



Companies House
— *for the record* —

***Liquidation and Insolvency
(Scotland)***

August 2003

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This is a guide only and should be read with the relevant legislation.

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Introduction

This booklet is a simple guide to liquidation and other insolvency procedures. It summarises some of the rules that apply to voluntary arrangements, administration orders, receivers and voluntary and compulsory liquidations. Please also refer to the relevant legislation, which you will find in the Companies Act 1985 (as amended in 1989 and later), the Insolvency Act 1986 and the Insolvency Rules (Scotland) 1986.

Please remember that if your company is considering liquidation, or any other measures to deal with insolvency, you should seek appropriate professional advice or consult an authorised insolvency practitioner.

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CHAPTER 1

General information

1. What are insolvency proceedings?

These are formal measures taken to deal with company debt. There are many different types of company insolvency proceedings. All are covered in this booklet.

2. Do insolvency proceedings apply to all types of companies?

The parts of this booklet covering [compulsory winding-up](#) and [receivers](#) (including administrative receivers) apply to registered and unregistered companies (including

[oversea companies](#)).

The parts of this booklet covering [voluntary winding-up](#) and [administration orders](#) do not apply to unregistered companies, which cannot be wound up by these methods.

If the liquidation or receivership began before 29 December 1986, then the law in force at that time will continue to apply.

Remember: Not all companies in liquidation are insolvent.

3. Do all companies have to go through insolvency proceedings before being dissolved?

No. If the Registrar has reason to believe that a company is not carrying on business or is not in operation, its name may be struck off the register and dissolved without going through liquidation. A private company that is not trading may apply to the Registrar to be [struck off](#) the register. **This procedure is not an alternative to formal insolvency proceedings.**

More information about striking off and dissolution of a company is available in our booklet, '[Strike-off, Dissolution and Restoration \(Scotland\)](#)'.

4. Can anyone supervise insolvency procedures?

All liquidators, administrative receivers, administrators and supervisors taking office on or after 29 December 1986 must be authorised insolvency practitioners.

Insolvency practitioners may be authorised by:

- the Chartered Association of Certified Accountants;
- the Insolvency Practitioners' Association;
- the Institute of Chartered Accountants in England and Wales;
- the Institute of Chartered Accountants in Ireland;
- the Institute of Chartered Accountants of Scotland;
- the Law Society;
- the Law Society of Scotland; or
- the Secretary of State for Trade and Industry.

5. What happens to the directors of an insolvent company?

The liquidator, administrative receiver or administrator has a duty to send the Secretary of State a report on the conduct of all directors who were in office in the last 3 years of the company's trading. The Secretary of State has to decide whether it is in the public interest to seek a disqualification order against a director.

Examples of the most commonly reported conduct are:

- continuing the company's trading when the company was insolvent;
- failing to keep proper accounting records;
- failing to prepare and file accounts or make returns to Companies House; and
- failing to send in returns or pay to the Crown any tax that is due.

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CHAPTER 2

Voluntary arrangements

1. What is a voluntary arrangement?

A voluntary arrangement is when a company makes an agreement with its creditors by proposing a 'composition in satisfaction of its debt' or a 'scheme of arrangement of its affairs'. This means an arrangement, approved by the court, in which the company has formally agreed terms with its creditors for the settlement of its debts.

2. Who may propose a voluntary arrangement?

A voluntary arrangement may be proposed by:

- the administrator, if there is an administration order;
- the liquidator, if the company is being wound up; or
- the directors, in other circumstances.

3. Who considers the proposal?

When the directors have proposed the arrangement, the nominee appointed to supervise its implementation reports to the court within 28 days on whether, in his or her opinion, meetings of the company and of its creditors should be called.

4. How is a proposed voluntary arrangement approved?

The meetings summoned by the nominee decide whether to approve the voluntary arrangement which, subject to certain restrictions, may be approved with or without modifications. It is then binding on all creditors who had notice of the meeting and were entitled to vote. All creditors who had notice of the meeting are bound by the terms of the arrangement.

5. What happens when the arrangement is approved?

If the meetings of members and creditors approve a voluntary arrangement, then the nominee or his replacement becomes the supervisor of the arrangement.

6. What needs to be sent to Companies House?

The supervisor must send a copy of the chairman's report of the meeting.

At least once every 12 months, the supervisor must send an account of receipts and payments, together with a progress report, to all interested parties including the Registrar.

When the arrangement is completed, the supervisor must notify the Registrar, within 28 days after final completion. If the arrangement is suspended or revoked, the Registrar must be notified.

The appropriate forms are:

Form title	Number
Notice of report of a meeting approving a voluntary arrangement	1.1 (Scot)
Notice of order of revocation or suspension of voluntary arrangement	1.2 (Scot)
Notice of voluntary arrangement's supervisor's abstract of receipts and payments	1.3 (Scot)
Notice of completion of voluntary arrangement	1.4 (Scot)

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CHAPTER 3

Administration orders

1. What is an administration order?

It is a court order made to appoint an administrator to manage the company's affairs.

2. What is the purpose of an administration order?

Its purpose may be to:

- save the whole or any part of the company as a going concern; or
- approve a company [voluntary arrangement](#); or
- sanction (agree to) a compromise or arrangement; or
- get a better price for the company's assets or otherwise realise their value more favourably than in a winding up.

3. When may a court make an administration order?

A court may make an administration order when the company is, or is likely to become, unable to pay its debts and the court considers that the making of an administration order could achieve one of the purposes outlined above.

4. Who may make a petition for an administration order?

This may be done by the company itself, its directors or one or more of its creditors including any contingent or prospective creditors. The administrator appointed by the order must notify the Registrar of the order.

5. What is the effect of the order?

While an administration order is in force, the company cannot be wound up and an administrative receiver cannot be appointed or, if previously appointed, they must vacate office. There are restrictions on enforcing any security over the company's property, selling any goods and starting any legal proceedings. More details about receivers are given in [chapter 4](#).

6. Who must an administrator notify of his appointment?

An administrator must:

- advertise the order in the Edinburgh Gazette and in a newspaper in the area where the company has its principal place of business; and
- send a copy of the court order to the Registrar with [Form 2.2 \(Scot\)](#).

What is the Edinburgh Gazette?

The Gazette is published by The Stationery Office and contains various statutory notices and advertisements. It is published twice weekly and can be obtained from The Stationery Office, 73 Lothian Road, Edinburgh EH3 9AW.

7. What are the administrator's duties?

The administrator takes control of all the property to which the company is, or appears to be entitled. He or she prepares proposals for achieving the purpose for which the administration order was made and calls a meeting of creditors to consider those proposals. If the majority of creditors approve the proposals, the administrator then manages the affairs, business and property of the company in accordance with the proposals.

8. Does the administrator need to send anything else to Companies House?

Yes. The administrator must send details of the proposals within 3 months after the order was made.

Then, every 6 months, the administrator must send an account of receipts and payments.

9. How long does an administration order last?

It continues until the court discharges it - in other words, decides that the order is no longer needed.

If there is a court order to discharge the order, or to vary its terms, the administrator must send a copy to the Registrar within 14 days after the order was made.

10. Which forms should be used?

The appropriate forms are:

Form title	Number
Notice of petition for administration order	2.1 (Scot)
Notice of administration order	2.2 (Scot)
Notice of discharge of administration order	2.4 (Scot)
Notice of statement of administrator's proposals	2.7 (Scot)
Notice of result of meeting of creditors	2.8 (Scot)
Administrator's abstract of receipts and payments	2.9 (Scot)
Notice of variation of administration order	2.12 (Scot)

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CHAPTER 4

Receivers

1. What is a receiver?

Appointed by or on behalf of the holder of a floating charge, a receiver has the power to sell or otherwise realise the charged assets of the company in an attempt to repay the debt owed to the charge-holder.

2. Who tells the Registrar and Accountant in Bankruptcy (AIB) that a receiver has been appointed?

Within 7 days of the appointment, the person who appoints the receiver must deliver notice to the Registrar and AIB. When the receiver ceases to act, the holder of the floating charge must deliver notice to the Registrar and AIB within 14 days.

3. What document must the receiver send?

Within 3 months of his appointment, the receiver must deliver a report to AIB with copies to:

- the company's creditors;
- the holders of a floating charge; and
- any trustees for secured creditors of the company.

The report must:

- explain the circumstances leading to the appointment of the receiver;
- give information about any action being taken by the receiver;
- include a summary of the statement of affairs prepared for the receiver by the officers or employees of the company.

Statement of affairs

This is a summary of the company's assets, liabilities and creditors. The administrative receiver decides whether it is required and who should prepare it.

Within 2 months of the anniversary of appointment, the receiver must send AIB an account of receipts and payments covering the first 12 months of receivership and for every 12 months thereafter.

4. Which forms should be used?

The appropriate forms are:

Form title	Number
Notice of the appointment of a receiver by a holder of a floating charge	1 (Scot)
Notice of the appointment of a receiver by a court	2 (Scot)
Notice of the receiver ceasing to act or of his removal	3 (Scot)
Receiver's abstract of receipts and payments	3.2 (Scot)
Notice of receiver's report	3.5 (Scot)

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CHAPTER 5

Voluntary liquidation

There are two kinds of voluntary liquidation:

- members' voluntary liquidation (MVL) - which means the directors have made a statutory declaration of solvency;

- creditors' voluntary liquidation (CVL) - which means that the directors have not made such a declaration.

1. When can a company go into MVL?

This can take place when the directors of a company believe that the company is solvent.

A majority of the company's directors must make a statutory declaration of solvency in the 5 weeks before a resolution to wind up the company is passed - see question 3.

2. What is in the declaration?

The statutory declaration will state that the directors have made a full inquiry into the company's affairs and that, having done so, they believe that the company will be able to pay its debts in full within 12 months from the start of the winding-up. The declaration will include a statement of the company's assets and liabilities as at the latest practicable date before making the declaration.

3. When does liquidation actually start?

The liquidation starts when the members, in general meeting, pass a [resolution](#) (usually a [special resolution](#)) to wind up the company voluntarily.

4. Must notice of voluntary liquidation be given to anyone?

Yes. Notice of the special resolution for voluntary winding-up of the company must be published in the [Edinburgh Gazette](#) within 14 days of the general meeting. The company must also send a copy of the declaration and the special resolution to the Registrar and AIB within 15 days of the general meeting.

5. When may a CVL be appropriate?

A company may go into CVL when it cannot pay its debts.

6. What must the company do?

The company passes an [extraordinary resolution](#) to say that it cannot continue in business because of its liabilities and that it is advisable to wind up.

The resolution must be:

- advertised in the Edinburgh Gazette within 14 days; and
- sent to the Registrar and AIB within 15 days.

A meeting of creditors must be held in the next 14 days after passing the resolution. Notice of the meeting must be sent to the creditors at least 7 days before the meeting. Also, the directors must prepare a statement of affairs for consideration at the meeting, and appoint one of themselves to attend and preside over the meeting.

When the liquidator is appointed, the directors must provide him or her with a statement of affairs and otherwise co-operate with the liquidator.

7. Does the company have to advertise notice of the meeting?

Yes. The meeting must be advertised in the Edinburgh Gazette and in two newspapers in the area where the company has its principal place of business.

8. What are the main duties of a liquidator?

The liquidator is appointed to wind up the company's affairs. The liquidator does this by calling in all the company's assets and distributing them to its creditors. If anything is left over, the liquidator distributes it among the members of the company.

9. Does a liquidator need to notify anyone of his or her appointment?

Yes. Within 14 days of being appointed, a liquidator must publish a notice of appointment in the Edinburgh Gazette and notify the AIB. If the liquidation is voluntary, the liquidator must also give notice in a newspaper in the area where the company has its principal place of business.

10. What does the liquidator have to send to AIB?

The liquidator must send a statement of affairs and a statement of receipts and payments for the first 12 months of liquidation. After that, statements must be sent every 6 months until the winding-up is complete.

11. Can an MVL be converted into a CVL?

Yes. If the liquidator decides that the company will not be able to pay its debts in full in the period stated in the directors' statutory declaration of solvency, he or she must call a meeting of the creditors which must be held within 28 days. The liquidation becomes a CVL from the date of the meeting.

12. What are the requirements for giving notice in such a case?

The liquidator must:

- post a notice of the meeting to each creditor at least 7 days before the date of the meeting;
- advertise the date of the meeting in the Edinburgh Gazette and in 2 newspapers in the area where the company has its principal place of business; and

- prepare a statement of affairs for consideration at the meeting. A copy of the statement must be sent to the AIB within 7 days of the meeting.

13. What happens when the company's affairs are fully wound up?

The liquidator presents an account to final meetings of creditors and members of the company. He or she must advertise the meetings in the Edinburgh Gazette at least one month before.

Within one week of the meeting having taken place, the liquidator must send the account to the Registrar and AIB together with a return of the final meeting.

Unless the court makes an order deferring the dissolution of the company, it is dissolved 3 months after the return and account are registered at Companies House.

14. Which forms should be used?

The appropriate forms are:

Form title	Number
Notice of appointment of liquidator voluntary winding-up (members or creditors)	600
Statement of affairs	4.4 (Scot)
Liquidator's statement of receipts and payments	4.5 (Scot)
Notice of liquidator's statement of receipts and payments	4.6 (Scot)
Notice of final meeting of creditors	4.17 (Scot)
Return of final meeting of voluntary winding-up	4.26 (Scot)
Liquidator's statement of account	92 (Scot)

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CHAPTER 6

Compulsory liquidation

1. What is 'compulsory liquidation'?

Compulsory liquidation of a company is when the company is ordered by a court to be wound up.

2. Which courts can order a compulsory liquidation?

The Court of Session, or sheriff court with the appropriate jurisdiction, may order the winding-up of a company. This may be, for example, on the petition of a creditor or creditors on the grounds that the company cannot pay its debts.

A company is regarded as unable to pay its debts if, for example, a creditor:

- is owed more than £750;
- presents a written demand in the prescribed form (known as a statutory demand ([Form 4.1 \(Scot\)](#)) to the company; and
- the company fails to pay, secure or agree a settlement of the debt to the creditor's reasonable satisfaction.

There are other situations where a company is deemed unable to pay its debts. Please read the relevant legislation.

The court may also order the company to be wound up on the petition of:

- the company itself;
- the company's directors or one or more members;
- the Secretary of State for Trade and Industry; or
- the Financial Services Authority (formerly the Securities and Investment Board).

3. Must the petition be advertised?

Unless the court directs other arrangements, the petition must be advertised in the [Edinburgh Gazette](#).

4. What appears on the company record held by Companies House?

If the petition is successful, the company must send [Form 4.2 \(Scot\)](#) and a copy of the winding-up order to the Registrar and AIB straightaway and it will be placed on the company's public record.

The petition itself is not presented to the Registrar so it will not appear on the public records.

5. Who acts as the liquidator when an order is made to wind up the company?

A provisional liquidator may be appointed after the petition is presented. If a winding up order is made, an interim liquidator is appointed. Both the provisional and interim liquidator must notify AIB of their appointments.

6. What are the duties of the interim liquidator?

Within 28 days of the appointment, the interim liquidator investigates the company's affairs and will call meetings of creditors and contributories (that is, those people liable to contribute to the assets of a company in the event of it being wound up). The meetings appoint the official liquidator who must notify AIB within 7 days. If no liquidator is appointed at the meetings, the court appoints a liquidator.

The liquidator must send to AIB a statement of receipts and payments for the first 12 months of liquidation and thereafter every 6 months until the winding up is complete.

7. What happens when the winding-up is complete?

When the Registrar and AIB receive notice from the liquidator of the final meeting that winding-up is complete, the Registrar will register it and publish its receipt in the Edinburgh Gazette.

Unless the Court directs otherwise, the company will be dissolved three months after the notice was registered at Companies House.

If the liquidator, is satisfied that the company's realisable assets (that is, assets which could be sold or disposed of to raise money) will not cover the expenses of winding-up and that no further investigation of the company's affairs is necessary, he or she may apply to the Registrar for early dissolution of the company. The company will be dissolved 3 months after the application is registered at Companies House

8. Which forms should be used?

The appropriate forms are:

Form title	Number
Statutory demand for payment of debt	4.1 (Scot)
Notice of winding-up order	4.2 (Scot)
Liquidator's statement of receipt and payments	4.5(Scot)
Notice of liquidator's statement of receipts and payments	4.6(Scot)
Notice of appointment of liquidator	4.9(Scot)
Notice of final meeting of creditors	4.17 (Scot)

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Further information

1. Where can I go for help?

Staff at Companies House in Edinburgh and AIB will be able to advise you on general matters, but if you are considering liquidation or insolvency proceedings you should seek the advice of an insolvency practitioner or the Insolvency Service.

Complaints about the conduct of a licensed insolvency practitioner should be sent, in writing, to:

The Insolvency Practitioners' Section
The Insolvency Service
Area 1.10
PO Box 203
21 Bloomsbury Street
London
WC1B 3QW

They will then forward the complaint to the practitioner's authorising body.

2. Where do I get forms and guidance booklets?

This is one of a series of Companies House booklets, which provide a simple guide to the Companies Act.

On request, we can also provide guidance on related legislation. Titles include: '[Overseas Companies](#)' (GBO1), '[Limited Partnership Act](#)' (GBO2) and '[European Economic Interest Groupings](#)' (GBO4).

Statutory forms and guidance booklets are available free of charge from Companies House. The quickest way to get them is through our website or by telephoning 0870 333 3636. If you prefer you can write to our stationery sections in [Cardiff](#) or [Edinburgh](#).

The following forms are available from Companies House:

Receivership forms

1(Scot)	Notice of the appointment of a receiver by the holder of a floating charge
2(Scot)	Notice of the appointment of a receiver by the court
3(Scot)	Notice of the receiver ceasing to act or of his removal
3.4(Scot)	Notice of authorisation to dispose of secured property

3.5(Scot) Notice of receiver's report

Liquidation forms

4.2(Scot)	Notice of winding up order
4.17(Scot)	Notice of final meeting of creditors
4.26(Scot)	Return of final meeting in a voluntary winding-up
4.27(Scot)	Notice of court's order sisting proceedings in winding up by the court
4.28(Scot)	Notice under section 204(6) or 205(6)
111/110	Members' Voluntary - Return of final winding up meeting
112/110	Creditors' Voluntary - Return of final winding up meeting

Forms can also be obtained from the Accountant in Bankruptcy or from legal stationers. A list of legal stationers can usually be found in Yellow Pages.

3. How do I send information to the Registrar?

- Documents, including court orders, should display the correct company name and registration number, where appropriate.
- Companies House will only acknowledge receipt if you provide a stamped addressed envelope.
- You should supply documents in portrait format (that is, with the shorter edge across the top)

Documents may be delivered by post, by hand (personally or by courier) or by the Hays Document Exchange service.

The relevant addresses are:

The Registrar of Companies Companies House 37 Castle Terrace Edinburgh EH1 2EB DX ED235 Edinburgh 1	The Accountant in Bankruptcy George House 126 George Street Edinburgh EH2 4HH DX ED311
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Please note: Companies House does not accept accounts or any other statutory documents by fax.

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