
STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE THIRD GROUP OF PARTS

PART 12

MISCELLANEOUS AND GENERAL

Power of Secretary of State to regulate certain matters

12.1.—(1) Pursuant to paragraph 27 of Schedule 8 to the Act, and paragraph 30 of Schedule 9 to the Act, the Secretary of State may make regulations with respect to the following matters arising in companies winding up and individual bankruptcy—

- (a) the preparation and keeping by liquidators, trustees, provisional liquidators, interim receivers and the official receiver, of books, accounts and other records, and their production to such persons as may be authorised or required to inspect them;
- (b) the auditing of liquidators' and trustees' accounts;
- (c) the manner in which liquidators and trustees are to act in relation to the insolvent company's or bankrupt's books, papers and other records, and the manner of their disposal by the responsible insolvency practitioner or others;
- (d) the supply—
 - (i) in company insolvency, by the liquidator to creditors and members of the company, contributories in its winding up and the liquidation committee, and
 - (ii) in individual insolvency, by the trustee to creditors and the creditors' committee,of copies of documents relating to the insolvency and the affairs of the insolvent company or individual (on payment, in such cases as may be specified by the regulations, of the specified fee);
- (e) the manner in which insolvent estates are to be distributed by liquidators and trustees, including provision with respect to unclaimed funds and dividends;
- (f) the manner in which moneys coming into the hands of a liquidator or trustee in the course of his administration are to be handled and, in the case of a liquidator, invested, and the payment of interest on sums which, in pursuance of regulations made by virtue of this subparagraph, have been paid into the Insolvency Service Account;
- (g) the amount (or the manner of determining the amount) to be paid to the official receiver by way of remuneration when acting as provisional liquidator, liquidator, interim receiver or trustee.

(2) Any reference in paragraph (1) to a trustee includes a reference to the official receiver when acting as receiver and manager under section 287.

(3) Regulations made pursuant to paragraph (1) may—

- (a) confer a discretion on the court;
- (b) make non-compliance with any of the regulations a criminal offence;

- (c) make different provision for different cases, including different provision for different areas.

Costs, expenses, etc

12.2. All fees, costs, charges and other expenses incurred in the course of winding up or bankruptcy proceedings are to be regarded as expenses of the winding up or, as the case may be, of the bankruptcy.

Provable debts

12.3.—(1) Subject as follows, in both winding up and bankruptcy, all claims by creditors are provable as debts against the company or, as the case may be, the bankrupt, whether they are present or future, certain or contingent, ascertained or sounding only in damages.

(2) The following are not provable—

- (a) in bankruptcy, any fine imposed for an offence, and any obligation arising under an order made in family or domestic proceedings;
- (b) in winding up or bankruptcy, any obligation arising under a confiscation order made under section 1 of the Drug Trafficking Offences Act 1986

“Fine”, “domestic proceedings” and “family proceedings” have the meanings given by section 281(8) of the Act (which applies the Magistrates' Courts Act 1980 and the Matrimonial and Family Proceedings Act 1984).

(3) Nothing in this Rule prejudices any enactment or rule of law under which a particular kind of debt is not provable, whether on grounds of public policy or otherwise.

Notices

12.4.—(1) All notices required or authorised by or under the Act or the Rules to be given must be in writing, unless it is otherwise provided, or the court allows the notice to be given in some other way.

(2) Where in any proceedings a notice is required to be sent or given by the official receiver or by the responsible insolvency practitioner, the sending or giving of it may be proved by means of a certificate—

- (a) in the case of the official receiver, by him or a member of his staff, and
- (b) in the case of the insolvency practitioner, by him, or his solicitor, or a partner or an employee of either of them,

that the notice was duly posted.

(3) In the case of a notice to be sent or given by a person other than the official receiver or insolvency practitioner, the sending or giving of it may be proved by means of a certificate by that person that he posted the notice, or instructed another person (naming him) to do so.

(4) A certificate under this Rule may be endorsed on a copy or specimen of the notice to which it relates.

Evidence of proceedings at meetings

12.5.—(1) A minute of proceedings at a meeting (held under the Act or the Rules) of a person's creditors, or of the members of a company, or of the contributories in a company's liquidation, signed by a person describing himself as, or appearing to be, the chairman of that meeting is admissible in insolvency proceedings without further proof.

- (2) The minute is prima facie evidence that—
 - (a) the meeting was duly convened and held,
 - (b) all resolutions passed at the meeting were duly passed, and
 - (c) all proceedings at the meeting duly took place.

Documents issuing from Secretary of State

12.6.—(1) Any document purporting to be, or to contain, any order, directions or certificate issued by the Secretary of State shall be received in evidence and deemed to be or (as the case may be) contain that order or certificate, or those directions, without further proof, unless the contrary is shown.

(2) Paragraph (1) applies whether the document is signed by the Secretary of State himself or an officer on his behalf.

(3) Without prejudice to the foregoing, a certificate signed by the Secretary of State or an officer on his behalf and confirming—

- (a) the making of any order,
- (b) the issuing of any document, or
- (c) the exercise of any discretion, power or obligation arising or imposed under the Act or the Rules,

is conclusive evidence of the matters dealt with in the certificate.

Forms for use in insolvency proceedings

12.7.—(1) The forms contained in Schedule 4 to the Rules shall be used in and in connection with, insolvency proceedings, whether in the High Court or a county court.

(2) The forms shall be used with such variations, if any, as the circumstances may require.

(3) Where any form contained in Schedule 4 is substantially the same as one used for a corresponding purpose under the law and practice obtaining before the coming into force of the Rules, the latter may continue to be used (with the necessary modifications) until the Lord Chancellor otherwise directs.

Insolvency practitioner's security

12.8.—(1) Wherever under the Rules any person has to appoint, or certify the appointment of, an insolvency practitioner to any office, he is under a duty to satisfy himself that the person appointed or to be appointed has security for the proper performance of his functions.

(2) It is the duty—

- (a) of the creditors' committee in companies administration, administrative receivership and bankruptcy,
- (b) of the liquidation committee in companies winding up, and
- (c) of any committee of creditors established for the purposes of a voluntary arrangement under Part I or VIII of the Act,

to review from time to time the adequacy of the responsible insolvency practitioner's security.

(3) In any insolvency proceedings the cost of the responsible insolvency practitioner's security shall be defrayed as an expense of the proceedings.

Time-limits

12.9. The provisions of Order 3 of the Rules of the Supreme Court, except Rules 3 and 6, apply as regards computation of time in respect of anything required or authorised by the Rules to be done.

Service by post

12.10.—(1) For a document to be properly served by post, it must be contained in an envelope addressed to the person on whom service is to be effected, and pre-paid for either first or second class post.

(2) Where first class post is used, the document is treated as served on the second business day after the date of posting, unless the contrary is shown.

(3) Where second class post is used, the document is treated as served on the fourth business day after the date of posting, unless the contrary is shown.

(4) The date of posting is presumed, unless the contrary is shown, to be the date shown in the post-mark on the envelope in which the document is contained.

General provisions as to service

12.11.—(1) Subject as follows, Order 65 of the Rules of the Supreme Court applies as regards any matter relating to the service of documents and the giving of notice in insolvency proceedings.

(2) In Order 65 Rule 7, the expression “other originating process” does not include any application in insolvency proceedings.

(3) Order 65 Rule 9 does not apply.

(4) In Order 65 Rule 10, the expression “process” includes any application in insolvency proceedings.

Service outside the jurisdiction

12.12.—(1) Order 11 of the Rules of the Supreme Court, and the corresponding County Court Rules, do not apply in insolvency proceedings.

(2) A bankruptcy petition may, with the leave of the court, be served outside England and Wales in such manner as the court may direct.

(3) Where for the purposes of insolvency proceedings any process or order of the court, or other document, is required to be served on a person who is not in England and Wales, the court may order service to be effected within such time, on such person, at such place and in such manner as it thinks fit, and may also require such proof of service as it thinks fit.

(4) An application under this Rule shall be supported by an affidavit stating—

(a) the grounds on which the application is made, and

(b) in what place or country the person to be served is, or probably may be found.

Confidentiality of documents

12.13.—(1) Where in insolvency proceedings the responsible insolvency practitioner considers, in the case of a document forming part of the records of the insolvency, that—

(a) it should be treated as confidential, or

(b) it is of such a nature that its disclosure would be calculated to be injurious to the interests of the insolvent's creditors or, in the case of a company's insolvency, its members or the contributories in its winding up,

he may decline to allow it to be inspected by a person who would otherwise be entitled to inspect it.

(2) The persons to whom the insolvency practitioner may under this Rule refuse inspection include the members of a liquidation committee or a creditors' committee.

(3) Where under this Rule the insolvency practitioner determines to refuse inspection of a document, the person wishing to inspect it may apply to the court for that determination to be overruled; and the court may either overrule it altogether, or sustain it subject to such conditions (if any) as it thinks fit to impose.

Notices sent simultaneously to the same person

12.14. Where under the Act or the Rules a document of any description is to be sent to a person (whether or not as a member of a class of persons to whom that same document is to be sent), it may be sent as an accompaniment to any other document or information which the person is to receive, with or without modification or adaptation of the form applicable to that document.

Right to copy documents

12.15. Where the Rules confer a right for any person to inspect documents, the right includes that of taking copies of those documents, on payment—

- (a) in the case of documents on the court's file of proceedings, of the fee chargeable under any order made under section 130 of the Supreme Court Act 1981 or under section 128 of the County Courts Act 1984, and
- (b) otherwise, of the appropriate fee.

Non-receipt of notice of meeting

12.16. Where in accordance with the Act or the Rules a meeting of creditors or other persons is summoned by notice, the meeting is presumed to have been duly summoned and held, notwithstanding that not all those to whom the notice is to be given have received it.

Right to have list of creditors

12.17.—(1) This Rule applies in any of the following proceedings—

- (a) proceedings under Part II of the Act (company administration),
- (b) a creditors' voluntary winding up, or a winding up by the court, and
- (c) proceedings in bankruptcy.

(2) In any such proceedings a creditor who under the Rules has the right to inspect documents on the court file also has the right to require the responsible insolvency practitioner to furnish him with a list of the insolvent's creditors and the amounts of their respective debts.

This does not apply if a statement of the insolvent's affairs has been filed in court or, in the case of a creditors' voluntary winding up, been delivered to the registrar of companies.

(3) The insolvency practitioner, on being required by any person to furnish the list, shall send it to him, but is entitled to charge the appropriate fee for doing so.

False claim of status as creditor, etc

12.18.—(1) Where the Rules provide for creditors, members of a company or contributories in a company's winding up a right to inspect any documents, whether on the court's file or in the hands of a responsible insolvency practitioner or other person, it is an offence for a person, with the intention

of obtaining a sight of documents which he has not under the Rules any right to inspect, falsely to claim a status which would entitle him to inspect them.

(2) A person guilty of an offence under this Rule is liable to imprisonment or a fine, or both.

Execution overtaken by judgment debtor's insolvency

12.19.—(1) This Rule applies where execution has been taken out against property of a judgment debtor, and notice is given to the sheriff or other officer charged with the execution—

- (a) under section 184(1) (that a winding-up order has been made against the debtor, or that a provisional liquidator has been appointed, or that a resolution for voluntary winding up has been passed); or
- (b) under section 184(4) (that a winding-up petition has been presented or a winding-up order made, or that a meeting has been called at which there is to be proposed a resolution for voluntary winding up, or that such a resolution has been passed); or
- (c) under section 346(2) (that the judgment debtor has been adjudged bankrupt); or
- (d) under section 346(3)(b) (that a bankruptcy petition has been presented in respect of him).

(2) Subject as follows, the notice shall be in writing and be delivered by hand at, or sent by recorded delivery to, the office of the under-sheriff or (as the case may be) of the officer charged with the execution.

(3) Where the execution is in a county court, and the officer in charge of it is the registrar of that court, then if—

- (a) there is filed in that court in respect of the judgment debtor a winding-up or bankruptcy petition, or
- (b) there is made by that court in respect of him a winding-up order or an order appointing a provisional liquidator, or a bankruptcy order or an order appointing an interim receiver,

section 184 or (as the case may be) 346 is deemed satisfied as regards the requirement of a notice to be served on, or given to, the officer in charge of the execution.

The Gazette

12.20.—(1) A copy of the Gazette containing any notice required by the Act or the Rules to be gazetted is evidence of any facts stated in the notice.

(2) In the case of an order of the court notice of which is required by the Act or the Rules to be gazetted, a copy of the Gazette containing the notice may in any proceedings be produced as conclusive evidence that the order was made on the date specified in the notice.

(3) Where an order of the court which is gazetted has been varied, and where any matter has been erroneously or inaccurately gazetted, the person whose responsibility it was to procure the requisite entry in the Gazette shall forthwith cause the variation of the order to be gazetted or, as the case may be, a further entry to be made in the Gazette for the purpose of correcting the error or inaccuracy.

Punishment of offences

12.21.—(1) Schedule 5 to the Rules has effect with respect to the way in which contraventions of the Rules are punishable on conviction.

(2) In relation to an offence under a provision of the Rules specified in the first column of the Schedule (the general nature of the offence being described in the second column), the third column shows whether the offence is punishable on conviction on indictment, or on summary conviction, or either in the one way or the other.

(3) The fourth column shows, in relation to an offence, the maximum punishment by way of fine or imprisonment which may be imposed on a person convicted of the offence in the way specified in relation to it in the third column (that is to say, on indictment or summarily), a reference to a period of years or months being to a term of imprisonment of that duration.

(4) The fifth column shows (in relation to an offence for which there is an entry in that column) that a person convicted of the offence after continued contravention is liable to a daily default fine; that is to say, he is liable on a second or subsequent conviction of the offence to the fine specified in that column for each day on which the contravention is continued (instead of the penalty specified for the offence in the fourth column of the Schedule).

(5) Section 431 (summary proceedings), as it applies to England and Wales, has effect in relation to offences under the Rules as to offences under the Act.