
STATUTORY INSTRUMENTS

2022 No. 1239

**The Payment and Electronic Money
Institution Insolvency (Scotland) Rules 2022**

PART 3

Process of Special Administration

CHAPTER 4

Meetings generally

Meetings generally

33. Except where different provision is made in the Regulations or these Rules, this Chapter applies to meetings called by the administrator—

- (a) under paragraph 51, 54(2) or 62,
- (b) following a request or a direction from the court under paragraph 56.

Venue

34.—(1) In fixing the venue for a meeting, the caller must have regard to the convenience of those attending.

(2) Meetings must be called for commencement between 10.00 and 16.00 hours on a business day (subject to any direction by the court).

(3) In this rule, “meeting” includes an adjourned meeting.

Notice of meeting by individual notice: when and where sent

35.—(1) This rule applies except where the court orders under rule 37 that notice of a meeting be given by advertisement only.

(2) Notice calling a meeting must be delivered at least fourteen days before the day fixed for the meeting as provided in paragraph (3).

(3) Notice must be sent—

- (a) for a meeting involving the creditors, to all the creditors of whose address the administrator is aware and who had claims against the institution at the date when it entered special administration (except for those who have subsequently been paid in full),
- (b) for a meeting involving the customers, to all customers of whose relevant funds claim the administrator is aware and has a means of contacting (except for those who have no outstanding relevant funds claims),
- (c) for a meeting of contributories, to every person appearing (by the institution’s books or otherwise) to be a contributory of the institution and of whose address the administrator is aware.

- (4) The FCA must also be notified of any such meeting.

Notice of meeting by individual notice: content and accompanying documents

36.—(1) This rule applies except where the court orders under rule 37 that notice of a meeting be given by advertisement only.

(2) Notice calling a meeting must specify the purpose of and venue for the meeting, the persons entitled to attend and vote at the meeting, and state that a creditor or customer (as the case may be) wishing to vote at the meeting must lodge a statement of claim (including relevant funds claims) and (if applicable) a proxy at or before the date fixed for the meeting.

- (3) A blank proxy complying with rule 88 must be sent out with every notice calling a meeting.

Notice of meeting by advertisement only

37.—(1) The court may order that notice of any meeting under these Rules be given by advertisement and not by individual notice to the persons concerned.

- (2) In considering whether so to order, the court must have regard to—

- (a) the cost of advertisement,
- (b) the amount of assets available,
- (c) the extent of the interest of creditors, customers, members and contributories or any particular class of them.

Content of notice for meetings

38. Notice of a meeting of the creditors, the customers or a meeting of creditors and customers, must contain the following information—

- (a) a statement that the proceedings are being held in the court and the court reference number,
- (b) the full name, registered address, registered number and any other trading names of the institution,
- (c) the full name and business address of the administrator,
- (d) details of the venue of the meeting,
- (e) whether the meeting is—
 - (i) an initial creditors’ and customers’ meeting under paragraph 51,
 - (ii) to consider revisions to the administrator’s proposals under paragraph 54(2),
 - (iii) a further creditors’, or creditors and customers’, or customers’ meeting under paragraph 56,
 - (iv) a meeting under paragraph 62,

unless the court orders that notice be given by advertisement only in accordance with rule 37.

Gazetting and advertisement of meetings

39.—(1) The administrator, in calling a meeting under these Rules, must have gazetted a notice which, in addition to the standard contents, must state—

- (a) that a meeting of—
 - (i) creditors,
 - (ii) customers,
 - (iii) creditors and customers,

- (iv) members, or
- (v) contributories

is to take place,

- (b) the venue fixed for the meeting,
- (c) the purpose of the meeting,
- (d) the time and date by which, and place at which, those attending who wish to vote must lodge proxies and (in the case of a meeting of creditors, customers or both) statements of claim.

(2) Notice under this rule must be gazetted before or as soon as is reasonably practicable after notice is given to those attending.

(3) Information to be gazetted under this rule may also be advertised in such other manner as the administrator thinks fit.

Non-receipt of notice of meeting

40. Where, in accordance with the Regulations or these Rules, a meeting is called by notice, the meeting is presumed to have been duly called and held, even if not all those to whom the notice is to be given have received it.

Requisition of meetings

41.—(1) A request for a requisitioned meeting must contain the following information—

- (a) a statement that the proceedings are being held in the court and the court reference number,
- (b) the full name, registered address and registered number of the institution,
- (c) the full name and address of the creditor requesting the meeting,
- (d) the full amount of that creditor's claim.

(2) The request for a requisitioned meeting must include a statement of the purpose of the proposed meeting and—

- (a) a list of the creditors concurring with the request and of the amounts of their respective claims, and written confirmation of concurrence from each creditor concurring, or
- (b) a statement that the requesting creditor's debt alone is sufficient without the concurrence of other creditors.

(3) A requisitioned meeting must be held within twenty-eight days of the date of the administrator's receipt of the notice.

(4) The administrator—

- (a) must notify the FCA of the details and purpose of the requisitioned meeting,
- (b) may, if the administrator thinks appropriate, summon customers to the requisitioned meeting.

Expenses of requisitioned meetings

42.—(1) The expenses of calling and holding a requisitioned meeting must be paid by the person who makes the request, who must deposit with the administrator caution for their payment.

(2) The sum to be deposited by way of caution must be such sum as the administrator may determine, and the administrator must not act without the deposit having been made.

(3) The meeting may resolve that the expenses of calling and holding it are to be payable out of the assets of the institution as an expense of the special administration.

(4) To the extent that any deposit made under this rule is not required for the payment of expenses of calling and holding the meeting, it must be repaid to the person who made it.

Quorum at meetings

43.—(1) A meeting of creditors, customers, creditors and customers or contributories is not competent to act unless a quorum is present.

(2) A quorum is—

- (a) in the case of a meeting of creditors, at least one creditor entitled to vote,
- (b) in the case of a meeting of customers, at least one customer entitled to vote,
- (c) in the case of a meeting of creditors and customers, at least one creditor and one customer who are each entitled to vote,
- (d) in the case of a meeting of contributories, at least two contributories so entitled, or all the contributories, if their number does not exceed two.

(3) For the purpose of this rule, the reference to the creditor, customer or contributories necessary to constitute a quorum is not confined to those persons present or duly represented in accordance with section 434B of the IA 1986 or under section 323 of the CA 2006(1) but includes those represented by proxy by any person (including the chair).

(4) Where—

- (a) the provisions of this rule as to a quorum being present are satisfied by the attendance of—
 - (i) the chair alone,
 - (ii) one other person in addition to the chair,
- (b) the chair is aware, by virtue of statements of claim and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote,

the meeting must not commence until at least the expiry of 15 minutes after the time appointed for its commencement.

Chair at meetings

44.—(1) At any meeting of the creditors, the customers, or creditors and customers summoned by the administrator, the administrator must be the chair, or a person nominated by the administrator in writing to act in the administrator's place.

(2) A person so nominated must be—

- (a) one who is qualified to act as an insolvency practitioner in relation to the institution, or
- (b) an employee of the administrator or the administrator's firm who is experienced in insolvency matters.

(3) Where the chair holds a proxy which includes a requirement to vote for a particular resolution and no other person proposes that resolution—

- (a) the chair must propose it unless the chair considers that there is good reason for not doing so,
- (b) if the chair does not propose it, the chair must as soon as is reasonably practicable after the meeting notify the principal of the reason why not.

(1) 2006 c. 46; section 323 was amended by S.I. 2009/1632.

Adjournment by chair

45.—(1) The chair may, and must if the meeting so resolves, adjourn the meeting to such time and place as seems to the chair to be appropriate in the circumstances.

(2) An adjournment under this rule must not be for a period of more than fourteen days, subject to any direction by the court.

(3) If there are further adjournments, the final adjournment must not be to a day later than fourteen days after the date on which the meeting was originally held.

(4) Rule 34 applies with regard to the venue fixed for a meeting adjourned under this rule.

(5) This rule does not apply to the initial meeting of creditors and customers.

Adjournment in absence of chair

46.—(1) If within 30 minutes from the time fixed for commencement of a meeting there is no person present to act as chair, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(2) If within 30 minutes from the time fixed for the commencement of the meeting those persons attending the meeting do not constitute a quorum, the chair may adjourn the meeting to such time and place as the chair may appoint.

Statements of claim and proxies in adjournment

47. Where a meeting under these Rules is adjourned, statements of claim and proxies may be used if lodged before the resumption of the adjourned meeting.

Suspension

48. Once only in the course of a meeting, the chair may, without an adjournment, declare it suspended for any period up to one hour.

Venue and conduct of company meetings

49.—(1) Where the administrator calls a meeting of members of the institution, the administrator must fix a venue for it having regard to the convenience of the members of the institution.

(2) The chair of the meeting must be the administrator or a person nominated by the administrator in writing to act in the administrator's place.

(3) A person so nominated must be—

(a) one who is qualified to act as an insolvency practitioner in relation to the institution, or

(b) an employee of the administrator or the administrator's firm who is experienced in insolvency matters.

(4) If within 30 minutes after the time fixed for commencement of the meeting there is no person present to act as chair, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(5) Subject to anything to the contrary in the Regulations and these Rules, the meeting must be called and conducted in accordance with the law of Scotland, including any applicable provision in or made under CA 2006.

(6) The chair of the meeting must ensure that minutes of its proceedings are entered in the institution's minute book and a copy placed in the sederunt book.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
