably practicable.

Removal of liquidator by the court

[Note: in relation to release of the liquidator following removal from office by the court see section 173(2)(b)(ii).]

4.25.—(1) This rule applies where an application is made to the court for the removal of the liquidator, or for an order directing the liquidator to initiate a decision procedure of creditors for the purpose of removing the liquidator.

(2) The court may require the applicant to make a deposit or find caution for the expenses to be incurred by the liquidator on the application.

(3) The applicant must, at least 14 days before the hearing, deliver to the liquidator—

(a) a notice of the hearing stating the venue;

(b) a copy of the application; and

(c) a copy of any evidence on which the applicant intends to rely.

(4) The expenses of the application are not payable as an expense of the liquidation unless the court orders otherwise.

(5) Where the court removes the liquidator the order of removal may include such provision as the court thinks fit with respect to matters arising in connection with the removal.

(6) The person removed must as soon as reasonably practicable after receiving a copy of the order of removal deliver a copy of the order of removal to AiB.

(7) If the court appoints a new liquidator rule 4.22 applies.

Deceased liquidator

[Note: in relation to release of a deceased liquidator, see section 173(2)(a)(iii)(**56**) and paragraph 23 of schedule 8 of the Scotland Act 1998.]

4.26.—(1) If the liquidator dies a notice of the fact and date of death must be delivered as soon as reasonably practicable—

(a) where there is a liquidation committee, to the members of that committee; and

(b) to AiB.

(2) The notice must be delivered by one of the following—

(a) a surviving joint liquidator;

(b) a member of the deceased liquidator's firm (if the deceased was a member or employee of a firm);

(c) an officer of the deceased liquidator's company (if the deceased was an officer or employee of a company); or

(d) an executor of the deceased liquidator.

(**56**) Section 173 is prospectively amended by paragraph 44 of schedule 9 of the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act").

(3) If such a notice has not been delivered within the 21 days following the liquidator's death then any other person may deliver the notice.

Loss of qualification as insolvency practitioner

[Note: in relation to release of the liquidator where the liquidator vacates office on ceasing to be a person qualified to act as an insolvency practitioner in relation to the company (section 171(4)), see section 173(2)(b)(iii).]

4.27.—(1) This rule applies where the liquidator vacates office on ceasing to be qualified to act as an insolvency practitioner in relation to the company.

(2) A notice of the fact must be delivered as soon as reasonably practicable to AiB by one of the following—

(a) the liquidator who has vacated office;

(b) a continuing joint liquidator;

(c) the recognised professional body which was the source of the vacating liquidator's authorisation to act (immediately before the liquidator vacated office).

(3) Each notice must be authenticated and dated by the person delivering the notice.

Vacation of office on making of winding-up order

4.28. Where the liquidator vacates office in consequence of the court making a winding-up order against the company, rule 4.29 applies in relation to the application to the Accountant of Court for release of the liquidator.

Application by former liquidator for release (section 173(2)(b) or (e))

4.29.—(1) An application by a former liquidator to the Accountant of Court for release under section 173(2)(b) or (e) must contain—

(a) identification details for the insolvency proceedings;

(b) identification and contact details for the former liquidator;

(c) details of the circumstances under which the former liquidator has ceased to act as liquidator; and

(d) a statement that the former liquidator is applying to the Accountant of Court for a certificate of the former liquidator's release as liquidator as a result of the circumstances specified in the application.

(2) The application must be authenticated and dated by the former liquidator.

(3) When the Accountant of Court gives a release, the Accountant of Court must deliver—

(a) a certificate of the release to the former liquidator; and

(b) a notice of the release to AiB.

(4) Release is effective from the date of the certificate or such other date as the certificate specifies.

Final account prior to dissolution (section 106)

4.30.—(1) The final account which the liquidator is required to make up under section 106(1)(**57**) and deliver to members and creditors must comply with the requirements of rule 7.9.

(**57**) New section 106 is prospectively substituted by paragraph 29 of schedule 9 of the 2015 Act.

(2) When the account is delivered to the creditors it must be accompanied by a notice which states—

(a) that the company's affairs are fully wound up;

(b) that a creditor may object to the release of the liquidator by giving notice in writing to the liquidator before the end of the prescribed period;

(c) that the prescribed period is the period ending 28 days after delivery of the notice;

(d) that the liquidator will vacate office under section 171 on delivering to the registrar of companies and AiB the final account and notice saying whether any creditor has objected to release; and

(e) that the liquidator will be released under section 173(**58**) at the same time as vacating office unless any of the company's creditors objected to the liquidator's release.

(3) The copy of the account which the liquidator delivers to the registrar of companies and AiB under section 106(3)(a) must be accompanied by a notice containing the statement required by section 106(3)(b) of whether any creditors have objected to the liquidator's release.

(4) Where a creditor has objected to the liquidator's release rule 4.29 applies to an application by the liquidator to the Accountant of Court for release.

(5) The liquidator is not obliged to prepare or deliver any progress report which may become due under these Rules in the period between the date to which the final account is made up and the date when the account is delivered to the registrar of companies and AiB under section 106(3)(a).

Liquidator's duties on vacating office (hand-over of assets etc.)

4.31.—(1) This rule applies where a person appointed as liquidator ("the succeeding liquidator") succeeds a previous liquidator ("the former liquidator") as the liquidator.

(2) When the succeeding liquidator's appointment takes effect the former liquidator must as soon as reasonably practicable deliver to the succeeding liquidator—

(a) the assets (after deduction of any expenses properly incurred, and distributions made, by the former liquidator);

(b) the records of the winding up, including correspondence, statements of claim, evidence of debts and other documents relating to the winding up; and

(c) the company's documents and other records.

(3) In doing so, the former liquidator must hand over—

(a) such information relating to the affairs of the company and the course of the winding up as the succeeding liquidator considers reasonably required for the effective discharge of the succeeding liquidator's duties as liquidator; and

(b) all records and documents in the former liquidator's possession relating to the affairs of the company and its winding up.

Taking possession and realisation of company's assets

4.32.—(1) The liquidator must—

(a) as soon as reasonably practicable after the liquidator's appointment take possession of—

(i) the whole assets of the company; and

(**58**) Section 173(2)(d) is prospectively amended and a new (2)(a), (b) and (e) and (2A) inserted by paragraph 44 of schedule 9 of the 2015 Act.

(ii) any property, books, papers or records in the possession or control of the company or to which the company appears to be entitled; and

(b) make up and maintain an inventory and valuation of the assets of the company.

(2) The liquidator is entitled to have access to, and to make copies of, all documents or records relating to the assets, property, business or financial affairs of the company—

(a) sent by or on behalf of the company to a third party; and

(b) in that third party's hands.

(3) If a person obstructs the liquidator in the liquidator's exercise, or attempted exercise, of a power conferred by paragraph (2), the court may, on the liquidator's application, order the person to cease obstructing the liquidator.

(4) The liquidator may require delivery to the liquidator of any title deed or other document of the company, even if a right of lien is claimed over it.

(5) Paragraph (4) is without prejudice to any preference of the holder of the lien.

Realisation of the company's heritable property

4.33.—(1) This rule applies to the sale of any part of the company's heritable property over which a heritable security is held by a creditor or creditors if the rights of the secured creditor are preferable to those of the liquidator.

(2) The liquidator may sell that part only with the concurrence of every such creditor unless the liquidator obtains a sufficiently high price to discharge every such security.

(3) Subject to paragraph (4), the following acts are precluded—

(a) the taking of steps by a creditor to enforce the creditor's security over that part after the liquidator has intimated to the creditor an intention to sell it;

(b) the commencement by the liquidator of the procedure for the sale of that part after a creditor has intimated to the liquidator that the creditor intends to commence the procedure for its sale.

(4) Where the liquidator or a creditor has given intimation under paragraph (3) but has unduly delayed in proceeding with the sale, then, if authorised by the court in the case of—

(a) paragraph (3)(a), any creditor to whom intimation has been given may enforce the creditor's security;

(b) paragraph (3)(b), the liquidator may sell that part.

(5) The validity of the title of any purchaser is not challengeable on the ground that there has been a failure to comply with a requirement of this rule.

Power of court to set aside certain transactions

4.34.—(1) If in the course of the liquidation the liquidator enters into any transaction with a person who is an associate of the liquidator, the court may, on the application of any interested person, set the transaction aside and order the liquidator to compensate the company for any loss suffered in consequence of it.

(2) This does not apply if either—

(a) the transaction was entered into with the prior consent of the court; or

(b) it is shown to the court's satisfaction that the transaction was for value, and that it was entered into by the liquidator without knowing, or having any reason to suppose, that the person concerned was an associate.

(3) Nothing in this rule is to be taken as prejudicing the operation of any rule of law relating to a trustee's dealings with trust property or the fiduciary obligations of any person.

Rule against improper solicitation

4.35.—(1) Where the court is satisfied that any improper solicitation has been used by or on behalf of the liquidator in obtaining proxies or procuring the liquidator's appointment, it may order that no remuneration be allowed as an expense of the liquidation to any person by whom, or on whose behalf, the solicitation was exercised.

(2) An order of the court under this rule overrides any resolution of the liquidation committee or the creditors, or any other provision of these Rules relating to the liquidator's remuneration.

Permission for exercise of powers by liquidator

4.36.—(1) Where these Rules require permission for the liquidator to exercise a power any permission given must not be a general permission but must relate to a particular proposed exercise of the liquidator's power.

(2) A person dealing with the liquidator in good faith and for value is not concerned to enquire whether any such permission has been given.

(3) Where the liquidator has done anything without such permission, the court or the liquidation committee may, for the purpose of enabling the liquidator to meet the liquidator's expenses out of the assets, ratify what the liquidator has done; but neither may do so unless satisfied that the liquidator has acted in a case of urgency and has sought ratification without undue delay.

(4) In this rule "permission" includes "sanction".

CHAPTER 5

Special Manager

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

Application for and appointment of special manager (section 177)

4.37.—(1) An application by the liquidator under section 177 for the appointment of a special manager must be supported by a report setting out the reasons for the application.

(2) The report must include the liquidator's estimate of the value of the business or property in relation to which the special manager is to be appointed.

(3) The court's order appointing a special manager must specify the duration of the special manager's appointment, being one of the following:—

(a) for a fixed period stated in the order;

(b) until the occurrence of a specified event; or

(c) until the court makes a further order.

(4) The appointment of the special manager may be renewed by order of the court.

(5) The special manager's remuneration will be fixed from time to time by the court.

(6) The acts of the special manager are valid notwithstanding any defect in the special manager's appointment or qualifications.

Caution

4.38.—(1) The appointment of the special manager does not take effect until the person appointed has found (or, if the court allows, undertaken to find) caution for the appointment to be given to the liquidator.

(2) A person appointed as special manager may find caution either specifically for a particular winding up, or generally for any winding up in relation to which that person may be appointed as special manager.

(3) The amount of the caution must be not less than the value of the business or property in relation to which the special manager is appointed, as estimated in the applicant's report under rule 4.37 which accompanied the application for appointment.

(4) When the special manager has found caution for the appointment to be given to the applicant that person must lodge with the court a certificate as to the adequacy of the caution.

(5) The cost of providing the caution must be paid in the first instance by the special manager; but the special manager is entitled to be reimbursed as an expense of the liquidation.

Failure to give or keep up caution

4.39.—(1) If the special manager fails to find the required caution within the time allowed for that purpose in the order of appointment, or any extension of that time that may be allowed, the liquidator must report the failure to the court which may discharge the order appointing the special manager.

(2) If the special manager fails to keep up the caution, the liquidator must report the failure to the court, which may remove the special manager, and make such order as to expenses as it thinks just.

(3) If the court discharges the order appointing the special manager, or makes an order removing the special manager, the court must give directions as to whether any, and if so what, steps should be taken for the appointment of another special manager.

Accounting

4.40.—(1) The special manager must produce accounts, containing details of the special manager's receipts and payments, for the approval of the liquidator.

(2) The account must be for—

(a) each 3 month period for the duration of the special manager's appointment; and

(b) any shorter period ending with the termination of the special manager's appointment.

(3) When the accounts have been approved, the special manager's receipts and payments must be added to those of the liquidator.

Termination of appointment

4.41.—(1) If the liquidator is of the opinion that the appointment of the special manager is no longer necessary or beneficial for the company, the liquidator must apply to the court for directions, and the court may order the special manager's appointment to be terminated.

(2) The liquidator must also make such an application if the creditors decide that the appointment should be terminated.

PART 5

WINDING UP BY THE COURT

CHAPTER 1

Application of Part

Application of Part 5

5.1. This Part applies to winding up by the court.

CHAPTER 2

The statutory demand (sections 123(1)(a) and 222(1)(a))

Interpretation

5.2. A demand served by a creditor on a company under section 123(1)(a) (registered companies) or 222(1)(a) (unregistered companies) is referred to in this Part as "a statutory demand".

The statutory demand

5.3.—(1) A statutory demand must be headed either "Statutory Demand under section 123(1)(a) of the Insolvency Act 1986" or "Statutory Demand under section 222(1)(a) of the Insolvency Act 1986" (as applicable) and must contain—

(a) identification details for the company;

(b) the registered office of the company (if any);

(c) the name and address of the creditor;

(d) either a statement that the demand is made under section 123(1)(a) or a statement that it is made under section 222(1)(a);

(e) the amount of the debt and the consideration for it (or, if there is no consideration, the way in which it arises);

(f) if the demand is founded on a decree or order of a court, details of the decree or order;

(g) if the creditor is entitled to the debt by way of assignation, details of the original creditor and any intermediate assignees;

(h) a statement that the company must pay the debt claimed in the demand within 21 days of service of the demand on the company after which the creditor may present a winding up petition unless the company offers security for the debt and the creditor agrees to accept security or the company compounds the debt with the creditor's agreement;

(i) the name of an individual with whom an officer or representative of the company may communicate with a view to securing or compounding the debt to the creditor's satisfaction;

(j) the named individual's address, electronic address and telephone number (if any);

(k) a statement that if the company disputes the demand in whole or in part it should contact the individual mentioned in sub-paragraph (i) immediately.

(2) The following must be separately identified in the demand (if claimed) with the amount or rate of the charge and the grounds on which payment is claimed—

(a) any charge by way of interest of which notice had not previously been delivered to the company as included in its liability; and

(b) any other charge accruing from time to time.

(3) The amount claimed for such charges must be limited to that which has accrued due at the date of the demand.

(4) The demand must be dated, and authenticated either by the creditor, or a person authorised to make the demand on the creditor's behalf.

(5) A demand which is authenticated by a person other than the creditor must state that the person is authorised to make the demand on the creditor's behalf and state the person's relationship to the creditor.

CHAPTER 3

Provisional liquidator

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

Application for appointment of provisional liquidator (section 135)

5.4.—(1) An application to the court for the appointment of a provisional liquidator under section 135 may be made by—

(a) the petitioner;

(b) a creditor of the company;

(c) a contributory;

(d) the company;

(e) the directors of the company;

(f) the Secretary of State;

(g) a temporary administrator;

(h) a member State liquidator appointed in main proceedings (including in accordance with Article 37(1) of the EU Regulation); or

(i) any person who under any enactment would be entitled to present a petition for the winding up of the company.

(2) The court must not make the appointment unless and until the person being appointed provisional liquidator has lodged in court a statement to the effect that that person is qualified to act as an insolvency practitioner in relation to the company and consents to act as provisional liquidator.

Order of appointment of provisional liquidator – delivery of copy

5.5. The provisional liquidator must as soon as reasonably practicable after receipt of the copy of the order appointing the provisional liquidator deliver a copy of the order to—

(a) the registrar of companies;

(b) AiB;

(c) the company (or the liquidator, if a liquidator was appointed for the company's voluntary winding up); and

(d) any receiver of the whole or any part of the company's property.

Delivery of copy order of appointment of provisional liquidator – notice

[Note: for notice to accompany delivery of a copy of the order of appointment to (a) the registrar of companies and (b) the Accountant in Bankruptcy see Chapter 7 of Part 1.]

5.6.—(1) This rule applies where under rule 5.5 the provisional liquidator delivers a copy of the order of appointment to—

(a) the company (or if a liquidator was appointed for the company's voluntary winding up, the liquidator);

(b) any receiver of the whole or any part of the company's property.

(2) The provisional liquidator must deliver with the copy of the order a notice.

Notice of appointment of provisional liquidator

5.7.—(1) The provisional liquidator must as soon as reasonably practicable after receipt of the copy of the order of appointment give notice of appointment unless the court directs otherwise.

(2) The notice—

(a) must be gazetted; and

(b) may be advertised in such other manner as the provisional liquidator thinks fit.

(3) The notice must state—

(a) that a provisional liquidator has been appointed; and

(b) the date of the appointment.

Caution

5.8.—(1) The cost of providing the caution required under the Act must be paid in the first instance by the provisional liquidator, however—

(a) if a winding-up order is not made, the person appointed is entitled to be reimbursed out of the property of the company, and the court may make an order on the company accordingly; and

(b) if a winding-up order is made, the person appointed is entitled to be reimbursed as an expense of the liquidation.

(2) If the provisional liquidator fails to give or keep up the required caution, the court may remove the provisional liquidator, and make such order as to expenses as it thinks just.

(3) If an order is made under this rule removing the provisional liquidator, or discharging the order appointing the provisional liquidator, the court must give directions as to whether any, and if so what, steps should be taken for the appointment of another person in the place of the removed or discharged provisional liquidator.

Remuneration

5.9.—(1) The remuneration of the provisional liquidator is to be fixed by the court from time to time on the application of the provisional liquidator.

(2) The basis for fixing the amount of the remuneration payable to the provisional liquidator may be a commission calculated by reference to the value of the company's assets with which the provisional liquidator has had to deal.

(3) But there is in any event to be taken into account—

(a) the work which, having regard to that value, was reasonably undertaken by the provisional liquidator;

(b) the extent of the provisional liquidator's responsibilities in administering the company's assets.

(4) Without prejudice to any order the court may make as to expenses, the remuneration of the provisional liquidator must be paid to the provisional liquidator, and the amount of any expenses incurred by the provisional liquidator (including the remuneration and expenses of any special manager appointed under section 177) reimbursed—

(a) if a winding-up order is not made, out of the property of the company; and

(b) if a winding-up order is made, as an expense of the liquidation.

(5) Unless the court otherwise directs, where a winding up order is not made, the provisional liquidator may retain out of the company's property such sums or property as are or may be required for meeting the remuneration and expenses of the provisional liquidator.

Termination of appointment

5.10.—(1) Subject to paragraph (2), the appointment of the provisional liquidator may be terminated by the court on the application of the provisional liquidator, or a person specified in rule 5.4(1).

(2) In relation to a winding-up petition under section 124A (petition by Secretary of State for winding up on grounds of public interest) the appointment of the provisional liquidator may be terminated by the court on the application of the provisional liquidator or the Secretary of State.

(3) If the provisional liquidator's appointment terminates, in consequence of the dismissal of the winding-up petition or otherwise, the court may give such directions as it thinks just relating to—

(a) the accounts of the provisional liquidator's administration;

(b) the expenses properly incurred by the provisional liquidator; or

(c) any other matters which it thinks appropriate.

(4) The provisional liquidator must give notice of termination of the appointment as provisional liquidator, unless the termination is on the making of a winding-up order or the court directs otherwise.

(5) The notice referred to in paragraph (4) must be delivered as soon as reasonably practicable to—

(a) the registrar of companies;

(b) AiB;

(c) the company (or the liquidator, if a liquidator was appointed for the company's voluntary winding up); and

(d) any receiver of the whole or any part of the company's property.

(6) The notice under paragraph (4) must state—

(a) that the appointment as provisional liquidator has been terminated;

(b) the date of that termination; and

(c) that the appointment terminated otherwise than on the making of a winding-up order.

CHAPTER 4

Statement of affairs and other information

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

Interpretation

5.11. In this Chapter—

"liquidator" includes "provisional liquidator";

"nominated person" means a relevant person who has been required by the liquidator to make out and deliver to the liquidator a statement of affairs; and

"relevant person" means a person mentioned in section 131(3).

Notice requiring statement of affairs (section 131)

5.12.—(1) Where, under section 131, the liquidator requires a nominated person to provide the liquidator with a statement of the affairs of the company, the liquidator must deliver a notice to that person.

(2) The notice must be headed "Notice requiring statement of affairs" and must—

(a) identify the company immediately below the heading;

(b) identify the liquidator;

(c) state the name of the nominated person;

(d) require the nominated person to prepare and submit to the liquidator a statement of affairs of the company on a date which is specified, being—

(i) the date of the winding-up order, or

(ii) a date directed by the liquidator;

(e) inform the nominated person—

(i) of the names and addresses of any other nominated person to whom such a notice has been delivered, and

(ii) of the date by which the statement must be delivered; and

(f) state the effect of section 131(7) (penalty for non-compliance) and section 235 (duty to co-operate) as it applies to the liquidator.

(3) The liquidator must inform the nominated person that a document for the preparation of the statement of affairs capable of completion in compliance with rule 5.13 can be supplied by the liquidator if requested.

Statement of affairs: contents and delivery

5.13.—(1) The statement of affairs must be headed "Statement of affairs" and must contain—

(a) identification details for the company;

(b) a statement that it is a statement of the affairs of the company on a date which is specified, being—

(i) the date of the winding-up order, or

(ii) the date directed by the liquidator;

(c) a list of the company's shareholders with the following information about each one—

(i) name and postal address,

(ii) the type of shares held,

(iii) the nominal amount of the shares held,

(iv) the number of shares held,

(v) the amount per share called up, and

(vi) the total amount called up;

(d) the total amount of shares called up held by all shareholders;

(e) a summary of the assets of the company, setting out the book value and estimated realisable value of—

(i) any assets specifically secured,

(ii) any assets subject to a floating charge,

(iii) any assets not secured, and

(iv) the total value of all the assets available for preferential creditors;

(f) a summary of the liabilities of the company, setting out—

(i) the amount of preferential debts,

(ii) an estimate of the deficiency with respect to preferential debts or the surplus available after paying the preferential debts,

(iii) an estimate of the prescribed part, if applicable,

(iv) an estimate of the total assets available to pay debts secured by floating charges,

(v) the amount of debts secured by floating charges;

(vi) an estimate of the deficiency with respect to debts secured by floating charges or the surplus available after paying the debts secured by fixed securities or floating charges;

(vii) the amount of unsecured debts (excluding preferential debts);

(viii) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts;

(ix) any issued and called-up capital, and

(x) an estimate of the deficiency with respect to, or surplus available to, members of the company;

(g) a list of the company's creditors (as required by section 131(2)) with the following particulars required by paragraph (2) indicating—

(i) any creditors under hire-purchase or conditional sale agreements,

(ii) any creditors who are consumers claiming amounts paid in advance of the supply of goods or services, and

(iii) any creditors claiming retention of title over property in the company's possession.

(2) The particulars required by this paragraph relating to each creditor are as follows and must be given in this order—

(i) the name and postal address,

(ii) the amount of the debt owed to the creditor,

(iii) details of any security held by the creditor,

(iv) the date the security was given, and

(v) the value of the security.

(3) Paragraph (4) applies where the particulars required by paragraph (2) relate to creditors who are either—

(a) employees or former employees of the company; or

(b) consumers claiming amounts paid in advance for the supply of goods or services.

(4) Where this paragraph applies—

(a) the statement of affairs itself must state separately for each of paragraph (3)(a) and (b) the number of such creditors and the total of the debts owed to them; and

(b) the particulars required by paragraph (2) in respect of those creditors must be set out in separate schedules to the statement of affairs for each of paragraph (3)(a) and (b).

(5) The statutory declaration required by section 131(2A)(**59**) must be a statutory declaration that the information provided in the statement of affairs is, to the best of the nominated person's knowledge and belief, accurate and complete.

(6) The nominated person who makes the statutory declaration required by section 131(2A) and paragraph (5) (or one of them, if more than one) must deliver the statement of affairs to the liquidator.

Statement of affairs: statement of concurrence

5.14.—(1) The liquidator may require a relevant person to deliver to the liquidator a statement of concurrence.

(2) A statement of concurrence is a statement that the relevant person concurs in the statement of affairs submitted by a nominated person.

(3) The liquidator must inform the nominated person who has been required to submit a statement of affairs that the relevant person has been required to deliver a statement of concurrence.

(4) The nominated person must deliver a copy of the statement of affairs to every relevant person who has been required to submit a statement of concurrence.

(5) A statement of concurrence—

(a) must identify the company; and

(b) may be qualified in relation to matters dealt with in the statement of affairs where the relevant person—

(i) is not in agreement with the statement of affairs;

(ii) considers the statement of affairs to be erroneous or misleading; or

(iii) is without the direct knowledge necessary for concurring in it.

(6) A statement of concurrence must contain a statutory declaration by the relevant person required to submit it that the information provided in the statement of concurrence is, to the best of the relevant person's knowledge and belief, accurate and complete.

(7) The relevant person must deliver the required statement of concurrence to the liquidator before the end of the period of 5 business days (or such other period as the liquidator may agree) beginning with the day on which the relevant person receives the statement of affairs.

Statement of affairs: expenses

5.15.—(1) If a nominated person cannot personally prepare a proper statement of affairs, the liquidator may, as an expense of the liquidation, employ a person or firm to assist in the preparation of the statement.

(2) At the request of a nominated person, made on the grounds that the nominated person cannot personally prepare a proper statement of affairs, the liquidator may authorise an allowance, payable as an expense of the liquidation, of all or part of the expenses to be incurred by the nominated person in employing a person or firm to assist the nominated person in preparing it.

(3) Any such request by the nominated person must be accompanied by an estimate of the expenses involved; and the liquidator must only authorise the employment of a named person or a named firm, approved by the liquidator.

(**59**) Section 131(2A) was inserted by S.I. 2010/18 and prospectively amended for Scotland by S.S.I. 2016/141, article 10.

(4) An authorisation given by the liquidator under this rule must be subject to such conditions (if any) as the liquidator thinks fit to impose relating to the manner in which any person may obtain access to relevant documents and other records.

(5) Nothing in this rule relieves a nominated person from any obligation relating to the preparation, verification and submission of the statement of affairs, or to the provision of information to the liquidator.

(6) The liquidator must deliver a notice to the relevant person advising whether the liquidator grants or refuses the relevant person's request for an allowance under paragraph (2) and where such request is refused the relevant person may appeal to the court not later than 14 days from the date of delivery of the notice to the relevant person.

(7) Paragraphs (2) to (6) of this rule may be applied, on application to the liquidator by any relevant person, in relation to the making of a statement of concurrence.

Limited disclosure

5.16.—(1) This rule applies where the liquidator thinks that disclosure of the whole or part of a statement of affairs or a statement of concurrence would be likely to prejudice the conduct of the winding up or might reasonably be expected to lead to violence against any person.

(2) The liquidator may apply to the court for an order of limited disclosure in respect of the whole or any specified part of the—

(a) statement of affairs; or

(b) the statement of concurrence.

(3) The court may order that the whole or any specified part of the statement of affairs or the statement of concurrence must not be entered in the sederunt book.

(4) The court's order of limited disclosure may include directions regarding the disclosure of information in the statement of affairs or statement of concurrence to other persons.

(5) A creditor who seeks disclosure of the statement of affairs or statement of concurrence or a specified part of it in relation to which an order has been made under this rule may apply to the court for an order that the liquidator disclose that statement of affairs or statement of concurrence or specified part of it.

(6) The court may attach to an order for disclosure any conditions as to confidentiality, duration and scope of the order in any material change of circumstances, and other matters as it sees fit.

(7) If there is a material change in circumstances rendering the limit on disclosure unnecessary, the liquidator must, as soon as reasonably practicable after the change, apply to the court for the order to be discharged or varied.

Delivery of accounts to liquidator

5.17.—(1) Any of the persons specified in section 235(3) must, at the request of the liquidator, deliver to the liquidator accounts of the company of such nature, as at such date, and for such period, as the liquidator may specify.

(2) The period specified may begin from a date up to 3 years before the date of the presentation of the winding-up petition, or from an earlier date to which audited accounts of the company were last prepared.

(3) The court may, on the liquidator's application, require accounts for any earlier period.

(4) Rule 5.15 applies (with the necessary modifications) in relation to accounts to be delivered under this rule as it applies in relation to the statement of affairs.

(5) The accounts must—

(a) if the liquidator so requires, contain a statutory declaration by the person required to deliver them that the accounts are, to the best of the relevant person's knowledge and belief, accurate and complete; and

(b) (whether or not they contain a statutory declaration) be delivered to the liquidator within 21 days of the request under paragraph (1), or such longer period as the liquidator may allow.

Expenses of assistance in preparing accounts

5.18.—(1) Where the liquidator requires a person to deliver accounts under rule 5.17, the liquidator may, with the approval of the liquidation committee (if there is one) and as an expense of the liquidation, employ a person or firm to assist that person in the preparation of the accounts.

(2) The person who is required to deliver accounts may request an allowance of all or part of the expenses to be incurred in employing a person or firm to assist in preparing the accounts.

(3) A request for an allowance must be accompanied by an estimate of the expenses involved.

(4) The liquidator must only authorise the employment of a named person or a named firm approved by the liquidator.

(5) The liquidator may, with the approval of the liquidation committee (if there is one), authorise such an allowance, payable as an expense of the liquidation.

Further disclosure

5.19.—(1) The liquidator may at any time require a nominated person to deliver (in writing) further information amplifying, modifying or explaining any matter contained in the statement of affairs, or in accounts delivered under the Act or these Rules.

(2) The information must—

(a) if the liquidator so directs, contain a statutory declaration by the person required to deliver the information that the information is, to the best of the relevant person's knowledge and belief, accurate and complete; and

(b) (whether or not it contains a statutory declaration) be delivered to the liquidator within 21 days of the requirement under paragraph (1), or such longer period as the liquidator may allow.

CHAPTER 5

Further information where winding up follows administration

Further information where winding up follows administration

5.20.—(1) This rule applies where an administrator is appointed by the court under section 140 as the company's liquidator and becomes aware of creditors not formerly known to that person as administrator.

(2) The liquidator must deliver to those creditors a copy of any statement previously sent by the administrator to creditors in accordance with paragraph 49(4)(**60**) of schedule B1 and rule 3.35 of the CVA and Administration Rules.

(**60**) Paragraph 49(4) is prospectively amended by paragraph 10(2) of schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act").

CHAPTER 6

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.]

Appointment of liquidator under section 138(1) (interim liquidator)

5.21.—(1) This rule applies to the appointment of a liquidator by the court under section 138(1) (such a liquidator being referred to in section 138, this rule and rules 5.22 (choosing a person to be liquidator) and 8.21 (chair at meetings) as an "interim liquidator").

(2) The court must not make the appointment unless and until the person being appointed interim liquidator has lodged in court a statement to the effect that that person is qualified to act as an insolvency practitioner in relation to the company and consents to act as liquidator.

(3) The interim liquidator's appointment is effective from the date of the order of appointment.

(4) The interim liquidator must—

(a) within 7 days beginning with the day the interim liquidator receives the copy order of appointment deliver notice of it to AiB; and

(b) within 28 days beginning with the day the interim liquidator receives the copy order of appointment—

(i) deliver notice of it to the creditors and contributories; or

(ii) if the court permits and in accordance with the directions of the court either—

(aa) gazette the notice; or

(bb) otherwise advertise the notice,

or both gazette the notice and otherwise advertise the notice.

(5) Where the interim liquidator gives notice under paragraph (4)(b)(i) the liquidator may, in addition—

(a) gazette the notice; or

(b) otherwise advertise the notice in such manner as the liquidator thinks fit,

or both gazette the notice and otherwise advertise the notice in such manner as the liquidator thinks fit.

(6) Any notice under this rule must state—

(a) that an interim liquidator has been appointed; and

(b) the date of the appointment.

Choosing a person to be liquidator

5.22.—(1) This rule applies where nominations are sought by the interim liquidator from the company's creditors and contributories under section 138(3) for the purpose of choosing a person to be liquidator of the company in place of the interim liquidator(**61**).

(2) The interim liquidator must deliver to the creditors and contributories a notice inviting proposals for a liquidator.

(3) The notice inviting proposals for a liquidator must explain that the liquidator is not obliged to seek the creditors' or contributories' views on any proposals that do not meet the requirements of paragraphs (4) and (5).

(**61**) Section 138(3) to (5) is prospectively amended by paragraph 33(1) to (4) of schedule 9 of the 2015 Act.

(4) A proposal must state the name and contact details of the proposed liquidator, and contain a statement that the proposed liquidator is qualified to act as an insolvency practitioner in relation to the company and has consented to act as liquidator of the company.

(5) A proposal must be received by the interim liquidator within 5 business days of the date of the notice under paragraph (2).

(6) Following the end of the period for inviting proposals under paragraph (2), where any proposals are received the interim liquidator must seek a decision on the proposals for nomination of a liquidator from the creditors (on any proposals received from creditors) and from the contributories (on any proposals received from contributories) by—

(a) a decision procedure; or

(b) the deemed consent procedure.

(7) Where a decision is sought under paragraph (6), the decision date must be not more than 60 days from the date of the winding-up order.

(8) The notice to be issued under rule 8.7 (deemed consent) (where the interim liquidator seeks a decision under paragraph (6) by the deemed consent procedure) or rule 8.8 (notices to creditors of decision procedure) (where the interim liquidator seeks a decision under paragraph (6) by a decision procedure) must also—

(a) identify any liquidator proposed to be nominated by a creditor (in the case of a notice to creditors) or by a contributory (in the case of a notice to contributories) in accordance with this rule; and

(b) contain a statement explaining the effect of section 138(5) (duty of interim liquidator to report to court where no person is appointed or nominated to be liquidator).

(9) The decision date in the notice referred to in paragraph (8) must be no later than 21 days after the date for receiving proposals has passed.

(10) The creditors and contributories must be given at least 14 days' notice of the decision date.

Appointment of liquidator by creditors or contributories

5.23.—(1) This rule applies where a person is appointed as liquidator by the creditors or contributories.

(2) The convener of the decision procedure or deemed consent procedure, or the chair in the case of a meeting, must certify the appointment, but not unless and until the appointee has provided to the convener or the chair a statement to the effect that the appointee is an insolvency practitioner qualified under the Act to be the liquidator and consents to act.

(3) The certificate must be authenticated and dated by the convener or chair and must—

(a) identify the company;

(b) identify and provide contact details for the person appointed as liquidator;

(c) state the date on which the liquidator was appointed;

(d) state that the appointee—

(i) has provided a statement of being qualified to act as an insolvency practitioner in relation to the company,

(ii) has consented to act, and

(iii) was appointed as liquidator of the company.

(4) Where 2 or more liquidators are appointed the certificate must also specify (as required by section 231) whether any act required or authorised under any enactment to be done by the liquidator is to be done by all or any one or more of them.

(5) The liquidator's appointment is effective from the date on which the appointment is certified, that date to be endorsed on the certificate.

(6) The convener or chair must deliver the certificate to the liquidator appointed.

(7) The liquidator must—

(a) within 7 days beginning with the day the liquidator receives the certificate of appointment deliver notice of it to—

(i) the court; and

(ii) AiB; and

(b) within 28 days beginning with the day the liquidator receives the order of appointment—

(i) gazette the notice; or

(ii) otherwise advertise the notice in such manner as the liquidator thinks fit,

or both gazette the notice and otherwise advertise the notice in such manner as the liquidator thinks fit.

(8) Any notice under this rule must state—

(a) that a liquidator has been appointed; and

(b) the date of the appointment.

Decision on nomination

5.24.—(1) In the case of a decision on the nomination of a liquidator—

(a) if on any vote there are 2 nominees, the person who obtains the most support is appointed;

(b) if there are 3 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 convener or chair must 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.

(2) The convener or chair may at any time put to the meeting a resolution for the joint nomination of any 2 or more nominees.

Invitation to creditors and contributories to form a liquidation committee

5.25.—(1) Where a decision is sought from the company's creditors and contributories on the appointment of a liquidator, the convener of the decision procedure must at the same time deliver to the creditors and contributories a notice inviting them to decide whether a liquidation committee should be established if sufficient creditors are willing to be members of the committee.

(2) The notice must also invite nominations for membership of the committee, such nominations to be received by a date specified in the notice.

(3) The notice must—

(a) state that nominations must be delivered to the convener by the specified date;

(b) state, in the case of creditors, that nominations can only be accepted if the convener is satisfied as to the creditors' eligibility under rule 10.4 (eligibility for membership of creditors' or liquidation committee); and

(c) explain the effect of section 142(2) and (3)(**62**) on whether a committee is to be established under Part 10 (creditors and liquidation committees).

Appointment by the court (section 138(5), section 139(4) and section 140)

5.26.—(1) This rule applies where the liquidator is appointed by the court under section 138(5) (no person nominated or appointed by creditors and contributories), 139(4) (different persons nominated by creditors and contributories) or section 140(**63**) (winding up following administration or CVA).

(2) The court must not make the appointment unless and until the person being appointed liquidator has lodged in court a statement to the effect that that person is qualified to act as an insolvency practitioner in relation to the company and consents to act as liquidator.

(3) The liquidator's appointment is effective from the date of the order of appointment.

(4) The liquidator must—

(a) within 7 days beginning with the day the liquidator receives the copy order of appointment deliver notice of it to AiB; and

(b) within 28 days beginning with the day the liquidator receives the copy order of appointment—

(i) deliver notice of it to the creditors and contributories; or

(ii) if the court permits and in accordance with the directions of the court either—

(aa) gazette the notice; or

(bb) otherwise advertise the notice,

or both gazette the notice and otherwise advertise the notice.

(5) Where the liquidator gives notice under paragraph (4)(b)(i) the liquidator may, in addition—

(a) gazette the notice; or

(b) otherwise advertise the notice in such manner as the liquidator thinks fit,

or both gazette the notice and otherwise advertise the notice.

(6) Any notice under this rule must—

(a) state that a liquidator has been appointed;

(b) state the date of the appointment;

(c) state whether the liquidator proposes to seek decisions from creditors and contributories for the purpose of establishing a liquidation committee, or proposes only to seek a decision from creditors for that purpose; and

(d) if the liquidator does not propose to seek any such decision, set out the powers of the creditors under the Act to require the liquidator to seek one.

Liquidator's resignation

5.27.—(1) A liquidator may resign only—

(a) on grounds of ill health;

(b) because of the intention to cease to practise as an insolvency practitioner;

(**62**) Section 141(2) and (3) are prospectively substituted by paragraph 36 of schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act").

(**63**) Section 140(3) is prospectively amended by paragraph 35 of schedule 9 to the 2015 Act.

(c) because the further discharge of the duties of liquidator is prevented or made impracticable by—

(i) a conflict of interest; or

(ii) a change of personal circumstances;

(d) where 2 or more persons are acting as liquidator jointly, and it is the opinion of both or all of them that it is no longer expedient that there should continue to be that number of joint liquidators.

(2) Before resigning, the liquidator must deliver a notice to creditors, and invite the creditors by a decision procedure, or by deemed consent procedure, to consider whether a replacement should be appointed, except where the resignation is under sub-paragraph (1)(d).

(3) The notice must—

(a) state the liquidator's intention to resign;

(b) state that under rule 5.27(8) of these Rules the liquidator will be released 21 days after the date of delivery of the notice of resignation to the court under section 172(6), unless the court orders otherwise; and

(c) comply with rule 8.7 (deemed consent) or 8.8 (notices to creditors of decision procedure) so far as applicable.

(4) The notice may suggest the name of a replacement liquidator.

(5) The notice must be accompanied by a summary of the liquidator's receipts and payments.

(6) The decision date must be not more than 5 business days before the date on which the liquidator intends to give notice of resignation under section 172(6) (notice of resignation to the court).

(7) The resigning liquidator must deliver a copy of the notice of resignation under section 172(6) to AiB.

(8) The resigning liquidator's release is effective 21 days after the date on which the notice of resignation under section 172(6) is delivered to the court, unless the court orders otherwise.

Decision of creditors to remove liquidator

[Note: in relation to release of the liquidator following removal from office by a decision of the company's creditors, see: where the company's creditors have not decided against the liquidator's release, section 174(4)(a)(i); and where the company's creditors have decided against release, section 174(4)(b)(i) (**64**).]

5.28.—(1) This rule applies where a decision is made, using a decision procedure, to remove the liquidator.

(2) The convener of the decision procedure or chair of the meeting (as the case may be) must within 3 business days of the decision to remove the liquidator—

(a) deliver the certificate of the liquidator's removal to the court;

(b) deliver a copy of that certificate to AiB; and

(c) if the convener or chair is a person other than the liquidator removed, deliver a copy of the certificate to the liquidator removed.

(3) If the creditors decided to appoint a new liquidator, the certificate of the new liquidator's appointment must also be delivered to the new liquidator within that time; and the certificate must comply with the requirements in rule 5.23.

(**64**) Section 174(4)(a)(i) and (b)(i) are prospectively substituted by paragraph 45 of schedule 9 of the 2015 Act.

(4) The certificate of the liquidator's removal must—

(a) identify the company;

(b) identify and provide contact details for the removed liquidator;

(c) state that the creditors of the company decided on the date specified in the certificate that the liquidator specified in the certificate be removed from office as liquidator of the company;

(d) state the decision procedure used, and the decision date;

(e) state that the creditors either—

(i) did not decide against the liquidator being released, or

(ii) decided that the liquidator should not be released; and

(f) be authenticated and dated by the convener or chair.

(5) The liquidator's removal is effective from the date of the certificate of removal.

Removal of liquidator by the court (section 172(2))

[Note: in relation to release of the liquidator following removal from office by the court see section 174(4)(b)(ii).]

5.29.—(1) This rule applies where an application is made to the court under section 172(2)(**65**) for the removal of the liquidator, or for an order directing the liquidator to initiate a decision procedure of creditors for the purpose of removing the liquidator.

(2) The court may require the applicant to make a deposit or find caution for the expenses to be incurred by the liquidator on the application.

(3) The applicant must, at least 14 days before the hearing, deliver to the liquidator—

(a) a notice of the hearing stating the venue;

(b) a copy of the application; and

(c) a copy of any evidence on which the applicant intends to rely.

(4) The expenses of the application are not payable as an expense of the liquidation unless the court orders otherwise.

(5) Where the court removes the liquidator the order of removal may include such provision as the court thinks fit with respect to matters arising in connection with the removal.

(6) The person removed must as soon as reasonably practicable after receiving a copy of the order of removal deliver a copy of the order of removal to AiB.

(7) If the court appoints a new liquidator, rule 5.26 applies.

Deceased liquidator

[Note: in relation to release of the liquidator following death see section 174(4)(a)(ii)(**66**).]

5.30.—(1) If the liquidator dies a notice of the fact and date of death must be delivered as soon as reasonably practicable to—

(a) the court; and

(b) AiB.

(**65**) Section 172(2) is prospectively amended by paragraph 43(2) of schedule 9 to the 2015 Act.
(**66**) Section 174 is prospectively amended by paragraph 45 of schedule 9 of the 2015 Act.

(2) The notice must be delivered by one of the following:—

(a) a surviving joint liquidator;

(b) a member of the deceased liquidator's firm (if the deceased was a member or employee of a firm);

(c) an officer of the deceased liquidator's company (if the deceased was an officer or employee of a company);

(d) an executor of the deceased liquidator.

(3) If such notice has not been delivered within the 21 days following the liquidator's death then any other person may deliver the notice.

Loss of qualification as insolvency practitioner

[Note: in relation to release of the liquidator where the liquidator vacates office on ceasing to be a person qualified to act as an insolvency practitioner in relation to the company (section 172(5)) see section 174(4)(b)(iii).]

5.31.—(1) This rule applies where the liquidator vacates office on ceasing to be qualified to act as an insolvency practitioner in relation to the company.

(2) A notice of the fact must be delivered as soon as reasonably practicable to—

(a) the court; and

(b) AiB.

(3) The notice must be delivered by one of the following—

(a) the liquidator who has vacated office;

(b) a continuing joint liquidator;

(c) the recognised professional body which was the source of the vacating liquidator's authorisation to act (immediately before the liquidator vacated office).

(4) The notice must be authenticated and dated by the person delivering the notice.

Application by liquidator for release (section 174(4)(b) or (d))

5.32.—(1) An application by a former liquidator to the Accountant of Court for release under section 174(4)(b) or (d) must contain—

(a) identification details for the insolvency proceedings;

(b) identification and contact details for the former liquidator;

(c) a statement that the former liquidator is applying to the Accountant of Court to grant the former liquidator a certificate of the former liquidator's release as liquidator as a result of the circumstances specified in the application;

(d) details of the circumstances referred to in sub-paragraph (c) under which the former liquidator has ceased to act as liquidator.

(2) The application must be authenticated and dated by the former liquidator.

(3) When the Accountant of Court gives a release, the Accountant of Court must deliver—

(a) a certificate of the release to the former liquidator; and

(b) a notice of the release to AiB.

(4) Release is effective from the date of the certificate or such other date as the certificate specifies.

Final account prior to dissolution (section 146)

5.33.—(1) The final account which the liquidator is required to make up under section 146(2)(**67**) and deliver to creditors must comply with the requirements of rule 7.9.

(2) When the account is delivered to the creditors it must be accompanied by a notice which states—

(a) that the company's affairs are fully wound up;

(b) that a creditor may object to the release of the liquidator by giving notice in writing to the liquidator before the end of the prescribed period;

(c) that the prescribed period is the period ending 28 days after delivery of the notice;

(d) that the liquidator will vacate office under section 172(8)(**68**) as soon as the liquidator has complied with section 146(4) by filing with the court and delivering to the registrar of companies and AiB the final account and notice containing the statement required by section 146(4)(b) of whether any creditors have objected to the liquidator's release; and

(e) that the liquidator will be released under section 174(4)(d)(ii)(**69**) at the same time as vacating office unless any of the creditors objected to the release.

(3) The liquidator must deliver a copy of the notice under section 146(4) to the Accountant of Court.

Relief from, or variation of, duty to report

5.34.—(1) The court may, on the application of the liquidator, relieve the liquidator of any duty imposed on the liquidator by rule 5.33, or authorise the liquidator to carry out the duty in a way other than required by that rule.

(2) In considering whether to act under this rule, the court must have regard to the cost of carrying out the duty, to the amount of the assets available, and to the extent of the interest of creditors or contributories, or any particular class of them.

Liquidator's duties on vacating office

5.35.—(1) This rule applies where a person appointed as liquidator ("the succeeding liquidator") succeeds a previous liquidator ("the former liquidator") as the liquidator.

(2) When the succeeding liquidator's appointment takes effect the former liquidator must as soon as reasonably practicable deliver to the succeeding liquidator—

(a) the assets (after deduction of any expenses properly incurred, and distributions made, by the former liquidator);

(b) the records of the winding up, including correspondence, statements of claim, evidence of debts and other documents relating to the winding up; and

(c) the company's documents and other records.

(3) In doing so, the former liquidator must hand over—

(a) such information relating to the affairs of the company and the course of the winding up as the succeeding liquidator considers reasonably required for the effective discharge of the succeeding liquidator's duties as liquidator; and

(**67**) Section 146 is prospectively substituted by paragraph 38 of schedule 9 of the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act").
(**68**) A new subsection (8) is prospectively substituted by paragraph 43(4) of schedule 9 of the 2015 Act.
(**69**) A new subsection (4)(d)(ii) is prospectively substituted by paragraph 45(4) of schedule 9 of the 2015 Act.

(b) all records and documents in the former liquidator's possession relating to the affairs of the company and its winding up.

Taking possession and realisation of the company's assets

5.36.—(1) The liquidator must—

(a) as soon as reasonably practicable after the liquidator's appointment take possession of—

(i) the whole assets of the company; and

(ii) any property, books, papers or records in the possession or control of the company or to which the company appears to be entitled; and

(b) make up and maintain an inventory and valuation of the assets of the company.

(2) The liquidator is entitled to have access to, and to make copies of, all documents or records relating to the assets, property, business or financial affairs of the company—

(a) sent by or on behalf of the company to a third party; and

(b) in that third party's hands.

(3) If a person obstructs the liquidator in the liquidator's exercise, or attempted exercise, of a power conferred by paragraph (2), the court may, on the liquidator's application, order the person to cease obstructing the liquidator.

(4) The liquidator may require delivery to the liquidator of any title deed or other document of the company, even if a right of lien is claimed over it.

(5) Paragraph (4) is without prejudice to any preference of the holder of the lien.

Realisation of the company's heritable property

5.37.—(1) This rule applies to the sale of any part of the company's heritable property over which a heritable security is held by a creditor or creditors if the rights of the secured creditor are preferable to those of the liquidator.

(2) The liquidator may sell that part only with the concurrence of every such creditor unless the liquidator obtains a sufficiently high price to discharge every such security.

(3) Subject to paragraph (4), the following acts are precluded—

(a) the taking of steps by a creditor to enforce the creditor's security over that part after the liquidator has intimated to the creditor an intention to sell it;

(b) the commencement by the liquidator of the procedure for the sale of that part after a creditor has intimated to the liquidator that the creditor intends to commence the procedure for its sale.

(4) Where the liquidator or a creditor has given intimation under paragraph (3) but has unduly delayed in proceeding with the sale, then, if authorised by the court in the case of—

(a) paragraph (3)(a), any creditor to whom intimation has been given may enforce the creditor's security;

(b) paragraph (3)(b), the liquidator may sell that part.

(5) The validity of the title of any purchaser is not challengeable on the ground that there has been a failure to comply with a requirement of this rule.

Power of court to set aside certain transactions

5.38.—(1) If in the course of the liquidation the liquidator enters into any transaction with a person who is an associate of the liquidator, the court may, on the application of any interested

person, set the transaction aside and order the liquidator to compensate the company for any loss suffered in consequence of it.

(2) This does not apply if either—

(a) the transaction was entered into with the prior consent of the court; or

(b) it is shown to the court's satisfaction that the transaction was for value, and that it was entered into by the liquidator without knowing, or having any reason to suppose, that the person concerned was an associate.

(3) Nothing in this rule is to be taken as prejudicing the operation of any rule of law relating to a trustee's dealings with trust property, or the fiduciary obligations of any person.

Rule against improper solicitation

5.39.—(1) Where the court is satisfied that any improper solicitation has been used by or on behalf of the liquidator in obtaining proxies or procuring the liquidator's appointment, it may order that no remuneration be allowed as an expense of the liquidation to any person by whom, or on whose behalf, the solicitation was exercised.

(2) An order of the court under this rule overrides any resolution of the liquidation committee or the creditors, or any other provision of these Rules relating to the liquidator's remuneration.

CHAPTER 7

Special manager

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

Application of this Chapter and interpretation

5.40. This Chapter applies to applications for the appointment of a special manager by a liquidator and by a provisional liquidator (where one has been appointed), and so references to the liquidator are to be read as including a provisional liquidator.

Appointment and remuneration of special manager (section 177)

5.41.—(1) An application by the liquidator under section 177 for the appointment of a special manager must be supported by a report setting out the reasons for the application.

(2) The report must include the liquidator's estimate of the value of the business or property in relation to which the special manager is to be appointed.

(3) The court's order appointing the special manager must specify the duration of the special manager's appointment being one of the following—

(a) for a fixed period stated in the order;

(b) until the occurrence of a specified event; or

(c) until the court makes a further order.

(4) The appointment of a special manager may be renewed by order of the court.

(5) The special manager's remuneration will be fixed from time to time by the court.

(6) The acts of the special manager are valid notwithstanding any defect in the special manager's appointment or qualifications.

Caution

5.42.—(1) The appointment of the special manager does not take effect until the person appointed has found (or, if the court allows, undertaken to find) caution for the appointment to be given to the applicant.

(2) A person appointed as special manager may find caution either specifically for a particular winding up, or generally for any winding up in relation to which that person may be appointed as special manager.

(3) The amount of the caution must be not less than the value of the business or property in relation to which the special manager is appointed, as estimated in the applicant's report under rule 5.41 which accompanied the application for appointment.

(4) When the special manager has found caution for the appointment to be given to the applicant that person must lodge with the court a certificate as to the adequacy of the caution.

(5) The cost of finding the caution must be paid in the first instance by the special manager; but—

(a) where a winding-up order is not made, the special manager is entitled to be reimbursed out of the property of the company, and the court may order accordingly; and

(b) where a winding-up order is made, the special manager is entitled to be reimbursed as an expense of the liquidation.

Failure to give or keep up caution

5.43.—(1) If the special manager fails to find the required caution within the time allowed for that purpose by the order of appointment, or any extension of that time that may be allowed, the liquidator must report the failure to the court, which may discharge the order appointing the special manager.

(2) If the special manager fails to keep up the caution, the liquidator must report the failure to the court, which may remove the special manager, and make such order as to expenses as it thinks just.

(3) If the court discharges the order appointing the special manager, or makes an order removing the special manager, the court must give directions as to whether any, and if so what, steps should be taken for the appointment of another special manager.

Accounting

5.44.—(1) The special manager must produce accounts, containing details of the special manager's receipts and payments, for the approval of the liquidator.

(2) The accounts must be for—

(a) each 3 month period for the duration of the special manager's appointment; and

(b) any shorter period ending with the termination of the special manager's appointment.

(3) When the accounts have been approved, the special manager's receipts and payments must be added to those of the liquidator.

Termination of appointment

5.45.—(1) The special manager's appointment terminates—

(a) if the winding-up petition is dismissed; or

(b) in a case where a provisional liquidator was appointed under section 135, if the appointment is discharged without a winding-up order having been made.

(2) If the liquidator is of the opinion that the appointment of the special manager is no longer necessary or beneficial for the company, the liquidator must apply to the court for directions, and the court may order the special manager's appointment to be terminated.

(3) The liquidator must make the same application if the creditors decide that the appointment should be terminated.

CHAPTER 8

Public examination of company officers and others (section 133)

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

Request by a creditor for a public examination (section 133(2))

5.46.—(1) A request made under section 133(2) by a creditor to the liquidator for the public examination of a person must contain—

(a) identification details for the company;

(b) the name and postal address of the creditor;

(c) the name and postal address of the proposed examinee;

(d) a description of the relationship which the proposed examinee has, or has had, with the company;

(e) a request by the creditor to the liquidator to apply to the court for a public examination of the proposed examinee under section 133(2);

(f) the amount of the creditor's claim in the winding up;

(g) a statement that the total amount of the creditor's and any concurring creditors' claims is believed to represent not less than ½ in value of the debts of the company;

(h) a statement that the creditor understands the requirement to deposit with the liquidator such sum as the liquidator may determine to be appropriate by way of caution for the expenses of holding a public examination; and

(i) a statement that the creditor believes that a public examination is required for the reason stated in the request.

(2) The request must be authenticated and dated by the creditor.

(3) The request must be accompanied by—

(a) a list of the creditors concurring with the request and the amounts of their respective claims in the winding up, with their respective values; and

(b) from each concurring creditor, confirmation of the creditor's concurrence.

Request by a contributory for a public examination (section 133(2))

5.47.—(1) A request made under section 133(2) by a contributory to the liquidator for the public examination of a person must contain—

(a) identification details for the company;

(b) the name and postal address of the contributory;

(c) the name and postal address of the proposed examinee;

(d) a description of the relationship which the proposed examinee has, or has had, with the company;

(e) a request by the contributory to the liquidator to apply to the court for a public examination of the proposed examinee under section 133(2);

(f) the number of shares held in the company by the contributory;

(g) the number of votes to which the contributory is entitled;

(h) a statement that the total amount of the contributory's and any concurring contributories' shares and votes is believed to represent not less than ¾ in value of the company's contributories;

(i) a statement that the contributory understands the requirement to deposit with the liquidator such sum as the liquidator may determine to be appropriate by way of caution for the expenses of holding a public examination; and

(j) a statement that the contributory believes that a public examination is required for the reason specified in the request.

(2) The request must be authenticated and dated by the contributory.

(3) The request must be accompanied by—

(a) a list of the contributories concurring with the request and the number of shares and votes each holds in the company; and

(b) from each concurring contributory, confirmation of the concurrence and of the number of shares and votes held in the company.

Further provisions about requests by a creditor or contributory for a public examination

5.48.—(1) A request by a creditor or contributory for a public examination does not require the support of concurring creditors or contributories if the requisitioning creditor's debt or, as the case may be, requisitioning contributory's shares, is sufficient alone under section 133(2).

(2) Before the liquidator makes the requested application, the creditor or contributory requesting the examination must deposit with the liquidator such sum (if any) as the liquidator determines is appropriate as caution for the expenses of the public examination (if ordered).

(3) The liquidator must make the application for the examination—

(a) within 28 days of receiving the creditor's or contributory's request (if no caution is required under paragraph (2)); or

(b) within 28 days of the creditor or contributory (as the case may be) depositing the required caution.

(4) However if the liquidator thinks the request is unreasonable, the liquidator may apply to the court for an order to be relieved from making the application.

(5) If the application for an order under paragraph (4) is made without notice to any other party and the court makes such an order then the liquidator must deliver a notice of the order as soon as reasonably practicable to the creditors or contributories who requested the examination.

(6) If the court dismisses the liquidator's application under paragraph (4), the liquidator must make the application under section 133(2) as soon as reasonably practicable.

Notice of the public examination

5.49.—(1) Where the court orders the public examination of any person under section 133(1) then, unless the court orders otherwise, the liquidator—

(a) must give at least 14 days' notice of the examination to—

(i) the special manager (if a special manager has been appointed); and

(ii) the creditors and all the contributories of the company who are known to the liquidator (subject to any contrary direction of the court); and

(b) may, in addition, at least 14 days before the date fixed for the examination—

(i) gazette the notice;

(ii) advertise the notice in such other manner as the liquidator thinks fit; or

(iii) both gazette the notice and advertise it in such other manner as the liquidator thinks fit.

(2) The notice must state—

(a) the purpose of the public examination; and

(b) the venue.

(3) Unless the court directs otherwise, notice under paragraph (1)(b) must not be given until at least 5 business days have elapsed since the examinee was served with the order.

Examinee unfit for examination

5.50.—(1) Where the examinee is a person who lacks capacity within the meaning of the Adults with Incapacity (Scotland) Act 2000(**70**) ("the 2000 Act") or is unfit to undergo or attend for public examination, the court may—

(a) sist the order for the examinee's public examination; or

(b) order that it is to be conducted in such manner and at such place as it thinks just.

(2) The applicant for an order under paragraph (1) must be—

(a) a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the examinee; or

(b) a person who appears to the court to be a suitable person to make the application.

(3) The application must, unless the examinee is a person who lacks capacity within the meaning of the 2000 Act, be supported by the affidavit of a registered medical practitioner as to the examinee's mental and physical condition.

(4) At least 5 business days' notice of the application must be given to the liquidator.

Expenses of examination

5.51. Where public examination of the examinee has been ordered by the court on a request by a creditor under rule 5.46 or by a contributory under rule 5.47, the court may order that some or all of the expenses of the examination are to be paid out of the deposit required under those rules, instead of as an expense of the liquidation.

CHAPTER 9

Distribution of company's assets by the liquidator

Winding up commencing as voluntary

5.52. 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)

5.53.—(1) The priority laid down by rule 7.27 is 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—

(**70**) 2000 asp 4.

(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.

CHAPTER 10

MISCELLANEOUS

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

Limitation

Limitation of actions

5.54.—(1) The following bar the effect of any enactment or rule of law relating to the limitation of actions:—

(a) the presentation of a petition for winding up;

(b) the submission of a claim under rule 7.16.

(2) Reference to any of a creditor's acts mentioned in sub-paragraphs (a) and (b) of paragraph (1) barring the effect of any enactment or rule of law relating to the limitation of actions is to be construed as a reference to that act having the same effect, for the purposes of that enactment or rule of law, as an effective acknowledgement of the creditor's claim.

(3) Reference in paragraph (1) or (2) to an enactment does not include a reference to an enactment which implements or gives effect to any international agreement or obligation.

Dissolution after winding up

Dissolution after winding up

[Note: on release of the liquidator where an order is made under section 204 for early dissolution of the company and the liquidator vacates office when dissolution takes effect in accordance with that section (section 172(7)), see section 174(4)(b)(iii) and rule 5.32.]

5.55. Where the court makes an order under section 204(5)(**71**) or 205(5)(**72**), the person on whose application the order was made must deliver to the registrar of companies and AiB a copy of the order.

PART 6

BLOCK TRANSFER OF WINDING UP PROCEEDINGS

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

(**71**) Section 204 is prospectively amended by S.S.I. 2016/141, article 11.
(**72**) Section 205 is prospectively amended by paragraph 51 of schedule 9 of the Small Business, Enterprise and Employment Act 2015 (c.26).

Power to make a block transfer order

6.1.—(1) Part 6 applies where it is expedient to transfer some or all of the cases in which an outgoing liquidator ("the outgoing liquidator") holds office to one or more liquidators ("the replacement liquidator") in a single transaction where the outgoing liquidator—

(a) dies;

(b) retires from practice; or

(c) is otherwise unable or unwilling to continue in office.

(2) In a case to which this Part applies the Court of Session has the power to make an order ("a block transfer order") appointing a replacement liquidator in the place of the outgoing liquidator.

(3) The replacement liquidator must be qualified to act as an insolvency practitioner in relation to the company.

Application for block transfer order

6.2.—(1) An application for a block transfer order may be made to the Court of Session for—

(a) the removal of the outgoing liquidator by the exercise of any of the powers in paragraph (2);

(b) the appointment of a replacement liquidator by the exercise of any of the powers in paragraph (3);

(c) such other order or direction as may be necessary or expedient in connection with the matters referred to in sub-paragraphs (a) and (b).

(2) The powers referred to in paragraph (1)(a) are those in—

(a) section 108(2) (voluntary winding up); and

(b) section 172(2) and rule 6.1(2) (winding up by the court).

(3) The powers referred to in paragraph (1)(b) are those in—

(a) section 108(2); and

(b) rule 6.1(2).

(4) An application may be made by any of the following:—

(a) the outgoing liquidator (if able and willing to do so);

(b) any person who holds the office of liquidator jointly with the outgoing liquidator;

(c) any person who is proposed to be appointed as the replacement liquidator;

(d) any creditor in a case subject to the application;

(e) the recognised professional body which was the source of the outgoing liquidator's authorisation (immediately before the application is made); or

(f) the Secretary of State.

(5) The application must be served on—

(a) the outgoing liquidator (if not the applicant or deceased);

(b) any person who holds office jointly with the outgoing liquidator; and

(c) such other person as the Court of Session directs.

(6) The application must contain a schedule setting out—

(a) identification details for the insolvency proceedings; and

(b) the capacity in which the outgoing liquidator was appointed.

(7) The application must be supported by evidence—

(a) setting out the circumstances as a result of which it is expedient to appoint a replacement liquidator; and

(b) exhibiting the consent to act of each person who is proposed to be appointed as replacement liquidator.

Action following application for a block transfer order

6.3.—(1) In deciding to what extent (if any) the costs of making an application under rule 6.2 should be paid as an expense of the case to which the application relates, the factors to which the Court of Session must have regard include—

(a) the reasons for making the application;

(b) the number of cases to which the application relates;

(c) the value of the assets comprised in those cases; and

(d) the nature and extent of costs involved.

(2) Where an appointment under rule 6.1 is made, the replacement liquidator must—

(a) as soon as reasonably practicable give notice of the appointment to AiB;

(b) within 28 days give notice of the appointment to the creditors and contributories, or if the court so permits, advertise the appointment in accordance with the directions of the court; and

(c) give notice to such other persons, and in such form, as the Court of Session may direct.

(3) In any notice given by the replacement liquidator under this rule the replacement liquidator must state—

(a) that the outgoing liquidator has been removed; and

(b) whether the outgoing liquidator has been released.

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(**73**) 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.

Progress reports: content

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

(**73**) Section 176A was inserted by the Enterprise Act 2002 (c.40), section 252.

(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(**74**) and 104A(**75**) 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(**76**) 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.

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

(**74**) 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.
(**75**) 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.
(**76**) A new section 106 is substituted by paragraph 29 of schedule 9 of the 2015 Act. See also rule 4.30.

(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(**77**) 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.

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.

(**77**) A new section 146 is prospectively substituted by paragraph 38 of schedule 9 of the 2015 Act.

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(**78**) held, the subjects covered, the date on which it was given and the value which the creditor puts on it;

(**78**) See section 248 of the Act for the definition of "security".

(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;

(k) in the case of a member State liquidator creditor, specify and give details of underlying claims in respect of which the creditor is claiming;

(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.

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(**79**) as it may be amended by section 4 of the Administration of Justice (Scotland) Act 1972(**80**).

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(**81**) (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(**82**) (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.

(**79**) 1892 c.17.
(**80**) 1972 c.59. See S.I. 1993/769.
(**81**) 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.
(**82**) 2000 c.8.

(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)**.**

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.

(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 including any costs referred to in Article 30 and 59 of the EU Regulation, 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).

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.

(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.

(14) Subject to any notification by the person entitled to a dividend given to the liquidator that the person wishes the dividend to be paid to another person, or has assigned that entitlement to another person, where both a creditor and a member State liquidator have had a claim accepted in relation to the same debt, payment is only to be made to the creditor.

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(**83**) of schedule 8 of the Act and paragraph 18A of schedule 9 of the Act(**84**)).

(**83**) 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").

(**84**) 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.

PART 8

DECISION MAKING

CHAPTER 1

Application of Part

Application of Part

8.1. In this Part—

(a) Chapters 2 to 11 apply where the Act or these Rules require a decision to be made by a qualifying decision procedure or permit a decision to be made by the deemed consent procedure; and

(b) Chapter 12 applies to company meetings.

CHAPTER 2

Decision procedures

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

Interpretation

8.2.—(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 paragraph (b) is to be treated as made at 23:59 on the decision date;

"decision procedure" means a qualifying decision procedure as prescribed by rule 8.3;

"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)(**85**);

"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 8.11 requires a different period or the court directs otherwise.

(3) The rules in Chapters 2 to 11 about decision procedures of creditors apply with any necessary modifications to decision making by contributories.

(4) In particular, in place of the requirement for percentages or majorities in decision making by creditors to be determined by value, where the procedure seeks a decision from contributories value must be determined on the percentage of voting rights in accordance with rule 8.39.

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.]

8.3. The following decision procedures are prescribed for the purpose of section 246ZE(**86**) 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

8.4. Where the decision procedure uses electronic voting—

(a) the notice delivered to creditors in accordance with rule 8.8 must give them any necessary information as to how to access the voting system including any password required;

(**85**) As described in section 246ZE(9), prospectively inserted by section 122 of the 2015 Act.

(**86**) Section 246ZE(11) provides: "In this Group of Parts "qualifying decision procedure" means a procedure prescribed or authorised under paragraph 8A of schedule 8." In terms of section 251 "prescribed" means prescribed by rules; "rules" means rules under section 411. Schedule 8 is introduced by section 411(2) which provides that without prejudice to the generality of in particular rule 411(1), rules may contain any such provision as is specified in schedule 8. Paragraph 8A(1)(a) of schedule 8 provides in particular that rules may contain provision about the making of decisions by creditors and contributories including provision prescribing particular procedures by which creditors and contributories make decisions.

(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

8.5. Where the decision procedure uses a virtual meeting the notice delivered to creditors in accordance with rule 8.8 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

8.6.—(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 5 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 requires a physical meeting the convener must summon the meeting by giving notice which complies with rule 8.8 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.

(5) The convener must send the notice under paragraph (3) not later than 3 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 being 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 8.31.

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 or any other legislation or court order requires a decision to be made by a decision procedure.]

8.7.—(1) This rule makes further provision about the deemed consent procedure to that set out in section 246ZF(**87**).

(2) A notice seeking deemed consent must, in addition to the requirements of section 246ZF comply with the requirements of rule 8.8 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 8.31(2) (calculation of voting rights), 8.32 (calculation of voting rights: authorised deposit-taker) and 8.33 (procedure for admitting creditors' claims for voting) 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 8.35 as if it were a decision under Chapter 8 of this Part.

CHAPTER 3

Notices, voting and venues for decisions

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

Notices to creditors of decision procedure

8.8.—(1) This rule sets out the requirements for notices to creditors where a decision is sought by a decision procedure.

(2) The convener must deliver a notice to every creditor who is entitled to notice of the procedure.

(3) The notice must contain the following—

(a) identification details for the insolvency proceedings;

(b) details of the decision to be made or of any resolution on which a decision is sought;

(c) a description of the decision procedure which the convener is using, and arrangements, including the venue, for the decision procedure;

(d) a statement of the decision date;

(e) a statement as to when the creditor must have delivered a statement of claim and documentary evidence of debt in accordance with these Rules failing which a vote by the creditor will be disregarded;

(**87**) Section 246ZF is prospectively inserted by section 122 of the 2015 Act.

(f) a statement that a creditor whose debt is treated as a small debt in accordance with rule 7.35 must still deliver a statement of claim and documentary evidence of debt if that creditor wishes to vote;

(g) a statement that a creditor who has opted out from receiving notices may nevertheless vote if the creditor provides a statement of claim and documentary evidence of debt in accordance with paragraph (e);

(h) in the case of a decision to remove a liquidator in a creditors' voluntary winding up or a winding up by the court, a statement drawing the attention of creditors to section 173(2) or 174(4) (which relate to the release of the liquidator), as appropriate(**88**);

(i) except in the case of a physical meeting, a statement that creditors who meet the thresholds in section 246ZE(7) may, within 5 business days from the date of delivery of the notice, require a physical meeting to be held to consider the matter;

(j) in the case of a meeting, a statement that any proxy must be delivered to the convener or chair before it may be used at the meeting;

(k) in the case of a meeting, a statement that, where applicable, a complaint may be made in accordance with rule 8.38 and the period within which such a complaint may be made; and

(l) a statement that a creditor may appeal a decision in accordance with rule 8.35, and the relevant period under rule 8.35 within which such an appeal may be made.

(4) The notice must be authenticated and dated by the convener.

(5) Where the decision procedure is a meeting the notice must be accompanied by a blank proxy complying with rule 9.3.

(6) This rule does not apply if the court orders under rule 8.12 that notice of a decision procedure be given by advertisement only.

Voting in a decision procedure

8.9.—(1) In order to be counted in a decision procedure other than where votes are cast at a meeting, votes must—

(a) be received by the convener on or before the decision date; and

(b) in the case of a vote cast by a creditor, be accompanied by a statement of claim and documentary evidence of debt (where the requirement to provide the latter is not dispensed with under rule 8.28(2)) unless already given to the convener.

(2) In a receivership, a creditors' voluntary winding up or a winding up by the court a vote must be disregarded if—

(a) a statement of claim and, where required, documentary evidence of debt are not received by the convener on or before the decision date or, in the case of a meeting, at or before the meeting (unless under rule 8.26 the chair is content to accept them before resumption of the adjourned meeting); or

(b) the convener decides, in the application of Chapter 8 of this Part, that the creditor is not entitled to cast the vote.

(3) The convener must have received at least one valid vote on or before the decision date in order for the decision to be made.

(**88**) Section 173(2)(d) is prospectively amended, (2)(a), (b) and (e) substituted and (2A) inserted by paragraph 44 of schedule 9 of the 2015 Act, and section 174(4) amended by paragraph 45 of schedule 9 of the same Act.

Venue for the decision procedure

8.10. The convener must have regard to the convenience of those invited to participate when fixing the venue for a decision procedure (including the resumption of an adjourned meeting).

Notice of decision procedures or of seeking deemed consent: when and to whom delivered

[Note: when an office-holder is obliged to give notice to "the creditors", this is subject to rule 1.33, which limits the obligation to giving notice to those creditors of whose address the office-holder is aware.]

8.11.—(1) Notices of decision procedures, and notices seeking deemed consent, must be delivered in accordance with the following table.

Proceedings	*Decisions*	*Persons to whom notice must be delivered*	*Minimum notice required*
receivership	decisions of creditors	the creditors	14 days
creditors' voluntary winding up	decisions of creditors for appointment of liquidator (including any decision made at the same time on the establishment of a liquidation committee)	the creditors	14 days on conversion from members' voluntary liquidation, 7 days on conversion from member's voluntary liquidation where deemed consent has been objected to and in other cases, 3 business days
creditors' voluntary winding up or a winding up by the court	decisions of creditors to consider whether a replacement should be appointed after a liquidator's resignation	the creditors	28 days
winding up by the court	decisions of creditors to consider whether to remove or replace the liquidator (other than after a liquidator's resignation)	the creditors	14 days
creditors' voluntary winding up or a winding up by the court	other decisions of creditors	the creditors	14 days
creditors' voluntary winding up or a winding up by the court	decisions of contributories	every person appearing (by the company's records or otherwise) to be a contributory	14 days
main proceedings in another Member State	approval under Article 36(5) of the EU Regulation of proposed undertaking offered by a member State liquidator	all the local creditors in the United Kingdom	14 days

(2) This rule does not apply where the court orders under rule 8.12 that notice of a decision procedure be given by advertisement only.

Notice of decision procedure by advertisement only

8.12.—(1) The court may order that notice of a decision procedure is to be given by advertisement only and not by individual notice to the persons concerned.

(2) In considering whether to make such an order, the court must have regard to the relative cost of advertisement as against the giving of individual notices, the amount of assets available and the extent of the interest of creditors, members or contributories or any particular class of them.

(3) The advertisement must meet the requirements for a notice under rule 8.8(3), and must also state—

(a) that the court ordered that notice of the decision procedure be given by advertisement only; and

(b) the date of the court's order.

Gazetting and advertisement

8.13.—(1) In a creditors' voluntary winding up or a winding up by the court where a decision is being sought in a meeting the convener must gazette a notice stating—

(a) that a meeting of creditors or contributories is to take place;

(b) the venue for the meeting;

(c) the purpose of the meeting; and

(d) the time and date by which, and place at which, those attending must deliver proxies and statements of claim and documentary evidence of debt (if not already delivered) in order to be entitled to vote.

(2) The notice must also state—

(a) who is the convener in respect of the meeting; and

(b) if the meeting results from a request of one or more creditors under section 246ZE, the fact that it was so summoned.

(3) The notice must be gazetted before or as soon as reasonably practicable after notice of the meeting is delivered in accordance with these Rules.

(4) Information to be gazetted under this rule may also be advertised in such other manner as the convener thinks fit.

(5) The convener may gazette other decision procedures or the deemed consent procedure in which case the equivalent information to that required by this rule must be stated in the notice.

Notice to company officers in respect of meetings

8.14.—(1) In a creditors' voluntary winding up or a winding up by the court notice to participate in a creditors' meeting must be delivered to every present or former officer of the company whose presence the convener thinks is required and that person is required to attend the meeting.

(2) A notice under this rule must be delivered in compliance with the minimum notice requirements set out in rule 8.2(2) or in compliance with an order of the court under rule 8.12.

Non-receipt of notice of decision

8.15. Where a decision is sought by a notice in accordance with the Act or these Rules, the decision procedure or deemed consent procedure is presumed to have been duly initiated and conducted, even if not everyone to whom the notice is to be delivered has received it.

Decisions on remuneration and conduct

8.16.—(1) This rule applies in relation to a decision or resolution which is proposed in a creditors' voluntary winding up or a winding up by the court and which affects a person in relation to that person's remuneration or conduct as liquidator (actual, proposed or former).

(2) The following may not vote on such a decision or resolution whether as a creditor, contributory, proxy-holder or corporate representative, except so far as permitted by rule 9.7 (proxy-holder with financial interest)—

(a) that person;

(b) the partners and employees of that person;

(c) the officers and employees of the company of which that person is a director, officer or employee; and

(d) the representative of any person mentioned in sub-paragraphs (a) to (c).

CHAPTER 4

Decision making in particular proceedings

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

Decisions in winding up of authorised deposit-takers

8.17.—(1) This rule applies in a creditors' voluntary winding up or a winding up by the court of an authorised deposit-taker.

(2) The directors of a company must deliver a notice of a meeting of the company at which it is intended to propose a resolution for its winding up to the Financial Conduct Authority and to the scheme manager established under section 212(1) of the Financial Services and Markets Act 2000(**89**).

(3) These notices must be the same as those delivered to members of the company.

(4) Where any decision is sought for the purpose of considering whether a replacement should be appointed after the liquidator's resignation, removing the liquidator or appointing a new liquidator, the convener must also deliver a copy of the notice by which such a decision is sought to the Financial Conduct Authority and the scheme manager.

(5) A scheme manager who is required by this rule to be given notice of a meeting is entitled to be represented at the meeting.

CHAPTER 5

Requisitioned decisions

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

(**89**) 2000 c.8.

Requisitions of decision

[Note: this rule is concerned with requests by creditors or contributories for a decision, rather than requests for decisions to be made by way of a physical meeting under section 246ZE(3)(**90**).]

8.18.—(1) In this Chapter, "requisitioned decision" means—

(a) a decision requested to be sought under section 142(4)(**91**), 171(2)(b), 171(3A)(**92**) or 172(3)(**93**);

(b) any other decision sought by a liquidator in a winding up by the court following a request to seek a decision on any matter from—

(i) one-tenth in value of a company's creditors; or

(ii) one-tenth in value of a company's contributories.

(2) The request for a requisitioned decision must include a statement of the purpose of the proposed decision and either—

(a) a copy of the requesting creditor's statement of claim or a statement of the requesting contributory's value, together with—

(i) a list of the creditors or contributories concurring with the request and of the amounts of their respective claims or values; and

(ii) confirmation of concurrence from each creditor or contributory concurring; or

(b) a copy of the requesting creditor's statement of claim or a statement of the requesting contributory's value and a statement that that alone is sufficient without the concurrence of other creditors or contributories.

(3) A decision procedure must be instigated under section 171(2)(b) for the removal of the liquidator, other than a liquidator appointed by the court under section 108, if 25% in value of the company's creditors, excluding those who are connected with the company(**94**), request it.

(4) Where a decision procedure under 171(2)(b), 171(3) or 171(3A) is to be instigated, or is proposed to be instigated, the court may, on the application of any creditor, give directions as to the decision procedure to be used and any other matter which appears to the court to require regulation or control.

Expenses and timing of requisitioned decision

8.19.—(1) The convener must, not later than 14 days from receipt of a request for a requisitioned decision, provide the requesting creditor with itemised details of the sum to be deposited as caution for payment of the expenses of such procedure.

(2) The convener is not obliged to initiate the decision procedure or deemed consent procedure (where applicable) until either—

(a) the convener has received the required sum; or

(b) the period of 14 days has expired without the convener having informed the requesting creditor or contributory of the sum required to be deposited as caution.

(3) A requisitioned decision must be made within 28 days of the date on which the earlier of the events specified in paragraph (2) of this rule occurs.

(**90**) Section 246ZE is prospectively inserted by section 122 of the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act").
(**91**) Section 142 is prospectively amended by paragraph 37 of schedule 9 of the 2015 Act.
(**92**) Section 171(2)(b) is prospectively amended, subsections (3) and (6) substituted and subsections (3A) and (7) inserted by paragraph 42 of schedule 9 of the 2015 Act.
(**93**) Section 172(3) is prospectively amended by paragraph 43(3) of schedule 9 of the 2015 Act.
(**94**) "Connected" with a company is defined in section 249 of the Act.

(4) The expenses of a requisitioned decision must be paid out of the deposit (if any) unless—

(a) the creditors decide that they are to be payable as an expense of the liquidation; and

(b) in the case of a decision of contributories, the creditors are first paid in full, with interest.

(5) The notice of a requisitioned decision of creditors must contain a statement that the creditors may make a decision as in paragraph (4)(a) of this rule.

(6) Where the creditors do not so decide, the expenses must be paid by the requesting creditor or contributory to the extent that the deposit (if any) is not sufficient.

(7) To the extent that the deposit (if any) is not required for payment of the expenses, it must be repaid to the requesting creditor or contributory.

CHAPTER 6

Constitution of meetings

Quorum at meetings

8.20.—(1) A meeting is not competent to act unless a quorum is in attendance.

(2) A quorum is—

(a) in the case of a meeting of creditors, at least one creditor entitled to vote; and

(b) in the case of a meeting of contributories, at least 2 contributories entitled to vote, or all the contributories, if their number does not exceed 2.

(3) Where the provisions of this rule as to quorum are satisfied by the attendance of the chair alone or the chair and one additional person, but the chair is aware, either by virtue of statements of claim and documentary evidence of debt and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote, the chair must delay the start of the meeting by at least 15 minutes after the appointed time.

(4) In this rule, the reference to the number of creditors or contributories necessary to constitute a quorum includes those represented by proxy by any person (including the chair).

Chair at meetings

8.21.—(1) The chair of a meeting must be—

(a) the convener; or

(b) an appointed person.

(2) However—

(a) where a decision on the appointment of a liquidator under rule 4.14(2)(b), 4.14(4) or 4.14(6) (information to creditors and appointment of liquidator in creditors voluntary winding up) is made by a meeting the chair of the meeting must be the convener;

(b) where a decision on the appointment of a liquidator under rule 5.22(6) (appointment of liquidator in place of the interim liquidator under section 138(3) in court winding up) is made by a meeting and a resolution is proposed to appoint the interim liquidator to be liquidator another person may be appointed to act as chair for the purpose of choosing the liquidator.

The chair – attendance, interventions and questions

8.22. The chair of a meeting may—

(a) allow any person who has given reasonable notice of wishing to attend to participate in a virtual meeting or to be admitted to a physical meeting;

(b) decide what intervention, if any, may be made at—

(i) a meeting of creditors by any person attending who is not a creditor; or

(ii) a meeting of contributories by any person attending who is not a contributory; and

(c) decide what questions may be put to any present or former officer of the company.

CHAPTER 7

Adjournment and suspension of meetings

Adjournment by chair

8.23.—(1) The chair may (and must if it is so resolved) adjourn a meeting for not more than 14 days, subject to any direction of the court and to rule 8.24.

(2) Any further adjournment under this rule must not be to a day later than 14 days after the date on which the meeting was originally held, subject to any direction of the court.

Adjournment of meetings to remove a liquidator

8.24. If the chair of a meeting to remove the liquidator in a creditors' voluntary winding up or a winding up by the court is the liquidator or the liquidator's nominee and a resolution has been proposed for the liquidator's removal, the chair must not adjourn the meeting without the consent of at least ½ (in value) of the creditors attending and entitled to vote.

Adjournment in absence of chair

8.25.—(1) In a receivership, a creditors' voluntary winding up or a winding up by the court, if no one attends to act as chair within 30 minutes of the time fixed for a meeting to start, then the meeting is adjourned to the same time and place the following week or, if that is not a business day, to the business day immediately following.

(2) If no one attends to act as chair within 30 minutes of the time fixed for the meeting after a second adjournment under this rule, then the meeting comes to an end.

Statements of claim and documentary evidence of debt in adjournment

8.26. Where a meeting in a receivership, a creditors' voluntary winding-up or a winding up by the court is adjourned, the chair may allow a statement of claim and documentary evidence of debt (where required) to be used if delivered at or before resumption of the adjourned meeting.

Suspension

8.27. The chair of a meeting may, without an adjournment, declare the meeting suspended for one or more periods not exceeding one hour in total (or, in exceptional circumstances, such longer total period during the same day as the chair may determine).

CHAPTER 8

Creditors' voting rights and majorities

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

Creditors' voting rights

8.28.—(1) In a receivership, a creditors' voluntary winding up or a winding up by the court, a creditor is entitled to vote in a decision procedure or to object to a decision proposed using the deemed consent procedure only if—

(a) the creditor has delivered to the convener a statement of claim and documentary evidence of debt, including any calculation for the purposes of rule 8.31 or 8.32;

(b) the statement of claim and documentary evidence of debt was received by the convener not later than the decision date, or in the case of a meeting, at or before the meeting; and

(c) the statement of claim and documentary evidence of debt has been admitted for the purposes of entitlement to vote.

(2) The convener or chair may dispense with the requirement to produce documentary evidence of debt in paragraph (1)(a) and (b) in respect of any debt or any class or debt.

(3) In the case of a meeting, a proxy-holder is not entitled to vote on behalf of a creditor unless the convener or chair has received the proxy intended to be used on behalf of that creditor.

Scheme manager's voting rights

8.29.—(1) For the purpose of voting in a creditors' voluntary winding up or a winding up by the court of an authorised deposit-taker at which the scheme manager established under section 212(1) of the Financial Services and Markets Act 2000(**95**) is entitled to be represented under rule 8.17 (but not for any other purpose), the manager may deliver, instead of a statement of claim and documentary evidence of debt, a statement containing—

(a) the names of the creditors of the company in relation to whom an obligation of the scheme manager has arisen or may reasonably be expected to arise;

(b) the amount of each such obligation; and

(c) the total amount of all such obligations.

(2) The manager may from time to time deliver a further statement; and each such statement supersedes any previous statement.

Claim made in proceedings in other member States

8.30.—(1) Where in a creditors' voluntary winding up or a winding up by the court—

(a) a creditor is entitled to vote under rule 8.28(1) (as determined, where that be the case, in accordance with rule 8.35);

(b) that creditor has made the claim in other proceedings;

(c) that creditor votes on a resolution in a decision procedure; and

(d) a member State liquidator casts a vote in respect of the same claim,

only the creditor's vote is to be counted.

(2) Where in a creditors' voluntary winding up or a winding up by the court—

(a) a creditor has made a claim in more than one set of other proceedings; and

(b) more than one member State liquidator seeks to vote in respect of that claim,

the entitlement to vote in respect of that claim is exercisable by the member State liquidator in the main proceedings, whether or not the creditor has made the claim in the main proceedings.

(**95**) 2000 c.8.

(3) In this rule, "other proceedings" means main, secondary or territorial proceedings in another member State.

Calculation of voting rights

8.31.—(1) Votes are calculated according to the amount of each creditor's claim—

(a) in a receivership, as at the date of the appointment of the receiver, less any payments that have been made to the creditor after that date in respect of the claim;

(b) in a creditors' voluntary winding up or a winding up by the court, as set out in the creditor's statement of claim and documentary evidence of debt to the extent that it has been admitted.

(2) A creditor may vote in respect of a debt of an unliquidated or unascertained amount if the convener or chair decides to put upon it an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.

(3) Where a debt is wholly secured its value for voting purposes is nil.

(4) Where a debt is partly secured its value for voting purposes is the value of the unsecured part.

(5) No vote may be cast in respect of a claim more than once on any resolution put to the meeting; and for this purpose (where relevant), the claim of a creditor and of any member State liquidator in relation to the same debt are a single claim.

(6) A vote cast in a decision procedure which is not a meeting may not be changed.

(7) Paragraph (5) does not prevent a creditor or member State liquidator from—

(a) voting in respect of less than the full value of an entitlement to vote; or

(b) casting a vote one way in respect of part of the value of an entitlement and another way in respect of some or all of the balance of that value.

Calculation of voting rights: winding up of authorised deposit-taker

8.32. Any voting rights which a creditor might otherwise exercise in respect of a claim in a creditors' voluntary winding up or a winding up by the court of an authorised deposit-taker are reduced by a sum equal to the amount of that claim in relation to which the scheme manager, by virtue of its having delivered a statement under rule 8.29, is entitled to exercise voting rights.

Procedure for admitting creditors' claims for voting

8.33.—(1) The convener or chair in respect of a decision procedure must ascertain entitlement to vote and admit or reject claims accordingly.

(2) The convener or chair may admit or reject a claim in whole or in part.

(3) If the convener or chair is in any doubt whether a claim should be admitted or rejected, the convener or chair must mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

Requisite majorities

8.34. A decision is made by creditors when a majority (in value) of those voting have voted in favour of the proposed decision.

Appeals against decisions under this Chapter

8.35.—(1) A decision of the convener or chair under this Chapter is subject to appeal to the court by a creditor or by a contributory (as applicable).

(2) If the decision is reversed or varied, or votes are declared invalid, the court may order another decision procedure to be initiated or make such order as it thinks just.

(3) An appeal under this rule may not be made later than 21 days after the decision date.

(4) The person who made the decision is not personally liable for expenses incurred by any person in relation to an appeal under this rule unless the court makes an order to that effect.

CHAPTER 9

Exclusions from meetings

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

Action where person excluded

8.36.—(1) In this rule and rules 8.37 and 8.38, 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 8.38 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

8.37.—(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

8.38.—(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 8.37, 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 2 business days from the date of receiving the decision of the appropriate person.

CHAPTER 10

Contributories' voting rights and majorities

Contributories' voting rights and requisite majorities

8.39. In a decision procedure for contributories—

(a) voting rights are as at a general meeting of the company, subject to any provision of the articles affecting entitlement to vote, either generally or at a time when the company is in liquidation; and

(b) a decision is made if more than ½ of the votes cast by contributories are in favour.

CHAPTER 11

Records

Record of a decision

8.40.—(1) Where a decision is sought using a decision procedure, the convener or chair must make a record of the decision procedure.

(2) In the case of a meeting, the record must be in the form of a minute of the meeting.

(3) The record must be authenticated by the convener or chair and must include—

(a) identification details for the insolvency proceedings;

(b) in the case of a decision procedure of creditors, a list of the names of the creditors who participated and their claims;

(c) in the case of a decision procedure of contributories, a list of the names of the contributories who participated;

(d) where a decision is taken on the election of members of a creditors' committee or liquidation committee, the names and addresses of those elected;

(e) a record of any change to the result of the resolution made under rule 8.38(6) and the reason for any such change; and

(f) in any case, a record of every decision made and how creditors voted.

(4) Where a decision is sought using the deemed consent procedure, the convener must make a record of the procedure.

(5) The record under paragraph (4) must be authenticated by the convener and must—

(a) identify the proceedings;

(b) state whether or not the decision was taken; and

(c) contain a list of the creditors or contributories who objected to the decision, and in the case of creditors, their claims.

(6) A record under this rule must also identify any decision procedure (or the deemed consent procedure) by which the decision had previously been sought.

CHAPTER 12

Company meetings

Company meetings

8.41.—(1) Unless the Act or these Rules provide otherwise, a company meeting must be called and conducted, and records of the meeting must be kept—

(a) in accordance with the law of Scotland, including any applicable provision in or made under the Companies Act, in the case of a company incorporated—

(i) in Scotland, or

(ii) outside the United Kingdom other than in an EEA state;

(b) in accordance with the law of that state applicable to meetings of the company in the case of a company incorporated in an EEA state other than the United Kingdom.

(2) Reference to a company meeting called and conducted to resolve, decide or determine a particular matter includes a reference to that matter being resolved, decided or determined by written resolution.

Remote attendance: notification requirements

8.42. When a meeting is to be summoned and held in accordance with section 246A(3)(**96**), the convener must notify all those to whom notice of the meeting is being given of—

(a) the ability of a person claiming to be an excluded person to request an indication in accordance with rule 8.45;

(b) the ability of a person within rule 8.46(1) to make a complaint in accordance with that rule; and

(c) in either case, the period within which a request or complaint must be made.

Location of company meetings

8.43.—(1) This rule applies to a request to the convener of a meeting under section 246A(9)(**97**) to specify a place for the meeting.

(2) The request must be accompanied by—

(a) a list of the members making or concurring with the request and their voting rights, and

(b) from each person concurring, confirmation of that person's concurrence.

(3) The request must be delivered to the convener within 7 business days of the date on which the convener delivered the notice of the meeting in question.

(4) Where the convener considers that the request has been properly made in accordance with the Act and this rule, the convener must—

(a) deliver notice to all those previously given notice of the meeting—

(i) that it is to be held at a specified place, and

(ii) as to whether the date and time are to remain the same or not;

(b) set a venue (including specification of a place) for the meeting, the date of which must be not later than 28 days after the original date for the meeting; and

(c) deliver at least 14 days' notice of that venue to all those previously given notice of the meeting,

and the notices required by sub-paragraphs (a) and (c) may be delivered at the same or different times.

(5) Where the convener has specified a place for the meeting in response to a request to which this rule applies, the chair of the meeting must attend the meeting by being present in person at that place.

(**96**) Section 246A was inserted by S.I. 2010/18 and prospectively amended by paragraph 54 of schedule 9 of the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act") and S.S.I. 2017/209, article 5.

(**97**) Section 246A(9) is amended by paragraph 54(4) of schedule 9 of the 2015 Act.

Action where person excluded

8.44.—(1) In this rule and rules 8.45 and 8.46, an "excluded person" means a person who has taken all steps necessary to attend a company meeting under the arrangements which—

(a) have been put in place by the convener of the meeting under section 246A(6); 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 8.46 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, in the chair's discretion and without an adjournment, declare the meeting suspended for any period up to 1 hour.

Indication to excluded person

8.45.—(1) A person 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

8.46.—(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) The complaint under paragraph (1) must be made to the appropriate person who is—

(a) the chair, where the complaint 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, no 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 8.45, 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 2 business days from the date of receiving the decision of the appropriate person.

PART 9

PROXIES AND CORPORATE REPRESENTATION

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

Application and interpretation

9.1.—(1) This Part applies in any case where a proxy is given in relation to a meeting or insolvency proceedings under the Act or these Rules, or where a corporation authorises a person to represent it.

(2) References in this Part to "the chair" are to the chair of the meeting for which a specific proxy is given or at which a continuing proxy is exercised.

Specific and continuing proxies

9.2.—(1) A proxy is a document made by a creditor, member or contributory which directs or authorises another person (a "proxy-holder") to act as the representative of the creditor, member or contributory at a meeting, or meetings, by speaking, voting, abstaining, or proposing resolutions.

(2) A proxy may be either—

(a) a specific proxy which relates to a specific meeting; or

(b) a continuing proxy for the insolvency proceedings.

(3) A specific proxy must—

(a) direct the proxy-holder how to act at the meeting by giving specific instructions; or

(b) authorise the proxy-holder to act at the meeting without specific instructions; or

(c) contain both direction and authorisation.

(4) A proxy is to be treated as a specific proxy for the meeting which is identified in the proxy unless it states that it is a continuing proxy for the insolvency proceedings.

(5) A continuing proxy must authorise the proxy-holder to attend, speak, vote or abstain, or to propose resolutions without giving the proxy-holder any specific instructions.

(6) A continuing proxy may be superseded by a proxy for a specific meeting or withdrawn by a written notice to the office-holder.

(7) A creditor, member or contributory may appoint more than one person to be proxy-holder but if so—

(a) their appointment is as alternates; and

(b) only one of them may act as proxy-holder at a meeting.

(8) The proxy-holder must be an individual.

Blank proxy

9.3.—(1) A blank proxy is a document which—

(a) complies with the requirements in this rule; and

(b) when completed with the details specified in paragraph (3) will be a proxy as described in rule 9.2.

(2) A blank proxy must state that the creditor, member or contributory named in the document (when completed) appoints a person who is named or identified as the proxy-holder of the creditor, member or contributory.

(3) The specified details are—

(a) the name and address of the creditor, member or contributory;

(b) either the name of the proxy-holder or the identification of the proxy-holder (e.g. the chair of the meeting);

(c) a statement that the proxy is either—

(i) for a specific meeting, which is identified in the proxy; or

(ii) a continuing proxy for the insolvency proceedings; and

(d) if the proxy is for a specific meeting, instructions as to the extent to which the proxy-holder is directed to vote in a particular way, to abstain or to propose any resolution.

(4) When it is delivered, a blank proxy must not have inserted in it—

(a) the name or description of any person as proxy-holder or as a nominee for the office holder; or

(b) instructions as to how a person appointed as proxy-holder is to act.

(5) A blank proxy must have a note to the effect that the proxy may be completed with the name of the person or the chair of the meeting who is to be proxy-holder.

Use of proxies

9.4.—(1) A proxy for a specific meeting must be delivered to the chair at or before the meeting.

(2) A continuing proxy must be delivered to the office-holder and may be exercised at any meeting which begins after the proxy is delivered.

(3) A proxy may be used at the resumption of the meeting after an adjournment, but if a different proxy is given for use at a resumed meeting, that proxy must be delivered to the chair at or before the resumed meeting.

(4) Where a specific proxy directs a proxy-holder to vote for or against a resolution for the nomination or appointment of a person as office-holder, the proxy-holder may, unless the proxy states otherwise, vote for or against (as the proxy-holder thinks fit) a resolution for the nomination or appointment of that person jointly with another or others.

(5) A proxy-holder may propose a resolution which is one on which the proxy-holder could vote if someone else proposed it.

(6) Where a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, prohibit the proxy-holder from exercising discretion as to how to vote on a resolution which is not dealt with by the proxy.

(7) The chair may require a proxy used at a meeting to be the same as or substantially similar to the blank proxy delivered for that meeting or to a blank proxy previously delivered which has been completed as a continuing proxy.

Use of proxies by the chair

9.5.—(1) Where a proxy appoints the chair (however described in the proxy) as proxy-holder the chair may not refuse to be the proxy-holder.

(2) Where the office-holder is appointed as proxy-holder but another person acts as chair of the meeting, that other person may use the proxies as if that person were the proxy-holder.

(3) Where, in a meeting of creditors in a creditors' voluntary winding up or a winding up by the court, the chair holds a proxy which requires the proxy-holder to vote for a particular resolution and no other person proposes that resolution the chair must propose it unless the chair considers that there is good reason for not doing so.

(4) If the chair does not propose such a resolution, the chair must as soon as reasonably practicable after the meeting deliver a notice of the reason why that was not done to the creditor, member or contributory.

Right of inspection and delivery of proxies

9.6.—(1) A person attending a meeting is entitled, immediately before or in the course of the meeting, to inspect proxies or any statement of claim and documentary evidence of debt delivered to the chair or to any other person in accordance with the notice convening the meeting.

(2) Where the chair is not the office-holder, the chair must deliver all proxies used for voting at a meeting to the office-holder, as soon as reasonably practicable after the meeting.

Proxy-holder with financial interest

9.7.—(1) A proxy-holder must not vote for a resolution which would—

(a) directly or indirectly place the proxy-holder or any associate of the proxy-holder in a position to receive any remuneration, fees or expenses from the company's assets; or

(b) fix or change the amount of or the basis of any remuneration, fees or expenses receivable by the proxy-holder or any associate of the proxy-holder out of the company's assets.

(2) However, a proxy-holder may vote for a resolution described in paragraph (1) if the proxy specifically directs the proxy-holder to vote in that way.

(3) Where an office-holder is appointed as proxy-holder and that proxy is used under rule 9.5(2) by another person acting as chair, the office-holder is deemed to be an associate of the person acting as chair.

Resolution conferring authorisation to represent corporation

[Note: section 434B(**98**) makes provision for corporate representation in company insolvency proceedings.]

9.8.—(1) A person authorised to represent a corporation (other than as a proxy-holder) at a meeting of creditors or contributories must produce to the chair—

(a) the resolution conferring the authority; or

(b) a copy of that resolution certified as a true copy by—

(i) 2 directors;

(ii) a director and the secretary; or

(iii) a director in the presence of a witness who attests the director's signature.

(2) The resolution conferring the authority must have been signed or subscribed (or in the case of an electronic document, authenticated) by or on behalf of the company in accordance with the Requirements of Writing (Scotland) Act 1995(**99**).

(3) In paragraph (2) "authenticated" has the meaning given in the Requirements of Writing (Scotland) Act 1995.

PART 10

CREDITORS' AND LIQUIDATION COMMITTEES

CHAPTER 1

Introductory

Scope and interpretation

10.1.—(1) This Part applies to the establishment and operation of—

(a) a creditors' committee in a receivership;

(b) a liquidation committee in a creditors' voluntary winding up; and

(c) a liquidation committee in a winding up by the court.

(2) In this Part—

(**98**) Section 434B is inserted by S.I. 2008/948. The section heading is prospectively amended, and subsection (1)(a) substituted, by paragraph 57 of schedule 9 of the Small Business, Enterprise and Employment Act 2015 (c.26).

(**99**) 1995 c.7; see section 12(2), (3) and (4) as amended by S.S.I. 2006/491, article 3 and the Land Registration etc. (Scotland) Act 2012 (asp 5), schedule 3, paragraph 19.

"contributory member" means a member of a liquidation committee appointed by the contributories; and

"creditor member" means a member of a liquidation committee appointed by the creditors.

CHAPTER 2

Functions of a committee

Functions of a committee

10.2. In addition to any functions conferred on a liquidation committee by any provision of the Act or any other provision of these Rules—

(a) a committee is to—

(i) assist the office-holder in discharging the office-holder's functions; and

(ii) act in relation to the office-holder in such manner as may from time to time be agreed; and

(b) a committee in a receivership is to represent to the receiver the views of the unsecured creditors.

CHAPTER 3

Membership and formalities of formation of a committee

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

Note: (2) see sections 215, 363, 365 and 371 of the Financial Services and Markets Act 2000 for the rights of persons appointed by a scheme manager, the Financial Conduct Authority and the Prudential Regulation Authority to attend committees and make representations.]

Number of members of a committee

[Note: section 101(1) provides that a liquidation committee in a creditors' voluntary winding up may not have more than 5 members.]

10.3.—(1) A committee in a receivership must have at least 3 members but not more than 5 members.

(2) A liquidation committee in a creditors' voluntary winding up appointed pursuant to section 101(**100**) must have at least 3 members.

(3) A liquidation committee in a winding up by the court established under section 142(**101**) must have—

(a) at least 3 and not more than 5 members elected by the creditors; and

(b) where the grounds on which the company was wound up do not include inability to pay its debts, and where the contributories so decide, up to 3 contributory members elected by the contributories.

Eligibility for membership of creditors' or liquidation committee

10.4.—(1) A creditor is eligible to be a member of a committee if—

(**100**) In section 101 subsection (1) was substituted by paragraph 25(2) of schedule 9 of the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act") and subsection (3) was amended by paragraph 25(3) of that schedule.

(**101**) In section 142 subsections (1) to (4) were substituted by paragraph 37(2) of schedule 9 to the 2015 Act and subsection (6) was amended by paragraph 37(3) of that schedule.

(a) the person has submitted a statement of claim and, where not dispensed with under rules 7.16(2) or 8.28(2), documentary evidence of debt;

(b) the debt is not fully secured and the creditor has not agreed to surrender the creditor's security to the liquidator; and

(c) neither of the following apply—

(i) the claim has been wholly rejected for voting purposes, or

(ii) the claim has been wholly rejected for the purpose of distribution or dividend.

(2) No person can be a member as both a creditor and a contributory.

(3) A body corporate or a partnership may be a member of a committee, but it cannot act otherwise than by a representative appointed under rule 10.17.

Establishment of committees

10.5.—(1) Where the creditors, or where applicable, contributories, decide that a creditors' or liquidation committee should be established, the convener or chair of the decision procedure or the convener of the deemed consent process (if not the office-holder) must—

(a) as soon as reasonably practicable deliver a notice of the decision to the office-holder (or to the person appointed as office-holder); and

(b) where a decision has also been made as to membership of the committee, inform the office-holder of the names and addresses of the persons elected to be members of the committee.

(2) Before a person may act as a member of the committee that person must agree to do so.

(3) A person's proxy-holder attending a meeting establishing the committee or, in the case of a body corporate or partnership, its duly appointed representative, may give such agreement (unless the proxy or instrument conferring authority contains a statement to the contrary).

(4) Where a decision has been made to establish a committee but not as to its membership, the office-holder must seek a decision from the creditors (about creditor members of the committee) and, where appropriate in a winding up by the court, a decision from contributories (about contributory members of the committee).

(5) The committee is not established (and accordingly cannot act) until the office-holder has delivered a notice of its membership in accordance with paragraph (9).

(6) The notice must contain the following—

(a) a statement that the committee has been duly constituted;

(b) identification details for any company that is a member of the committee;

(c) the full name and address of each member that is not a company.

(7) The notice must be authenticated and dated by the office-holder.

(8) The notice must be delivered as soon as reasonably practicable after the minimum number of persons required by rule 10.3 have agreed to act as members and been elected.

(9) The office-holder must, as soon as reasonably practicable, deliver the notice to AiB.

Liquidation committee established by contributories

10.6.—(1) This rule applies where, under section 142, the creditors do not decide that a liquidation committee should be established, or decide that a committee should not be established.

(2) The contributories may decide to appoint one of their number to make application to the court for an order requiring the liquidator to seek a further decision from the creditors on whether to establish a liquidation committee; and—

(a) the court may, if it thinks that there are special circumstances to justify it, make such an order; and

(b) the creditors' decision sought by the liquidator in compliance with the order is deemed to have been a decision under section 142.

(3) If the creditors decide under paragraph (2)(b) not to establish a liquidation committee, the contributories may establish a committee.

(4) The committee must then consist of at least 3, and not more than 5, contributories elected by the contributories; and rule 10.5 applies, substituting for the reference to rule 10.3 in rule 10.5(8) a reference to this paragraph.

Notice of change of membership of a committee

10.7.—(1) If there is a change in membership of the committee, the office-holder must deliver a notice to AiB, as soon as reasonably practicable.

(2) The notice must contain—

(a) the date of the original notice in respect of the constitution of the committee and the date of the last notice of membership given under this rule (if any);

(b) a statement that this notice of membership replaces the previous notice;

(c) identification details for any company that is a member of the committee;

(d) the full name and address of any member that is not a company;

(e) a statement whether any member has become a member since the issue of the previous notice;

(f) the identification details for a company or otherwise the full name of any member named in the previous notice who is no longer a member and the date the membership ended.

(3) The notice must be authenticated and dated by the office-holder.

Vacancies: creditor members of creditors' or liquidation committee

10.8.—(1) This rule applies if there is a vacancy among the creditor members of a creditors' or liquidation committee or where the number of creditor members of the committee is fewer than the maximum allowed.

(2) A vacancy need not be filled if—

(a) the office-holder and a majority of the remaining creditor members agree; and

(b) the total number of creditor members does not fall below 3.

(3) The office-holder may appoint a creditor, who is qualified under rule 10.4 to be a member of the committee, to fill a vacancy or as an additional member of the committee, if—

(a) the remaining creditor members of the committee (provided there are at least 2) agree in accordance with paragraph (4) to the appointment; and

(b) the creditor agrees to act.

(4) Where there are only 2 remaining members of the committee, both must agree to the appointment, otherwise a majority must agree.

(5) Alternatively, the office-holder may seek a decision from creditors to appoint a creditor (with that creditor's consent) to fill the vacancy.

(6) Where the vacancy is filled by an appointment made by a decision of creditors which is not chaired or convened by the office-holder, the chair or convenor must report the appointment to the office-holder.

Vacancies: contributory members of liquidation committee

10.9.—(1) This rule applies if there is a vacancy among the contributory members of a liquidation committee or where the number of contributory members of the committee is fewer than the maximum allowed under rule 10.3(3)(b) or 10.6(4) as the case may be.

(2) A vacancy need not be filled if—

(a) the liquidator and a majority of the remaining contributory members agree; and

(b) in the case of a committee of contributories only, the number of members does not fall below 3.

(3) The liquidator may appoint a contributory to be a member of the committee, to fill a vacancy or as an additional member of the committee, if—

(a) a majority of the remaining contributory members of the committee (provided there are at least 2) agree to the appointment; and

(b) the contributory agrees to act.

(4) Alternatively, the office-holder may seek a decision from contributories to appoint a contributory (with that contributory's consent) to fill the vacancy.

(5) Where the vacancy is filled by an appointment made by a decision of contributories which is not convened or chaired by the office-holder, the convener or chair must report the appointment to the office-holder.

Resignation

10.10. A member of a committee may resign by informing the office-holder in writing.

Termination of membership

10.11. A person's membership of a committee is automatically terminated if that person—

(a) becomes bankrupt or that person's estate is sequestrated, as the case may be, in which case the trustee in bankruptcy or the trustee in the sequestration replaces the person bankrupt or sequestrated as a member of the committee;

(b) grants a trust deed for the benefit of creditors;

(c) makes a composition with creditors;

(d) is a person to whom a moratorium under a debt relief order applies;

(e) neither attends nor is represented at 3 consecutive meetings (unless it is resolved at the third of those meetings that this rule is not to apply in that person's case);

(f) has ceased to satisfy the criteria set out in rule 10.4 for eligibility to be a member of the committee;

(g) ceases to be a creditor or is found never to have been a creditor;

(h) ceases to be a contributory or is found never to have been a contributory.

Removal

10.12. A creditor member of a committee may be removed by a decision of the creditors through a decision procedure and in the case of a liquidation committee a contributory member of the committee may be removed by a decision of contributories through a decision procedure.

Cessation of liquidation committee in a winding up when creditors are paid in full

10.13.—(1) Where the creditors have been paid in full together with interest in accordance with section 189, the liquidator must deliver to AiB a notice to that effect.

(2) On the delivery of the notice the liquidation committee ceases to exist.

(3) The notice must—

(a) identify the liquidator;

(b) contain a statement by the liquidator certifying that the creditors of the company have been paid in full with interest in accordance with section 189; and

(c) be authenticated and dated by the liquidator.

CHAPTER 4

Meetings of Committee

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

Meetings of committee

10.14.—(1) Meetings of the committee must be held when and where determined by the office-holder.

(2) The office-holder must call a first meeting of the committee to take place within 6 weeks of the committee's establishment.

(3) After the calling of the first meeting, the office-holder must call a meeting—

(a) if so requested by a member of the committee or a member's representative (the meeting then to be held within 21 days of the request being received by the office-holder); and

(b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

(4) The office-holder must give 5 business days' notice of the venue of a meeting to each member of the committee (or a member's representative, if designated for that purpose), except where the requirement for notice has been waived by or on behalf of a member.

(5) Waiver may be signified either at or before the meeting.

The chair at meetings

10.15. The chair at a meeting of a committee must be the office-holder or an appointed person.

Quorum

10.16. A meeting of a committee is duly constituted if due notice of it has been delivered to all the members, and at least 2 of the members are in attendance or represented.

Committee members' representatives

10.17.—(1) A member of the committee may, in relation to the business of the committee, be represented by another person duly authorised by the member for that purpose.

(2) A person acting as a committee member's representative must hold a letter of authority entitling that person to act (either generally or specifically) and authenticated by or on behalf of the committee member.

(3) A proxy or an instrument conferring authority (in respect of a person authorised to represent a body corporate or a partnership) is to be treated as a letter of authority to act generally (unless the proxy or instrument conferring authority contains a statement to the contrary).

(4) The chair at a meeting of the committee may call on a person claiming to act as a committee member's representative to produce a letter of authority, and may exclude that person if no letter of authority is produced at or by the time of the meeting or if it appears to the chair that the authority is deficient.

(5) A committee member may not be represented by—

(a) another member of the committee;

(b) a person who is at the same time representing another committee-member;

(c) a body corporate;

(d) a partnership;

(e) an undischarged bankrupt;

(f) a person whose estate has been sequestrated and who has not been discharged;

(g) a person who has granted a trust deed for the benefit of creditors;

(h) a person who has made a composition with creditors;

(i) a person to whom a moratorium period under a debt relief order applies;

(j) a person who is subject to a company directors disqualification order or a company directors disqualification undertaking; or

(k) a person who is subject to a bankruptcy restrictions order (including an interim order), a bankruptcy restrictions undertaking, a debt relief restrictions order (including an interim order) or a debt relief restrictions undertaking.

(6) Where a representative authenticates any document on behalf of a committee member the fact that the representative authenticates as a representative must be stated below the authentication.

Voting rights and resolutions

10.18.—(1) At a meeting of the committee, each member (whether the member is in attendance or is represented by a representative) has one vote.

(2) A resolution is passed when a majority of the members attending or represented have voted in favour of it.

(3) Every resolution passed must be recorded in writing and authenticated by the chair, either separately or as part of the minutes of the meeting.

Resolutions by correspondence

10.19.—(1) The office-holder may seek to obtain the agreement of the committee to a resolution by delivering to every member (or the member's representative designated for the purpose) details of the proposed resolution.

(2) The details must be set out in such a way that the recipient may indicate agreement or dissent and where there is more than one resolution may indicate agreement to or dissent from each one separately.

(3) A member of the committee may, within 5 business days from the delivery of details of the proposed resolution, require the office-holder to summon a meeting of the committee to consider the matters raised by the proposed resolution.

(4) In the absence of such a request, the resolution is passed by the committee if a majority of the members (excluding a member or member's representative who is to participate directly or

indirectly in a transaction (see rule 10.25(4)) deliver notice to the office-holder that they agree with the resolution.

Remote attendance at meetings of committee

10.20.—(1) Where the office-holder considers it appropriate, a meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(2) A person attends such a meeting who is able to exercise that person's right to speak and vote at the meeting.

(3) A person is able to exercise the right to speak at a meeting when that person is in a position to communicate during the meeting to all those attending the meeting any information or opinions which that person has on the business of the meeting.

(4) A person is able to exercise the right to vote at a meeting when—

(a) that person is able to vote, during the meeting, on resolutions or determinations put to the vote at the meeting; and

(b) that person's vote can be taken into account in determining whether or not such resolutions or determinations are passed at the same time as the votes of all the other persons attending the meeting.

(5) Where such a meeting is to be held the office-holder must make whatever arrangements the office-holder considers appropriate to—

(a) enable those attending the meeting to exercise their rights to speak or vote; and

(b) verify the identity of those attending the meeting and to ensure the security of any electronic means used to enable attendance.

(6) A requirement in these Rules to specify a place for the meeting may be satisfied by specifying the arrangements the office-holder proposes to enable persons to exercise their rights to speak or vote where in the reasonable opinion of the office-holder—

(a) a meeting will be attended by persons who will not be present together at the same place; and

(b) it is unnecessary or inexpedient to specify a place for the meeting.

(7) In making the arrangements referred to in paragraph (6) and in forming the opinion referred to in paragraph (6)(b), the office-holder must have regard to the legitimate interests of the committee members or their representatives attending the meeting in the efficient despatch of the business of the meeting.

(8) Where the notice of a meeting does not specify a place for the meeting the office-holder must specify a place for the meeting if at least one member of the committee requests the office-holder to do so in accordance with rule 10.21.

Procedure for requests that a place for a meeting should be specified

10.21.—(1) This rule applies to a request to the office-holder under rule 10.20(8) to specify a place for the meeting.

(2) The request must be made within 3 business days of the date on which the office-holder delivered the notice of the meeting in question.

(3) Where the office-holder considers that the request has been properly made in accordance with this rule, the office-holder must—

(a) deliver notice to all those previously given notice of the meeting—

(i) that it is to be held at a specified place; and

(ii) as to whether the date and time are to remain the same or not;

(b) fix a venue for the meeting, the date of which must be not later than 7 business days after the original date for the meeting; and

(c) give 3 business days' notice of the venue to all those previously given notice of the meeting.

(4) The notices required by sub-paragraphs (a) and (c) may be delivered at the same or different times.

(5) Where the office-holder has specified a place for the meeting in response to the request under rule 10.20(8), the chair of the meeting must attend the meeting by being present in person at that place.

CHAPTER 5

Supply of information by the office-holder to the committee

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

Notice requiring office-holder to attend the creditors' committee (receivership: section 68(2))

[Note: in a receivership section 68(2) enables the creditors' committee to require the receiver to attend the committee or provide the committee with information.]

10.22.—(1) This rule applies where a committee in a receivership resolves under section 68(2) to require the attendance of the receiver.

(2) The notice delivered to the office-holder requiring the receiver's attendance must be—

(a) accompanied by a copy of the resolution; and

(b) authenticated by a member of the committee.

(3) A member's representative may authenticate the notice for the member.

(4) The meeting at which the receiver's attendance is required must be fixed by the committee for a business day, and must be held at such time and place as the receiver determines.

(5) Where the receiver so attends, the committee may elect one of their number to be chair of the meeting in place of the receiver or the appointed person.

Office-holder's obligation to supply information to the committee (winding up)

10.23.—(1) This rule applies in relation to a creditors' voluntary winding up and a winding up by the court.

(2) The liquidator must deliver a report to every member of the liquidation committee containing the information required by paragraph (3)—

(a) not less than once in every period of 6 months (unless the committee agrees otherwise); and

(b) when directed to do so by the committee.

(3) The required information is a report setting out—

(a) the position generally in relation to the progress of the insolvency proceedings; and

(b) any matters arising in connection with them to which the office-holder considers the committee's attention should be drawn.

(4) The liquidator must, as soon as reasonably practicable after being directed by the committee—

(a) deliver any report directed under paragraph (2)(b);

(b) comply with a request by the committee for information.

(5) However the liquidator need not comply with such a direction where it appears to the office-holder that—

(a) the direction is frivolous or unreasonable;

(b) the cost of complying would be excessive, having regard to the relative importance of the information; or

(c) there are insufficient assets to enable the liquidator to comply.

(6) Where the committee has come into being more than 28 days after the appointment of the liquidator, the liquidator must make a summary report to the members of the committee of what actions the liquidator has taken since the liquidator's appointment, and must answer such questions as they may put to the liquidator relating to the liquidator's conduct of the proceedings so far.

(7) A person who becomes a member of the committee at any time after its first establishment is not entitled to require a report under this rule by the liquidator of any matters previously arising, other than a summary report.

(8) Nothing in this rule disentitles the committee, or any member of it, from having access to the liquidator's sederunt book, or from seeking an explanation of any matter within the committee's responsibility.

CHAPTER 6

Miscellaneous

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

Expenses of members etc.

10.24.—(1) The office-holder must pay, as an expense of the insolvency proceedings, the reasonable travelling expenses directly incurred by members of the committee or their representatives in attending the committee's meetings or otherwise on the committee's business.

(2) The requirement for the office-holder to pay the expenses does not apply to a meeting of the committee held within 6 weeks of a previous meeting, unless the meeting is summoned by the office-holder.

Dealings by committee members and others: winding up

10.25.—(1) This rule applies in a creditors' voluntary winding up and a winding up by the court to a person who is, or has been in the preceding 12 months—

(a) a member of the committee;

(b) a member's representative; or

(c) an associate of a member, or of a member's representative.

(2) Such a person must not enter into a transaction as a result of which that person would—

(a) receive out of the company's assets any payment for services given or goods supplied in connection with the liquidation;

(b) obtain a profit from the liquidation; or

(c) acquire any part of the company's assets.

(3) However such a transaction may be entered into—

(a) with the prior sanction of the committee, where it is satisfied (after full disclosure of the circumstances) that the person will be giving full value in the transaction;

(b) with the prior permission of the court; or

(c) if that person does so as a matter of urgency, or by way of performance of a contract in force before the date on which the company went into liquidation, and that person obtains the court's permission for the transaction, having applied for it without undue delay.

(4) Neither a member nor a representative of a member who is to participate directly or indirectly in a transaction may vote on a resolution to sanction that transaction.

(5) The court may, on the application of an interested person—

(a) set aside a transaction which appears to it to be contrary to this rule; and

(b) make such other order about the transaction as it thinks just, including an order requiring a person to whom this rule applies to account for any profit obtained from the transaction and compensate the insolvent estate for any resultant loss.

(6) The court will not make an order under the previous paragraph in respect of an associate of a member of the committee or an associate of a member's representative, if satisfied that the associate or representative entered into the relevant transaction without having any reason to suppose that in doing so the associate or representative would contravene this rule.

(7) The costs of the application are not payable as an expense of the liquidation unless the court orders otherwise.

Dealings by committee members and others: receivership

10.26.—(1) This rule applies in a receivership.

(2) Membership of the committee does not prevent a person from dealing with the company provided that a transaction is in good faith and for value.

(3) The court may, on the application of an interested person—

(a) set aside a transaction which appears to it to be contrary to this rule; and

(b) make such other order about the transaction as it thinks just including an order requiring a person to whom this rule applies to account for any profit obtained from the transaction and compensate the company for any resultant loss.

Formal defects

10.27. The acts of a creditors' committee or a liquidation committee are valid notwithstanding any defect in the appointment, election or qualifications of a member of the committee or a committee member's representative or in the formalities of its establishment.

Special rule for winding up by the court: functions vested in the court

10.28. At any time when the functions of a committee in a winding up by the court are vested in the court under section 142(5), requirements of the Act or these Rules about notices to be delivered, or reports to be made, to the committee by the liquidator do not apply, otherwise than as enabling the committee to require a report as to any matter.

CHAPTER 7

Winding up by the court following an administration

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

Continuation of creditors' committee

[Note: paragraph 83(8)(f) of schedule B1 makes provision for the liquidation committee to continue where the administration is followed by a creditors' voluntary winding up.]

10.29.—(1) This rule applies where—

(a) a winding-up order has been made by the court on the application of the administrator under paragraph 79 of schedule B1(**102**);

(b) the court makes an order under section 140(1) appointing the administrator as the liquidator; and

(c) a creditors' committee was in existence immediately before the winding-up order was made.

(2) The creditors' committee shall continue in existence after the date of the order as if appointed as a liquidation committee under section 142(**103**).

(3) However, subject to rule 10.8(3)(a), the committee cannot act until—

(a) the minimum number of persons required by rule 10.3 have agreed to act as members of the liquidation committee (including members of the former creditors' committee and any other who may be appointed under rule 10.8); and

(b) the liquidator has delivered a notice of continuance of the committee to AiB.

(4) The notice must be delivered as soon as reasonably practicable after the minimum number of persons required have agreed to act as members or, if applicable, been appointed.

(5) The notice must contain—

(a) a statement that the former creditors' committee is continuing in existence;

(b) identification details for any company that is a member of the committee; and

(c) the full name and address of each member that is not a company.

(6) The notice must be authenticated and dated by the liquidator.

PART 11

THE EU REGULATION

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

Interpretation of this Part

11.1. In this Part—

"winding up proceedings" means winding up proceedings listed in the United Kingdom entry in Annex A to the EU Regulation;

"conversion into winding up proceedings" refers to an order under Article 51 of the EU Regulation (conversion of secondary insolvency proceedings) that winding up proceedings of one kind are converted into winding up proceedings of another kind.

(**102**) Paragraph 79(2)(c) is prospectively amended by paragraph 10(29) of schedule 9 of the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act").

(**103**) Section 142, subsections (1) to (4) are prospectively substituted by paragraph 37 of schedule 9 of the 2015 Act.

Conversion into other winding up proceedings: application

11.2.—(1) This rule applies where a member State liquidator in main proceedings applies to the court under Article 51 of the EU Regulation for conversion of winding up proceedings of one kind into winding up proceedings of another kind.

(2) A statement containing a statutory declaration made by or on behalf of the member State liquidator must be lodged with the court in support of the application.

(3) The statement must state—

(a) that main proceedings have been opened in relation to the company in a member State other than the United Kingdom;

(b) the belief of the person making the statement that conversion into other winding up proceedings would be most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings;

(c) the kind of winding up proceedings into which, in the opinion of the person making the statement, the winding up proceedings should be converted; and

(d) all other matters that, in the opinion of the member State liquidator, would assist the court in—

(i) deciding whether to make such an order, and

(ii) considering whether and, if so, what consequential provision to include.

(4) The application and the statement must be served upon the company.

Conversion into winding up proceedings: court order

11.3.—(1) On hearing an application for conversion of winding up proceedings under rule 11.2, the court may, subject to Article 51 of the EU Regulation, make such order as it thinks just.

(2) An order for conversion into winding up proceedings may—

(a) provide that the company be wound up as if a resolution for voluntary winding up under section 84 were passed on the day on which the order is made; and

(b) contain such consequential provisions as the court thinks just.

Confirmation of creditors' voluntary winding up: application

11.4.—(1) This rule applies where—

(a) a company has passed a resolution for voluntary winding up, and either—

(i) no declaration of solvency has been made in accordance with section 89, or

(ii) a declaration made under section 89—

(aa) has no effect by virtue of section 89(2), or

(bb) is treated as not having been made by virtue of section 96(**104**); or

(b) a company has moved from administration to creditors' voluntary winding up in accordance with paragraph 83 of schedule B1(**105**).

(2) The liquidator may apply to court for an order confirming the winding up as a creditors' voluntary winding up for the purposes of the EU Regulation.

(3) The application must be supported by a statement containing a statutory declaration made by the liquidator which must contain—

(**104**) A new section 96 is prospectively substituted by paragraph 20 of schedule 9 of the 2015 Act.

(**105**) Paragraph 83 sub-paragraphs (1)(b) and (2)(b) are prospectively amended by section 128(3) of the 2015 Act and sub-paragraphs (5)(b) and (8)(d) amended by paragraph 10(31) and (32) of schedule 9 of that Act.

(a) identification details for the liquidator and the company;

(b) the date on which the resolution for voluntary winding up was passed;

(c) a statement that the application is accompanied by the documents required by paragraph (4);

(d) a statement that the documents required by paragraph (4)(c) and (d) are true copies of the originals; and

(e) a statement whether the proceedings will be main proceedings, secondary proceedings or territorial proceedings and the reasons for so stating.

(4) The liquidator must lodge with the court—

(a) 2 copies of the application;

(b) evidence of having been appointed liquidator of the company;

(c) a copy of—

(i) the resolution for voluntary winding up, or

(ii) the notice of moving from administration to creditors' voluntary winding up sent by the administrator to the registrar of companies under paragraph 83(3) of schedule B1; and

(d) a copy of—

(i) the statement of affairs required by section 99(**106**) or under paragraph 47 of schedule B1, or

(ii) the information included in the administrator's statement of proposals under paragraph 49 of schedule B1.

Confirmation of creditors' voluntary winding up: court order

11.5.—(1) On an application under the preceding rule, the court may make an order confirming the creditors' voluntary winding up.

(2) It may do so without a hearing.

Confirmation of creditors' voluntary winding up: notice to member State liquidator

11.6.—(1) Where the court has confirmed the creditors' voluntary winding up, the liquidator must as soon as reasonably practicable give notice to any member State liquidator appointed in relation to the company.

(2) Paragraph (1) is without prejudice to the liquidator's obligation in Article 54 of the EU Regulation (duty to inform creditors in other member States) in relation to the creditors' voluntary winding up.

Proceedings in another member State: duty to give notice

11.7.—(1) This rule applies where a liquidator or provisional liquidator is required to give notice, or provide a copy of a document (including an order of court), to the court or the registrar of companies.

(2) Where not already required to do so by Article 41 of the EU Regulation, the liquidator or provisional liquidator must also give notice or provide a copy to—

(a) any member State liquidator; or

(**106**) Section 99 subsections (1) and (3) are prospectively substituted by new subsections (1) and (3) by paragraph 23 of schedule 9 of the 2015 Act.

(b) where the liquidator or provisional liquidator knows that an application has been made to commence insolvency proceedings in another member State but a member State liquidator has not yet been appointed to the court to which that application has been made.

Member State liquidator: rules on creditors' participation in proceedings

11.8.—(1) The provisions in these Rules apply to a member State liquidator's participation in proceedings in accordance with Article 45 of the EU Regulation (exercise of creditors' rights) in the same manner as they do to creditors' participation in those proceedings.

(2) In this rule, "creditors' participation"—

(a) includes the following matters:—

(i) requesting and being provided with information, including inspecting or obtaining copies of documents or files,

(ii) being provided with notices or other documents,

(iii) participating and voting in decision procedures,

(iv) the establishment and operation of creditor committees,

(v) submitting statements of claim and documentary evidence of debt in respect of debts and receipt of dividends, and

(vi) applying to the court and appearing at hearings; and

(b) is limited to creditors' participation from the time of the opening of proceedings in accordance with Article 2(8) of the EU Regulation.

Main proceedings in Scotland: undertaking in respect of assets in another member State (Article 36 of the EU Regulation)

11.9.—(1) This rule applies where a liquidator or provisional liquidator in main proceedings proposes to give an undertaking under Article 36 of the EU Regulation in respect of assets located in another member State.

(2) In addition to the requirements as to form and content set out in Article 36, the undertaking must contain—

(a) the heading "Proposed Undertaking under Article 36 of the EU Insolvency Regulation (2015/848)";

(b) identification details for the main proceedings;

(c) identification and contact details for the liquidator or provisional liquidator; and

(d) a description of the effect of the undertaking if approved.

(3) The proposed undertaking must be delivered to all the local creditors in the member State concerned of whose address the liquidator or provisional liquidator is aware.

(4) Where the undertaking is rejected the liquidator or provisional liquidator must inform all the creditors of the company of the rejection of the undertaking as soon as reasonably practicable.

(5) Where the undertaking is approved the liquidator or provisional liquidator must as soon as reasonably practicable—

(a) send a copy of the undertaking to all the creditors with a notice informing them of the approval of the undertaking and of its effect (so far as they have not already been given this information under paragraph (2)(d));

(b) where the insolvency proceedings relate to a registered company, deliver a copy of the undertaking to the registrar of companies.

(6) The liquidator or provisional liquidator may advertise details of the undertaking in the other member State in such manner as the office-holder thinks fit.

Main proceedings in another member State: approval of undertaking offered by the member State liquidator to local creditors in the UK

11.10.—(1) This rule applies where a member State liquidator proposes an undertaking under Article 36 of the EU Regulation and the secondary proceedings which the undertaking is intended to avoid would be winding up proceedings to which these Rules apply.

(2) The decision by the local creditors whether to approve the undertaking must be made by a decision procedure subject to the rules which apply to the approval of a proposed CVA under section 4A(**107**) of the Act.

(3) The rules in Chapters 1 to 9 of Part 5 of the CVA and Administration Rules 2018 apply to the decision procedure (with any necessary modifications) except for the following— 5.7, 5.12, 5.14, 5.16 to 5.18 and 5.27.

(4) Where the main proceedings relate to a registered company the member State liquidator must deliver a copy of the approved undertaking to the registrar of companies.

Powers of a liquidator, provisional liquidator or member State liquidator in proceedings concerning members of a group of companies (Article 60 of the EU Regulation)

11.11. Where a liquidator or provisional liquidator or a member State liquidator makes an application in accordance with paragraph (1)(b) of Article 60 of the EU Regulation the application must state with reasons why the applicant thinks the matters set out in points (i) to (iv) of that paragraph apply.

Group coordination proceedings (Section 2 of Chapter 5 of the EU Regulation)

11.12.—(1) An application to open group coordination proceedings must be headed "Application under Article 61 of Regulation (EU) 2015/848 to open group coordination proceedings".

(2) The application must, in addition to the requirements in Article 61 of the EU Regulation, contain—

(a) identification and contact details for the liquidator or provisional liquidator making the application;

(b) identification details for the company and the insolvency proceedings by virtue of which the liquidator or provisional liquidator is making the application;

(c) identification details for the company and the insolvency proceedings in respect of each company which is a member of the group;

(d) contact details for the office-holders and member state liquidators appointed in those proceedings;

(e) identification details for any insolvency proceedings in respect of a member of the group which are not to be subject to the coordination because of an objection to being included; and

(f) if relevant, a copy of any such agreement as is mentioned in Article 66 of the EU Regulation.

(3) An "office-holder" in paragraph (2)(d) includes a person holding office in insolvency proceedings in relation to the company in England and Wales or Northern Ireland.

(**107**) Section 4A was inserted by paragraph 5 of schedule 2 of the Insolvency Act 2000 (c.39) and paragraph 5 of schedule 18 of the Financial Services Act 2012 (c.21) and prospectively amended by paragraph 5 of schedule 9 of the 2015 Act.

Group coordination order (Article 68 of the EU Regulation)

11.13.—(1) An order opening group coordination proceedings must also contain—

(a) details of the matters set out in Article 68(1)(a) to (c) of the EU Regulation;

(b) identification details for the insolvency proceedings by virtue of which the liquidator or provisional liquidator is making the application;

(c) identification and contact details for the liquidator or provisional liquidator making the application;

(d) identification details for the insolvency proceedings which are subject to the coordination; and

(e) identification details for any insolvency proceedings for a member of the group which are not subject to the coordination because of an objection to being included.

(2) The liquidator or provisional liquidator must deliver a copy of the order to the coordinator and to any person who is, in respect of proceedings subject to the coordination—

(a) an office-holder,

(b) a person holding office in insolvency proceedings in relation to the company in England and Wales or Northern Ireland, and

(c) a member State liquidator.

Delivery of group coordination order to registrar of companies

11.14. A liquidator or provisional liquidator in respect of insolvency proceedings subject to coordination must deliver a copy of the group coordination order to the registrar of companies.

Liquidator or provisional liquidator's report

11.15.—(1) This rule applies where, under the second paragraph of Article 70(2) of the EU Regulation, a liquidator or provisional liquidator is required to give reasons for not following the coordinator's recommendations or the group coordination plan.

(2) Those reasons must be given as soon as reasonably practicable by a notice to all the creditors.

(3) Those reasons may be given in the next progress report where doing so satisfies the requirement to give the reasons as soon as reasonably practicable.

Publication of opening of proceedings by a member State liquidator

11.16.—(1) This rule applies where—

(a) a company subject to insolvency proceedings has an establishment in Scotland; and

(b) a member State liquidator is required or authorised under Article 28 of the EU Regulation to publish a notice.

(2) The notice must be gazetted.

Statement by member State liquidator that insolvency proceedings in another member State are closed etc.

11.17. A statement by a member State liquidator under any of sections 201, 204 or 205 informing the registrar of companies that the insolvency proceedings in another member State are closed or that the member State liquidator consents to the dissolution must contain—

(a) identification details for the company; and

(b) identification details for the member State liquidator.

PART 12

PERMISSION TO ACT AS DIRECTOR ETC. OF COMPANY WITH A PROHIBITED NAME (SECTION 216)

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

Preliminary

12.1. The rules in this Part—

(a) relate to permission required under section 216 (restriction on re-use of name of company in insolvent liquidation) for a person to act as mentioned in section 216(3) in relation to a company with a prohibited name;

(b) prescribe the cases excepted from that provision, that is to say, in which a person to whom the section applies may so act without that permission; and

(c) apply to all windings up to which section 216 applies.

Application for permission under section 216(3)

12.2. At least 14 days' notice of any application for permission to act in any of the circumstances which would otherwise be prohibited by section 216(3) must be given by the applicant to the Secretary of State, who may—

(a) appear at the hearing of the application; and

(b) whether or not appearing at the hearing, make representations.

Power of court to call for liquidator's report

12.3. When considering an application for permission under section 216, the court may call on the liquidator, or any former liquidator, of the liquidating company for a report of the circumstances in which the company became insolvent and the extent (if any) of the applicant's apparent responsibility for its doing so.

First excepted case

12.4.—(1) This rule applies where—

(a) a person ("the person") was within the period mentioned in section 216(1) a director, or shadow director, of an insolvent company that has gone into insolvent liquidation; and

(b) the person acts in all or any of the ways specified in section 216(3) in connection with, or for the purposes of, the carrying on (or proposed carrying on) of the whole or substantially the whole of the business of the insolvent company where that business (or substantially the whole of it) is (or is to be) acquired from the insolvent company under arrangements—

(i) made by its liquidator, or

(ii) made before the insolvent company entered into insolvent liquidation by an office-holder acting in relation to it as administrator, receiver or supervisor of a CVA.

(2) The person will not be taken to have contravened section 216 if prior to that person acting in the circumstances set out in paragraph (1) a notice is, in accordance with the requirements of paragraph (3),—

(a) given by the person, to every creditor of the insolvent company whose name and address—

(i) is known by that person, or

(ii) is ascertainable by that person on the making of such enquiries as are reasonable in the circumstances; and

(b) published in the Gazette.

(3) The notice referred to in paragraph (2)—

(a) may be given and published before the completion of the arrangements referred to in paragraph (1)(b) but must be given and published no later than 28 days after their completion;

(b) must contain—

(i) identification details for the company,

(ii) the name and address of the person,

(iii) a statement that it is the person's intention to act (or, where the insolvent company has not entered insolvent liquidation, to act or continue to act) in all or any of the ways specified in section 216(3) in connection with, or for the purposes of, the carrying on of the whole or substantially the whole of the business of the insolvent company,

(iv) the prohibited name or, where the company has not entered into insolvent liquidation, the name under which the business is being, or is to be, carried on which would be a prohibited name in respect of the person in the event of the insolvent company entering insolvent liquidation,

(v) a statement that the person would not otherwise be permitted to undertake those activities without the leave of the court or the application of an exception created by Rules made under the Insolvency Act 1986,

(vi) a statement that breach of the prohibition created by section 216 is a criminal offence, and

(vii) a statement as set out in rule 12.5 of the effect of issuing the notice under rule 12.4(2);

(c) where the company is in administration, has a receiver appointed or is subject to a CVA,—

(i) the date that the company entered administration, had a receiver appointed or a CVA approved (whichever is the earliest), and

(ii) a statement that the person was a director of the company on that date; and

(d) where the company is in insolvent liquidation,—

(i) the date that the company entered insolvent liquidation, and

(ii) a statement that the person was a director of the company during the 12 months ending with that date.

(4) Notice may in particular be given under this rule—

(a) prior to the insolvent company entering insolvent liquidation where the business (or substantially the whole of the business) is, or is to be, acquired by another company under arrangements made by an office-holder acting in relation to the insolvent company as administrator, receiver or supervisor of a CVA (whether or not at the time of the giving of the notice the person is a director of that other company); or

(b) at a time when the person is a director of another company where—

(i) the other company has acquired, or is to acquire, the whole, or substantially the whole, of the business of the insolvent company under arrangements made by its liquidator, and

(ii) it is proposed that after the giving of the notice a prohibited name should be adopted by the other company.

(5) Notice may not be given under this rule by a person who has already acted in breach of section 216.

Statement as to the effect of the notice under rule 12.4(2)

12.5. The statement as to the effect of the notice under rule 12.4(2) must be as set out below—

"Section 216(3) of the Insolvency Act 1986 lists the activities that a director of a company that has gone into insolvent liquidation may not undertake unless the court gives permission or there is an exception in the Insolvency Rules made under the Insolvency Act 1986. (This includes the exceptions in Part 12 of the Insolvency (Scotland) (Receivership and Winding up) Rules 2018.) These activities are—

(a) acting as a director of another company that is known by a name which is either the same as a name used by the company in insolvent liquidation in the 12 months before it entered liquidation or is so similar as to suggest an association with that company;

(b) directly or indirectly being concerned or taking part in the promotion, formation or management of any such company; or

(c) directly or indirectly being concerned in the carrying on of a business otherwise than through a company under a name of the kind mentioned in (a) above.

This notice is given under rule 12.4 of the Insolvency (Scotland) (Receivership and Winding up) Rules 2018 where the business of a company which is in, or may go into, insolvent liquidation is, or is to be, carried on otherwise than by the company in liquidation with the involvement of a director of that company and under the same or a similar name to that of that company.

The purpose of giving this notice is to permit the director to act in these circumstances where the company enters (or has entered) insolvent liquidation without the director committing a criminal offence and in the case of the carrying on of the business through another company, being personally liable for that company's debts.

Notice may be given where the person giving the notice is already the director of a company which proposes to adopt a prohibited name.".

Second excepted case

12.6.—(1) Where a person to whom section 216 applies as having been a director or shadow director of the liquidating company applies for permission of the court under that section not later than 7 business days from the date on which the company went into liquidation, the person may, during the period specified in paragraph (2) below, act in any of the ways mentioned in section 216(3), notwithstanding that the person does not have the permission of the court under that section.

(2) The period referred to in paragraph (1) begins with the day on which the company goes into liquidation and ends either on the day falling 6 weeks after that date or on the day on which the court disposes of the application for permission under section 216, whichever of those days occurs first.

Third excepted case

12.7. The court's permission under section 216(3) is not required where the company there referred to though known by a prohibited name within the meaning of the section—

(a) has been known by that name for the whole of the period of 12 months ending with the day before the liquidating company went into liquidation; and

(b) has not at any time in those 12 months been dormant within the meaning of section 1169(1), (2) and (3)(a) of the Companies Act(**108**).

St Andrew's House,
Edinburgh
13th November 2018

JAMIE HEPBURN
Authorised to sign by the Scottish Ministers

(**108**)2006 c.46; section 1169 is modified for Limited Liability Partnerships by S.I. 2008/1911, regulation 53.