

1999 No. 1022

INSOLVENCY

COMPANIES

INDIVIDUALS, ENGLAND AND WALES

The Insolvency (Amendment) (No. 2) Rules 1999

<i>Made</i> - - - -	<i>29th March 1999</i>
<i>Laid before Parliament</i>	<i>31st March 1999</i>
<i>Coming into force</i>	<i>26th April 1999</i>

The Lord Chancellor, in the exercise of his powers under sections 411 and 412 of the Insolvency Act 1986(a), with the concurrence of the Secretary of State, and after consulting the committee existing for that purpose under section 413 of that Act, hereby makes the following Rules:—

Citation and commencement

1. These Rules may be cited as the Insolvency (Amendment) (No. 2) Rules 1999 and shall come into force on 26th April 1999.

Interpretation

2. In these Rules references to “the principal Rules” are to the Insolvency Rules 1986(b) and a Rule referred to by number means the Rule so numbered in the principal Rules.

Application

3. The principal Rules shall have effect subject to the amendments set out in the Schedule to these Rules.

25th March 1999

Irvine of Lairg, C.

I concur, on behalf of the Secretary of State,

Kim Howells
Parliamentary Under Secretary of State
for Competition and Consumer Affairs,
Department of Trade and Industry

29th March 1999

(a) 1986 c. 45.

(b) S.I. 1986/1925; amended by S.I. 1987/1919, 1989/397, 1991/495, 1993/602, 1995/586 and 1999/359. The only relevant amending instrument is S.I. 1987/1919.

Amendment of Rule 0.2. (Construction and interpretation)

1. For Rule 0.2. substitute—

“Construction and interpretation

0.2.—(1) In these Rules—

“the Act” means the Insolvency Act 1986 (any reference to a numbered section being to a section of that Act);

“the Companies Act” means the Companies Act 1985**(a)**;

“CPR” means the Civil Procedure Rules 1998**(b)** and “CPR” followed by a Part or rule by number means the Part or rule with that number in those Rules;

“RSC” followed by an Order by number means the Order with that number set out in Schedule 1 to the CPR; and

“the Rules” means the Insolvency Rules 1986.

(2) References in the Rules to *ex parte* hearings shall be construed as references to hearings without notice being served on any other party; references to applications made *ex parte* as references to applications made without notice being served on any other party and other references which include the expression “*ex parte*” shall be similarly construed.

(3) Subject to paragraphs (1) and (2), Part 13 of the Rules has effect for their interpretation and application.”.

Amendment of Rule 6.197. (Claim by mortgagee of land)

2. In Rule 6.197. in paragraph (3) for “The court may under this paragraph authorise the service of interrogatories on any party.” substitute “The court may under this paragraph 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) shall apply to any such order.”.

Amendment of Part 7 (Court Procedure and Practice) Chapter 6 (Costs and Taxation)

3. In Part 7 for Chapter 6 substitute—

“Chapter 6 – Costs and Detailed Assessment**Application of the CPR**

7.33. Subject to provision to inconsistent effect made as follows in this Chapter, CPR Part 43 (scope of costs rules and definitions), Part 44 (general rules about costs), Part 45 (fixed costs), Part 47 (procedure for detailed assessment of costs and default provisions) and Part 48 (costs — special cases) shall apply to insolvency proceedings with any necessary modifications.

Requirement to assess costs by the detailed procedure

7.34.—(1) Subject as follows, where the costs, charges or expenses of any person are payable out of the insolvent estate, the amount of those costs, charges or expenses shall be decided by detailed assessment unless agreed between the responsible insolvency practitioner and the person entitled to payment, and in the absence of such agreement the responsible insolvency practitioner may serve notice in writing requiring that person to commence detailed assessment proceedings in accordance with CPR Part 47 (procedure for detailed assessment of costs and default provisions) in the court to which the insolvency proceedings are allocated or, where in relation to a company there is no such court, that in relation to any court having jurisdiction to wind up the company.

(2) If a liquidation or creditors’ committee established in insolvency proceedings (except administrative receivership) resolves that the amount of any such costs, charges or

(a) 1985 c. 6.

(b) S.I. 1998/3132 (L. 17); amended by S.I. 1999/1008 (L. 8).

expenses should be decided by detailed assessment, the insolvency practitioner shall require detailed assessment in accordance with CPR Part 47.

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

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

(5) Unless otherwise directed or authorised, the costs of a trustee in bankruptcy or a liquidator are to be allowed on the standard basis for which provision is made in CPR rule 44.4 (basis of assessment) and rule 44.5 (factors to be taken into account in deciding the amount of costs).

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

Procedure where detailed assessment required

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

(2) The certificate shall include—

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

(3) Every person whose costs in insolvency proceedings are required to be decided by detailed assessment shall, on being required in writing to do so by the insolvency practitioner, commence detailed assessment proceedings in accordance with CPR Part 47 (procedure for detailed assessment of costs and default provisions).

(4) If that person does not commence detailed assessment proceedings within 3 months of the requirement under paragraph (3), or within such further time as the court, on application, may permit, the insolvency practitioner may deal with the insolvent estate without regard to any claim by that person, whose claim is forfeited by such failure to commence proceedings.

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

(6) Where costs have been incurred in insolvency proceedings in the High Court and those proceedings are subsequently transferred to a county court, all costs of those proceedings directed by the court or otherwise required to be assessed may nevertheless, on the application of the person who incurred the costs, be ordered to be decided by detailed assessment in the High Court.

Costs of sheriff

7.36.—(1) Where a sheriff—

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

the responsible insolvency practitioner may require in writing that the amount of the sheriff's bill of costs be decided by detailed assessment.

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

(a) 1838 c. 110 (1 & 2 Vict.).

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

Petitions presented by insolvents

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

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

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

Costs paid otherwise than out of the insolvent estate

7.38. Where the amount of costs is decided by detailed assessment under an order of the court directing that those costs are to be paid otherwise than out of the insolvent estate, the costs officer shall note on the final costs certificate by whom, or the manner in which, the costs are to be paid.

Award of costs against official receiver or responsible insolvency practitioner

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

Applications for costs

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

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

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

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

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

Costs and expenses of witnesses

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

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

Final costs certificate

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

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

Amendment of Rule 7.49. (Procedure on Appeal)

4. For Rule 7.49. substitute–

“Procedure on appeal

7.49.—(1) Subject as follows, the procedure and practice of the Supreme Court relating to appeals to the Court of Appeal apply to appeals in insolvency proceedings.

(2) In relation to any appeal to a single judge of the High Court under section 375(2) (individual insolvency) or Rule 7.47(2) above (company insolvency), any reference in the CPR to the Court of Appeal is replaced by a reference to that judge and any reference to the registrar of civil appeals is replaced by a reference to the registrar of the High Court who deals with insolvency proceedings of the kind involved.

(3) In insolvency proceedings, the procedure under RSC Order 59 (appeals to the Court of Appeal) is by ordinary application and not by application notice.”.

Amendment of Rule 7.51. (Principal court rules and practice to apply)

5. For Rule 7.51. substitute–

“Principal court rules and practice to apply

7.51.—(1) The CPR, the practice and procedure of the High Court and of the county court (including any practice direction) apply to insolvency proceedings in the High Court and county court as the case may be, in either case with any necessary modifications, except so far as inconsistent with the Rules.

(2) All insolvency proceedings shall be allocated to the multi-track for which CPR Part 29 (the multi-track) makes provision, accordingly those provisions of the CPR which provide for allocation questionnaires and track allocation will not apply.”.

Amendment of Rule 7.57. (Affidavits)

6. For Rule 7.57. substitute–

“Affidavits

7.57.—(1) Subject to the following paragraphs of this Rule the practice and procedure of the High Court with regard to affidavits, their form and contents and the procedure governing their use are to apply to all insolvency proceedings.

(2) Where, in insolvency proceedings, an affidavit is made by the official receiver or the responsible insolvency practitioner, the deponent shall state the capacity in which he makes it, the position which he holds, and the address at which he works.

(3) A creditor’s affidavit of debt may be sworn before his own solicitor.

(4) The official receiver, any deputy official receiver, or any officer of the court duly authorised in that behalf, may take affidavits and declarations.

(5) Subject to paragraph (6), where the Rules provide for the use of an affidavit, a witness statement verified by a statement of truth may be used as an alternative.

(6) Paragraph (5) does not apply to Rules 2.12., 3.4., 4.33., 6.60. (statement of affairs), 4.42., 6.66., 6.72. (further disclosure), 4.39., 4.40., 6.65; 6.70. (accounts), 4.73., 4.77., 6.96; 6.99. (claims) and 9.3., 9.4. (examinations).

(7) Where paragraph (5) applies any form prescribed by Rule 12.7 of these Rules shall be modified as necessary.”.

Amendment of Rule 7.59. (Payment into court)

7. For Rule 7.59. substitute–

“Payment into court

7.59. The CPR relating to payment into and out of court of money lodged in court as security for costs apply to money lodged in court under the Rules.”.

Amendment of Rule 7.60. (Discovery)

8. For Rule 7.60. substitute–

“Further Information and Disclosure

7.60.—(1) Any party to insolvency proceedings may apply to the court for an order–

(a) that any other party

(i) clarify any matter which is in dispute in the proceedings, or

(ii) give additional information in relation to any such matter;

in accordance with CPR Part 18 (further information); or

(b) to obtain disclosure from any other party in accordance with CPR Part 31 (disclosure and inspection of documents).

(2) An application under this Rule may be made without notice being served on any other party.”.

Amendment of Rule 9.2. (Form and contents of application)

9. In Rule 9.2. for paragraph (3)(b) substitute–

“(b) to be ordered to clarify any matter which is in dispute in the proceedings or to give additional information in relation to any such matter and if so CPR Part 18 (further information) shall apply to any such order, or”.

Amendment of Rule 9.4. (Procedure for examination)

10. In Rule 9.4. for paragraph (3) substitute–

“(3) If the respondent is ordered to clarify any matter or to give additional information, the court shall direct him as to the questions which he is required to answer, and as to whether his answers (if any) are to be made on affidavit.”.

Amendment of Rule 12.9. (Time-limits)

11. For Rule 12.9. substitute–

“Time-Limits

12.9.—(1) The provisions of CPR rule 2.8 (time) apply, as regards computation of time, to anything required or authorised to be done by the Rules.

(2) The provisions of CPR rule 3.1(2)(a) (the court’s general powers of management) apply so as to enable the court to extend or shorten the time for compliance with anything required or authorised to be done by the Rules.”.

Amendment of Rule 12.11. (General provisions as to service)

12. For Rule 12.11. substitute–

“General provisions as to service

12.11. Subject to Rule 12.10, CPR Part 6 (service of documents) applies as regards any matter relating to the service of documents and the giving of notice in insolvency proceedings.”.

Amendment of Rule 12.12. (Service outside the jurisdiction)

13. In Rule 12.12. for paragraph (1) substitute–

“(1) RSC Order 11 (service of process, etc., out of the jurisdiction) does not apply in insolvency proceedings.”.

Amendment of Rule 13.13. (Definition of certain expressions used generally)

14. In Rule 13.13.–

(a) for paragraph (1) substitute–

“(1) “Business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Great Britain under or by virtue of the Banking and Financial Dealings Act 1971^(a) except in Rules 1.7., 4.10., 4.11., 4.16., 4.20., 5.10. and 6.23. where “business day” shall include any day which is a bank holiday in Scotland but not in England and Wales.”; and

(b) for paragraph (6) substitute–

“(6) “Practice direction” means a direction as to the practice and procedure of any court within the scope of the CPR.

(7) “Prescribed order of priority” means the order of priority of payments laid down by Chapter 20 of Part 4 of the Rules, or Chapter 23 of Part 6.”.

(a) 1971 c. 80.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules further amend the Insolvency Rules 1986 (“the Rules”) which provide detailed procedures for the conduct of all company and individual insolvency proceedings in England and Wales under the Insolvency Act 1986.

The amendments come into force on 26th April 1999 to coincide with the coming into force of the Civil Procedure Rules 1998 (“the CPR”) which provide a new code of civil procedure for the civil courts which replaces the Rules of the Supreme Court 1965 and the County Court Rules 1981.

Although, by rule 2.1 of the CPR, the new civil procedure does not apply to insolvency proceedings, the Rules themselves apply all those provisions of the CPR and such practice of the High Court and County Court as is not inconsistent with provisions made by the Rules to such proceedings.

In addition to the application of the CPR and court practice, detailed amendment is made of such of the Rules as use language in relation to insolvency proceedings no longer to be used in civil procedure. References to “*ex parte* hearings” and to the “taxation” of costs are, for example, to be read, respectively, as references to “hearings without notice being given to any other party” and to “detailed assessment”.

Consistent with the CPR, the amendments also bring practice in insolvency proceedings into line with the new civil procedure by permitting, for example, the use of witness statements verified by statements of truth in a number of situations where affidavit evidence was, before amendment of the Rules, obligatory.

£2.00

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WO 4548 4/99 ON (MFK)