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STATUTORY INSTRUMENTS

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**2016 No. 1024**

**The Insolvency (England and Wales) Rules 2016**

**PART 10**

**BANKRUPTCY**

**CHAPTER 1**

**The statutory demand**

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

**The statutory demand (section 268)**

**10.1.**—(1) A statutory demand under section 268 must contain—

- (a) the heading either “Statutory demand under section 268(1) (debt payable immediately) of the Insolvency Act 1986” or “Statutory demand under section 268(2) (debt not immediately payable)”;
- (b) identification details for the debtor;
- (c) the name and address of the creditor;
- (d) a statement of the amount of the debt, and the consideration for it (or, if there is no consideration, the way in which it arises);
- (e) if the demand is made under section 268(1) and founded on a judgment or order of a court, the date of the judgment or order and the court in which it was obtained;
- (f) if the demand is made under section 268(2), a statement of the grounds on which it is alleged that the debtor appears to have no reasonable prospect of paying the debt;
- (g) if the creditor is entitled to the debt by way of assignment, details of the original creditor and any intermediary assignees;
- (h) a statement that if the debtor does not comply with the demand bankruptcy proceedings may be commenced;
- (i) the date by which the debtor must comply with the demand, if bankruptcy proceedings are to be avoided;
- (j) a statement of the methods of compliance which are open to the debtor;
- (k) a statement that the debtor has the right to apply to the court to have the demand set aside;
- (l) a statement that rule 10.4(4) of the Insolvency (England and Wales) Rules 2016 states to which court such an application must be made; and name the court or hearing centre of the County Court to which, according to the present information, the debtor must make the application (i.e. the High Court, the County Court at Central London or a named hearing centre of the County Court as the case may be);
- (m) a statement that any application to set aside the demand must be made within 18 days of service on the debtor; and

- (n) a statement that if the debtor does not apply to set aside the demand within 18 days or otherwise deal with this demand within 21 days after its service the debtor could be made bankrupt and the debtor's property and goods taken away.

(2) Where the statutory demand is served by a Minister of the Crown or a Government Department the statutory demand must explain that the debtor may alternatively apply to set aside the demand to the High Court or the County Court at Central London (as the case may be) if the Minister or Department intends to present a bankruptcy petition to one of them.

(3) A demand must name one or more individuals with whom the debtor may communicate with a view to—

- (a) securing or compounding the debt to the satisfaction of the creditor; or
- (b) establishing to the creditor's satisfaction that there is a reasonable prospect that the debt will be paid when it falls due.

(4) The postal address, electronic address and telephone number (if any) of the named individual must be given.

(5) A demand must be dated and authenticated either by the creditor or by a person who is authorised to make the demand on the creditor's behalf

(6) A demand which is authenticated by a person other than the creditor must state that the person is authorised to make the demand on the creditor's behalf and state the person's relationship to the creditor.

(7) If the amount claimed in the demand includes—

- (a) any charge by way of interest of which notice had not previously been delivered to the debtor as a liability of the debtor's; or
- (b) any other charge accruing from time to time,

the amount or rate of the charge must be separately identified, and the grounds on which payment of it is claimed must be stated.

(8) The amount claimed for such charges must be limited to that which has accrued at the date of the demand.

(9) If the creditor holds any security in respect of the debt, the full amount of the debt must be specified, but—

- (a) the demand must specify the nature of the security, and the value which the creditor puts upon it at the date of the demand; and
- (b) the demand must claim payment of the full amount of the debt, less the specified value of the security.

### **Service of statutory demand**

**10.2.** A creditor must do all that is reasonable to bring the statutory demand to the debtor's attention and, if practicable in the particular circumstances, serve the demand personally.

### **Proof of service of statutory demand**

**10.3.—**(1) Where section 268 requires a statutory demand to be served before the petition, a certificate of service of the demand must be filed with the court with the petition.

(2) The certificate must be verified by a statement of truth and be accompanied by a copy of the demand served.

(3) If the demand has been served personally on the debtor, the statement of truth must be made by the person who served the demand unless service has been acknowledged in writing by the debtor or a person authorised to accept service.

(4) If service has been acknowledged in writing either by—

(a) the debtor; or

(b) a person who is authorised to accept service on the debtor's behalf and who has stated that this is the case in the acknowledgement of service;

then the certificate of service must be authenticated either by the creditor or by a person acting on the creditor's behalf, and the acknowledgement of service must accompany the certificate.

(5) If the demand has been served other than personally and there is no acknowledgement of service, the certificate must be authenticated by a person or persons having direct personal knowledge of the means adopted for serving the statutory demand, and must contain the following information—

(a) the steps taken to serve the demand; and

(b) a date by which, to the best of the knowledge, information and belief of the person authenticating the certificate, the demand will have come to the debtor's attention.

(6) Where paragraph (5) applies the statutory demand is deemed to have been served on the debtor on the date referred to in paragraph (5)(b) unless the court determines otherwise.

#### **Application to set aside statutory demand**

**10.4.**—(1) The debtor may apply to the court for an order setting aside the statutory demand.

(2) The application must be made within 18 days from the date of the service of the statutory demand.

(3) The application must—

(a) identify the debtor;

(b) state that the application is for an order that the statutory demand be set aside;

(c) state the date of the statutory demand; and

(d) be dated and authenticated by the debtor, or by a person authorised to act on the debtor's behalf.

(4) The application must be made to the court or hearing centre—

(a) determined in accordance with rule 10.48; or

(b) to which rule 10.11(1) requires a petition to be presented if—

(i) the creditor serving the statutory demand is a Minister of the Crown or a government Department,

(ii) the debt in respect of which the statutory demand is made, or part of it equal to or exceeding the bankruptcy level (within the meaning of section 267), is the subject of a judgment or order of a court, and

(iii) the statutory demand—

(aa) specifies the date of the judgment or order and the court in which it was obtained, and

(bb) indicates the creditor's intention to present a bankruptcy petition against the debtor in the High Court or the County Court at Central London as the case may be.

(5) The time within which the debtor must comply with the statutory demand ceases to run on the date the application is filed with the court, subject to any order of the court under rule 10.5.

(6) The debtor's application must be accompanied by a copy of the statutory demand, where it is in the debtor's possession, and supported by a witness statement containing the following—

- (a) the date on which the debtor became aware of the statutory demand;
- (b) the grounds on which the debtor claims that it should be set aside; and
- (c) any evidence in support of the application.

### **Hearing of application to set aside**

**10.5.**—(1) On receipt of an application to set aside a statutory demand, the court may, if satisfied that no sufficient cause is shown for it, dismiss it without giving notice of the application to the creditor.

(2) The time for complying with the statutory demand runs again from the date the application is dismissed under paragraph (1).

(3) Unless the application is dismissed under paragraph (1), the court must fix a venue for it to be heard, and must give at least five business days' notice to—

- (a) the debtor or, if the debtor's application was made by a solicitor acting for the debtor, to the solicitor;
- (b) the creditor; and
- (c) whoever is named in the statutory demand as the person with whom the debtor may communicate about the demand (or the first such if more than one).

(4) On the hearing of the application, the court must consider the evidence then available to it, and may either determine the application or adjourn it, giving such directions as it thinks appropriate.

(5) The court may grant the application if—

- (a) the debtor appears to have a counterclaim, set-off or cross demand which equals or exceeds the amount of the debt specified in the statutory demand;
- (b) the debt is disputed on grounds which appear to the court to be substantial;
- (c) it appears that the creditor holds some security in relation to the debt claimed by the demand, and either rule 10.1(9) is not complied with in relation to it, or the court is satisfied that the value of the security equals or exceeds the full amount of the debt; or
- (d) the court is satisfied, on other grounds, that the demand ought to be set aside.

(6) An order setting aside a statutory demand must contain—

- (a) identification details for the debtor;
- (b) the date of the hearing of the application;
- (c) the date of the statutory demand;
- (d) an order that the statutory demand be set aside;
- (e) details of any further order in the matter; and
- (f) the date of the order.

(7) Where the creditor holds some security in relation to the debt and has complied with rule 10.1(9) but the court is satisfied that the statutory demand undervalues the security, the court may order the creditor to amend the demand (but without prejudice to the creditor's right to present a bankruptcy petition by reference to the original demand as so amended).

(8) If the court dismisses the application, it must make an order authorising the creditor to present a bankruptcy petition either as soon as reasonably practicable, or on or after a date specified in the order.

(9) The court must deliver a copy of any order under paragraphs (6) to (8) to the creditor as soon as reasonably practicable.

## CHAPTER 2

### CREDITORS' BANKRUPTCY PETITIONS

#### *Preliminary*

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

#### **Application and interpretation**

**10.6.**—(1) This Chapter relates to a creditor's petition and making a bankruptcy order on such a petition.

(2) In this Chapter "the debt" means the debt in relation to which the petition is presented.

(3) This Chapter also applies to a petition under section 264(1)(c) by a supervisor of, or person bound by, an IVA, with any necessary modifications.

#### **Contents of petition**

**10.7.**—(1) The petition must state—

- (a) the name and postal address of the petitioner;
- (b) where the petitioner is represented by a solicitor, the name, postal address and telephone number of the solicitor;
- (c) that the petitioner requests that the court make a bankruptcy order against the debtor;
- (d) whether—
  - (i) the debtor's centre of main interests is within a member State,
  - (ii) the debtor's centre of main interests is not within a member State, or
  - (iii) the debtor carries on business as an Article 1.2 undertaking;
- (e) whether the debtor—
  - (i) is resident in England and Wales, or
  - (ii) is not resident in England and Wales;
- (f) whether the petition is presented to—
  - (i) the High Court,
  - (ii) the County Court at Central London, or
  - (iii) a specified hearing centre; and
- (g) the reasons why the court or hearing centre to which the petition is presented is the correct court or hearing centre under rule 10.11.

(2) If the petition is based on a statutory demand, and more than four months have elapsed between the service of the demand and the presentation of the petition, the petition must explain the reasons for the delay.

(3) The petition must also contain a blank box for the court to complete with the details of the venue for hearing the petition.

**Identification of debtor**

**10.8.**—(1) The petition must state the following matters about the debtor, so far as they are within the petitioner's knowledge—

- (a) the debtor's identification details;
- (b) the occupation (if any) of the debtor;
- (c) the name or names in which the debtor carries on business, if other than the name of the debtor, and whether, in the case of any business of a specified nature, the debtor carries it on alone or with others;
- (d) the nature of the debtor's business, and the address or addresses at which it is carried on;
- (e) any name or names, other than the name of the debtor, in which the debtor has carried on business at or after the time when the debt was incurred, and whether the debtor has done so alone or with others;
- (f) any address or addresses at which the debtor has resided or carried on business at or after that time, and the nature of that business; and
- (g) whether the centre of main interests or an establishment of the debtor (as defined in Article 2(h) of the EC Regulation) is in another member State.

(2) The particulars of the debtor given under this rule determine the title of the proceedings.

(3) If to the petitioner's knowledge the debtor has used any name other than the one specified under paragraph (1)(a), that fact must be stated in the petition.

**Identification of debt**

**10.9.**—(1) The petition must state for each debt in relation to which it is presented—

- (a) the amount of the debt, the consideration for it (or, if there is no consideration, the way in which it arises) and the fact that it is owed to the petitioner;
- (b) when the debt was incurred or became due;
- (c) if the amount of the debt includes any charge by way of interest not previously notified to the debtor as a liability of the debtor's, the amount or rate of the charge (separately identified);
- (d) if the amount of the debt includes any other charge accruing from time to time, the amount or rate of the charge (separately identified);
- (e) the grounds on which any such a charge is claimed to form part of the debt, provided that the amount or rate must, in the case of a petition based on a statutory demand, be limited to that claimed in the demand;
- (f) that the debt is unsecured (subject to section 269); and
- (g) either—
  - (i) that the debt is for a liquidated sum payable immediately, and the debtor appears to be unable to pay it, or
  - (ii) that the debt is for a liquidated sum payable at some certain, future time (that time to be specified), and the debtor appears to have no reasonable prospect of being able to pay it.

(2) Where the debt is one for which, under section 268, a statutory demand must have been served on the debtor, the petition must—

- (a) specify the date and manner of service of the statutory demand; and
- (b) state that, to the best of the creditor's knowledge and belief—

(i) the demand has been neither complied with nor set aside in accordance with these Rules, and

(ii) that no application to set it aside is outstanding.

(3) If the case is within section 268(1)(b) (unsatisfied execution or process in respect of judgment debt, etc.) the petition must state which court issued the execution or other process and give particulars of the return.

### **Verification of petition**

**10.10.**—(1) The petition must be verified by a statement of truth.

(2) If the petition relates to debts to different creditors, the debt to each creditor must be separately verified.

(3) A statement of truth which is not contained in or endorsed upon the petition which it verifies must be sufficient to identify the petition and must contain—

(a) the name of the debtor;

(b) the name of the petitioner; and

(c) the court or hearing centre in which the petition is to be presented.

(4) The statement of truth must be authenticated and dated by or on behalf of the petitioner.

(5) Where the person authenticating the statement of truth is not the petitioner, or one of the petitioners, the statement of truth must state—

(a) the name and postal address of the authenticating person;

(b) the capacity in which, and the authority by which, that person authenticates the statement of truth; and

(c) the means of the authenticating person's knowledge of the matters verified.

### **Court in which petition is to be presented**

**10.11.**—(1) Where the proceedings are allocated to the London Insolvency District under rule 12.5(a)(i) to (iv) or (b), the creditor must present the petition to—

(a) the High Court where the debt is £50,000 or more; or

(b) the County Court at Central London where the debt is less than £50,000.

(2) Where the proceedings are allocated to the London Insolvency District under rule 12.5(a)(v), (c) or (d), the creditor must present the petition to the High Court.

(3) Where the debtor is resident in England and Wales and the proceedings are not allocated to the London Insolvency District, the creditor must present the petition to the debtor's own hearing centre.

(4) The debtor's own hearing centre is—

(a) where the debtor has carried on business in England and Wales within the six months immediately preceding the presentation of the petition, the hearing centre for the insolvency district where for the longest period during those six months—

(i) the debtor carried on business, or

(ii) the principal place of business was located, if business was carried on in more than one insolvency district; or

(b) where the debtor has not carried on business in England and Wales within the six months immediately preceding the presentation of the petition, the hearing centre for the insolvency district where the debtor resided for the longest period during those six months.

(5) If the debtor is not resident in England and Wales but was resident or carried on business in England and Wales within the six months immediately preceding the presentation of the petition and the proceedings are not allocated to the London Insolvency District, the petition may be presented either to the debtor's own hearing centre or to the High Court.

(6) Unless paragraph (2) applies, where to the petitioner's knowledge there is in force for the debtor an IVA under Part 8(1) of the Act, the petition must be presented to the court or hearing centre—

- (a) to which the nominee's report under section 256(2) was submitted;
- (b) to which an application has been made, where a nominee has made a report under section 256A(3)(3); or
- (c) as determined under paragraphs (1) to (5) in any other case.

(7) The petition must contain sufficient information to establish that it is presented in the appropriate court and, where the court is the County Court, the appropriate hearing centre.

### **Procedure for presentation and filing of petition**

**10.12.**—(1) The petition must be filed with the court.

(2) A petition may not be filed unless—

- (a) a receipt for the deposit payable to the official receiver is produced on presentation of the petition; or
- (b) the Secretary of State has given notice to the court that the petitioner has made suitable alternative arrangements in accordance with an order made under section 415(3) for the payment of the deposit and that notice has not been revoked.

(3) A notice of alternative arrangements for the deposit may be revoked by a further notice filed with the court.

(4) The following copies of the petition must also be filed with the court with the petition—

- (a) one for service on the debtor;
- (b) one copy for the supervisor, if to the petitioner's knowledge there is in force for the debtor an IVA under Part 8 of the Act, and the petitioner is not the supervisor of the IVA; and
- (c) one copy for the liquidator, if to the petitioner's knowledge there is a member State liquidator appointed in main proceedings in relation to the debtor.

(5) The date and time of filing the petition must be endorsed on the petition and on the copies.

(6) The court must fix a venue for hearing the petition, and this must also be endorsed on the petition and the copies.

(7) Each copy of the petition must have the seal of the court applied to it and must be delivered to the petitioner.

(1) Part 8 is amended by paragraph 2 of Schedule 6 to the Deregulation Act 2015 (c.20), paragraphs 2 to 4 of Schedule 19 to the Enterprise and Regulatory Reform Act 2014 (c.24) and sections 134 and 135 and paragraphs 61 to 72 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

(2) Section 256(12)(aa), (5) and (6) are amended and (1)(b) is omitted by paragraph 61 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

(3) Section 256A(3) is amended by paragraph 4(3) of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24) and paragraph 62 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).



### **Application to Chief Land Registrar to register petition**

**10.13.**—(1) When the petition is filed, the court must as soon as reasonably practicable deliver to the Chief Land Registrar an application for registration of the petition in the register of pending actions.

(2) The application must contain—

- (a) a statement that the court is applying for registration of a petition in bankruptcy proceedings as a pending action with the Chief Land Registrar under section 5 of the Land Charges Act 1972(4);
- (b) the debtor's name;
- (c) the debtor's gender, if known;
- (d) details of the debtor's trade, profession or occupation, including any trading name and, in the case of a partnership, the name and gender, if known, of each of the other partners;
- (e) the postal address for each known place of residence of the debtor, including the debtor's business address where the court considers it to be appropriate for the purpose of the notice;
- (f) the relevant key number allocated by the Land Charges Department;
- (g) the name of the court (and hearing centre if applicable);
- (h) the number and date of the petition; and
- (i) the name and postal address of the petitioner.

(3) The application must be sealed and dated by the court.

(4) A separate application must be completed for each debtor and for any alternative name by which the debtor has been or is known (other than any trading name).

### **Service of petition and delivery of copies**

**10.14.**—(1) The petitioner must serve the petition on the debtor in accordance with Schedule 4 (Service of documents).

(2) If to the petitioner's knowledge there is in force for the debtor an IVA, and the petitioner is not the supervisor of the IVA, a copy of the petition must be delivered by the petitioner to the supervisor.

(3) If to the petitioner's knowledge, there is a member State liquidator appointed in main proceedings in relation to the debtor, a copy of the petition must be delivered by the petitioner to the member State liquidator.

### **Death of debtor before service**

**10.15.** If the debtor dies before service of the petition, the court may order service to be effected on the debtor's personal representative, or on such other person as it thinks just.

### **Amendment of petition**

**10.16.** The petition may be amended at any time after presentation with the court's permission.

### **Security for costs**

**10.17.**—(1) This rule applies where the debt is a liquidated sum payable at some future time, it being claimed in the petition that the debtor appears to have no reasonable prospect of being able to pay it.

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(4) 1972 c.61.

(2) The debtor may apply for an order that the petitioning creditor give security for the debtor's costs.

(3) The nature and amount of the security to be ordered is in the court's discretion.

(4) If an order for security is made then the petition may not be heard until the whole amount of the security has been given.

#### **Debtor's notice of opposition to petition**

**10.18.**—(1) A debtor who intends to oppose the making of a bankruptcy order must not less than five business days before the day fixed for the hearing—

(a) file a notice with the court; and

(b) deliver a copy of the notice to the petitioning creditor or the petitioner's solicitor.

(2) The notice must—

(a) identify the proceedings;

(b) state that the debtor intends to oppose the making of a bankruptcy order; and

(c) state the grounds on which the debtor opposes the making of the order.

#### **Notice by persons intending to appear**

**10.19.**—(1) A creditor or a member State liquidator appointed in main proceedings in relation to the debtor who intends to appear on the hearing of the petition must deliver a notice of intention to appear to the petitioner.

(2) The notice must contain the following—

(a) the name and address of the person, and any telephone number and reference which may be required for communication with that creditor or with any other person (also to be specified in the notice) authorised to speak or act on the person's behalf;

(b) the date of the presentation of the bankruptcy petition and a statement that the notice relates to the matter of that petition;

(c) the date of the hearing of the petition;

(d) in the case of a creditor, the amount and nature of the debt due from the debtor to the creditor;

(e) whether the person intends to support or oppose the petition;

(f) where the person is represented by a solicitor or other agent, the name, postal address, telephone number and reference number (if any) of that person and details of that person's position with or relationship to the creditor or member State liquidator; and

(g) the name and postal address of the petitioner.

(3) The notice must be authenticated and dated by the person delivering it.

(4) The notice must be delivered to the petitioner or the petitioner's solicitor at the address shown in the court records.

(5) The notice must be delivered so as to reach the petitioner (or the petitioner's solicitor) not later than 4pm on the business day before that which is appointed for the hearing (or, where the hearing has been adjourned, for the adjourned hearing).

(6) A person who fails to comply with this rule may appear and be heard on the hearing of the petition only with the permission of the court.

### **List of appearances**

**10.20.**—(1) The petitioner must prepare for the court a list of the persons who have delivered a notice under rule 10.19 of their intention to appear.

(2) The list must contain—

- (a) the date of the presentation of the bankruptcy petition;
- (b) the date of the hearing of the petition;
- (c) a statement that the persons listed have delivered notice that they intend to appear at the hearing of the petition;
- (d) the name and address of each person who has delivered notice of intention to appear;
- (e) in the case of creditors, the amount owed to each such creditor;
- (f) the name and postal address of any solicitor for a person listed; and
- (g) whether each person listed intends to support the petition, or to oppose it.

(3) On the day appointed for hearing the petition, a copy of the list must be handed to the court before the hearing commences.

(4) If the court gives a person permission to appear under rule 10.19(6) then the petitioner must add that person to the list with the same particulars.

### **Hearing of petition**

**10.21.**—(1) The petition may not be heard until at least 14 days have elapsed since it was served on the debtor.

(2) However the court may, on such terms as it thinks just, hear the petition at an earlier date, if—

- (a) it appears that the debtor has absconded;
- (b) the court is satisfied that it is a proper case for an expedited hearing; or
- (c) the debtor consents to a hearing within the 14 days.

(3) The following persons may appear and be heard—

- (a) the petitioning creditor;
- (b) the debtor;
- (c) the supervisor of any IVA in force for the debtor; and
- (d) any person who has delivered a notice under rule 10.19.

### **Postponement of hearing**

**10.22.**—(1) The petitioner may, if the petition has not been served, apply to the court to appoint another day for the hearing.

(2) The application must state the reasons why the petition has not been served.

(3) Costs of the application may not be allowed in the proceedings except by order of the court.

(4) If the court appoints another day for the hearing, the petitioner must as soon as reasonably practicable deliver notice of that day to any person who delivered notice of intention to appear under rule 10.19 and to any person who must be served with a copy of the petition under rule 10.14.

### **Adjournment of the hearing**

**10.23.**—(1) This rule applies if the court adjourns the hearing of a bankruptcy petition.

(2) The order of adjournment must identify the proceedings and contain—

- (a) the date of the presentation of the petition;
  - (b) the order that the further hearing of the petition be adjourned to the venue specified in the order;
  - (c) the venue of the adjourned hearing; and
  - (d) the date of the order.
- (3) Unless the court otherwise directs, the petitioner must as soon as reasonably practicable deliver a notice of the order of adjournment to—
- (a) the debtor; and
  - (b) any person who has delivered a notice of intention to appear under rule 10.19 but was not present at the hearing.
- (4) The notice of the order of adjournment must identify the proceedings and—
- (a) contain—
    - (i) the date of the presentation of the petition,
    - (ii) the date the order of adjournment was made, and
    - (iii) the venue for the adjourned hearing; and
  - (b) be authenticated and dated by the petitioner or the petitioner’s solicitor.

### **Decision on the hearing**

**10.24.**—(1) On the hearing of the petition, the court may make a bankruptcy order if satisfied that the statements in the petition are true, and that the debt on which it is founded has not been paid, or secured or compounded.

(2) If the petition is brought in relation to a judgment debt, or a sum ordered by any court to be paid, the court may stay or dismiss the petition on the ground that an appeal is pending from the judgment or order, or that execution of the judgment has been stayed.

- (3) An order dismissing or giving permission to withdraw a bankruptcy petition must contain—
- (a) identification details for the proceedings;
  - (b) the date of the presentation of the bankruptcy petition;
  - (c) the name, postal address and description of the applicant;
  - (d) a statement that the petition has been heard;
  - (e) the order that the petition be dismissed or that, with the permission of the court, the petition is withdrawn;
  - (f) details of any further terms of the order;
  - (g) the date and reference number of the registration of the petition as a pending action with the Chief Land Registrar;
  - (h) an order that the entry relating to the petition in the register of pending actions be vacated on the debtor’s application; and
  - (i) the date of the order.
- (4) The order must notify the debtor that it is the debtor’s responsibility and in the debtor’s interest to ensure that the registration of the petition as an entry, both with the Chief Land Registrar and in the title register of any property owned by the debtor, is cancelled.

(5) In the case of a petition preceded by a statutory demand, the petition will not be dismissed on the ground only that the amount of the debt was over-stated in the demand, unless the debtor, within the time allowed for complying with the demand, delivered a notice to the creditor disputing

the validity of the demand on that ground; but, in the absence of such notice, the debtor is deemed to have complied with the demand if the correct amount is paid within the time allowed.

### **Vacating registration on withdrawal of petition**

**10.25.** If the petition is withdrawn by permission of the court, the court must deliver to the debtor two sealed copies of the order (one for the Chief Land Registrar).

### **Non-appearance of petitioning creditor**

**10.26.** A petitioning creditor who fails to appear on the hearing of the petition may not present a petition either alone or jointly with any other person against the same debtor in respect of the same debt without the permission of the court to which the previous petition was presented.

### **Substitution of petitioner**

**10.27.**—(1) This rule applies where the petitioner—

- (a) is subsequently found not to have been entitled to present the petition;
- (b) consents to withdraw the petition or to allow it to be dismissed;
- (c) consents to an adjournment;
- (d) fails to appear in support of the petition when it is called on in court on the day originally fixed for the hearing, or on a day to which it is adjourned; or
- (e) appears, but does not apply for an order in the terms of the petition.

(2) The court may, on such terms as it thinks just, substitute as petitioner a person who—

- (a) has delivered a notice under rule 10.19 of intention to appear at the hearing;
- (b) is willing to prosecute the petition; and
- (c) was, in the case of a creditor, at the date on which the petition was presented, in such a position in relation to the debtor as would have enabled the creditor on that date to present a bankruptcy petition in relation to a debt or debts owed to that creditor by the debtor, paragraphs (a) to (d) of section 267(2) being satisfied in relation to that debt or those debts.

### **Order for substitution of petitioner**

**10.28.** The order for substitution of a petitioner must contain—

- (a) identification details for the proceedings;
- (b) the date of the hearing of the petition;
- (c) the name of the original petitioner;
- (d) the name of the person who is willing to prosecute the petition (“the named person”);
- (e) a statement that the named person meets the requirements of rule 10.27(2);
- (f) details of the statutory demand or return of the enforcement officer or enforcement agent;
- (g) the following orders—
  - (i) that upon payment by the named person of the statutory deposit to the court the statutory deposit paid by the original petitioner to the court be repaid to the original petitioner by the official receiver,
  - (ii) that the named person be substituted as petitioner in place of the original petitioner and that the relevant person may amend the petition accordingly,

- (iii) that the named person must within five business days from the date of the order file a copy of the amended petition together with a statement of truth verifying the amended petition,
- (iv) that at least 14 days before the date of the adjourned hearing of the petition the named person must serve upon the debtor a sealed copy of the amended petition,
- (v) that the hearing of the amended petition be adjourned to the venue specified in the order, and
- (vi) that the question of the costs of the original petitioner and of the statutory deposit (if appropriate) be reserved until the final determination of the amended petition;
- (h) the venue of the adjourned hearing; and
- (i) the date of the order.

### **Change of carriage of petition**

**10.29.**—(1) On the hearing of the petition, a person who has delivered notice under rule 10.19 of intention to appear at the hearing, may apply to the court for an order giving that person carriage of the petition in place of the petitioner, but without requiring any amendment of the petition.

(2) The court may, on such terms as it thinks just, make a change of carriage order if satisfied that—

- (a) the applicant is an unpaid and unsecured creditor of the debtor or a member State liquidator appointed in main proceedings in relation to the debtor; and
- (b) the petitioner either—
  - (i) intends by any means to secure the postponement, adjournment, dismissal or withdrawal of the petition, or
  - (ii) does not intend to prosecute the petition, either diligently or at all.

(3) The court must not make such an order if satisfied that the petitioner’s debt has been paid, secured or compounded by means of—

- (a) a disposition of property made by some person other than the debtor; or
- (b) a disposition of the debtor’s own property made with the approval of, or ratified by, the court.

(4) A change of carriage order may be made whether or not the petitioner appears at the hearing.

(5) If the order is made, the person given the carriage of the petition is entitled to rely on all evidence previously provided in the proceedings.

(6) The change of carriage order will contain—

- (a) identification details for the proceedings;
- (b) the date of the hearing of the petition;
- (c) the name of the person who is willing to be given carriage of the petition (“the relevant person”);
- (d) a statement that the relevant person is a creditor of the debtor or a member State liquidator appointed in main proceedings in relation to the debtor;
- (e) the name of the original petitioner;
- (f) a statement that the relevant person has applied for an order under this rule to have carriage of the petition in place of the original petitioner;
- (g) the order that the relevant person must within a period which is specified in the order serve upon the debtor and the original petitioner a sealed copy of the order;

- (h) the order that the further hearing of the petition be adjourned to the venue specified in the order;
- (i) the venue of the adjourned hearing;
- (j) the order that the question of the costs of the original petitioner be reserved until the final determination of the petition; and
- (k) the date of the order.

**Petitioner seeking dismissal or permission to withdraw**

[Note. See rule 10.24 for the contents of an order dismissing or giving permission to withdraw a petition.]

**10.30.**—(1) Where the petitioner applies to the court for the petition to be dismissed, or for permission to withdraw it, the petitioner must file with the court a witness statement specifying the grounds of the application and the circumstances in which it is made if —

- (a) a person has delivered notice under rule 10.19 of intention to appear at the hearing of the petition; or
- (b) the court so orders.

(2) If any payment has been made to the petitioner since the petition was filed by way of settlement (in whole or in part) of the debt or any arrangement has been entered into for securing or compounding the debt, the witness statement must also state—

- (a) what dispositions of property have been made for the purposes of the settlement or arrangement;
- (b) whether, in the case of any disposition, it was property of the debtor, or of some other person; and
- (c) whether, if it was property of the debtor, the disposition was made with the approval of, or has been ratified by, the court (if so, specifying the relevant court order).

(3) An order giving permission to withdraw a petition must not be made before the petition is heard.

(4) The order of dismissal or granting permission to withdraw a bankruptcy petition must contain—

- (a) identification details for the proceedings;
- (b) the date of the filing of the bankruptcy petition;
- (c) the name, postal address and description of the applicant;
- (d) a statement that the petition has been heard;
- (e) the order that the petition be dismissed or that, with the permission of the court, the petition is withdrawn;
- (f) details of any further terms of the order;
- (g) the date and reference number of the registration of the petition as a pending action with the Chief Land Registrar;
- (h) an order that the entry relating to the petition in the register of pending actions be vacated on the debtor’s application; and
- (i) the date of the order.

**Contents of bankruptcy order**

**10.31.**—(1) The bankruptcy order must identify the proceedings and contain—

- (a) the name and address of the petitioner;
- (b) the date of the presentation of the petition;
- (c) the details of the debtor as provided under rule 10.8(1)(a) to (g);
- (d) the order that the person named is made bankrupt;
- (e) the order either—
  - (i) that the court being satisfied that the EC Regulation applies declares that the proceedings are main, secondary or territorial proceedings (as the case may be) as defined in Article 3 of the EC Regulations, or
  - (ii) that the court is satisfied that the EC Regulation does not apply in relation to the proceedings;
- (f) a statement that the official receiver (or one of them) attached to the court is by virtue of the order trustee of the bankrupt's estate;
- (g) a notice of the bankrupt's duties in relation to the official receiver under section 291(5), and in particular to the bankrupt's duty to give the official receiver such inventory of the bankrupt's estate and such other information, and to attend on the official receiver at such times, as the official receiver may reasonably require; and
- (h) the date and time of the order.

(2) If the petitioner is represented by a solicitor the order is to be endorsed with the name, address, telephone number and reference of the solicitor.

(3) Subject to section 346(6) (effect of bankruptcy on enforcement procedures), the order may include provision staying any action or proceeding against the bankrupt.

**Delivery and notice of the order**

**10.32.**—(1) As soon as reasonably practicable after making a bankruptcy order the court must deliver two sealed copies of the order to the official receiver.

(2) The official receiver must as soon as reasonably practicable deliver a sealed copy of the order to the bankrupt.

(3) On receipt of the sealed copies of the bankruptcy order the official receiver—

- (a) must as soon as reasonably practicable—
  - (i) deliver an application for registration of the order containing the particulars specified in rule 10.33 to the Chief Land Registrar, for registration in the register of writs and orders affecting land, and
  - (ii) cause notice of the order to be gazetted;
- (b) must cause an entry to be made in the individual insolvency register in accordance with rule 11.16; and
- (c) may cause notice of the order to be advertised in such other manner as the official receiver thinks fit.

(4) The notice to be gazetted and any notice to be advertised must state—

- (a) that a bankruptcy order has been made against the bankrupt;

(5) Section 291 subsections (1) to (3) are omitted by paragraph 4 of Schedule 10 to the Small Business, Enterprise and Employment Act 2015 (c.26).

(6) Section 346(1) to (4) is amended by paragraph 39 of Schedule 19 of the Enterprise and Regulatory Reform Act 2013 (c.24).



- (b) the date and time of the making of the bankruptcy order;
- (c) the name and address of the petitioning creditor; and
- (d) the date of presentation of the petition.

(5) The court may, on the application of the bankrupt or a creditor, order the official receiver to suspend action under paragraph (3) and rule 11.16, pending a further order of the court.

(6) An application for such action to be suspended must be supported by a witness statement stating the grounds on which it is made.

(7) Where an order to suspend such action is made, the applicant must deliver a copy of the order to the official receiver as soon as reasonably practicable.

### **Application to Chief Land Registrar to register bankruptcy order**

**10.33.**—(1) The application for registration of the bankruptcy order delivered to the Chief Land Registrar under rule 10.32 must contain—

- (a) identification details for the proceedings;
- (b) a statement that the official receiver is applying for registration of a bankruptcy order in the register of writs and orders under section 6 of the Land Charges Act 1972<sup>(7)</sup>;
- (c) the name of the bankrupt;
- (d) the bankrupt’s gender, if known;
- (e) details of the bankrupt’s trade, profession or occupation, including any trading name and, in the case of a partnership, the name and gender, if known, of each of the other partners;
- (f) the postal address for each known place of residence of the bankrupt, including the bankrupt’s business address where the official receiver considers it to be appropriate for the purpose of the notice;
- (g) the relevant key number allocated by the Chief Land Registrar;
- (h) the date of the bankruptcy order; and
- (i) the name and postal address of the petitioner.

(2) The application must be authenticated and dated by the official receiver.

(3) A separate application must be completed for each address and for any alternative name by which the bankrupt has been or is known (other than any trading name).

## **CHAPTER 3**

### **Debtors’ bankruptcy applications**

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

#### **Preliminary**

**10.34.** This Chapter relates to a debtor’s bankruptcy application and the making of a bankruptcy order on the application of a debtor.

#### **Bankruptcy application for a bankruptcy order**

**10.35.**—(1) In the bankruptcy application the debtor must—

- (a) state that the debtor is unable to pay the debtor’s debts;

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(7) 1972 c.61.

- (b) request that the adjudicator make a bankruptcy order against the debtor;
  - (c) state that the debtor is not aware of any pending bankruptcy petition;
  - (d) state whether a bankruptcy order has been made in respect of any of the debts which are the subject of the bankruptcy application;
  - (e) state whether the debtor has taken debt advice before completing the bankruptcy application;
  - (f) consent to verification checks being made by the adjudicator;
  - (g) provide the information set out in Schedule 7;
  - (h) provide the additional information set out in Schedule 8;
  - (i) state that the information provided in accordance with this rule is accurate and up-to-date at the date of the bankruptcy application; and
  - (j) state that the prescribed fee and deposit have been paid in full.
- (2) The bankruptcy application must be authenticated by the debtor.

#### **Procedure for making a bankruptcy application and communication with the adjudicator**

**10.36.**—(1) The bankruptcy application must be completed in accordance with these Rules in electronic form and delivered to the adjudicator by electronic means unless otherwise agreed with the adjudicator in accordance with paragraph (4).

(2) For the purposes of rule 10.35(1)(i) the date of the bankruptcy application is the date that the debtor submits the bankruptcy application to the adjudicator under these Rules.

(3) A bankruptcy application is made when its receipt has been acknowledged by the adjudicator by electronic or other means.

(4) In the event of any malfunction or error in the operation of the electronic form or means of delivery, the adjudicator must—

- (a) agree that debtors may, for a specified period, complete and deliver bankruptcy applications in another format; and
- (b) provide an alternative means of delivery for the bankruptcy application and details of any terms or conditions to which their use is subject.

(5) If a bankruptcy application is completed in hard copy, it may not be delivered by fax.

(6) Where the debtor has given an electronic address in the bankruptcy application, the adjudicator must so far as reasonably practicable communicate with the debtor by electronic means.

(7) Unless the contrary is shown, a document (other than a bankruptcy application) 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.

(8) Unless the contrary is shown, a document (other than a bankruptcy application) is to be treated as delivered to the electronic address to which it is sent at 9.00am on the next business day after it was sent.

(9) Rule 1.45 does not apply to electronic delivery of documents between a debtor and the adjudicator.

### **Application to the Chief Land Registrar to register a bankruptcy application**

**10.37.**—(1) When a bankruptcy application is made, the adjudicator must as soon as reasonably practicable deliver to the Chief Land Registrar an application for registration of the bankruptcy application, in the register of pending actions.

(2) The application must contain—

- (a) a statement that the adjudicator is applying for registration of a bankruptcy application as a pending action under section 5 of the Land Charges Act 1972<sup>(8)</sup>;
- (b) the debtor's name and any alternative name by which the debtor has been or is known;
- (c) the debtor's date of birth;
- (d) the debtor's gender, if known;
- (e) the debtor's occupation, including any trading name;
- (f) the postal address for each known place of residence of the debtor;
- (g) the debtor's business address where the adjudicator considers it appropriate for the purpose of the application;
- (h) the relevant key number allocated by the Chief Land Registrar;
- (i) the reference allocated to the bankruptcy application; and
- (j) the date of the bankruptcy application.

(3) The application must be authenticated and dated by the adjudicator.

### **Verification checks**

**10.38.** For the purpose of determining whether the adjudicator can make a bankruptcy order, verification checks may be made in, or with, one or more of the following—

- (a) the electoral registers for such districts in England and Wales as the adjudicator considers appropriate to determine the identity and residence of the debtor;
- (b) the individual insolvency register;
- (c) the official receiver; or
- (d) a credit reference agency.

### **Determination of the bankruptcy application**

**10.39.**—(1) The adjudicator must determine whether to make a bankruptcy order within the determination period referred to in rule 10.40.

(2) In reaching a determination, the adjudicator must have regard to whether the requirements of section 263K<sup>(9)</sup> of the Act are met.

(3) During the determination period the adjudicator may request such further information from the debtor as the adjudicator considers is necessary in order to make the determination, such information to be provided in writing or at the request of the adjudicator, to be provided orally.

(4) Subject to paragraph (5), the adjudicator must make a determination from the information provided under rule 10.35(1)(g), any further information provided under paragraph (3) and from the verification checks.

(5) Before determining that the requirements of section 263K are not met, the adjudicator must have regard to the additional information provided under rule 10.35(1)(h).

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<sup>(8)</sup> 1972 c.61; there are amending instruments but none is relevant.

<sup>(9)</sup> Section 263K is inserted by paragraph 1 of Schedule 18 to the Enterprise and Regulatory Reform Act 2013 (c.24).

**The determination period**

- 10.40.**—(1) The determination period is 28 days from the date the bankruptcy application is made.
- (2) Where the adjudicator requests further information from the debtor more than 14 days after the date the bankruptcy application is made, the determination period is extended by 14 days.
- (3) A failure to make a determination within the determination period is a refusal.

**Settlement and contents of bankruptcy order**

- 10.41.**—(1) The bankruptcy order must be settled by the adjudicator.
- (2) The bankruptcy order must contain—
- (a) the information set out in Part 1 of Schedule 7;
  - (b) the date of delivery of the bankruptcy application on which the order is made;
  - (c) the order that upon reading the application it is ordered that person named be made bankrupt;
  - (d) the order either—
    - (i) that the adjudicator being satisfied that the EC Regulation applies declares that the proceedings are main, secondary or territorial proceedings (as the case may be) as defined in Article 3 of the EC Regulations, or
    - (ii) that the adjudicator is satisfied that the EC Regulation does not apply in relation to the proceedings;
  - (e) a statement that the official receiver (or one of them) attached to the court is, by virtue of the order, trustee of the bankrupt's estate; and
  - (f) a notice of the bankrupt's duties in relation to the official receiver under section 291(4) (duties of bankrupt in relation to the official receiver), and in particular to the bankrupt's duty to give the official receiver such inventory of the bankrupt's estate and such other information, and to attend on the official receiver at such times, as the official receiver may reasonably require.

**Refusal to make a bankruptcy order and contents of notice of refusal**

- 10.42.**—(1) Where the adjudicator determines that the requirements of section 263K are not met, the adjudicator must refuse to make a bankruptcy order.
- (2) The adjudicator must deliver notice of the refusal to make a bankruptcy order to the debtor as soon as reasonably practicable after the refusal to make the bankruptcy order under paragraph (1) or under rule 10.40(3).
- (3) The notice of refusal must state—
- (a) the reason or reasons for the refusal to make a bankruptcy order;
  - (b) that the debtor may request that the adjudicator review the decision to refuse to make a bankruptcy order within 14 days from the date of delivery of the notice of refusal;
  - (c) that where a review is requested it will be a review of the information that was available to the adjudicator at the date when the adjudicator refused to make a bankruptcy order;
  - (d) that following a review, the adjudicator must either—
    - (i) confirm the refusal to make a bankruptcy order; or
    - (ii) make a bankruptcy order against the debtor; and

- (e) where the adjudicator confirms the refusal following a review, that the debtor may appeal to the court against the decision within 28 days from the date of delivery of the notice of confirmation of the refusal.

#### **Review of refusal to make a bankruptcy order**

**10.43.**—(1) The debtor may request the adjudicator to review the decision to refuse to make a bankruptcy order within 14 days from the date of delivery of the notice of refusal.

(2) The debtor must give reasons for requesting a review but the request may not include additional information that was not available to the adjudicator when the determination was made.

(3) Where the adjudicator makes a bankruptcy order following a review, the bankruptcy order must be settled by the adjudicator in accordance with rule 10.41.

(4) Where the adjudicator confirms the refusal to make a bankruptcy order, the adjudicator must deliver notice to the debtor as soon as reasonably practicable.

(5) The notice will state—

- (a) the reason or reasons for confirming the refusal to make the bankruptcy order; and
- (b) that the debtor may appeal to the court against the decision within 28 days from the date of delivery of the confirmation of the notice of refusal.

#### **Appeal to the court following a review of refusal to make a bankruptcy order**

**10.44.**—(1) Following a decision by the adjudicator to confirm the refusal to make a bankruptcy order, a debtor may appeal the decision to the court.

(2) An appeal under this rule must be made within 28 days from the date of delivery of the confirmation of the notice of refusal.

(3) The appeal must set out the grounds for the appeal.

(4) The court must either—

- (a) dismiss the application; or
- (b) make a bankruptcy order against the debtor.

(5) The bankruptcy order must contain—

- (a) the information set out in Part 1 of Schedule 7;
- (b) the date of delivery of the bankruptcy application on which the order is made;
- (c) the date and time of the making of the order; and
- (d) a statement that the order has been made following an appeal to the court under this rule.

(6) The adjudicator is not personally liable for costs incurred by any person in respect of an application under this rule.

(7) As soon as reasonably practicable after the making of the bankruptcy order the court must deliver sealed copies of the order to the debtor and the official receiver.

#### **Action to follow making of order**

**10.45.**—(1) As soon as reasonably practicable following the making of the bankruptcy order the adjudicator must deliver copies of the bankruptcy order to the debtor and the official receiver.

(2) On the application of the bankrupt to the official receiver, the official receiver must deliver to the bankrupt a hard copy of the bankruptcy order.

(3) Subject to paragraph (5), on receipt of the bankruptcy order, the official receiver—

- (a) must as soon as reasonably practicable—
    - (i) deliver an application to the Chief Land Registrar for registration of the bankruptcy order in the register of writs and orders affecting land, and
    - (ii) must cause notice of the bankruptcy order to be gazetted;
  - (b) may cause notice of the bankruptcy order to be advertised in such other manner as the official receiver thinks fit; and
  - (c) must cause an entry to be made in the individual insolvency register in accordance with rule 11.16.
- (4) The notice to be gazetted under paragraph (3)(a)(ii) and any notice to be advertised under paragraph (3)(b) must state—
- (a) that a bankruptcy order has been made against the bankrupt;
  - (b) the date of the bankruptcy order;
  - (c) that the bankruptcy order was made on the debtor’s own bankruptcy application; and
  - (d) the date of delivery of the bankruptcy application.
- (5) The court may, on the application of the bankrupt or a creditor, order the official receiver to suspend action under paragraph (3), pending a further order of the court.
- (6) An application for such action to be suspended must be supported by a witness statement stating the grounds on which it is made.
- (7) Where an order is made to suspend such action, the applicant must deliver a copy of it to the official receiver as soon as reasonably practicable.

### **Application to the Chief Land Registrar**

- 10.46.**—(1) The application to the Chief Land Registrar for registration of the bankruptcy order under rule 10.45 must contain—
- (a) a statement that the official receiver is applying for registration of a bankruptcy order made by the adjudicator in the register of writs and orders under section 6 of the Land Charges Act 1972;
  - (b) the bankrupt’s name and any alternative names by which the bankrupt has been or is known;
  - (c) the bankrupt’s date of birth;
  - (d) the bankrupt’s gender, if known;
  - (e) the bankrupt’s occupation including any trading name;
  - (f) the postal address for each known place of residence of the bankrupt;
  - (g) the bankrupt’s business address where the official receiver considers it appropriate for the purpose of the application;
  - (h) the relevant key number allocated by the Chief Land Registrar;
  - (i) the reference allocated to the bankruptcy order; and
  - (j) the date of the bankruptcy order.
- (2) The application must be authenticated and dated by the official receiver.

### **The bankruptcy file**

**10.47.**—(1) On receipt of a bankruptcy application, the adjudicator must open a file on which the adjudicator must place the bankruptcy application and any documents which are filed with the adjudicator under this Chapter.

(2) As soon as reasonably practicable following the making of the bankruptcy order the adjudicator must deliver the bankruptcy file to the official receiver.

(3) The official receiver must place on the bankruptcy file—

- (a) any documents delivered to the official receiver by the court; and
- (b) any notices delivered to the official receiver under these Rules.

(4) The following persons may inspect the bankruptcy file—

- (a) the court;
- (b) the trustee;
- (c) the Secretary of State; and
- (d) the bankrupt.

(5) Following the making of a bankruptcy order, a creditor may inspect the following information and documents filed on the bankruptcy file—

- (a) the information provided to the adjudicator and set out in Schedule 9;
- (b) the bankruptcy order; and
- (c) directions and orders of the court, if any.

(6) The right to inspect the bankruptcy file may be exercised on that person's behalf by a person authorised to do so by that person.

(7) Any person who is not otherwise entitled to inspect the bankruptcy file (or any part of it) may do so if the court gives permission.

(8) The court may direct that the bankruptcy file, a document (or part of it) must not be made available under this rule without the permission of the court.

(9) An application for a direction to withhold the bankruptcy file, a document (or part of it) may be made by—

- (a) the official receiver;
- (b) the trustee; or
- (c) any person appearing to the court to have an interest.

(10) An application under this rule for—

- (a) permission to inspect the bankruptcy file; or
- (b) a direction to withhold the bankruptcy file, a document (or part of it),

may be made without notice to any other party, but the court may direct that notice must be delivered to any person who would be affected by its decision.

### **Court to which applications are to be made**

**10.48.**—(1) An application to the court under this Chapter must be made to the debtor's own hearing centre where the debtor is resident in England and Wales.

(2) If the debtor is not resident in England and Wales but was resident or carried on business in England and Wales within the six months immediately preceding the making of the bankruptcy application, an application may be made to the debtor's own hearing centre or to the High Court.

(3) In this rule the debtor's own hearing centre is—

- (a) where the debtor has carried on business in England and Wales within the six months immediately preceding the filing with the court of the application, the hearing centre for the insolvency district where for the longest period during those six months—
    - (i) the debtor carried on business, or
    - (ii) the principal place of business was located, if business was carried on in more than one insolvency district; or
  - (b) where the debtor has not carried on business in England and Wales within the six months immediately before making the application to the court, the hearing centre for the insolvency district where the debtor resided for the longest period during those six months.
- (4) Where, for whatever reason, it is not possible for the application to be made to the debtor's own hearing centre, the applicant may, with a view to expediting the application, make the application—
- (a) where paragraph (3)(a) applies, to—
    - (i) the hearing centre for the insolvency district in which the debtor resides, or
    - (ii) whichever court or hearing centre is specified in Schedule 6 as being the nearest full-time court or hearing centre in relation to—
      - (aa) the hearing centre in paragraph (3)(a), or
      - (bb) the hearing centre in paragraph (4)(a)(i); or
  - (b) where paragraph (3)(b) applies, whichever court or hearing centre is specified in Schedule 6 as being the nearest full-time court or hearing centre in relation to the court in that paragraph.
- (5) The application must contain sufficient information to establish that it is brought in the appropriate court or hearing centre.

## CHAPTER 4

### The interim receiver

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

#### **Application for appointment of interim receiver (section 286)**

**10.49.**—(1) An application to the court under section 286(10) for the appointment of the official receiver or an insolvency practitioner as interim receiver may be made by—

- (a) a creditor;
  - (b) the debtor;
  - (c) a temporary administrator; or
  - (d) a member State liquidator appointed in main proceedings (including in accordance with Article 29 of the EC Regulation).
- (2) The application must be supported by a witness statement stating—
- (a) the grounds on which it is proposed that the interim receiver should be appointed;
  - (b) whether or not the official receiver has been informed of the application and, if so, whether a copy of it has been delivered to that person;
  - (c) if the proposed interim receiver is an insolvency practitioner, that the insolvency practitioner has consented to act;

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(10) Section 286 is amended by paragraph 17 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24), paragraph 13 of Schedule 6 to the Deregulation Act 2015 (c.20) and paragraph 2 of Schedule 10 to the Small Business, Enterprise and Employment Act 2015 (c.26).



(d) whether to the applicant's knowledge there has been proposed or is in force an IVA(11); and

(e) the applicant's estimate of the value of the property or business in relation to which the interim receiver is to be appointed.

(3) The applicant must deliver copies of the application and the witness statement to the proposed interim receiver and to the official receiver.

(4) If for any reason it is not practicable to deliver a copy of the application to the proposed interim receiver that person must be informed of the application in sufficient time to be able to be present at the hearing.

(5) The official receiver may attend the hearing of the application and make representations.

(6) If satisfied that sufficient grounds are shown for the appointment, the court may appoint an interim receiver on such terms as it thinks just.

### **Deposit**

**10.50.**—(1) An applicant for an order appointing the official receiver as interim receiver must, before the order is made, deposit with the official receiver, or otherwise secure to the official receiver's satisfaction, such sum as the court directs to cover the official receiver's remuneration and expenses.

(2) If the sum proves to be insufficient, the court may, on the application of the official receiver, order the applicant to deposit or secure an additional sum.

(3) If such additional sum is not deposited or secured within two business days after service of the order on the applicant the court may discharge the order appointing the official receiver as interim receiver.

(4) If a bankruptcy order is made after an interim receiver has been appointed, any money deposited under this rule must (unless it is required because the assets are insufficient to pay the remuneration and expenses of the interim receiver, or the deposit was made by the debtor out of the debtor's own property) be repaid to the person depositing it (or as that person may direct) out of the bankrupt's estate, in the prescribed order of priority.

### **Order of appointment**

**10.51.**—(1) The order appointing the interim receiver must contain—

(a) identification details for the proceedings;

(b) the name and title of the judge making the order;

(c) the name and postal address of the applicant;

(d) identification details for the debtor;

(e) the statement that the court is satisfied—

(i) that the debtor is unable to pay the debtor's debts, and

(ii) that the proceedings are main, secondary, territorial or non-EC proceedings (as the case may be);

(f) the order either that—

(i) upon the applicant depositing the sum specified in the order with the official receiver, the official receiver is appointed interim receiver of the property of the debtor, or

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(11) Part 8 is amended by paragraph 2 of Schedule 6 to the Deregulation Act 2015 (c.20), paragraphs 2 to 4 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24) and sections 124 and 15 and paragraphs 61 to 72 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

- (ii) the person specified in the order is appointed interim receiver of the property of the debtor;
  - (g) identification and contact details for the interim receiver, where the interim receiver is not the official receiver;
  - (h) details of the nature, together with a short description, of the property of which the interim receiver is to take possession;
  - (i) details of the duties to be carried out by the interim receiver in relation to the debtor's affairs;
  - (j) a notice to the debtor stating that the debtor must give the interim receiver all the information about the debtor's property that the interim receiver may require in order to carry out the functions imposed on the interim receiver by the order; and
  - (k) the date of the order.
- (2) The court must, as soon as reasonably practicable after the order is made, deliver two sealed copies of the order to the person appointed interim receiver.
- (3) The interim receiver must as soon as reasonably practicable deliver a sealed copy of the order to the debtor.

### **Security**

- 10.52.**—(1) This rule applies where an insolvency practitioner is appointed as interim receiver under section 286.
- (2) The cost of providing the security required under the Act must be paid in the first instance by the interim receiver.
- (3) If a bankruptcy order is not made, the person so appointed is entitled to be reimbursed out of the property of the debtor, and the court may make an order on the debtor accordingly.
- (4) If a bankruptcy order is made, the person so appointed is entitled to be reimbursed out of the bankrupt's estate in the prescribed order of priority.
- (5) If the interim receiver fails to give or keep up the required security, the court may remove the interim receiver, and make such order as it thinks just as to costs.
- (6) If an order is made under this rule removing the interim receiver, or discharging the order appointing the interim receiver, the court must give directions as to whether any, and if so what, steps should be taken for the appointment of another person as interim receiver.

### **Remuneration**

- 10.53.**—(1) The remuneration of an interim receiver (other than the official receiver) must be fixed by the court from time to time on application of the interim receiver.
- (2) In fixing the remuneration of the interim receiver, the court must take into account—
- (a) the time properly given by the interim receiver and staff of the interim receiver in attending to the debtor's affairs;
  - (b) the complexity of the case;
  - (c) any respects in which, in connection with the debtor's affairs, there falls on the interim receiver any responsibility of an exceptional kind or degree;
  - (d) the effectiveness with which the interim receiver appears to be carrying out, or to have carried out, the duties of the interim receiver; and
  - (e) the value and nature of the property with which the interim receiver has to deal.

(3) Without prejudice to any order the court may make as to costs, the interim receiver's remuneration (whether the official receiver or another) must be paid to the interim receiver, and the amount of any expenses incurred by the interim receiver (including the remuneration and expenses of any special manager appointed under section 370)(12) reimbursed—

- (a) if a bankruptcy order is not made, out of the property of the debtor; and
- (b) if a bankruptcy order is made, out of the bankrupt's estate in the prescribed order of priority; or
- (c) in either case (the relevant funds being insufficient), out of any deposit under rule 10.50.

(4) Unless the court otherwise directs, if a bankruptcy order is not made, the interim receiver may retain out of the debtor's property such sums or property as are or may be required for meeting the remuneration and expenses of the interim receiver.

(5) Where a person other than the official receiver has been appointed interim receiver, and the official receiver has taken any steps for the purpose of obtaining a statement of affairs or has performed any other duty under these Rules, the interim receiver must pay the official receiver such sum (if any) as the court may direct.

### **Termination of appointment**

**10.54.**—(1) The appointment of the interim receiver may be terminated by the court on the application of the interim receiver, or a person specified in rule 10.49(1).

(2) If the interim receiver's appointment terminates, in consequence of the dismissal of the bankruptcy petition or otherwise, the court may give such directions as it thinks just relating to the accounts of the interim receiver's administration and any other matters which it thinks appropriate.

## CHAPTER 5

### Disclosure of the bankrupt's affairs

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

#### *Sub-division A: creditor's petition*

### **Notice requiring statement of affairs (section 288)**

**10.55.**—(1) Where, under section 288(13), the official receiver requires a bankrupt to provide the official receiver with a statement of affairs, the official receiver must deliver a notice to the bankrupt.

- (2) The notice must be headed "Notice requiring statement of affairs" and must—
  - (a) require the bankrupt to prepare and submit to the official receiver a statement of affairs;
  - (b) inform the bankrupt of the date by which the statement must be delivered; and
  - (c) state the effect of section 288(4) (penalty for non-compliance) and section 291 (duty to co-operate).

(3) The official receiver must deliver instructions for the preparation of the statement of affairs with the notice.

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(12) Section 370(1)(c) and (2) is amended by paragraph 14 of Schedule 6 to the Deregulation Act (c.20).

(13) Section 288 is amended by paragraph 18 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24) and by paragraph 15 of Schedule 6 to the Deregulation Act 2015 (c.20).

### **Statement of affairs**

- 10.56.**—(1) The statement of affairs must contain—
- (a) identification details for the proceedings;
  - (b) identification details for the bankrupt;
  - (c) the date of the bankruptcy order;
  - (d) a list of the bankrupt’s secured creditors giving in relation to each—
    - (i) the name and postal address,
    - (ii) the amount owed to the creditor, and
    - (iii) particulars of the property of the bankrupt which is claimed by the creditor to clear or reduce the creditor’s debt and the value of that property;
  - (e) a list of unsecured creditors giving in relation to each—
    - (i) the name and postal address of the creditor,
    - (ii) the amount the creditor claims the bankrupt owes to that creditor, and
    - (iii) the amount the bankrupt thinks is owed by the bankrupt to that creditor;
  - (f) a list of the bankrupt’s total assets (which must include anything not previously mentioned in the statement of affairs which may be of value) divided into the following categories and giving the value of each asset listed—
    - (i) cash at the bank or building society,
    - (ii) household furniture and belongings,
    - (iii) life policies,
    - (iv) money owed to the bankrupt,
    - (v) stock in trade,
    - (vi) motor vehicles, and
    - (vii) other property; and
  - (g) the total value of the assets listed under paragraph (f).
- (2) The bankrupt must authenticate and date each page of the statement of affairs.
- (3) The statement of affairs must be verified by a statement of truth and delivered to the official receiver, together with one copy.
- (4) The official receiver must file the verified statement with the court.

### **Limited disclosure**

**10.57.** Where the official receiver thinks that disclosure of the whole or part of the statement of affairs would be likely to prejudice the conduct of the bankruptcy or might reasonably be expected to lead to violence against any person, the official receiver may apply to the court for an order that the statement of affairs or any specified part of it either—

- (a) must not be filed with the court; or
- (b) must be filed separately and not open to inspection otherwise than with permission of the court.

### **Requirement to submit statement of affairs and extension of time (section 288(3))**

**10.58.**—(1) The official receiver may exercise the power in section 288(3)(14) to require the bankrupt to submit a statement of affairs under section 288(3) and to grant an extension of time, either on the official receiver’s own initiative, or at the bankrupt’s request.

(2) A bankrupt required to submit a statement of affairs under paragraph (1) may apply to the court for a release or extension of time, if the official receiver has refused to release the bankrupt from that requirement or grant an extension.

(3) On receipt of an application, the court may, if it is satisfied that no sufficient cause is shown for it, dismiss it without giving notice to any party other than the applicant.

(4) Unless the application is dismissed, the court must fix a venue for it to be heard.

(5) The applicant must, at least 14 days before any hearing, deliver to the official receiver a notice stating the venue with a copy of the application and any evidence on which the applicant intends to rely.

(6) The official receiver may do either or both of the following—

(a) file a report of any matters which the official receiver thinks ought to be drawn to the court’s attention; or

(b) appear and be heard on the application.

(7) If such a report is filed, the official receiver must deliver a copy of it to the bankrupt not later than five business days before the hearing.

(8) The court must deliver sealed copies of any order made on the application to the bankrupt and the official receiver.

(9) The bankrupt must pay the bankrupt’s costs of the application in any event and, unless and to the extent the court orders otherwise, no allowance in respect of them will be made out of the bankrupt’s estate.

### **Expenses of assisting bankrupt to prepare statement of affairs**

**10.59.**—(1) If the bankrupt cannot personally prepare a proper statement of affairs, the official receiver may, at the expense of the bankrupt’s estate, employ a person or firm to assist in the preparation of the statement.

(2) At the request of the bankrupt, made on the grounds that the bankrupt cannot personally prepare a proper statement, the official receiver may authorise an allowance payable out of the bankrupt’s estate (in accordance with the prescribed order of priority) of all or part of the expenses to be incurred by the bankrupt in employing a person or firm to assist the bankrupt in preparing it.

(3) The bankrupt’s request must be accompanied by an estimate of the expenses involved, and the official receiver must only authorise the employment of a named person or named firm approved by the official receiver.

(4) The official receiver may make the authorisation subject to such conditions (if any) as the official receiver thinks fit relating to the manner in which any person may obtain access to relevant documents and other records.

(5) Nothing in this rule relieves the bankrupt from any obligation relating to the preparation, verification and submission of a statement of affairs, or to the provision of information to the official receiver or the trustee.

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(14) Section 288(3) is amended by paragraph 15(4) and (5) of Schedule 6 to the Deregulation Act 2015 (c.20).

### **Delivery of accounts to official receiver**

**10.60.**—(1) The bankrupt must, at the request of the official receiver, deliver to the official receiver accounts relating to the bankrupt's affairs of such nature, as at such date and for such period as the official receiver may specify.

(2) The period specified may begin from a date up to three years before the date of the presentation of the bankruptcy petition.

(3) The court may, on the official receiver's application, require accounts for any earlier period.

(4) Rule 10.59 (expenses of assisting bankrupt to prepare statement of affairs) applies to accounts to be delivered under this rule as it applies to the statement of affairs.

(5) The accounts must, if the official receiver so requires, be verified by a statement of truth, and (whether or not so verified) delivered to the official receiver within 21 days of the request, or such longer period as the official receiver may allow.

### **Further disclosure**

**10.61.**—(1) The official receiver may at any time require the bankrupt to deliver in writing further information amplifying, modifying or explaining any matter contained in the bankrupt's statement of affairs, or in accounts delivered under the Act or these Rules.

(2) The information must, if the official receiver directs, be verified by a statement of truth, and (whether or not verified) delivered to the official receiver within 21 days from the date of the requirement, or such longer period as the official receiver may allow.

### *Sub-division B: Bankruptcy application*

### **Preliminary**

**10.62.** The rules in this sub-division apply in relation to further disclosure which is required of a bankrupt where the bankruptcy order was made on a bankruptcy application.

### **Delivery of accounts to official receiver**

**10.63.**—(1) The bankrupt must, at the request of the official receiver, deliver to the official receiver accounts relating to the bankrupt's affairs of such nature, as at such date and for such period as the official receiver may specify.

(2) The specified period may begin from a date up to three years preceding the date of the bankruptcy application.

(3) The accounts must, if the official receiver so requires, be verified by a statement of truth, and (whether or not so verified) be delivered to the official receiver within 21 days of the request or such longer period as the official receiver may allow.

(4) The court may, on the official receiver's application, require accounts in respect of any earlier period.

### **Expenses of preparing accounts**

**10.64.**—(1) If the bankrupt cannot personally prepare adequate accounts under rule 10.63, the official receiver may, at the expense of the bankrupt's estate, employ a person or firm to assist in their preparation.

(2) At the request of the bankrupt, made on the grounds that the bankrupt cannot personally prepare the accounts, the official receiver may authorise an allowance payable out of the bankrupt's

estate (in accordance with the prescribed order of priority) of all or part of the expenses to be incurred by the bankrupt in employing a person or firm to assist the bankrupt in their preparation.

(3) The bankrupt's request must be accompanied by an estimate of the expenses involved; and the official receiver must only authorise the employment of a named person or a named firm, being in either case approved by the official receiver.

(4) The official receiver may make the authorisation subject to such conditions (if any) as the official receiver thinks fit relating to the manner in which any person may obtain access to relevant documents and other records.

(5) Nothing in this rule relieves the bankrupt from any obligation relating to the preparation and delivery of accounts, or to the provision of information to the official receiver or the trustee.

### **Further disclosure**

**10.65.**—(1) The official receiver may at any time require the bankrupt to deliver in writing further information amplifying, modifying or explaining any matter contained in the bankruptcy application, or in accounts delivered under the Act or these Rules.

(2) The information must, if the official receiver so directs, be verified by a statement of truth, and (whether or not so verified) delivered to the official receiver within 21 days from the date of the requirement, or such longer period as the official receiver may allow.

### *Sub-division C: Reports by the official receiver*

### **Reports by the official receiver**

**10.66.**—(1) The official receiver must deliver a report on the bankruptcy and the bankrupt's affairs to the creditors at least once after the making of the bankruptcy order.

(2) The report must contain—

- (a) identification details for the proceedings;
- (b) contact details for the official receiver;
- (c) a summary of the assets and liabilities of the bankrupt as known to the official receiver at the date of the report;
- (d) such comments on the summary and the bankrupt's affairs as the official receiver thinks fit; and
- (e) any other information of relevance to the creditors.

(3) The official receiver may apply to the court to be relieved of any duty imposed by this rule or to be authorised to carry out the duty in another way.

(4) On such an application the court must have regard to the cost of carrying out the duty, to the amount of the assets available, and to the extent of the interest of creditors or any particular class of them.

(5) If a bankruptcy order is annulled, any duty of the official receiver to deliver a report under this rule ceases.

## **CHAPTER 6**

### **THE TRUSTEE IN BANKRUPTCY**

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

*Sub-division A: appointment and associated formalities***Appointment by creditors of new trustee**

**10.67.**—(1) This rule applies where the bankrupt’s creditors decide to remove a trustee in bankruptcy under section 298(15) but do not, as part of the decision procedure to remove the trustee, appoint a new trustee.

(2) The existing trustee must send the creditors a notice inviting proposals for a new trustee.

(3) The notice must contain a statement explaining the effect of section 298(4B) (decision of creditors to remove a trustee does not take effect until creditors appoint another trustee).

(4) The notice must also explain that the existing trustee is not obliged to seek the creditors’ views on any proposals that do not meet the requirements of paragraphs (5) and (6).

(5) Any proposal must state the name and contact details of the proposed trustee, and contain a statement that the proposed trustee is qualified to act as an insolvency practitioner in relation to the bankrupt and has consented to act as trustee.

(6) Any proposal must be received by the existing trustee within five business days of the date of the notice.

(7) Following the end of the period for inviting proposals under paragraph (2) of this rule, where any proposals are received the existing trustee must seek a decision from the creditors on the appointment of a replacement trustee by—

(a) a decision procedure; or

(b) the deemed consent procedure.

(8) Where paragraph (7) applies, the existing trustee must send the creditors a notice which complies with rules 15.7 and 15.8 so far as are relevant.

(9) The notice must also identify any person proposed to be nominated as trustee in accordance with this rule.

(10) The decision date in the notice must be no later than 14 days after the date for receiving proposals has passed.

(11) The creditors must be given at least seven days’ notice of the decision date.

(12) A notice inviting proposals for a new trustee under paragraph (2) may be sent before or after the date of the decision to remove the trustee.

(13) Nothing in this rule affects the official receiver’s ability under section 296(1)(16), at any time when trustee, to apply to the Secretary of State to appoint a trustee instead of the official receiver.

**Certification of appointment**

**10.68.**—(1) This rule applies where a person has been appointed as trustee by a decision of the creditors.

(2) The convener or the chair (as the case may be) must certify the appointment, but not unless and until the appointee has delivered to the convener or chair a statement that the appointee is an insolvency practitioner qualified to act as trustee in relation to the bankrupt and consents to act.

(15) Section 298(8A) is inserted and subsection (1) is amended by paragraph 77 of Schedule 9, subsection (4) is amended, (2) omitted and (4A) and (4B) are inserted by paragraph 9 of Schedule 10 to the Small Business, Enterprise and Employment Act 2015 (c.26) and subsections (7) and (8) are amended by paragraph 23 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013(c.24).

(16) Section 296(5) is amended by paragraph 76 of Schedule 9 and (1) and (3) are amended by paragraph 7 of Schedule 10 to the Small Business, Enterprise and Employment Act 2015.



(3) The trustee's appointment takes effect from the date on which the appointment is certified, that date to be endorsed on the certificate.

(4) The certificate must contain—

- (a) identification details for the proceedings;
- (b) identification details for the bankrupt;
- (c) identification and contact details for the person appointed as trustee;
- (d) the date on which the creditors made the appointment; and
- (e) the statement that the appointee—
  - (i) has provided a statement of being qualified to act as an insolvency practitioner in relation to the bankrupt,
  - (ii) has consented to act, and
  - (iii) was appointed trustee of the bankrupt's estate.

(5) The certificate must be authenticated and dated by the person who certifies the appointment.

(6) Where two or more trustees are appointed the certificate must also specify (as required by section 292(3)) the circumstances in which the trustees must act together and the circumstances in which one or more of them may act for the others.

(7) The convener or chair (if that person is not the official receiver) must deliver the certificate to the official receiver.

(8) The official receiver must in any case deliver the certificate to the trustee.

#### **Cost of the trustee's security (section 390(3))**

**10.69.** The cost of the trustee's security required by section 390(3) for the proper performance of the trustee's functions is an expense of the bankruptcy.

#### **Creditors' decision to appoint a trustee**

**10.70.**—(1) In the case of a decision on the appointment of a trustee—

- (a) if on any vote there are two nominees for appointment, the person who obtains the most support is appointed;
- (b) if there are three or more nominees, and one of them has a clear majority over both or all the others together, that one is appointed; and
- (c) in any other case the convener or chair must continue to take votes (disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support last time) until a clear majority is obtained for any one nominee.

(2) In the case of a decision being made at a meeting, the chair may at any time put to the meeting a resolution for the joint appointment of any two or more nominees.

#### **Appointment by the court (section 291A(2))**

**10.71.**—(1) This rule applies where the court appoints the trustee under section 291A(2)(17).

(2) The court's order must not be made unless and until the proposed appointee has filed with the court a statement that the proposed appointee is an insolvency practitioner, qualified to act as the trustee in relation to the bankrupt and consents to act.

(3) The order of the court must contain—

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(17) Section 291A is inserted by section 133(1) of the Small Business, Enterprise and Employment Act 2015 (c.26).

- (a) identification details the proceedings;
- (b) the name and title of the judge making the order;
- (c) the name and postal address of the applicant;
- (d) the capacity in which the applicant made the application;
- (e) identification and contact details for the person appointed as trustee;
- (f) a statement that that the appointee has filed a statement of qualification to act as an insolvency practitioner in relation to the bankrupt and of consent to act;
- (g) the order that the appointee is appointed trustee of the bankrupt's estate; and
- (h) the date of the order.

(4) Where two or more trustees are appointed the order must also specify (as required by section 292(3)) the circumstances in which the trustees must act together and the circumstances in which one or more of them may act for the others.

(5) The court must deliver two copies of the order, one of which must be sealed, to the official receiver.

(6) The official receiver must deliver the sealed copy of the order to the person appointed as trustee.

(7) The trustee's appointment takes effect from the date of the order.

#### **Appointment by the Secretary of State**

**10.72.**—(1) This rule applies where the official receiver—

- (a) refers the need for an appointment of a trustee to the Secretary of State under section 300(4)(18); or
- (b) applies to the Secretary of State under section 296 to make the appointment.

(2) If the Secretary of State makes an appointment the Secretary of State must deliver a copy of the certificate of appointment to the official receiver, who must deliver it to the person appointed.

(3) The certificate must specify the date from which the trustee's appointment is to be effective.

#### **Authentication of trustee's appointment**

**10.73.** Where a trustee is appointed under any of rules 10.70, 10.71 or 10.72, a sealed copy of the order of appointment or (as the case may be) a copy of the certificate of the trustee's appointment may in any proceedings be adduced as proof that the trustee is duly authorised to exercise the powers and perform the duties of trustee of the bankrupt's estate.

#### **Appointment to be gazetted**

**10.74.**—(1) As soon as reasonably practicable after appointment a trustee appointed by a decision of the bankrupt's creditors—

- (a) must gazette a notice of the appointment; and
- (b) may advertise the notice in other such manner as the trustee thinks fit.

(2) The notice must state—

- (a) that a trustee has been appointed by a decision of creditors; and
- (b) the date of the appointment.

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(18) Section 300(4) and (8) is amended, (3) is substituted and (3A) is inserted by paragraph 79 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

### **Hand-over of bankrupt's estate by official receiver to trustee**

**10.75.**—(1) This rule applies where a trustee is appointed in succession to the official receiver acting as trustee.

(2) When the trustee's appointment takes effect, the official receiver must as soon as reasonably practicable do all that is required for putting the trustee into possession of the bankrupt's estate.

(3) On taking possession of the bankrupt's estate, the trustee must discharge any balance due to the official receiver on account of—

- (a) expenses properly incurred by the official receiver and payable under the Act or these Rules; and
- (b) any advances made by the official receiver in respect of the bankrupt's estate, together with interest on such advances at the rate specified in section 17 of the Judgments Act 1838<sup>(19)</sup> on the date of the bankruptcy order.

(4) Alternatively, the trustee may (before taking office) deliver to the official receiver a written undertaking to discharge any such balance out of the first realisation of assets.

(5) The official receiver has a charge on the bankrupt's estate in respect of any sums due under paragraph (3) until they have been discharged, subject only to the deduction from realisations by the trustee of the costs and expenses of such realisations.

(6) The trustee must from time to time out of the realisation of assets discharge all guarantees properly given by the official receiver for the benefit of the bankrupt's estate, and must pay all the official receiver's expenses.

(7) The official receiver must give to the trustee all the information relating to the affairs of the bankrupt and the course of the bankruptcy which the official receiver considers to be reasonably required for the effective discharge by the trustee of the trustee's duties in relation to the bankrupt's estate.

(8) The official receiver must also deliver to the trustee any report of the official receiver under rule 10.66.

### **Invitation to creditors to form a creditors' committee**

**10.76.**—(1) Where the trustee seeks any decision from the bankrupt's creditors, the trustee must at the same time deliver to the creditors a notice inviting them to decide whether a creditors' committee should be established if sufficient creditors are willing to be members of the committee.

(2) The notice must also invite nominations for membership of the committee, such nominations to be received by a date specified in the notice.

(3) The notice must state that nominations—

- (a) must be delivered to the trustee by the specified date; and
- (b) can only be accepted if the convener is satisfied as to the creditors' eligibility under rule 17.4.

#### *Sub-division B: resignation and removal*

### **Trustee's resignation and appointment of replacement (section 298(7))**

**10.77.**—(1) A trustee may resign under section 298(7)<sup>(20)</sup> only—

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<sup>(19)</sup> Section 17 is amended by the Statute Law Revision (No 2) Act 1888 (c.57), article 2 of S.I. 1993/564, article 3 of S.I. 1998/2940, Part 1 of the Schedule to the Civil Procedure Acts Repeal Act 1879 (c.59) and article 3(c) of S.I. 1998/3132.

<sup>(20)</sup> Section 298(7) is amended by paragraph 23 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24).

- (a) on grounds of ill health;
  - (b) because of the intention to cease to practise as an insolvency practitioner;
  - (c) because the further discharge of the duties of trustee is prevented or made impracticable by —
    - (i) a conflict of interest, or
    - (ii) a change of personal circumstances; or
  - (d) where two or more persons are acting as trustee jointly, and it is the opinion of both or all of them that it is no longer expedient that there should continue to be that number of joint trustees.
- (2) Before resigning, the trustee must invite the creditors to consider, either by a decision procedure or by the deemed consent procedure, whether a replacement should be appointed except where the resignation is under sub-paragraph (1)(d).
- (3) The notice to the creditors must—
- (a) state the trustee’s intention to resign;
  - (b) state that under rule 10.77(8) of the Insolvency (England and Wales) Rules 2016, the trustee will be released 21 days after the date of delivery of the notice of resignation to the prescribed person under section 298(7), unless the court orders otherwise; and
  - (c) comply with rule 15.7 or 15.8 so far as applicable.
- (4) The notice may suggest the name of a replacement trustee.
- (5) The notice must be accompanied by a summary of the trustee’s receipts and payments.
- (6) The decision date must be not more than five business days before the date on which the trustee intends to give notice under section 298(7).
- (7) The trustee must deliver a copy of the notice to the official receiver and the bankrupt.
- (8) The resigning trustee’s release is effective 21 days after the date on which the notice of resignation under section 298(7) is filed with the court in a bankruptcy based on a petition or, delivered to the official receiver in a bankruptcy based on a debtor’s application.

### **Decision of creditors to remove trustee (section 298(1))**

**10.78.**—(1) Where the convener of the decision procedure or chair of a meeting of creditors is other than the official receiver, and a decision is taken to remove the trustee, the convener or chair must, within three business days, deliver a certificate to that effect to the official receiver.

(2) If the creditors have decided to appoint a new trustee, the certificate of the new trustee’s appointment must also be delivered to the official receiver within three business days from the date of that decision and rule 10.68 must be complied with in relation to it.

(3) The certificate of the trustee’s removal must be authenticated and dated by the convener or chair and—

- (a) identify the bankrupt;
- (b) identify and provide contact details for the removed trustee;
- (c) state that the creditors decided that the trustee specified in the certificate be removed from office as trustee of the bankrupt’s estate;
- (d) state the decision date and the decision procedure used; and
- (e) state that the creditors either—
  - (i) did not decide against the trustee being released, or
  - (ii) decided that the trustee should not be released.

- (4) The trustee's removal is effective from the date of the certificate of removal.

#### **Procedure on removal by creditors**

**10.79.**—(1) Where the creditors have decided that the trustee be removed, the official receiver must in a bankruptcy based on a petition file the certificate of removal with the court.

- (2) The official receiver must deliver a copy of the certificate to the removed trustee.

#### **Removal of trustee by the court (section 298(1))**

**10.80.**—(1) This rule applies where an application is made to the court under section 298(1) for the removal of the trustee, or for an order directing the trustee to initiate a creditors' decision procedure for the purpose of removing the trustee.

(2) On receipt of an application, the court may, if it is satisfied that no sufficient cause is shown for it, dismiss it without giving notice to any party other than the applicant.

- (3) Unless the application is dismissed, the court must fix a venue for it to be heard.

(4) The applicant must, at least 14 days before any hearing, deliver to the trustee and the official receiver a notice stating the venue with a copy of the application and of any evidence on which the applicant intends to rely.

(5) A respondent may apply for security for the costs of the application and the court may make such an order if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order.

- (6) The trustee and the official receiver may do either or both of the following—

- (a) file a report of any matters which the trustee or the official receiver thinks ought to be drawn to the court's attention; or
- (b) appear and be heard on the application.

(7) The costs of the application are not payable as an expense of the bankruptcy unless the court orders otherwise.

- (8) On a successful application the court's order must contain—

- (a) identification details for the proceedings;
- (b) the name and title of the judge making the order;
- (c) the name and postal address of the applicant;
- (d) a statement as to the capacity in which the applicant made the application;
- (e) identification and contact details for the trustee;
- (f) an order that either—
  - (i) the trustee is removed from office, or
  - (ii) the trustee must instigate a creditors' decision procedure on or before the date specified in the order for the purpose of considering the trustee's removal from office;
- (g) details of any further order in the matter; and
- (h) the date of the order.

(9) Where the court removes the trustee it must deliver a sealed copy of the order of removal to the trustee and a copy to the official receiver.

- (10) If the court appoints a new trustee, rule 10.71 applies.

**Removal of trustee by the Secretary of State (section 298(5))**

**10.81.**—(1) This rule applies where the Secretary of State decides to remove a trustee appointed by the Secretary of State.

(2) Before doing so the Secretary of State must deliver to the trustee and the official receiver a notice of the Secretary of State's decision and the grounds for the decision.

(3) The notice must specify a period within which the trustee may make representations against implementation of the decision.

(4) If the Secretary of State directs the removal of the trustee, the Secretary of State must as soon as reasonably practicable—

(a) deliver the notice to the trustee and the official receiver; and

(b) where the bankruptcy was based upon a petition, file a notice of the decision with the court.

(5) Where the Secretary of State directs the trustee be removed, the court may make any order that it could have made if the trustee had been removed by the court.

**Notice of resignation or removal**

**10.82.** Where a new trustee is appointed in place of one who has resigned or been removed, the new trustee must, in the notice of appointment, state that the predecessor trustee has resigned or, as the case may be, been removed and (if it be the case) has been given release.

**Release of removed trustee (section 299)**

**10.83.**—(1) Where the trustee is removed by a creditors' decision procedure the certificate of removal must state whether or not the creditors decided against the trustee's release.

(2) Where the creditors decided against release, the trustee's application to the Secretary of State for release under subsection 299(3)(b) **(21)** must—

(a) identify the proceedings;

(b) identify the bankrupt;

(c) identify and provide contact details for the trustee;

(d) provide details of the circumstances under which the trustee has ceased to act as trustee;

(e) state that the trustee is applying to the Secretary of State for a certificate of the trustee's release as a trustee as a result of the circumstances specified in the application; and

(f) be authenticated and dated by the trustee.

(3) When the Secretary of State gives the release, the Secretary of State must certify it accordingly and file the certificate with the court in a bankruptcy based on a creditor's petition.

(4) The Secretary of State must deliver a copy of the certificate to the official receiver and former trustee whose release is effective from the date of the certificate or such other date as the certificate specifies.

**Deceased trustee**

**10.84.**—(1) If the trustee (not being the official receiver) dies, notice of the fact and date of death must be delivered to the official receiver by one of the following—

(a) a surviving joint trustee;

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(21) Section 299(3)(a) is amended by paragraph 24 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24) and paragraph 78(3) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

- (b) a member or partner in the deceased trustee's firm (if the deceased was a member, partner or employee of a firm);
  - (c) an officer of the deceased trustee's company (if the deceased was an officer or employee of a company); or
  - (d) a personal representative of the deceased trustee.
- (2) If no such notice has been delivered within 21 days following the trustee's death then any other person may deliver the notice.
- (3) In a bankruptcy based on a creditor's petition the official receiver must file notice of the death with the court.
- (4) The date of the deceased trustee's release under section 299(3)(a) is—
- (a) the date of the filing of the notice with the court where the bankruptcy is based on a creditor's petition; or
  - (b) the date of delivery of the notice under paragraph (1) to the official receiver where the bankruptcy is based on a debtor's application.

#### **Loss of qualification as insolvency practitioner (section 298(6))**

**10.85.**—(1) This rule applies where the trustee vacates office under section 298(6)(22), on ceasing to be qualified to act as an insolvency practitioner in relation to the bankrupt.

(2) A notice of the fact must be delivered as soon as reasonably practicable to the official receiver by one of the following—

- (a) the trustee who has vacated office;
  - (b) a continuing joint trustee;
  - (c) the recognised professional body which was the source of the vacating trustee's authorisation to act in relation to the bankrupt.
- (3) The notice must be authenticated and dated by the person delivering the notice.
- (4) On receiving such a notice the official receiver must—
- (a) deliver a copy of the notice to the Secretary of State; and
  - (b) file a copy of the notice with the court where the bankruptcy was based on a creditor's petition.
- (5) Rule 10.83(2) to (4) applies in relation to the trustee's application for release under section 299(3)(b).

#### *Sub-division C: release on completion of administration of bankrupt's estate*

#### **Release of official receiver on completion of administration (section 299)**

**10.86.**—(1) Before giving a notice that the administration of the bankrupt's estate is for practical purposes complete to the Secretary of State under section 299(2), the official receiver must deliver a notice of intention to do so to the creditors and to the bankrupt.

(2) The notice must be accompanied by a summary of the official receiver's receipts and payments as trustee.

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(22) Section 298(8A) is inserted and (1) is amended by paragraph 77 of Schedule 9; subsection (4) is amended, (2) is omitted and (4A) and (4B) are inserted by paragraph 9 of Schedule 10 to the Small Business, Enterprise and Employment Act 2015 (c.26) and subsections (7) and (8) are amended by paragraph 23 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24).

(3) When the Secretary of State has determined the date from which the official receiver's release is effective, the Secretary of State must—

- (a) where the bankruptcy was based on a bankruptcy application, deliver a notice of release to the official receiver; or
- (b) in all other cases, file a notice of the release with the court.

(4) The Secretary of State's notice to the court must be accompanied by the summary of the official receiver's receipts and payments.

### **Vacation of office on completion of bankruptcy (sections 298(8) and 331)**

**10.87.**—(1) The report which the trustee is required to make under section 331(2A)(a)(23) must comply with the requirements of rule 18.14.

(2) A copy of the notice and report that is sent to creditors under section 331(2) and (2A) must be sent to the bankrupt as soon as is reasonably practicable after notice is given to creditors under that provision.

(3) The notice under section 331(2) must also state—

- (a) that the creditors have the right to request information from the trustee under rule 18.9;
- (b) that the creditors have the right to challenge the trustee's remuneration and expenses under rule 18.34;
- (c) that the bankrupt has a right to challenge the trustee's remuneration and expenses under rule 18.35;
- (d) that the creditors may object to the trustee's release by giving notice in writing to the trustee before the end of the prescribed period;
- (e) that the prescribed period is the period ending at the later of—
  - (i) eight weeks after delivery of the notice; or
  - (ii) if any request for information under rule 18.9 or any application to the court under that rule, rule 18.34 or rule 18.35 is made when that request or application is finally determined;
- (f) that the trustee will vacate office under section 298(8) when, after the end of the prescribed period, the trustee files with the court a notice that the trustee has given notice to the creditors under section 331; and
- (g) that the trustee will be released under section 299(3)(d) at the same time as vacating office unless any of the creditors objected to the trustee's release.

(4) The notice under section 298(8) must be authenticated and dated by the trustee.

(5) The notice must be accompanied by a copy of the final report.

(6) The trustee must deliver a copy of the notice under section 298(8) to—

- (a) the Secretary of State; and
- (b) the official receiver.

(7) Rule 10.83(2) to (4) applies to an application by the trustee to the Secretary of State for release.

### **Rule as to reporting**

**10.88.**—(1) The court may, on the application of the trustee or official receiver, relieve the applicant of any duty imposed on the applicant by rule 10.86 and 10.87 and rule 18.14 (contents of final report), or authorise the applicant to carry out the duty in any other way.



(2) In considering whether to relieve the applicant, the court must have regard to the cost of carrying out the duty, to the amount of the funds available in the bankrupt's estate, and to the extent of the interest of creditors or any particular class of them.

#### **Notice to official receiver of intention to vacate office**

**10.89.**—(1) This rule applies where the trustee intends to vacate office, whether by resignation or otherwise, and as a result there will be a vacancy in the office of trustee (so that by virtue of section 300 the official receiver is trustee until the vacancy is filled).

(2) The trustee must deliver notice of that intention to the official receiver at least 21 days before the trustee intends to vacate office.

(3) The notice must include the following details of any property which has not been realised, applied, distributed or otherwise fully dealt with in the bankruptcy—

- (a) the nature of the property;
- (b) its value (or that it has no value);
- (c) its location;
- (d) any action taken by the trustee to deal with the property or any reason for the trustee not dealing with it; and
- (e) the current position in relation to it.

#### **Trustee's duties on vacating office**

**10.90.** A trustee who ceases to be in office in consequence of removal, resignation or ceasing to be qualified to act as an insolvency practitioner in relation to the bankrupt, must as soon as reasonably practicable deliver to the successor as trustee—

- (a) the assets of the bankrupt's estate (after deduction of any expenses properly incurred, and distributions made, by the trustee);
- (b) the records of the bankruptcy, including correspondence, proofs and other documents relating to the bankruptcy while it was within the trustee's responsibility, and
- (c) the bankrupt's documents and other records.

#### **Power of the court to set aside certain transactions**

**10.91.**—(1) If in dealing with the bankrupt's estate the trustee enters into any transaction with a person who is an associate of the trustee, the court may, on the application of any interested person, set the transaction aside and order the trustee to compensate the bankrupt's estate for any loss suffered in consequence of it.

(2) This does not apply if either—

- (a) the transaction was entered into with the prior consent of the court; or
- (b) it is shown to the court's satisfaction that the transaction was for value, and that it was entered into by the trustee without knowing, or having any reason to suppose, that the person concerned was an associate.

(3) Nothing in this rule is to be taken as prejudicing the operation of any rule of law or equity relating to a trustee's dealings with trust property, or the fiduciary obligations of any person.

#### **Rule against improper solicitation**

**10.92.**—(1) Where the court is satisfied that any improper solicitation has been used by or on behalf of the trustee in obtaining proxies or procuring the trustee's appointment, it may order that no

remuneration be allowed out of the bankrupt's estate to any person by whom, or on whose behalf, the solicitation was exercised.

(2) An order of the court under this rule overrides any decision of the creditors' committee or the creditors, or any other provision of these Rules relating to the trustee's remuneration.

### **Enforcement of trustee's obligations to official receiver (section 305(3))**

**10.93.**—(1) On the application of the official receiver, the court may make such orders as it thinks necessary to enforce the duties of the trustee under section 305(3).

(2) An order of the court under this rule may provide that all costs of and incidental to the official receiver's application must be borne by the trustee.

## CHAPTER 7

### Special manager

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

### **Application for and order of appointment of special manager (section 370)**

[Note: section 377 provides that the acts of the special manager are valid notwithstanding any defect in the special manager's appointment or qualifications.]

**10.94.**—(1) An application by the interim receiver or trustee under section 370(24) for the appointment of a special manager must be supported by a report setting out the reasons for the application. The report must include the applicant's estimate of the value of the bankrupt's estate, property or business in relation to which the special manager is to be appointed.

(2) The court's order appointing the special manager must contain—

- (a) identification details for the proceedings;
- (b) the name and title of the judge making the order;
- (c) the name and postal address of the applicant;
- (d) the name and postal address of the proposed special manager;
- (e) an order that the proposed special manager is appointed as special manager;
- (f) details of the special manager's responsibility over the debtor's property or the bankrupt's estate;
- (g) the powers entrusted to the special manager under section 370(4);
- (h) the time allowed for the special manager to give the required security for the appointment;
- (i) the duration of the special manager's appointment, being one of the following—
  - (i) for a fixed period stated in the order,
  - (ii) until the occurrence of a specified event, or
  - (iii) until the court makes a further order;
- (j) an order that the special manager's remuneration will be fixed from time to time by the court; and
- (k) the date of the order.

(3) The appointment of a special manager may be renewed by order of the court.

## **Security**

**10.95.**—(1) The appointment of the special manager does not take effect until the person appointed has given (or, if the court allows, undertaken to give) security to the applicant for the appointment.

(2) A person appointed as special manager may give security either specifically for a particular bankruptcy, or generally for any bankruptcy in relation to which that person may be appointed as special manager.

(3) The amount of the security must be not less than the value of the bankrupt's estate, property or business in relation to which the special manager is appointed, as estimated in the applicant's report which accompanied the application for appointment.

(4) When the special manager has given security to the applicant, the applicant must file with the court a certificate as to the adequacy of the security.

(5) The cost of providing the security must be paid in the first instance by the special manager; but—

- (a) where a bankruptcy order is not made, the special manager is entitled to be reimbursed out of the property of the debtor, and the court may order accordingly; and
- (b) where a bankruptcy order is made, the special manager is entitled to be reimbursed out of the bankrupt's estate in the prescribed order of priority.

## **Failure to give or keep up security**

**10.96.**—(1) If the special manager fails to give the required security within the time stated for that purpose by the order of appointment, or any extension of that time that may be allowed, the interim receiver or trustee (as the case may be) must report the failure to the court, which may discharge the order appointing the special manager.

(2) If the special manager fails to keep up the security, the interim receiver or trustee must report the failure to the court, which may remove the special manager, and make such order as it thinks just as to costs.

(3) If the court discharges the order appointing the special manager or makes an order removing the special manager, the court must give directions as to whether any, and if so what, steps should be taken for the appointment of another special manager.

## **Accounting**

**10.97.**—(1) The special manager must produce accounts, containing details of the special manager's receipts and payments, for the approval of the trustee.

(2) The accounts must be for—

- (a) each three month period for the duration of the special manager's appointment; or
- (b) any shorter period ending with the termination of the special manager's appointment.

(3) When the accounts have been approved, the special manager's receipts and payments must be added to those of the trustee.

## **Termination of appointment**

**10.98.**—(1) The special manager's appointment terminates if—

- (a) the bankruptcy petition is dismissed; or

(b) in a case where an interim receiver was appointed under section 286(25), the appointment is discharged without a bankruptcy order having been made.

(2) If the interim receiver or the trustee thinks that the appointment of the special manager is no longer necessary or beneficial to the bankrupt's estate, the interim receiver or the trustee must apply to the court for directions, and the court may order the special manager's appointment to be terminated.

(3) The interim receiver or the trustee must make such an application if the creditors decide that the appointment should be terminated.

## CHAPTER 8

### Public examination of bankrupt

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

#### Order for public examination of bankrupt

[Note: rule 81.9 (as amended) of the CPR requires a warning as mentioned in paragraph (2)(f) to be displayed prominently on the front of the order.]

**10.99.**—(1) This rule applies to a court order for the public examination of a bankrupt made on an application by the official receiver under section 290(26).

(2) The order must have the title “Order for public examination” and contain—

- (a) identification details for the proceedings;
- (b) the name and the title of the judge making the order;
- (c) an order that the bankrupt must attend the venue specified in the order for the purpose of being publicly examined;
- (d) the venue for the public examination;
- (e) the date of the order; and
- (f) a warning that if the bankrupt fails without reasonable excuse to attend the public examination at the time and place specified in the order the bankrupt will be liable to be arrested without further notice under section 364(1)(27) and may be held to be in contempt of court under section 290(5) and imprisoned or fined.

(3) The official receiver must serve a copy of the court's order on the bankrupt as soon as reasonably practicable after the order is made.

#### Notice of public examination

**10.100.**—(1) The official receiver must deliver at least 14 days' notice of the public examination to—

- (a) any trustee or special manager; and
- (b) subject to any contrary direction of the court, every creditor of the bankrupt who is known to the official receiver.

(2) Where the official receiver thinks fit, a notice of the order must be gazetted not less than 14 days before the day fixed for the hearing.

(25) Section 286(1) is amended and (2) is omitted by paragraph 13 of Schedule 6 to the Deregulation Act 2015 (c.20); (8) is amended by paragraph 17 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24); and subsection (3) is amended by paragraph 2 of Schedule 10 to the Small Business, Enterprise and Employment Act 2015 (c.26).

(26) Section 290(4)(a) is amended by paragraph 19 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24).

(27) Section 364(1) is amended by paragraph 50(2) of Schedule 19 to the Enterprise and Regulatory Reform Act 2013.

(3) The official receiver may advertise the notice in such other manner as the official receiver thinks fit.

(4) The notice must state the purpose of the examination hearing and the venue.

#### **Order for public examination requested by creditors**

**10.101.**—(1) A notice by a creditor to the official receiver, under section 290(2), requesting the bankrupt to be publicly examined must be accompanied by—

- (a) a list of the creditors concurring with the request with the name and postal address of each and the amount of their respective claims; and
- (b) confirmation by each creditor of that creditor's concurrence; and
- (c) a statement of the reasons why the public examination is requested.

(2) The request must be authenticated and dated by the creditor giving the notice.

(3) A list of concurring creditors is not required if the requisitioning creditor's debt alone is at least one half in value of the bankrupt's creditors.

(4) Before the official receiver makes the requested application, the creditor requesting the examination must deposit with the official receiver such sum (if any) as the official receiver determines is appropriate as security for the expenses of the public examination, if ordered.

(5) The official receiver must make the application for the examination—

- (a) within 28 days of receiving the creditor's request (if no security is required under paragraph (4)); or
- (b) within 28 days of the creditor depositing such security if security is requested.

(6) However, if the official receiver thinks the request is unreasonable, the official receiver may apply to the court for an order to be relieved from making the application.

(7) If the court so orders, and the application for the order was made without notice to any other party, the official receiver must deliver a copy of the order as soon as reasonably practicable to the requisitioner.

(8) If such an application is dismissed, the official receiver's application under section 290(2) must be made as soon as reasonably practicable on conclusion of the hearing of the application first mentioned.

#### **Bankrupt unfit for examination**

[Note: rule 81.9 (as amended) of the CPR requires a warning as mentioned in paragraph (6) to be displayed prominently on the front of the order.]

**10.102.**—(1) Where the bankrupt is a person who lacks capacity within the meaning of the Mental Capacity Act 2005(28) or is unfit to undergo or attend for public examination, the court may—

- (a) stay the order for the bankrupt's public examination; or
- (b) direct that it will be conducted in a manner and place the court thinks just.

(2) An application for an order under paragraph (1) must be made—

- (a) by a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the bankrupt;
- (b) by a person who appears to the court to be a suitable person to make the application; or
- (c) by the official receiver.

- (3) Where an application is made by a person other than the official receiver, then—
- (a) the application must, unless the bankrupt is a person who lacks capacity within the meaning of the Mental Capacity Act 2005, be supported by a witness statement by a registered medical practitioner as to the bankrupt's mental and physical condition;
  - (b) at least five business days' notice of the application must be delivered to the official receiver and the trustee (if one is appointed); and
  - (c) before any order is made on the application, the applicant must deposit with the official receiver such sum as the official receiver determines is necessary for the additional expenses of an examination.
- (4) The court may order that some or all of the expenses of the examination are to be payable out of the deposit under paragraph (3)(c), instead of out of the bankrupt's estate.
- (5) The order must contain—
- (a) identification details for the proceedings;
  - (b) the name and title of the judge making the order;
  - (c) the date of the original order for the public examination of the bankrupt;
  - (d) the name and postal address of the applicant;
  - (e) a statement as to the capacity in which the applicant (other than the official receiver) made the application;
  - (f) a statement that the court is satisfied that the bankrupt is a person who lacks capacity within the meaning of the Mental Capacity Act 2005 to manage and administer the bankrupt's property and affairs or is unfit to undergo a public examination;
  - (g) an order either that—
    - (i) the original order is stayed on the grounds that the bankrupt is unfit to undergo a public examination, or
    - (ii) the original order is varied (as specified in this order) on the grounds that the bankrupt is unfit to attend the public examination fixed by the original order; and
  - (h) the date of the order.
- (6) If the original order is varied, the order must also contain a warning to the bankrupt, which must be displayed prominently on the front page of the order, stating that if the bankrupt fails without reasonable excuse to attend the public examination at the time and place set out in the order the bankrupt—
- (a) may be arrested without further notice under section 364(1); and
  - (b) may be held to be in contempt of court under section 290(5) and imprisoned or fined.
- (7) Where the application is made by the official receiver, it may be made without notice to any other party, and may be supported by evidence set out in a report by the official receiver to the court.

### **Procedure at public examination**

- 10.103.**—(1) At the public examination the bankrupt must—
- (a) be examined on oath; and
  - (b) answer all the questions the court puts, or allows to be put.
- (2) A person allowed by section 290(4) to question the bankrupt may—
- (a) with the approval of the court be represented by an appropriately qualified legal representative;
  - (b) in writing authorise another person to question the bankrupt on that person's behalf.

(3) The bankrupt may at the bankrupt's own expense instruct an appropriately qualified legal representative, who may put such questions as the court may allow to the bankrupt for the purpose of enabling the bankrupt to explain or qualify any answers given by the bankrupt, and may make representations on the bankrupt's behalf.

(4) The court must have such record made of the examination as the court thinks proper.

(5) The record may, in any proceedings (whether under the Act or otherwise) be used as evidence of any statement made by the bankrupt in the course of the bankrupt's public examination.

(6) If criminal proceedings have been instituted against the bankrupt, and the court is of the opinion that the continuance of the hearing might prejudice a fair trial of those proceedings, the hearing may be adjourned.

### **Adjournment**

[Note: rule 81.9 (as amended) of the CPR requires a warning as mentioned in paragraph (2) to be displayed prominently on the front of the order.]

**10.104.**—(1) The court may adjourn the public examination from time to time, either to a fixed date or generally.

(2) The order of adjournment of the public examination to a fixed date must contain a warning to the bankrupt, which must be displayed prominently on the front page of the order, stating that if the bankrupt fails without reasonable excuse to attend the public examination at the time and place set out in the order the bankrupt—

(a) may be arrested without further notice under section 364(1); and

(b) may be held to be in contempt of court under section 290(5) and imprisoned or fined.

(3) Where the examination has been adjourned generally, the court may at any time on the application of the official receiver or of the bankrupt—

(a) fix a venue for the resumption of the examination; and

(b) give directions as to the manner in which, and the time within which, notice of the resumed public examination is to be given to persons entitled to take part in it.

(4) Where such an application is made by the bankrupt, the court may grant it on terms that the expenses of giving the notices required by that paragraph must be paid by the bankrupt and that, before a venue for the resumed public examination is fixed, the bankrupt must deposit with the official receiver such sum as the official receiver considers necessary to cover those expenses.

(5) Where the examination is adjourned, the official receiver may, there and then, make an application under section 279(3) (suspension of automatic discharge).

(6) If the court makes such an order suspending the bankrupt's discharge, then the court must deliver copies of the order to the official receiver, the trustee and the bankrupt.

### **Expenses of examination**

**10.105.**—(1) Where a public examination of the bankrupt has been ordered by the court on a creditor's request under rule 10.101, the court may order that some or all of the expenses of the examination are to be paid out of the deposit under rule 10.101, instead of out of the bankrupt's estate.

(2) The costs and expenses of a public examination do not fall on the official receiver personally.

## CHAPTER 9

### Replacement of exempt property

#### **Purchase of replacement property**

**10.106.**—(1) A purchase of replacement property under section 308(3) may be made either before or after the realisation by the trustee of the value of the property vesting in the trustee under the section.

(2) The trustee is under no obligation to apply funds to the purchase of a replacement for property vested in the trustee, unless and until the trustee has sufficient funds in the bankrupt's estate for that purpose.

#### **Money provided in lieu of sale**

**10.107.**—(1) The following applies where a third party proposes to the trustee that the third party should provide the bankrupt's estate with a sum of money enabling the bankrupt to be left in possession of property which would otherwise be made to vest in the trustee under section 308.

(2) The trustee may accept that proposal, if satisfied that it is a reasonable one, and that the bankrupt's estate will benefit to the extent of the value of the property in question less the cost of a reasonable replacement.

## CHAPTER 10

### Income payments orders

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

#### **Interpretation**

**10.108.** In this Chapter the "permitted fee" means the amount which is prescribed for the purposes of section 7(4)(a) of the Attachment of Earnings Act 1971(29).

#### **Application for income payments order (section 310)**

**10.109.**—(1) Where the trustee applies for an income payments order under section 310, the court must fix a venue for the hearing of the application.

(2) Notice of the application and the venue must be delivered by the trustee to the bankrupt at least 28 days before the day fixed for the hearing, together with a copy of the trustee's application and a short statement of the grounds on which it is made.

(3) The notice must inform the bankrupt that—

- (a) the bankrupt is required to attend the hearing unless at least five business days before the date fixed for the hearing the bankrupt files with the court and delivers to the trustee, consent to an order being made in the terms of the application; and
- (b) if the bankrupt attends, the bankrupt will be given an opportunity to show cause why the order should not be made, or why a different order should be made to that applied for by the trustee.

(4) The notice must be authenticated and dated by the trustee.

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(29) 1971 c.32. Figure substituted by S.I. 1991/356.



### **Order for income payments order**

**10.110.** An order under section 310 must have the title “Income Payments Order” and must contain—

- (a) identification details for the proceedings;
- (b) identification and contact details for the trustee;
- (c) a statement that the bankrupt has or has not consented to the order (as the case may be);
- (d) the order that it appears to the court that the sum which is specified in the order should be paid to the trustee in accordance with the payments schedule detailed in the order until the date specified in the order;
- (e) the order that the bankrupt must pay to the trustee the sum referred to in paragraph (e) in accordance with the payments schedule out of the bankrupt’s income, the first of such instalments to be made on or before the date specified in the order; and
- (f) the date of the order.

### **Action to follow making of order**

**10.111.**—(1) Where the court makes an income payments order, the trustee must deliver a sealed copy of the order to the bankrupt as soon as reasonably practicable after it is made.

(2) If the order is made under section 310(3)(b), a sealed copy of the order must also be delivered by the trustee to the person to whom the order is directed.

### **Variation of order**

**10.112.**—(1) If an income payments order is made under section 310(3)(a), and the bankrupt does not comply with it, the trustee may apply to the court for the order to be varied, so as to take effect under section 310(3)(b) as an order to the payer of the relevant income.

(2) The trustee’s application under this rule may be made without notice to any other party.

(3) The order must contain—

- (a) identification details for the proceedings;
- (b) identification and contact details for the trustee who made the application;
- (c) the name and address of the payer;
- (d) a statement that the applicant is the trustee of the bankrupt;
- (e) the date of the income payments order;
- (f) a statement that it appears to the court that the bankrupt has failed to comply with the income payments order;
- (g) the order that the income payments order be varied to the effect that the payer specified in this order do take payment in accordance with the payments schedule detailed in this order out of the bankrupt’s income and that the first instalment must be paid on the date specified in the order; and that the payer must deliver the sums deducted to the trustee; and
- (h) the date of the order.

(4) The court must deliver sealed copies of any order made on the application to the trustee and the bankrupt as soon as reasonably practicable after the order is made.

(5) In the case of an order varying or discharging an income payments order made under section 310(3)(b), the court must deliver an additional sealed copy of the order to the trustee, for delivery as soon as reasonably practicable to the payer of the relevant income.

**Order to payer of income: administration**

**10.113.**—(1) Where a person receives notice of an income payments order under section 310(3)(b), with reference to income otherwise payable by that person to the bankrupt, that person (“the payer”) must make the necessary arrangements for compliance with the order as soon as reasonably practicable.

(2) When making any payment to the trustee, the payer may deduct the permitted fee towards the clerical and administrative costs of compliance with the income payments order.

(3) The payer must give to the bankrupt a statement of any amount deducted by the payer under paragraph (2).

(4) Where a payer receives notice of an income payments order imposing on the payer a requirement under section 310(3)(b), and either—

(a) the payer is then no longer liable to make to the bankrupt any payment of income; or

(b) having made payments in compliance with the order, the payer ceases to be so liable;

the payer must as soon as reasonably practicable deliver notice of that fact to the trustee.

**Review of order**

**10.114.**—(1) Where an income payments order is in force, either the trustee or the bankrupt may apply to the court for the order to be varied or discharged.

(2) If the application is made by the trustee, rule 10.109 applies (with any necessary modification) as in the case of an application for an income payments order.

(3) If the application is made by the bankrupt, it must be accompanied by a short statement of the grounds on which it is made.

(4) On receipt of an application, the court may, if it is satisfied that no sufficient cause is shown for it, dismiss it without giving notice to any party other than the applicant.

(5) Unless the application is dismissed, the court must fix a venue for it to be heard.

(6) The applicant must, at least 28 days before any hearing, deliver to the trustee or the bankrupt (whichever of them is not the applicant) a notice stating the venue with—

(a) a copy of the application; and

(b) where the applicant is the bankrupt, a copy of the statement of the grounds for the application referred to in paragraph (3).

(7) The trustee may do either or both of the following—

(a) file a report of any matters which the trustee thinks ought to be drawn to the court’s attention; or

(b) appear and be heard on the application.

(8) The trustee must file a copy of a report under paragraph (7)(a) with the court not less than five business days before the date fixed for the hearing and must deliver a copy of it to the bankrupt.

(9) The court order must contain—

(a) identification details for the proceedings;

(b) the name and title of the judge making the order;

(c) the name and postal address of the applicant;

(d) an order that the income payments order specified is varied as specified;

(e) the date of the income payments order referred to in paragraph (d);

(f) details of how the income payments order is varied by this order; and

(g) the date of the order.

(10) Sealed copies of any order made on the application must be delivered by the court to the trustee, the bankrupt and the payer (if other than the bankrupt) as soon as reasonably practicable after the order is made.

## CHAPTER 11

### Income payments agreements

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

#### **Approval of income payments agreements**

**10.115.**—(1) An income payments agreement can only be entered into before the bankrupt's discharge.

(2) The official receiver or trustee must provide a draft of the agreement to the bankrupt for the bankrupt's approval.

(3) Within 14 days or such longer period as may be specified by the official receiver or trustee from the date on which the income payments agreement was delivered, the bankrupt must—

- (a) if the bankrupt decides to approve the agreement, authenticate the agreement and return it to the official receiver or trustee; or
- (b) if the bankrupt decides not to approve the agreement, deliver a notice of that decision specifying the bankrupt's reasons for not approving the agreement to the official receiver or trustee.

#### **Acceptance of income payments agreements**

**10.116.**—(1) On receipt by the official receiver or trustee of the authenticated income payments agreement, the official receiver or trustee must authenticate and date it at which time it will come into force and a copy must be delivered to the bankrupt.

(2) Where the agreement provides for payments by a third person in accordance with section 310A(1)(b)(30), a notice of the agreement must be delivered by the official receiver or trustee to that person.

(3) The notice must—

- (a) identify the bankrupt;
- (b) state that an income payments agreement has been made, the date of it, and that it provides for the payment by the third person of sums owed to the bankrupt (or a part of those sums) to be paid to the official receiver or trustee;
- (c) state the name and address of the third person;
- (d) state the amount of money to be paid to the official receiver or trustee from the bankrupt's income, the period over which the payments are to be made, and the intervals at which the sums are to be paid; and
- (e) identify and provide contact details for the official receiver or trustee and details of how and where the sums are to be paid.

(4) When making any payment to the official receiver or the trustee a person who has received notice of an income payments agreement with reference to income otherwise payable by that person

to the bankrupt may deduct the permitted fee towards the clerical and administrative costs of compliance with the income payments agreement.

(5) The payer must give to the bankrupt a statement of any amount deducted by the payer under paragraph (4).

### **Variation of income payments agreements**

**10.117.**—(1) Where an application is made to court for variation of an income payments agreement, the application must be accompanied by a copy of the agreement.

(2) Where the bankrupt applies to the court for variation of an income payments agreement under section 310A(6)(b), the bankrupt must deliver a copy of the application and notice of the venue to the official receiver or trustee (whichever is appropriate) at least 28 days before the date fixed for the hearing.

(3) When the official receiver or trustee applies to the court for variation of an income payments agreement under section 310A(6)(b), the official receiver or trustee must deliver a copy of the application and notice of the venue to the bankrupt at least 28 days before the date fixed for the hearing.

(4) The court may order the variation of an income payments agreement under section 310A.

(5) The court order must contain—

- (a) identification details for the proceedings;
- (b) the name and title of the judge making the order;
- (c) the name and postal address of the applicant
- (d) the order that the income payments agreement be varied as specified;
- (e) the date of the income payments agreement referred to in paragraph (d);
- (f) details of how the income payments agreement is varied by the order; and
- (g) the date of the order.

(6) Where the court orders an income payments agreement under section 310A(1)(a) to be varied, so as to be an agreement under section 310A(1)(b) providing that a third person is to make payments to the trustee or the official receiver, the official receiver or trustee must deliver a notice of the agreement to that person in accordance with rule 10.116(2).

(7) A person who has received notice of an income payments agreement relating to income otherwise payable by that person to the bankrupt may deduct the permitted fee towards the clerical and administrative costs of compliance with the agreement when making any payment to the official receiver or the trustee.

(8) The payer must give the bankrupt a statement of any amount deducted under paragraph (7).

## **CHAPTER 12**

Applications for production of documents by Her Majesty's Revenue and Customs (section 369)

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

### **Application for order**

**10.118.**—(1) An application by the official receiver or the trustee for an order under section 369(31) (order for production of documents) must specify (with such details as will enable

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(31) Section 7 of the Commissioners for Revenue and Customs Act 2005 (c.11) vests functions conferred by enactments on an Inland Revenue Official (or relating to such functions) in an officer of Revenue and Customs.

the order, if made, to be most easily complied with) the documents the production of which is sought, naming the official to whom the order is to be addressed.

(2) The court must fix a venue for the hearing of the application.

(3) The applicant must deliver notice of the venue, accompanied by a copy of the application to the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") at least 28 days before the hearing.

(4) The notice must require the Commissioners, not later than five business days before the date fixed for the hearing of the application, to inform the court whether they consent or object to the making of an order.

(5) If the Commissioners consent to the making of an order, the statement must include the name of the official to whom the order should be addressed, if other than the one named in the application.

(6) If the Commissioners object to the making of an order, they must file with the court a statement of their grounds of objection not less than five business days before the hearing of the application and must ensure that an official of theirs attends the hearing.

(7) The Commissioners must deliver a copy of the statement of objections to the applicant as soon as reasonably practicable.

### **Making and service of the order**

**10.119.**—(1) The court may make the order applied for, with any modifications which appear appropriate, having regard to any representations made on behalf of the Commissioners.

(2) The order—

- (a) may be addressed to an official of Her Majesty's Revenue and Customs other than the one named in the application;
- (b) must specify a time, not less than 28 days after service on the official to whom the order is addressed, within which compliance is required; and
- (c) may include requirements as to the manner in which documents to which the order relates are to be produced.

(3) A sealed copy of the order must be served by the applicant on the official to whom it is addressed.

(4) If the official is unable to comply with the order because the relevant documents are not in the possession of the official, and the official has been unable to obtain possession of them, the official must file with the court a statement as to the reasons for the official's non-compliance.

(5) The official must deliver a copy of the statement referred to in paragraph (4) to the applicant as soon as reasonably practicable.

### **Custody of documents**

**10.120.** When, in compliance with an order under section 369, original documents are produced, any person who, by order of the court under section 369(2), has possession or custody of those documents is responsible to the court for their safe keeping as, and return when, directed.

## CHAPTER 13

### Mortgaged property

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

## **Interpretation**

**10.121.** For the purposes of this Chapter “land” includes any interest in, or right over, land.

## **Claim by mortgagee of land**

**10.122.—**(1) Any person claiming to be the legal or equitable mortgagee of land belonging to the bankrupt may apply to the court for an order directing that the land be sold.

(2) The court, if satisfied as to the applicant’s title, may direct accounts to be taken and enquiries made to ascertain—

- (a) the principal, interest and costs due under the mortgage; and
- (b) where the mortgagee has been in possession of the land or any part of it, the rents and profits, dividends, interest, or other proceeds received by the mortgagee or on the mortgagee’s behalf.

(3) The court may also give directions in relation to any mortgage (whether prior or subsequent) on the same property, other than that of the applicant.

(4) For the purpose of those accounts and enquiries, and of making title to the purchaser, any of the parties may be examined by the court, and must produce on oath before the court all such documents in their custody or under their control relating to the bankrupt’s estate as the court may direct.

(5) The court may under paragraph (4) order any of the parties to clarify any matter which is in dispute in the proceedings or give additional information in relation to any such matter and CPR Part 18 (further information) applies to any such order.

(6) In any proceedings between a mortgagor and mortgagee, or the trustee of either of them, the court may order accounts to be taken and enquiries made in like manner as in the Chancery Division of the High Court.

## **Power of court to order sale**

**10.123.—**(1) The court may order that the land, or any specified part of it, be sold and any party bound by the order and in possession of the land or part, or in receipt of the rents and profits from it, may be ordered to deliver possession or receipt to the purchaser or to such other person as the court may direct.

(2) The court may—

- (a) permit the person having the conduct of the sale to sell the land in such manner as that person thinks fit; or
- (b) direct that the land be sold as directed by the order.

(3) The court’s order may contain directions—

- (a) appointing the person to have the conduct of the sale;
- (b) fixing the manner of sale (whether by contract conditional on the court’s approval, private treaty, public auction, or otherwise);
- (c) settling the particulars and conditions of sale;
- (d) for obtaining evidence of the value of the property and for fixing a reserve or minimum price;
- (e) requiring particular persons to join in the sale and conveyance;
- (f) requiring the payment of the purchase money into court, or to trustees or others; or
- (g) if the sale is to be by public auction, fixing the security (if any) to be given by the auctioneer, and the auctioneer’s remuneration.

(4) The court may direct that, if the sale is to be by public auction, the mortgagee may bid on the mortgagee's own behalf.

(5) Nothing in this rule or rule 10.124 affects the rights in rem of creditors or third parties protected under Article 5 of the EC Regulation.

### **Proceeds of sale**

**10.124.**—(1) The proceeds of sale must be applied as follows—

- (a) first in payment of—
  - (i) the trustee's expenses in relation to the application to the court,
  - (ii) the trustee's expenses of the sale and attendance at it, and
  - (iii) any costs of the trustee arising from the taking of accounts, and making of enquiries, as directed by the court under rule 10.122;
- (b) secondly, in payment of the amount found due to any mortgagee, for principal, interest and costs; and
- (c) the balance must be retained by or paid to the trustee.

(2) Where the proceeds of the sale are insufficient to pay in full the amount found due to any mortgagee, the mortgagee is entitled to prove as a creditor for any deficiency, and to receive dividends rateably with other creditors, but not so as to disturb any dividend already declared.

## **CHAPTER 14**

### **After-acquired property**

#### **Duties of bankrupt in relation to after-acquired property**

**10.125.**—(1) The notice to be given by the bankrupt to the trustee, under section 333(2), of property acquired by, or devolving upon, the bankrupt, or of any increase of the bankrupt's income, must be given within 21 days of the bankrupt becoming aware of the relevant facts.

(2) The bankrupt must not, without the trustee's consent in writing, dispose of such property or income within the period of 42 days beginning with the date of giving the notice.

(3) If the bankrupt disposes of property before giving the notice required by this rule or contrary to paragraph (2), it is the bankrupt's duty as soon as reasonably practicable to disclose to the trustee the name and address of the person to whom the property was disposed, and to provide any other information which may be necessary to enable the trustee to trace the property and recover it for the bankrupt's estate.

(4) Paragraphs (1) to (3) do not apply to property acquired by the bankrupt in the ordinary course of a business carried on by the bankrupt.

(5) A bankrupt who carries on a business must, when required by the trustee, deliver to the trustee—

- (a) information about the business, showing the total of goods bought and sold and services supplied and the profit or loss arising from the business; and
- (b) fuller details including accounts of the business.

#### **Trustee's recourse to person to whom property disposed**

**10.126.**—(1) Where property has been disposed of by the bankrupt, before giving the notice required by section 333(2) or otherwise in contravention of rule 10.125, the trustee may serve notice

on the person to whom the property was disposed, claiming the property as part of the bankrupt's estate by virtue of section 307(32).

(2) The trustee's notice must be served within 28 days of the trustee becoming aware of the identity of the person to whom the property was disposed and an address at which that person can be served.

## CHAPTER 15

### Permission to act as director, etc.

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

### Interpretation

**10.127.** In this Chapter a bankrupt includes a person in relation to whom a bankruptcy restrictions order is in force.

### Application for permission

**10.128.**—(1) An application under section 11 of the Company Directors Disqualification Act 1986(33) by the bankrupt for permission to act as director of, or to take part or be concerned in the promotion, formation or management of a company, must be supported by a witness statement.

- (2) The witness statement must identify the company and specify—
- (a) the nature of its business or intended business, and the place or places where that business is, or is to be, carried on;
  - (b) whether it is, or in the case of a company which has not yet been incorporated is to be, a private or a public company;
  - (c) the persons who are, or are to be, principally responsible for the conduct of its affairs (whether as directors, shadow directors, managers or otherwise);
  - (d) the manner and capacity in which the applicant proposes to take part or be concerned in the promotion or formation of the company or, as the case may be, its management; and
  - (e) the emoluments and other benefits to be obtained from the directorship.

(3) The court must fix a venue for hearing the bankrupt's application and deliver notice of the hearing to the bankrupt.

### Report of official receiver

**10.129.**—(1) The bankrupt must, not less than 28 days before the date fixed for the hearing, deliver to the official receiver and the trustee (if different) notice of the venue, accompanied by copies of the application and the witness statement under rule 10.128.

(2) The official receiver may, not less than 14 days before the date fixed for the hearing, file with the court a report of any matters which the official receiver considers ought to be drawn to the court's attention.

(3) The official receiver must deliver a copy of the report to the bankrupt and to the trustee (if not the official receiver) as soon as reasonably practicable after it is filed.

(4) Where a copy of the report is delivered by post under paragraph (3) it must be delivered by first class post.

(32) Section 307(3) and (4) is amended and new subsection (4A) is inserted by paragraph 16 of Schedule 6 to the Deregulation Act 2015 (c.20).

(33) 1986 c.46; section 11 is amended by S.I. 2009/1941 and 2012/2404.



(5) The bankrupt may, not later than five business days before the date of the hearing, file with the court a notice specifying any statements in the official receiver's report which the bankrupt intends to deny or dispute.

(6) If the bankrupt files such a notice, the bankrupt must deliver copies of it, not less than three business days before the date of the hearing, to the official receiver and the trustee.

(7) The official receiver and the trustee may appear on the hearing of the application, and may make representations and put to the bankrupt such questions as the court may allow.

### **Court's order on application**

**10.130.**—(1) A court order granting the bankrupt permission under section 11 of the Company Directors Disqualification Act 1986 must specify what the bankrupt has permission to do.

(2) The court, having regard to any representations made by the trustee on the hearing of the application, may—

- (a) include in the order provision varying an income payments order or an income payments agreement already in force in relation to the bankrupt; or
- (b) if no income payments order is in force, make one.

(3) Whether or not the application is granted, copies of the order must be delivered by the court to the bankrupt, the official receiver and the trustee (if different).

### **Costs under this Chapter**

**10.131.** In no case do any costs or expenses arising under this Chapter fall on the official receiver personally.

## **CHAPTER 16**

### **Annulment of bankruptcy order**

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

### **Application for annulment**

**10.132.**—(1) An application to the court under section 282(1) for the annulment of a bankruptcy order must specify whether it is made—

- (a) under subsection (1)(a) (claim that the order ought not to have been made); or
- (b) under subsection (1)(b) (debts and expenses of the bankruptcy all paid or secured).

(2) The application must be supported by a witness statement stating the grounds on which it is made.

(3) Where the application is made under section 282(1)(b), the witness statement must contain all the facts by reference to which, under the Act and these Rules, the court may be satisfied that the condition in section 282(1)(b) applies before annulling the bankruptcy order.

(4) A copy of the application and the witness statement in support must be filed with the court.

(5) The court must deliver notice of the venue fixed for the hearing to the applicant.

(6) Where the application is made under section 282(1)(a) the applicant must deliver notice of the venue, accompanied by copies of the application and the supporting witness statement, to the official receiver, the trustee (if different), and the person on whose petition the bankruptcy order was made in sufficient time to enable them to be present at the hearing.

(7) Where the application is made under section 282(1)(b) the applicant must deliver notice of the venue, accompanied by copies of the application and the supporting witness statement, to the official receiver and the trustee (if different) not less than 28 days before the hearing.

(8) Where the applicant is not the bankrupt, all notices, documents and evidence required by this Chapter to be delivered to another party by the applicant must also be delivered to the bankrupt.

### **Report by trustee**

**10.133.**—(1) The following applies where the application is made under section 282(1)(b) (debts and expenses of the bankruptcy all paid or secured).

(2) Not less than 21 days before the date fixed for the hearing, the trustee must file with the court a report relating to the following matters—

- (a) the circumstances leading to the bankruptcy;
- (b) a summary of the bankrupt's assets and liabilities at the date of the bankruptcy order and at the date of the application;
- (c) details of any creditors who are known to the trustee to have claims, but have not proved; and
- (d) such other matters as the person making the report considers to be, in the circumstances, necessary for the information of the court.

(3) Where the trustee is other than the official receiver, the report must also include a statement of—

- (a) the trustee's remuneration;
- (b) the basis fixed for the trustee's remuneration under rule 18.16; and
- (c) the expenses incurred by the trustee.

(4) The report must include particulars of the extent to which, and the manner in which, the debts and expenses of the bankruptcy have been paid or secured.

(5) In so far as debts and expenses are unpaid but secured, the person making the report must state in it whether and to what extent that person considers the security to be satisfactory.

(6) A copy of the report must be delivered to the applicant as soon as reasonably practicable after it is filed with the court and the applicant may file a further witness statement in answer to statements made in the report.

(7) Copies of any such witness statement must be delivered by the applicant to the official receiver and the trustee (if different).

(8) If the trustee is other than the official receiver, a copy of the trustee's report must be delivered to the official receiver at least 21 days before the hearing.

(9) The official receiver may then file an additional report, a copy of which must be delivered to the applicant and the trustee (if not the official receiver) at least five business days before the hearing.

### **Applicant's claim that remuneration or expenses are excessive**

**10.134.**—(1) Where the trustee is other than the official receiver and application for annulment is made under section 282(1)(b), the applicant may also apply to the court for one or more of the orders in paragraph (4) on the ground that the remuneration charged, or expenses incurred, by the trustee are in all the circumstances excessive.

(2) Application for such an order must be made no later than five business days before the date fixed for the hearing of the application for annulment and be accompanied by a copy of any evidence which the applicant intends to provide in support.

(3) The applicant must deliver a copy of the application and of any evidence accompanying it to the trustee as soon as reasonably practicable after the application is made.

(4) If the court annuls the bankruptcy order under section 282(1)(b) and considers the application to be well-founded, it must also make one or more of the following orders—

- (a) an order reducing the amount of remuneration which the trustee was entitled to charge;
- (b) an order that some or all of the remuneration or expenses in question be treated as not being bankruptcy expenses;
- (c) an order that the trustee or the trustee's personal representative pay to the applicant the amount of the excess of remuneration or expenses or such part of the excess as the court may specify; and
- (d) any other order that the court thinks just.

### **Power of court to stay proceedings**

**10.135.**—(1) The court may, in advance of the hearing, make an order staying any proceedings which it thinks ought, in the circumstances of the application, to be stayed.

(2) Except in relation to an application for an order staying all or any part of the proceedings in the bankruptcy, application for an order under this rule may be made without notice to any other party.

(3) Where an application is made under this rule for an order staying all or any part of the proceedings in the bankruptcy, the applicant must deliver copies of the application to the official receiver and the trustee, if other than the official receiver, in sufficient time to enable them to be present at the hearing and make representations.

(4) Where the court makes an order under this rule staying all or any part of the proceedings in the bankruptcy, the rules in this Chapter nevertheless continue to apply to any application for, or other matters in connection with, the annulment of the bankruptcy order.

(5) If the court makes an order under this rule, it must deliver copies of the order to the applicant, the official receiver and the trustee (if different).

### **Notice to creditors who have not proved**

**10.136.** Where the application for annulment is made under section 282(1)(b) and it has been reported to the court under rule 10.133(2)(c) that there are known creditors of the bankrupt who have not proved, the court may—

- (a) direct the trustee or, if no trustee has been appointed, the official receiver to deliver notice of the application to such of those creditors as the court thinks ought to be informed of it, with a view to their proving for their debts within 21 days;
- (b) direct the trustee or, if no trustee has been appointed, the official receiver to advertise the fact that the application has been made, so that creditors who have not proved may do so within a specified time; and
- (c) adjourn the application meanwhile, for any period not less than 35 days.

### **The hearing**

**10.137.**—(1) The trustee must attend the hearing of the application under section 282(34) unless the court directs otherwise.

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(34) Section 282(2) is amended by paragraph 13 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24) and (4) is amended by section 135(2)(a) of the Small Business, Enterprise and Employment Act 2015 (c.26).

(2) The official receiver, if not the trustee, may attend, but is not required to do so unless the official receiver has filed a report under rule 10.133.

(3) If the court makes an order on the application or on an application under rule 10.134, it must deliver copies of the order to the applicant, the official receiver and (if other) the trustee.

(4) An order of annulment under section 282 must contain—

- (a) identification details for the proceedings;
- (b) the name and address of the applicant;
- (c) the date of the bankruptcy order;
- (d) the date of the filing of the bankruptcy petition or the making of the bankruptcy application;
- (e) the date and reference number of the registration of the bankruptcy petition or bankruptcy application as a pending action with the Chief Land Registrar;
- (f) the date and reference number of the registration of the bankruptcy order on the register of writs and orders affecting land with the Chief Land Registrar;
- (g) a statement that it appears to the court that—
  - (i) the bankruptcy order ought not to have been made, or
  - (ii) the bankruptcy debts and expenses of the bankruptcy have all been paid or secured to the satisfaction of the court;

and that under section 282(2) the bankruptcy order ought to be annulled;

- (h) an order—
  - (i) that the bankruptcy order specified in the order is annulled,
  - (ii) that the bankruptcy petition or bankruptcy application specified in the order be dismissed, and
  - (iii) that the registration of the petition or the bankruptcy application as a pending action with the Chief Land Registrar and of the bankruptcy order with the Chief Land Registrar specified in the order be vacated upon application made by the bankrupt; and
- (i) the date of the order.

(5) The order must contain a notice to the bankrupt stating—

- (a) should the bankrupt require notice of the order to be gazetted and to be advertised in the same manner as the bankruptcy order was advertised, the bankrupt must within 28 days deliver notice of that requirement to the official receiver; and
- (b) it is the bankrupt's responsibility and in the bankrupt's interest to ensure that the registration of the petition or bankruptcy application and of the bankruptcy order with the Chief Land Registrar are cancelled.

#### **Matters to be proved under section 282(1)(b)**

**10.138.**—(1) This rule applies in relation to the matters which—

- (a) must, in an application under section 282(1)(b), be proved to the satisfaction of the court; and
- (b) may be taken into account by the court on hearing such an application.

(2) Subject to the following paragraph, all bankruptcy debts which have been proved must have been—

- (a) paid in full; or
- (b) secured in full to the satisfaction of the court.

(3) If a debt is disputed, or a creditor who has proved can no longer be traced, the bankrupt must have given such security (in the form of money paid into court, or a bond entered into with approved sureties) as the court considers adequate to satisfy any sum that may subsequently be proved to be due to the creditor concerned and (if the court thinks just) costs.

(4) Where such security has been given in the case of an untraced creditor, the court may direct that particulars of the alleged debt, and the security, be advertised in such manner as it thinks just.

(5) If the court directs such advertisement and no claim on the security is made within 12 months from the date of the advertisement (or the first advertisement, if more than one), the court must, on application, order the security to be released.

(6) In determining whether to annul a bankruptcy order under section 282(1)(b), the court may, if it thinks just and without prejudice to the generality of its discretion under section 282(1), take into account whether any sums have been paid or payment of any sums has been secured in respect of post-commencement interest on the bankruptcy debts which have been proved.

(7) For the purposes of paragraphs (2) and (6), security includes an undertaking given by a solicitor and accepted by the court.

(8) For the purposes of paragraph (6), “post-commencement interest” means interest on the bankruptcy debts at the rate specified in section 328(5) in relation to periods during which those debts have been outstanding since the commencement of the bankruptcy.

#### **Notice to creditors**

**10.139.**—(1) Where the official receiver has delivered notice of the debtor’s bankruptcy to the creditors and the bankruptcy order is annulled, the official receiver must as soon as reasonably practicable deliver notice of the annulment to them.

(2) Expenses incurred by the official receiver in delivering such notice are a charge in the official receiver’s favour on the property of the former bankrupt, whether or not the property is actually in the official receiver’s hands.

(3) Where any property is in the hands of a trustee or any person other than the former bankrupt, the official receiver’s charge is subject to any costs that may be incurred by the trustee or that other person in effecting realisation of the property for the purpose of satisfying the charge.

#### **Other matters arising on annulment**

**10.140.**—(1) Within 28 days of the making of an order under section 282, the former bankrupt may require the official receiver to publish a notice of the making of the order in accordance with paragraphs (2) and (3).

(2) As soon as reasonably practicable the notice must be—

- (a) gazetted; and
- (b) advertised in the same manner as the bankruptcy order to which it relates was advertised.

(3) The notice must state—

- (a) the name of the former bankrupt;
- (b) the date on which the bankruptcy order was made;
- (c) that the bankruptcy order against the former bankrupt has been annulled under section 282(1); and
- (d) the date of the annulment.

(4) Where the former bankrupt—

- (a) has died; or

- (b) is a person lacking capacity to manage the person's own affairs (within the meaning of the Mental Capacity Act 2005(35));

the reference to the former bankrupt in paragraph (1) is to be read as referring to the former bankrupt's personal representative or, as the case may be, a person appointed by the court to represent or act for the former bankrupt.

### **Trustee's final account**

**10.141.**—(1) Where a bankruptcy order is annulled under section 282, this does not of itself release the trustee from any duty or obligation, imposed on the trustee by or under the Act or these Rules, to account for all of the trustee's transactions in connection with the former bankrupt's estate.

(2) The trustee must deliver a copy of the trustee's final account to the Secretary of State as soon as practicable after the court's order annulling the bankruptcy order.

(3) The trustee must file a copy of the final account with the court.

(4) The final account must include a summary of the trustee's receipts and payments in the administration, and contain a statement to the effect that the trustee has reconciled the account with that which is held by the Secretary of State in respect of the bankruptcy.

(5) The trustee is released from such time as the court may determine, having regard to whether—

- (a) the trustee has delivered the final accounts under paragraph (2); and
- (b) any security given under rule 10.138 has been, or will be, released.

## CHAPTER 17

### Discharge

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

### **Application for suspension of discharge**

**10.142.**—(1) The following applies where the official receiver or trustee (if different) applies to the court for an order under section 279(3) (suspension of automatic discharge), but not where the official receiver makes that application under rule 10.104 on the adjournment of the bankrupt's public examination.

(2) The official receiver or trustee must file, with the application, evidence in support setting out the reasons why it appears that such an order should be made.

(3) The court must fix a venue for the hearing of the application, and deliver notice of it to the official receiver, the trustee, and the bankrupt.

(4) Copies of the official receiver's report under this rule must be delivered by the official receiver to the bankrupt and any trustee who is not the official receiver, so as to reach them at least 21 days before the date fixed for the hearing.

(5) Copies of the trustee's evidence in support of the application must be delivered by the trustee to the official receiver and the bankrupt at least 21 days before the date fixed for the hearing.

(6) If the bankrupt intends to deny or dispute any statements in the official receiver's or trustee's evidence in support then the bankrupt must not later than five business days before the date of the hearing, file with the court a notice specifying the statements which the bankrupt intends to deny or dispute.

(7) If the bankrupt files such a notice under paragraph (6), the bankrupt must deliver copies of it, not less than three business days before the date of the hearing, to the official receiver and any trustee.

(8) If the court makes an order suspending the bankrupt's discharge, copies of the order must be delivered by the court to the official receiver, any trustee and the bankrupt.

(9) An order of suspension of discharge under section 279(3) must be headed "Suspension of Discharge" and must contain—

- (a) identification details for the proceedings;
- (b) the name and title of the judge making the order;
- (c) identification and contact details for the applicant who will be the official receiver or the trustee;
- (d) the date of the bankruptcy order;
- (e) a statement that it appears to the court that the bankrupt has failed or is failing to comply with the bankrupt's obligations under the Act for the reasons specified in the order;
- (f) a statement in what respect the bankrupt has failed to comply with the bankrupt's obligations under the Act;
- (g) an order that the relevant period for the purpose of section 279(36) will cease to run for either—
  - (i) a specified period, or
  - (ii) until specified conditions have been fulfilled;
- (h) the period or conditions referred to in paragraph (g); and
- (i) the date of the order.

### **Lifting of suspension of discharge**

**10.143.**—(1) Where the court has made an order under section 279(3) that the period specified in section 279(1) will cease to run, the bankrupt may apply to it for the order to be discharged.

(2) The court must fix a venue for the hearing of the application and deliver notice of it to the bankrupt.

(3) The bankrupt must, not less than 28 days before the date fixed for the hearing, deliver notice of the venue with a copy of the application to the official receiver and any trustee.

(4) The official receiver and the trustee may appear and be heard on the bankrupt's application.

(5) Whether or not they appear, the official receiver and trustee may file with the court a report containing evidence in support of any matters which either of them considers ought to be drawn to the court's attention.

(6) If the court made an order under section 279(3)(b), the court may request a report from the official receiver or the trustee as to whether or not the condition specified in the order has been fulfilled.

(7) Copies of a report filed under paragraph (5) or requested by the court under paragraph (6) must be delivered by the official receiver or trustee to the bankrupt and to either the official receiver or trustee (depending on which has filed the report), not later than 14 days before the hearing.

(8) The bankrupt may, not later than five business days before the date of the hearing, file with the court a notice specifying any statements in the official receiver's or trustee's report which the bankrupt intends to deny or dispute.

(9) If the bankrupt files such a notice, the bankrupt must deliver copies of it to the official receiver and the trustee not less than three business days before the date of the hearing.

(10) If on the bankrupt's application the court discharges the order under section 279(3) (being satisfied that the period specified in section 279(1) should begin to run again), it must deliver to the bankrupt a certificate that it has done so, and must deliver copies of the certificate to the official receiver and the trustee (if different).

(11) The court's order lifting the suspension of discharge must contain—

- (a) identification details for the proceedings;
- (b) the name and title of the judge making the order;
- (c) the date and terms of the order made under section 279;
- (d) a statement that the bankrupt specified in the order has made the application;
- (e) a statement whether or not the court has taken into consideration the report of the official receiver or of the trustee or both in this matter;
- (f) an order discharging the order suspending discharge; and
- (g) state the date of the order.

(12) The certificate that the order suspending discharge has been lifted must contain—

- (a) identification details for the proceedings;
- (b) the date of the bankruptcy order;
- (c) the date of the order suspending discharge;
- (d) a statement that the court has made—
  - (i) the bankruptcy order specified in this order against the bankrupt specified in this order, and
  - (ii) the order suspending the bankrupt's discharge specified in this order;
- (e) a statement that it is certified that the order of suspension of discharge was lifted on the date specified in this order; and
- (f) the date of the certificate.

### **Certificate of discharge from bankruptcy order made otherwise than on a bankruptcy application**

**10.144.**—(1) A bankrupt may apply to the court for a certificate of discharge where the bankruptcy order was made otherwise than on a bankruptcy application.

(2) Where it appears to the court that the bankrupt is discharged, whether by expiration of time or otherwise, the court must deliver a certificate of discharge to the former bankrupt.

(3) The certificate of discharge must be headed "Certificate of Discharge" and must contain—

- (a) identification details for the proceedings;
- (b) the date of the bankruptcy order;
- (c) the statement that the former bankrupt was discharged from bankruptcy;
- (d) the date of discharge from bankruptcy; and
- (e) the date of the certificate.

(4) The certificate must also state—

- (a) that the former bankrupt may request in writing notice of the discharge to be gazetted and advertised in the same manner as the bankruptcy order; and



- (b) that such a request must be delivered to the official receiver within 28 days of the making of the certificate of discharge.
- (5) As soon as reasonably practicable after delivery of such a request to the official receiver the notice of discharge must be gazetted, and advertised in the same manner as the bankruptcy order.
- (6) The notice must contain—
  - (a) the name of the former bankrupt;
  - (b) the date of the bankruptcy order;
  - (c) the statement that a certificate of discharge has been delivered to the former bankrupt;
  - (d) the date of the certificate; and
  - (e) the date from which the discharge is effective.
- (7) An application for a notice of discharge and a request in writing that the notice be gazetted and advertised may be made by the former bankrupt’s personal representative or, as the case may be, a person appointed by the court to represent or act for the former bankrupt where the former bankrupt—
  - (a) has died; or
  - (b) is a person lacking capacity to manage the person’s own affairs (within the meaning of the Mental Capacity Act 2005).

#### **Certificate of discharge from bankruptcy order made on a bankruptcy application**

- 10.145.**—(1) A bankrupt may apply to the official receiver for a certificate of discharge where the bankruptcy order was made on a bankruptcy application.
- (2) The bankrupt must send the application to the official receiver with the prescribed fee.
  - (3) Where it appears to the official receiver that the bankrupt is discharged, the official receiver must deliver a certificate of discharge to the former bankrupt by electronic means.
  - (4) The certificate of discharge must be headed “Certificate of Discharge” and must contain—
    - (a) identification details for the former bankrupt;
    - (b) the date of the bankruptcy order;
    - (c) a statement that the former bankrupt was discharged from bankruptcy;
    - (d) the date of discharge from the bankruptcy; and
    - (e) the date of the certificate.
  - (5) The certificate must also state—
    - (a) that the former bankrupt may request in writing notice of the discharge to be gazetted and advertised in the same manner as the bankruptcy order; and
    - (b) that such a request must be delivered to the official receiver within 28 days of the making of the certificate of discharge.
  - (6) As soon as reasonably practicable after delivery of such a request to the official receiver the notice of discharge must be gazetted, and advertised in the same manner as the bankruptcy order.
  - (7) The notice must contain—
    - (a) the name of the former bankrupt;
    - (b) the date of the bankruptcy order;
    - (c) the statement that a certificate of discharge has been delivered to the former bankrupt;
    - (d) the date of the certificate; and
    - (e) the date from which the discharge is effective.

(8) An application for a notice of discharge and a request in writing that the notice be gazetted and advertised may be made by the former bankrupt's personal representative or, as the case may be, a person appointed by the court to represent or act for the former bankrupt where the former bankrupt—

- (a) has died; or
- (b) is a person lacking capacity to manage the person's own affairs (within the meaning of the Mental Capacity Act 2005).

### **Bankrupt's debts surviving discharge**

[Note: see also section 281 (effect of discharge).]

**10.146.** Discharge does not release the bankrupt from any obligation arising—

- (a) under a confiscation order made under section 1 of the Drug Trafficking Offences Act 1986~~(37)~~;
- (b) under a confiscation order made under section 1 of the Criminal Justice (Scotland) Act 1987~~(38)~~;
- (c) under a confiscation order made under section 71 of the Criminal Justice Act 1988~~(39)~~;
- (d) under a confiscation order made under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002~~(40)~~; or
- (e) from a payment out of the social fund under section 138(1)(b) of the Social Security Contributions and Benefits Act 1992~~(41)~~ by way of crisis loan or budgeting loan.

### **Costs under this Chapter**

**10.147.** In no case do any costs or expenses arising under this Chapter fall on the official receiver personally.

## **CHAPTER 18**

### **Priority of payment of costs etc. out of the bankrupt's estate**

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

### **Expenses**

**10.148.** All fees, costs, charges and other expenses incurred in the course of the bankruptcy are to be treated as expenses of the bankruptcy.

### **General rule as to priority**

**10.149.** The expenses of the bankruptcy are payable out of the bankrupt's estate in the following order of priority—

- (a) expenses or costs which—

**(37)** 1986 c.32. Repealed by Schedule 3 to the Drug Trafficking Act 1994 (c.37).

**(38)** 1987 c.41. Repealed by Schedule 5 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40).

**(39)** Repealed by Schedule 12 to the Proceeds of Crime Act 2002 (c.29) with savings in articles 10 and 13 of S.I. 2003/333.

**(40)** 2002 (c.29); relevant amendments are made by paragraph 75(1) and (2) of Part 2 of Schedule 3 to the Criminal Justice Act 2003 (c.44); Part 1 of Schedule 8 and paragraphs 1 and 2 of Schedule 14 to the Serious Crime Act 2007 (c.27); and paragraphs 11 and 12 of the Schedule to the Prevention of Social Housing Fraud Act 2013 (c.3).

**(41)** 1992 c.4. Section 138(1)(b) is repealed by section 71 of the Welfare Reform Act 2012 (c.5).

- (i) are properly chargeable or incurred by the official receiver or the trustee in preserving, realising or getting in any of the assets of the bankrupt or otherwise relating to the conduct of any legal proceedings which the bankrupt has power to bring (whether the claim on which the proceedings are based forms part of the bankrupt's estate or otherwise) or defend,
- (ii) relate to the employment of a shorthand writer, if appointed by an order of the court made at the instance of the official receiver in connection with an examination, or
- (iii) are incurred in holding an examination under rule 10.102 (examinee unfit) where the application was made by the official receiver;
- (b) any other expenses incurred or disbursements made by the official receiver or under the official receiver's authority, including those incurred or made in carrying on the business of a debtor or bankrupt;
- (c) the fees payable under any order made under section 415(42) or 415A(43), including those payable to the official receiver (other than the fee referred to in sub-paragraph (d)), and any remuneration payable to the official receiver under general regulations;
- (d) the fee payable under any order made under section 415 for the performance by the official receiver of the official receiver's general duties as official receiver;
- (e) any repayable sum deposited under any such order as security for the fee mentioned in sub-paragraph (d);
- (f) the cost of any security provided by an interim receiver, trustee or special manager in accordance with the Act or these Rules;
- (g) the remuneration of the interim receiver (if any);
- (h) any sum deposited on an application for the appointment of an interim receiver;
- (i) the costs of the petitioner, and of any person appearing on the petition whose costs are allowed by the court;
- (j) the remuneration of the special manager (if any);
- (k) any amount payable to a person or firm employed or authorised, under rules 10.59, 10.60 or 10.64, to assist in the preparation of a statement of affairs or of accounts;
- (l) any allowance made, by order of the court, in respect of costs on an application for release from the obligation to submit a statement of affairs, or for an extension of time for submitting such a statement;
- (m) the costs of employing a shorthand writer in any case other than one appointed by an order of the court at the instance of the official receiver in connection with an examination;
- (n) any necessary disbursements by the trustee in the course of the trustee's administration (including any expenses incurred by members of the creditors' committee or their representatives and allowed by the trustee under rule 17.24, but not including any payment of capital gains tax in circumstances referred to in sub-paragraph (q));
- (o) the remuneration or emoluments of any person (including the bankrupt) who has been employed by the trustee to perform any services for the bankrupt's estate, as required or authorised by or under the Act or these Rules;
- (p) the remuneration of the trustee, up to any amount not exceeding that which is payable under Schedule 11;

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(42) Section 415 subsections (1)(c) and (1A) are inserted by paragraph 59 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24).

(43) Section 415A subsections (1)(c) and (1A) are inserted by section 17(5) and subsection (2) is omitted by paragraph 22(5) of Schedule 6 to the Deregulation Act 2015 (c.20). Subsection (1B) is inserted by 139(2) and (5) by 140(2) of the Small Business, Enterprise and Employment Act 2015 (c.26).

- (q) the amount of any capital gains tax on chargeable gains accruing on the realisation of any asset of the bankrupt (irrespective of the person by whom the realisation is effected);
- (r) the balance, after payment of any sums due under sub-paragraph (p), of any remuneration due to the trustee; and
- (s) any other expenses properly chargeable by the trustee in carrying out the trustee's functions in the bankruptcy.

## CHAPTER 19

### Second bankruptcy

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

#### Scope of this Chapter

[Note: “the earlier bankruptcy”, “the existing trustee” and “the later bankruptcy” are defined in section 334(1).]

**10.150.** The rules in this Chapter relate to the manner in which, in the case of a second bankruptcy, the existing trustee is to deal with property and money to which section 334(3) applies until there is a trustee of the bankrupt's estate in the later bankruptcy.

#### General duty of existing trustee

**10.151.**—(1) The existing trustee must take into custody or under control the property and money to which section 334(3) applies so far as this has not already been done in the earlier bankruptcy.

(2) Where any of that property consists of perishable goods, or goods the value of which is likely to diminish if they are not disposed of, the existing trustee has power to sell or otherwise dispose of those goods.

(3) The proceeds of such a sale or disposal must be held, under the existing trustee's control, with the other property and money comprised in the bankrupt's estate.

#### Delivery up to later trustee

**10.152.** The existing trustee must, if requested by the later trustee for the purposes of the later bankruptcy, deliver to the later trustee as soon as reasonably practicable all the property and money in the existing trustee's custody or under the existing trustee's control under rule 10.151.

#### Existing trustee's expenses

**10.153.** Any expenses incurred by the existing trustee in compliance with section 335(1) and this Chapter must be paid out of, and are a charge on, all of the property and money referred to in section 334(3), whether in the hands of the existing trustee or of the later trustee for the purposes of the later bankruptcy.

## CHAPTER 20

### Criminal bankruptcy

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

#### Contents of petition

**10.154.** The petition must contain—

- (a) identification details for the debtor;
- (b) the name and postal address of the petitioner if other than the Official Petitioner;
- (c) the occupation (if any) of the debtor;
- (d) any other address at which the debtor has resided at or after the time the petition debt was incurred;
- (e) any other name by which the debtor is or has been known;
- (f) the trading name, business address and nature of the business of any business carried on by the debtor;
- (g) details of any other businesses which have been carried on by the debtor at or after the time the petition debt was incurred;
- (h) a statement that the petitioner requests that court make a bankruptcy order against the debtor;
- (i) a statement that a criminal bankruptcy order was made against the debtor at the court specified in this petition and that an office copy of the order accompanies the petition;
- (j) the name of the court that made the criminal bankruptcy order;
- (k) a statement that the criminal bankruptcy order—
  - (i) remains in force, or
  - (ii) was amended by the Court of Appeal on the date specified in this petition, that an office copy of the order of the Court of Appeal accompanies the petition and that the order as amended by the Court of Appeal remains in force;
- (l) a statement that according to the criminal bankruptcy order the debtor is indebted to the persons specified in this petition as having suffered loss or damage in the aggregate sum of the amount of loss or damage suffered specified in this petition;
- (m) the names and addresses of the persons referred to in paragraph (k); and
- (n) the amount of loss or damage suffered referred to in paragraph (k).

### **Status and functions of Official Petitioner**

**10.155.**—(1) The Official Petitioner is to be treated for all purposes of the Act and these Rules as a creditor of the bankrupt.

(2) The Official Petitioner may attend or be represented at any meeting of creditors, and is to be given any notice under the Act or these Rules which is required or authorised to be delivered to creditors; and the requirements of these Rules as to the delivery and use of proxies do not apply to the Official Petitioner.

### **Interim receivership**

**10.156.** The rules in Chapter 4 of this Part about the appointment of an interim receiver apply in criminal bankruptcy only in so far as they provide for the appointment of the official receiver as interim receiver.

### **Proof of bankruptcy debts and notice of order**

**10.157.**—(1) The making of a bankruptcy order on a criminal bankruptcy petition does not affect the right of creditors to prove for their debts arising otherwise than in consequence of the criminal proceedings.

(2) A person specified in a criminal bankruptcy order as having suffered loss or damage must be treated as a creditor of the bankrupt; and a copy of the order is sufficient evidence of that person's

claim, subject to its being shown by any party to the bankruptcy proceedings that the loss or damage actually suffered was more or (as the case may be) less than the amount specified in the order.

(3) The requirements of these Rules about proofs do not apply to the Official Petitioner.

(4) In criminal bankruptcy, notice of the making of the bankruptcy order and blank proofs must be delivered by the official receiver to every creditor who is known to the official receiver within 12 weeks from the making of the bankruptcy order.

### **Rules not applying in criminal bankruptcy**

**10.158.** The following rules do not apply in criminal bankruptcy—

- (a) rule 10.67 (appointment by creditors of new trustee).
- (b) Chapter 6 of this Part, except rules 10.86 (release of official receiver) and 10.91 (power of court to set aside transactions);
- (c) rule 15.21(a) and (b) (chair at meetings); and
- (d) Part 17 (creditors' and liquidation committees).

### **Annulment of criminal bankruptcy order**

**10.159.** Chapter 16 of this Part (annulment of bankruptcy order) applies to an application to the court under section 282(2)(44) as it applies to an application under section 282(1), with any necessary modifications.

### **Application by bankrupt for discharge**

**10.160.**—(1) A bankrupt who applies under section 280 for an order of discharge must deliver notice of the application to the official receiver, and deposit with the official receiver such sum as the official receiver may require for the purpose of covering the costs of the application.

(2) The court, if satisfied that the bankrupt has complied with paragraph (1), must fix a venue for the hearing of the application, and give at least 42 days' notice of it to the official receiver and the bankrupt.

(3) The official receiver must deliver notice of the application and venue to—

- (a) the trustee; and
- (b) every creditor who, to the official receiver's knowledge, has a claim outstanding against the bankrupt's estate which has not been satisfied.

(4) These notices must be delivered not later than 14 days before the date fixed for the hearing of the bankrupt's application.

### **Report of official receiver**

**10.161.**—(1) Where the bankrupt makes an application under section 280, the official receiver must, at least 21 days before the date fixed for the hearing of the application, file with the court a report containing—

- (a) particulars of any failure by the bankrupt to comply with the bankrupt's obligations under Parts 8 to 11 of the Act;
- (b) the circumstances surrounding the present bankruptcy, and those surrounding any previous bankruptcy of the bankrupt;

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(44) Section 282(2) is amended by paragraph 13 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24).

- (c) the extent to which, in the present and in any previous bankruptcy, the bankrupt's liabilities have exceeded the bankrupt's assets; and
  - (d) particulars of any distribution which has been, or is expected to be, made to creditors in the present bankruptcy or, if such is the case, that there has been and is to be no distribution; and
  - (e) any other matters which in the official receiver's opinion ought to be brought to the court's attention.
- (2) The official receiver must deliver a copy of the report to the bankrupt and the trustee, so as to reach them at least 14 days before the date of the hearing of the application under section 280.
- (3) The bankrupt may, not later than five business days before the date of the hearing, file with the court a notice specifying any statements in the official receiver's report which the bankrupt intends to deny or dispute.
- (4) Such a notice must be authenticated and dated by the bankrupt and must contain the bankrupt's name and postal address.
- (5) The bankrupt must deliver copies of such a notice to the official receiver and the trustee not less than three business days before the date of the hearing.
- (6) The official receiver, the trustee and any creditor may appear on the hearing of the bankrupt's application, and may make representations and put to the bankrupt such questions as the court allows.

### **Order of discharge**

**10.162.**—(1) An order of the court under section 280(2)(b) (discharge absolutely) or (c) (discharge subject to conditions relating to income or property) must contain—

- (a) the name of the court;
  - (b) identification details for the bankrupt;
  - (c) the date of the bankruptcy order;
  - (d) the date of the report of the official receiver in the matter;
  - (e) the statement that the court has taken into consideration the report of the official receiver specified in the order as to the bankrupt's conduct and affairs, including the bankrupt's conduct during the bankruptcy;
  - (f) an order—
    - (i) that the bankrupt be discharged absolutely, or
    - (ii) that the bankrupt be discharged but that the bankrupt's discharge be suspended until the conditions specified in the order are fulfilled;
  - (g) the date on which the order is made;
  - (h) the date on which the order takes effect; and
  - (i) any conditions required to be fulfilled for discharge.
- (2) Copies of any order made on an application by the bankrupt for discharge under section 280 must be delivered by the court to the bankrupt, the trustee and the official receiver.
- (3) The order must contain a notice to the bankrupt stating that should the bankrupt require notice of the order to be gazetted and to be advertised in the same manner as the bankruptcy order was advertised, then the bankrupt must within 28 days deliver a notice of that requirement to the official receiver

**Deferment of issue of order pending appeal**

**10.163.** An order made by the court on an application by the bankrupt for discharge under section 280 must not be drawn up or gazetted until the time allowed for appealing has expired or, if an appeal is entered, until the appeal has been determined.

**Costs under this Chapter**

**10.164.** In no case do any costs or expenses arising under this Chapter fall on the official receiver personally.

## CHAPTER 21

## Miscellaneous rules in bankruptcy

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

**Amendment of title of proceedings**

**10.165.**—(1) At any time after the making of a bankruptcy order, the official receiver may amend the title of the proceedings.

(2) An official receiver who amends the title of proceedings must as soon as reasonably practicable—

- (a) where the bankruptcy is on the petition of a creditor, file a notice of the amendment with the court;
- (b) where the bankruptcy is on the application of a debtor, file a notice of the amendment on the bankruptcy file; and
- (c) make an application to the Chief Land Registrar to amend the register of writs and orders.

(3) If the official receiver thinks fit to gazette the amendment then it must be gazetted as soon as reasonably practicable, and may be advertised in such other manner as the official receiver thinks fit.

(4) The notice must—

- (a) state that the title of the proceedings has been amended; and
- (b) specify the amendment.

**Application for redirection order**

**10.166.**—(1) This rule applies where the official receiver or trustee other than the official receiver makes an application to the court under section 371(1) (re-direction of bankrupt's letters etc.).

(2) The application must be made without notice to the bankrupt or any other person, unless the court directs otherwise.

(3) Where the applicant is the official receiver the applicant must file with the court with the application a report setting out the reasons why the order is sought.

(4) Where the applicant is the trustee the applicant must file with the court a witness statement setting out the reasons why the order is sought.

(5) The court must fix a venue for the hearing of the application if the court thinks just and deliver notice to the applicant.

(6) The court may make an order on such conditions as it thinks just.

(7) The order must identify the person on whom it is to be served, and need not be served on the bankrupt unless the court so directs.



### **Bankrupt's home: property falling within section 283A**

**10.167.**—(1) Where it appears to a trustee that section 283A(1)(45) applies, the trustee must deliver notice as soon as reasonably practicable to—

- (a) the bankrupt;
  - (b) the bankrupt's spouse or civil partner (in a case falling within section 283A(1)(b)); and
  - (c) the former spouse or former civil partner of the bankrupt (in a case falling within section 283A(1)(c)).
- (2) Such a notice must contain—
- (a) the name of the bankrupt;
  - (b) the address of the dwelling-house;
  - (c) if the dwelling-house is registered land, the title number; and
  - (d) the date by which the trustee must have delivered the notice.

(3) A trustee must not deliver such a notice any later than 14 days before the third anniversary of the bankruptcy order or, 14 days before the third anniversary of when the official receiver or trustee became aware of the property.

### **Application in relation to the vesting of an interest in a dwelling-house (registered land)**

**10.168.**—(1) This rule applies where—

- (a) the bankrupt's estate includes an interest in a dwelling-house which at the date of bankruptcy was the sole or principal residence of—
  - (i) the bankrupt,
  - (ii) the bankrupt's spouse or civil partner, or
  - (iii) a former spouse or former civil partner of the bankrupt; and
- (b) the dwelling-house is registered land; and
- (c) an entry has been made relating to the bankruptcy in the individual register of the dwelling-house or the register has been altered to reflect the vesting of the bankrupt's interest in a trustee in bankruptcy.

(2) Where such an interest ceases to be comprised in the bankrupt's estate and vests in the bankrupt under either section 283A(2) or 283A(4) of the Act, or under section 261(8) of the Enterprise Act 2002(46), the trustee must, within five business days of the vesting, make such application to the Chief Land Registrar as is necessary to show in the individual register of the dwelling-house that the interest has vested in the bankrupt.

(3) The trustee's application must be made in accordance with the Land Registration Act 2002 and must be accompanied by—

- (a) evidence of the trustee's appointment (where not previously provided to the Chief Land Registrar); and
- (b) a certificate from the trustee stating that the interest has vested in the bankrupt under section 283A(2) or 283A(4) of the Act or section 261(8) of the Enterprise Act 2002 (whichever is appropriate).

(4) As soon as reasonably practicable after making such an application, the trustee must deliver notice of the application—

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(45) Section 283A was inserted by section 261(1) of the Enterprise Act 2002 (c.40) and has been amended by paragraph 113 of Schedule 27 to the Civil Partnership Act 2004 (c.33).

(46) 2002 c.40. There are amendments to this Act but they are not relevant to this instrument.

- (a) to the bankrupt; and
  - (b) to the bankrupt's spouse, former spouse, civil partner or former civil partner if the dwelling-house was the sole or principal residence of that person.
- (5) The trustee must deliver notice of the application to every person who (to the trustee's knowledge) claims an interest in, or is under any liability in relation to, the dwelling-house.

#### **Vesting of bankrupt's interest (unregistered land)**

**10.169.**—(1) Where an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

- (a) the bankrupt;
- (b) the bankrupt's spouse or civil partner; or
- (c) a former spouse or former civil partner of the bankrupt;

ceases to be comprised in the bankrupt's estate and vests in the bankrupt under either section 283A(2) or 283A(4) of the Act or section 261(8) of the Enterprise Act 2002 and the dwelling-house is unregistered land, the trustee must as soon as reasonably practicable deliver to the bankrupt a certificate as to the vesting.

(2) Such a certificate is conclusive proof that the interest mentioned in paragraph (1) has vested in the bankrupt.

(3) As soon as reasonably practicable after delivering the certificate, the trustee must deliver a copy of the certificate to the bankrupt's spouse, former spouse, civil partner or former civil partner if the dwelling-house was the sole or principal residence of that person.

(4) The trustee must deliver a copy of the certificate to every person who (to the trustee's knowledge) claims an interest in, or is under any liability relating to, the dwelling-house.

#### **Vesting of bankrupt's estate: substituted period**

[Note: section 283A(6)(b) gives the court the power to impose a longer period than the three years mentioned in section 283A(2) in such circumstances as the court thinks appropriate.]

**10.170.**—(1) For the purposes of section 283A(2) the period of one month is substituted for the period of three years set out in that section where the trustee has delivered notice to the bankrupt that the trustee considers—

- (a) the continued vesting of the property in the bankrupt's estate to be of no benefit to creditors; or
  - (b) the re-vesting to the bankrupt will make dealing with the bankrupt's estate more efficient.
- (2) The one month period starts from the date of the notice.

#### **Charging order**

**10.171.**—(1) This rule applies where the trustee applies to the court under section 313 for an order imposing a charge on property consisting of an interest in a dwelling-house.

- (2) The respondents to the application must be—
  - (a) any spouse or former spouse or civil partner or former civil partner of the bankrupt having or claiming to have an interest in the property;
  - (b) any other person appearing to have an interest in the property; and
  - (c) such other persons as the court may direct.
- (3) The trustee must make a report to the court, containing the following particulars—

- (a) the extent of the bankrupt's interest in the property;
  - (b) the amount which, at the date of the application, remains owing to unsecured creditors of the bankrupt; and
  - (c) an estimate of the cost of realising the interest.
- (4) The terms of the charge to be imposed must be agreed between the trustee and the bankrupt or in the absence of an agreement must be settled by the court.
- (5) The rate of interest applicable under section 313(2) is the rate specified in section 17 of the Judgments Act 1838<sup>(47)</sup> on the day on which the charge is imposed, and the rate must be stated in the court's order imposing the charge.
- (6) The court's order must also—
- (a) describe the property to be charged;
  - (b) state whether the title to the property is registered and, if it is, specify the title number;
  - (c) set out the extent of the bankrupt's interest in the property which has vested in the trustee;
  - (d) indicate by reference to any, or the total, amount which is payable otherwise than to the bankrupt out of the bankrupt's estate and of interest on that amount, how the amount of the charge to be imposed is to be ascertained;
  - (e) set out the conditions (if any) imposed by the court under section 3(1) of the Charging Orders Act 1979<sup>(48)</sup>; and
  - (f) identify the date any property charged under section 313 will cease to be comprised in the bankrupt's estate and will, subject to the charge (and any prior charge), vest in the bankrupt.
- (7) The date referred to in paragraph (6)(f) must be that of the registration of the charge in accordance with section 3(2) of the Charging Orders Act 1979 unless the court is of the opinion that a different date is appropriate.
- (8) Where the court order is capable of giving rise to an application under the Land Charges Act 1972 or the Land Registration Act 2002<sup>(49)</sup> the trustee must, as soon as reasonably practicable after the making of the court order or at the appropriate time, make the appropriate application to the Chief Land Registrar.
- (9) The appropriate application is—
- (a) an application under section 6(1)(a) of the Land Charges Act 1972<sup>(50)</sup> (application for registration in the register of writs and orders affecting land); or
  - (b) an application under the Land Registration Act 2002 for an entry in the register in relation to the charge imposed by the order; and such application under that Act as is necessary to show in the individual register or registers of the dwelling-house that the interest has vested in the bankrupt.
- (10) In determining the value of the bankrupt's interest for the purposes of paragraph (6)(c), the court must disregard that part of the value of the property in which the bankrupt's interest subsists which is equal to the value of—
- (a) any loans secured by mortgage or other charge against the property;
  - (b) any other third party interest; and
  - (c) the reasonable costs of sale.

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<sup>(47)</sup> Section 17 is amended by the Statute Law Revision (No 2) Act 1888 (c.57), article 2 of S.I. 1993/564, article 3 of S.I. 1998/2940, Part 1 of the Schedule to the Civil Procedure Acts Repeal Act 1879 (c.59) and article 3(c) of S.I. 1998/3132.

<sup>(48)</sup> 1979 c.53.

<sup>(49)</sup> 2002 c.9.

<sup>(50)</sup> 1972 c.61.

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**Status:** *This is the original version (as it was originally made).*

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