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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 347**

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

**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) <sup>M1</sup> by an instrument of appointment under section 53(1) <sup>M2</sup>.

(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).

#### Marginal Citations

- M1** [Section 51\(1\)](#) was amended by [S.S.I. 2011/140](#).
- M2** [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 <sup>M3</sup>.

(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.

#### Marginal Citations

- M3** [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.

### 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) <sup>M4</sup>

**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;
  - (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.

#### Marginal Citations

**M4** 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.

## 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 <sup>M5</sup>

**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;
  - (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.

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**Marginal Citations**

**M5** 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.

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))**<sup>M6</sup>

**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).

(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.

#### **Marginal Citations**

**M6** 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.

### **Statement of affairs: contents and delivery (section 66(2))**<sup>M7</sup>

**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;
  - (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)<sup>M8</sup> 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.

#### Marginal Citations

**M7** 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.

**M8** Section 66(2) is prospectively amended to require a statutory declaration by S.S.I. 2016/141, [article 4](#).

### **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—

(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) <sup>M9</sup>**

**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 <sup>M10</sup> 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.

(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.

#### **Marginal Citations**

**M9** 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.

**M10** [Section 176A](#) was inserted by the [Enterprise Act 2002 \(c.40\)](#), [section 252](#).

#### **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))<sup>M11</sup>**

**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.

#### **Marginal Citations**

**M11** 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.

### **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.]

### **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**<sup>M12</sup>

**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
- (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.

#### **Marginal Citations**

**M12** 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.

### 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)<sup>M13</sup> 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.

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#### Marginal Citations

**M13** Section 176A was inserted by the Enterprise Act 2002 (c.40), section 252.

**Changes to legislation:**

There are currently no known outstanding effects for the The Insolvency (Scotland) (Receivership and Winding up) Rules 2018, PART 2.