

Register of Insolvencies – Detailed Guidance on Insolvency Proceedings

(i) Whether jurisdiction for opening proceedings is based on Article 3(1), 3(2) or 3(4)

Unless otherwise stated, the jurisdiction for opening proceedings is based on Article 3(1), [Council Regulation \(EC\) 2015/848](#) on insolvency proceedings (the 'EU Regulations 2015').

(ii) Time limits for lodging claims/reference to criteria for calculating time limit

Creditors/Members Voluntary Winding Up/Winding up by Court

In accordance with rule 4.15, [Insolvency \(Scotland\) Rules 1986](#) – a creditor, in order to obtain an adjudication as to his entitlement to vote at any meeting; or to a dividend out of the assets of the company in respect of any accounting period, shall submit his claim to the liquidator: at or before the meeting; or, as the case may be, not later than 8 weeks before the end of the accounting period.

Creditor Petition/Debtor Application

[Section 122](#) of the [Bankruptcy \(Scotland\) Act 2016](#) ('2016 Act') provides that a creditor must submit a claim to the trustee in the sequestration in order to obtain an adjudication as to that person's entitlement to vote at a meeting of creditors other than the statutory meeting, or (so far as funds are available) to a dividend out of the debtor's estate in respect of any accounting period.

Where the claim is in relation to entitlement to vote, the claim must be submitted at or before the meeting. Where the claim is in relation to entitlement to a dividend, the claim must be submitted not later than the 'relevant day'.

The 'relevant day', in relation to a creditor, means— where notice is given to the creditor under section 44(3), the day which is 120 days after the day on which that notice is given, or where no such notice is given, the day which is 120 days after the day on which the trustee gives notice to the creditor inviting the submission of claims.

If a claim is submitted after the relevant day, the trustee may, in respect of any accounting period, provide an adjudication as to the creditor's entitlement (so far as funds are available) to a dividend out of the debtor's estate if the claim is submitted not later than 8 weeks before the end of the accounting period, and there were exceptional circumstances which prevented the claim from being submitted before the relevant day.

(iii) The court before which and, where applicable, the time limit within which a challenge of the decision opening insolvency proceedings is to be lodged in accordance with Article 5, or a reference to the criteria for calculating that time limit.

Article 5 of the EU Regulations 2015, concerns judicial review of the decision to open main insolvency proceedings. It states that;

1. The debtor or any creditor may challenge before a court the decision opening main insolvency proceedings on grounds of international jurisdiction.
2. The decision opening main insolvency proceedings may be challenged by parties other than those referred to in paragraph 1 or on grounds other than a lack of international jurisdiction where national law so provides.'

Winding up by Court

The Court of Session has jurisdiction to wind up any company registered in Scotland in accordance with [section 120\(1\)](#) of the [Insolvency Act 1986](#) (the '1986 Act'). It is specifically provided that the provisions in the 1986 Act are subject to Article 3 of the EU Regulations 2015. Where the Regulation applies, the court will have jurisdiction to wind up a company only if it has its 'centre of main interests'

('COMI') or an establishment in the United Kingdom and, in the latter case, the winding up will be restricted to the company's assets in the United Kingdom.

Unless the court otherwise directs, the petition must be intimated on the walls of court and served as follows:

- (1) where the petitioner is not the company, on the company;
- (2) where the company is being wound up voluntarily and a liquidator has been appointed, on the liquidator;
- (3) where a receiver has been appointed, on the receiver;
- (4) where the company is in administration, on the administrator;
- (5) in certain specified cases, on the Bank of England.

The petition must also be advertised forthwith once in the Edinburgh Gazette and once in one or more such newspapers as the court directs unless the court otherwise directs. Subject to the court's power to shorten or extend it, the period of notice for lodging answers to the petition is eight days.

Receivership

It is competent for the holder of a floating charge over all or part of the property (including uncalled capital) which may from time to time be comprised in the property and undertaking of an incorporated company (whether a company within the meaning of the Companies Act 2006 or not) which the Court of Session has jurisdiction to wind up or, where the Court of Session does not have such jurisdiction, in respect of which a court of a member state other than the United Kingdom has jurisdiction to open insolvency proceedings under the EU Regulations 2015, to appoint a receiver of such part of the company's property as is subject to the charge. It is also competent for the court, on the application of the holder of such a charge, to make such an appointment under [section 51\(2\)](#) of the 1986 Act.

If the mode of appointment of a receiver is by the court then unless the court otherwise directs, the petition must be intimated on the walls of court and served as follows:

- (1) on the company; and
- (2) where an administration order has been presented, on that applicant and any respondent to that application.

The petition must also be advertised forthwith once in the Edinburgh Gazette and once in one or more such newspapers as the court directs unless the court otherwise directs. Subject to the court's power to shorten or extend it, the period of notice for lodging answers to the petition is eight days.

Otherwise, where the basis for appointing a receiver is challenged, an application may be made to the court for interdict or, if a receiver has already been appointed, suspension and interdict.

Debtor Application

Where a debtor application is made and it is neither incomplete nor inappropriate as defined in [sections 20](#) and [21](#) of the 2016 Act respectively, the Accountant in Bankruptcy ('AiB') must make an award of sequestration under [section 22](#) of the 2016 Act if satisfied with the conditions therein.

A petition for recall of sequestration to the sheriff under [section 29](#) of the 2016 Act may be made by the debtor, any creditor, any other person having an interest, the trustee in the sequestration or AiB. A petition may not be made if the only ground is that the debtor has paid, or is able to pay the debtor's debts in full.

An application for recall of an award of sequestration may be made to AiB on the ground that the debtor has paid or is able to pay the debtor's debts in full under [section 31](#) of the 2016 Act. An application may be made by the debtor, any creditor, the trustee (where AiB is not the trustee) or any other person having an interest.

Creditor Petition

Under [section 22\(3\)](#) of the 2016 Act, where a petition for sequestration of the estate of the debtor is presented to the court by a creditor or a trustee acting under a trust deed, the sheriff must grant warrant to cite the debtor to appear before the sheriff on such date as is specified in the warrant to show cause why sequestration should not be awarded.

The court before which such a petition should be presented is the place in which the debtor had an established place of business, or was habitually resident under [section 15](#) of the 2016 Act.