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STATUTORY INSTRUMENTS

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**2018 No. 1082**

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

**PART 1**

SCOPE, INTERPRETATION, TIME AND RULES ABOUT DOCUMENTS

CHAPTER 9

Delivery of documents and opting out (sections 246C and 248A <sup>M1</sup>)

**Marginal Citations**

**M1** Section 246C was inserted by section 124(3) of the 2015 Act and section 248A was inserted by section 124(4) of the 2015 Act.

**Application of Chapter**

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

**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 1 and 2 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, except in accordance with paragraph 3.

(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) 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.

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(5) 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 1, 2, 4 or 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 1, 2, 4 or 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;
  - (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 to be 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, official address or 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 a.m. 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 five business days of receipt of the request.

### Use of website by office-holder to deliver a particular document (section 246B<sup>M2</sup>)

[Note: rule 3.54(3) allows notice of an extension to an administration to be given on a website and rule 2.25(6) does likewise in respect of notice of the result of the consideration of a proposal for a CVA]

#### Marginal Citations

**M2** Section 246B was inserted by S.I. 2010/18.

**1.44.**—(1) This rule applies for the purposes of section 246B.

(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 five business days of receipt of the request.

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

- (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 delivered 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

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- 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; and
  - (b) 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) creditors,
  - (c) any class of members 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 for a hard copy 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 five 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, 1.45, 2.24(7) and 3.54(3).

(2) Such a document must continue to be made available on the website until two 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 an administration is deemed to have submitted a statement of claim and documentary evidence of a debt in winding up proceedings which immediately preceded the administration.

(4) In a CVA, where a creditor has given written notification of a debt in accordance with rule 5.9(1)(b)(i), it need not be given again.

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