STATUTORY INSTRUMENTS

2018 No. 719

The Housing Administration (England and Wales) Rules 2018

PART 2

APPLICATION FOR AN HOUSING ADMINISTRATION ORDER

Commencement of housing administration proceedings

2.1.—(1) An application for a housing administration order may be commenced either in the High Court or in the county court.

(2) Where an application for housing administration is commenced in the county court it may only be commenced in the hearing centre which serves the area in which the registered provider, if it is a company, has its registered office, or, if it is not a company, has its principal place of business in England.

(3) However if the registered office is situated in an area served by a hearing centre for which Schedule 6 to the Insolvency (England and Wales) Rules 2016(**1**) lists an alternative court or hearing centre, then any such proceedings in the county court may be commenced in that alternative court or hearing centre.

Form of application

2.2.—(1) The application must state whether it is made by the Regulator of Social Housing or the Secretary of State.

(2) Where the application is made by the Regulator of Social Housing, it must contain a statement that it is made with the consent of the Secretary of State.

(3) A written statement complying with rule 2.3 must be attached to the application made by each of the persons proposed to be housing administrator, stating—

(a) that the person consents to accept the appointment; and

(b) details of any prior professional relationship or relationships that the person has had with the registered provider to which that person is to be appointed as housing administrator.

Contents of application and witness statement

2.3.—(1) The housing administration application must be headed "Housing Administration application" and must identify the registered provider to which it relates immediately below the heading.

(2) The application must state one or both of the following—

(a) the applicant's belief that the registered provider is unable, or is likely to be unable, to pay its debts;

(**1**) S.I. 2016/1024.

(b) that the Secretary of State has certified that section 100(2)(b) of the Housing and Planning Act applies, in the case of a registered provider which is a company.

(3) The application must also contain—

(a) if the registered provider is a company registered under the Companies Act—

(i) details of any issued and called-up capital, the number of shares into which the capital is divided, the nominal value of each share and the amount of capital paid up or treated as paid up, or

(ii) that it is a company limited by guarantee; and

(b) a statement that the applicant requests the court—

(i) to make a housing administration order in relation to the registered provider,

(ii) to appoint the proposed person to be housing administrator, and

(iii) to make such ancillary order or orders as the applicant may request, and such other order or orders as the court thinks appropriate.

(4) The witness statement required by rule 2.2(3) must state the nature of the authority of the person making it and the means of that person's knowledge of the matters to which the witness statement relates.

(5) The witness statement must also contain—

(a) a statement of the registered provider's financial position, specifying (to the best of the applicant's knowledge and belief) the registered provider's assets and liabilities, including contingent and prospective liabilities;

(b) details of any security known or believed to be held by creditors of the registered provider, and whether in any case the security is such as to confer power on the holder to appoint an administrative receiver or to appoint an administrator under paragraph 14 of Schedule B1;

(c) a statement that an administrative receiver has been appointed if that is the case;

(d) details of any insolvency proceedings in relation to the registered provider, including any petition that has been presented for the winding up of the registered provider, so far as known to the applicant;

(e) where it is intended to appoint a number of persons as housing administrators, a statement of the matters relating to their functions as set out in section 101(4) of the Housing and Planning Act; and

(f) any other matters which, in the applicant's opinion, will assist the court in deciding whether to make a housing administration order.

Filing of application

2.4.—(1) The housing administration application must be filed with the court together with the witness statement in support and the proposed housing administrator's consent to act.

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

(3) There must also be filed, at the same time as the application or at any time after that, a sufficient number of copies of the application and the statement for service in accordance with rule 2.5.

(4) Each of the copies filed must—

(a) have applied to it the seal of the court;

(b) be endorsed with—

(i) the date and time of filing, and

(ii) the venue fixed by the court; and

(c) be delivered by the court to the applicant.

(5) After the application is filed, it is the duty of the applicant to notify the court in writing of the existence of any insolvency proceedings in relation to the registered provider, as soon as the applicant becomes aware of them.

Service of application

2.5.—(1) In this rule, references to the application are to a copy of the application and witness statement filed with the court under rule 2.4.

(2) Notification for the purposes of section 99(2) of the Housing and Planning Act must be by way of service of the application in accordance with rule 2.7, verified in accordance with rule 2.8.

(3) The applicant must serve the application on the following (in addition to serving it on the persons referred to in section 99(2) of the Housing and Planning Act)—

(a) an administrative receiver of the registered provider;

(b) if there is pending an administration application under Schedule B1, on the applicant;

(c) if there is a petition pending for the winding up of the registered provider, on—

(i) the petitioner; and

(ii) any provisional liquidator;

(d) any creditor who has served notice in accordance with section 108(2)(a) of the Housing and Planning Act of their intention to enforce their security over property of the registered provider;

(e) on the person proposed as housing administrator;

(f) on the registered provider;

(g) if the applicant is the Secretary of State, on the Regulator of Social Housing;

(h) if the applicant is the Regulator of Social Housing, on the Secretary of State;

(i) on any supervisor of a voluntary arrangement under Part 1 of the Act who has been appointed.

Notice to enforcement agents charged with distress or other legal process, etc.

2.6. The applicant must as soon as reasonably practicable after filing the application deliver a notice of its being made to—

(a) any enforcement agent or other officer who to the knowledge of the applicant is charged with distress or other legal process against the registered provider or its property; and

(b) any person who to the knowledge of the applicant has distrained against the registered provider or its property.

Manner in which service to be effected

2.7.—(1) Service of the application in accordance with rule 2.5 must be effected by the applicant, or the applicant's solicitor, or by a person instructed by the applicant or the applicant's solicitor, not less than 5 business days before the date fixed for the hearing.

(2) Schedule 2 has effect to set out the manner in which service is to be effected.

Proof of service

2.8.—(1) A certificate in accordance with the following provisions of this rule must be filed with the court as soon as reasonably practicable after service, and in any event not less than 1 business day before the hearing of the application.

(2) The certificate is proof that a document has been duly served on the recipient in accordance with this Chapter unless the contrary is shown.

(3) The certificate must state the method of service and the date of the sending, posting or delivery (as the case may be).

(4) In the case of the proposed housing administrator, the certificate must be given by—

(a) the proposed housing administrator;

(b) the proposed housing administrator's solicitor; or

(c) a partner or employee of either of them.

(5) In the case of a person other than the housing administrator, the certificate must be given by that person and must state—

(a) that the document was delivered by that person; or

(b) that another person (named in the certificate) was instructed to deliver it.

(6) A certificate under this rule may be endorsed on a copy of the document to which it relates.

The hearing

2.9.—(1) At the hearing of the housing administration application, any of the following may appear or be represented—

(a) the Secretary of State;

(b) the Regulator of Social Housing;

(c) the registered provider;

(d) a relevant officer of the registered provider;

(e) if an administrative receiver has been appointed, that person;

(f) any person who has presented a petition for the winding up of the registered provider;

(g) the person proposed for appointment as housing administrator;

(h) any person that is the holder of a qualifying floating charge;

(i) any person that is the holder of security over property of the registered provider;

(j) any person who has applied to the court for an administration order under Schedule B1;

(k) any supervisor of a voluntary arrangement under Part 1 of the Act;

(l) with the permission of the court, any other person who appears to have an interest justifying their appearance.

(2) If the court makes a housing administration order, the costs of the applicant and of any other person whose costs are allowed by the court, are payable as an expense of the administration.

The order

2.10.—(1) Where the court makes a housing administration order the court's order must be headed "Housing Administration order" and must contain the following—

(a) the name of the court in which the order is made;

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

(c) identification details for the registered provider;

(d) the address for service of the applicant;

(e) details of any other parties (including the registered provider) appearing and by whom represented;

(f) an order that during the period the order is in force the affairs, business and property of the registered provider are to be managed by the housing administrator;

(g) the name of the person appointed as housing administrator;

(h) an order that that person is appointed as housing administrator of the registered provider;

(i) the date of the order (and if the court so orders the time); and

(j) such other provisions if any as the court thinks just.

(2) Where two or more housing administrators are appointed the order must also specify (as required by section 101(4) of the Housing and Planning Act)—

(a) which functions (if any) are to be exercised by those persons acting jointly; and

(b) which functions (if any) are to be exercised by any or all of those persons.

Notice of housing administration order

2.11.—(1) If the court makes a housing administration order, it must as soon as reasonably practicable deliver two sealed copies of the order, or three sealed copies in the event that two housing administrators have been appointed, to the applicant.

(2) The applicant must as soon as reasonably practicable deliver a sealed copy of the order to the person appointed as housing administrator, or each of them in the event that two housing administrators have been appointed.

(3) If the court makes an order under section 100(1)(e) or any other order under section 100(1)(f) of the Housing and Planning Act, it must give directions as to the persons to whom, and how, notice of that order is to be given.