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STATUTORY INSTRUMENTS

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**1986 No. 1925**

**The Insolvency Rules 1986**

THE THIRD GROUP OF PARTS

PART 7

COURT PROCEDURE AND PRACTICE

CHAPTER 6

COSTS AND TAXATION

**Application of Rules of Supreme Court and County Court Rules**

**7.33.** Subject to provision to inconsistent effect made as follows in this Chapter—

- (a) Order 62 of the Rules of the Supreme Court applies to insolvency proceedings in the High Court, and
- (b) Order 38 of the County Court Rules applies to such proceedings in a county court,

in either case, with any necessary modifications.

**Requirement to tax costs**

**7.34.—**(1) Subject as follows, where any costs, charges or expenses of any person are payable out of the insolvent estate, the responsible insolvency practitioner may agree them with the person entitled to payment or may require them to be taxed by the court to which the insolvency proceedings are allocated or, where in relation to a company there is no such court, by a court having jurisdiction to wind up the company.

(2) If a liquidation or creditors' committee established in insolvency proceedings (except administrative receivership) resolves that any such costs, charges or expenses be taxed, the insolvency practitioner shall require taxation.

(3) Where the costs, charges or expenses of any person employed by an insolvency practitioner in insolvency proceedings are required to be taxed, this does not preclude the insolvency practitioner from making payments on account to such person on the basis of an undertaking by that person to repay immediately any money which may, on taxation, prove to have been overpaid, with interest at the rate specified in section 17 of the Judgments Act 1838 on the date payment was made and for the period from the date of payment to that of repayment.

(4) In any proceedings before the court, including proceedings on a petition, the court may order costs to be taxed.

(5) Unless otherwise directed or authorised, the costs of a trustee in bankruptcy or a liquidator are to be allowed on the standard basis.

(6) This Rule applies additionally (with any necessary modifications) to winding-up and bankruptcy proceedings commenced before the coming into force of the Rules.

### **Procedure where taxation required**

**7.35.**—(1) Before taxing the costs of any person employed in insolvency proceedings by a responsible insolvency practitioner, the taxing officer shall require a certificate of employment, which shall be endorsed on the bill and signed by the insolvency practitioner.

(2) The certificate shall include—

- (a) the name and address of the person employed,
- (b) details of the functions to be carried out under the employment, and
- (c) a note of any special terms of remuneration which have been agreed.

(3) Every person whose costs are required to be taxed in insolvency proceedings shall, on being required in writing to do so by the insolvency practitioner, deliver his bill of costs to the taxing officer for taxation.

(4) If that person does not so deliver his bill within 3 months of the requirement under paragraph (3), or within such further time as the court, on application, may grant, the insolvency practitioner may deal with the insolvent estate without regard to any claim by that person, whose claim is forfeited.

(5) Where in any such case such a claim lies additionally against an insolvency practitioner in his personal capacity, that claim is also forfeited.

### **Costs of sheriff**

**7.36.**—(1) Where a sheriff—

- (a) is required under section 184(2) or 346(2) to deliver up goods or money, or
- (b) has under section 184(3) or 346(3) deducted costs from the proceeds of an execution or money paid to him,

the responsible insolvency practitioner may require in writing that the sheriff's bill of costs be taxed.

(2) Where such a requirement is made, Rule 7.35(4) applies.

(3) Where, in the case of a deduction under paragraph (1)(b), any amount is disallowed on taxation, the sheriff shall forthwith pay a sum equal to that amount to the insolvency practitioner for the benefit of the insolvent estate.

### **Petitions presented by insolvents**

**7.37.**—(1) In any case where a petition is presented by a company or individual (“the insolvent”) against himself, any solicitor acting for the insolvent shall in his bill of costs give credit for any sum or security received from the insolvent as a deposit on account of the costs and expenses to be incurred in respect of the filing and prosecution of the petition; and the deposit shall be noted by the taxing officer on the taxing certificate.

(2) Paragraph (3) applies where a petition is presented by a person other than the insolvent to whom the petition relates and before it is heard the insolvent presents a petition for the same order, and that order is made.

(3) Unless the court considers that the insolvent estate has benefitted by the insolvent's conduct, or that there are otherwise special circumstances justifying the allowance of costs, no costs shall be allowed to the insolvent or his solicitor out of the insolvent estate.

### **Costs paid otherwise than out of the insolvent estate**

**7.38.** Where a bill of costs is taxed under an order of the court directing that the costs are to be paid otherwise than out of the insolvent estate, the taxing officer shall note on the certificate of taxation by whom, or the manner in which, the costs are to be paid.

### **Award of costs against official receiver or responsible insolvency practitioner**

**7.39.** Without prejudice to any provision of the Act or Rules by virtue of which the official receiver is not in any event to be liable for costs and expenses, where the official receiver or a responsible insolvency practitioner is made a party to any proceedings on the application of another party to the proceedings, he shall not be personally liable for costs unless the court otherwise directs.

### **Applications for costs**

**7.40.—**(1) This Rule applies where a party to, or person affected by, any proceedings in an insolvency—

- (a) applies to the court for an order allowing his costs, or part of them, incidental to the proceedings, and
- (b) that application is not made at the time of the proceedings.

(2) The person concerned shall serve a sealed copy of his application on the responsible insolvency practitioner, and, in a winding up by the court or bankruptcy, on the official receiver.

(3) The insolvency practitioner and, where appropriate, the official receiver may appear on the application.

(4) No costs of or incidental to the application shall be allowed to the applicant unless the court is satisfied that the application could not have been made at the time of the proceedings.

### **Costs and expenses of witnesses**

**7.41.—**(1) Except as directed by the court, no allowance as a witness in any examination or other proceedings before the court shall be made to the bankrupt or an officer of the insolvent company to which the proceedings relate.

(2) A person presenting any petition in insolvency proceedings shall not be regarded as a witness on the hearing of the petition, but the taxing officer may allow his expenses of travelling and subsistence.

### **Certificate of taxation**

**7.42.—**(1) A certificate of taxation of the taxing officer is final and conclusive as to all matters which have not been objected to in the manner provided for under the rules of the court.

(2) Where it is proved to the satisfaction of a taxing officer that a certificate of taxation has been lost or destroyed, he may issue a duplicate.

(3) “Certificate of taxation” includes, for the purposes of the Rules, an order of the registrar in a county court.