

SCHEDULE 2

PROCEDURAL MATTERS IN ENGLAND AND WALES

PART 9

GENERAL PROVISION AS TO COURT PROCEDURE AND PRACTICE

Principal court rules and practice to apply with modifications

30.—(1) The CPR and the practice and procedure of the High Court (including any practice direction) shall apply to proceedings under these Regulations in the High Court with such modifications as may be necessary for the purpose of giving effect to the provisions of these Regulations and in the case of any conflict between any provision of the CPR and the provisions of these Regulations, the latter shall prevail.

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

Applications other than the principal applications—preliminary

31. Paragraphs 32 to 37 of this Part apply to any application made to the court under these Regulations, except any of the applications referred to in paragraph 18(1)(a).

Form and contents of application

32.—(1) Every application shall be in the form appropriate to the application concerned. Forms ML 4 and ML 5 shall be used for an originating application and an ordinary application respectively under these Regulations.

(2) Each application shall be in writing and shall state—

- (a) the names of the parties;
- (b) the nature of the relief or order applied for or the directions sought from the court;
- (c) the names and addresses of the persons (if any) on whom it is intended to serve the application or that no person is intended to be served;
- (d) where these Regulations require that notice of the application is to be given to specified persons, the names and addresses of all those persons (so far as known to the applicant); and
- (e) the applicant's address for service.

(3) An originating application shall set out the grounds on which the applicant claims to be entitled to the relief or order sought.

(4) The application must be signed by the applicant if he is acting in person or, when he is not so acting, by or on behalf of his solicitor.

Filing and service of application

33.—(1) The application shall be filed in court, accompanied by one copy and a number of additional copies equal to the number of persons who are to be served with the application.

Status: This is the original version (as it was originally made).

(2) Subject as follows in this paragraph and in paragraph 34, or unless the court otherwise orders, upon the presentation of the documents mentioned in sub-paragraph (1), the court shall fix a venue for the application to be heard.

(3) Unless the court otherwise directs, the applicant shall serve a sealed copy of the application, endorsed with the venue of the hearing, on the respondent named in the application (or on each respondent if more than one).

(4) The court may give any of the following directions—

- (a) that the application be served upon persons other than those specified by the relevant provision of these Regulations;
- (b) that the giving of notice to any person may be dispensed with;
- (c) that notice be given in some way other than that specified in sub-paragraph (3).

(5) Subject to sub-paragraph (6), the application must be served at least 10 business days before the date fixed for the hearing.

(6) Where the case is one of urgency, the court may (without prejudice to its general power to extend or abridge time limits)—

- (a) hear the application immediately, either with or without notice to, or the attendance of, other parties; or
- (b) authorise a shorter period of service than that provided for by sub-paragraph (5);

and any such application may be heard on terms providing for the filing or service of documents, or the carrying out of other formalities, as the court thinks fit.

Other hearings *ex parte*

34.—(1) Where the relevant provisions of these Regulations do not require service of the application on, or notice of it to be given to, any person, the court may hear the application *ex parte*.

(2) Where the application is properly made *ex parte*, the court may hear it forthwith, without fixing a venue as required by paragraph 33(2).

(3) Alternatively, the court may fix a venue for the application to be heard, in which case paragraph 33 applies (so far as relevant).

Use of affidavit evidence

35.—(1) In any proceedings evidence may be given by affidavit unless the court otherwise directs; but the court may, on the application of any party, order the attendance for cross-examination of the person making the affidavit.

(2) Where, after such an order has been made, the person in question does not attend, his affidavit shall not be used in evidence without the permission of the court.

Filing and service of affidavits

36.—(1) Unless the court otherwise allows—

- (a) if the applicant intends to rely at the first hearing on affidavit evidence, he shall file the affidavit or affidavits (if more than one) in court and serve a copy or copies on the respondent, not less than 10 business days before the date fixed for the hearing; and
- (b) where a respondent to an application intends to oppose it and to rely for that purpose on affidavit evidence, he shall file the affidavit or affidavits (if more than one) in court and serve a copy or copies on the applicant, not less than 5 business days before the date fixed for the hearing.

(2) Any affidavit may be sworn by the applicant or by the respondent or by some other person possessing direct knowledge of the subject matter of the application.

Adjournment of hearings; directions

37. The court may adjourn the hearing of an application on such terms (if any) as it thinks fit and in the case of such an adjournment paragraph 27(2) shall apply.

Transfer of proceedings within the High Court

38.—(1) The High Court may, having regard to the criteria in CPR rule 30.3(2), order proceedings in the Royal Courts of Justice or a district registry, or any part of such proceedings (such as an application made in the proceedings), to be transferred—

- (a) from the Royal Courts of Justice to a district registry; or
- (b) from a district registry to the Royal Courts of Justice or to another district registry.

(2) The High Court may order proceedings before a district registry for the detailed assessment of costs to be transferred to another district registry if it is satisfied that the proceedings could be more conveniently or fairly taken in that other district registry.

(3) An application for an order under sub-paragraph (1) or (2) must, if the claim is proceeding in a district registry, be made to that registry.

(4) A transfer of proceedings under this paragraph may be ordered—

- (a) by the court of its own motion; or
- (b) on the application of a person appearing to the court to have an interest in the proceedings.

(5) Where the court orders proceedings to be transferred, the court from which they are to be transferred must give notice of the transfer to all the parties.

(6) An order made before the transfer of the proceedings shall not be affected by the order to transfer.

Transfer of proceedings—actions to avoid acts detrimental to creditors

39.—(1) If—

- (a) in accordance with article 23(6) of the Model Law, the court grants a foreign representative permission to make an application in accordance with paragraph 1 of that article; and
- (b) the relevant proceedings under British insolvency law taking place regarding the debtor are taking place in the county court,

the court may also order those proceedings to be transferred to the High Court.

(2) Where the court makes an order transferring proceedings under sub-paragraph (1)—

- (a) it shall send sealed copies of the order to the county court from which the proceedings are to be transferred, and to the official receivers attached to that court and the High Court respectively; and
- (b) the county court shall send the file of the proceedings to the High Court.

(3) Following compliance with this paragraph, if the official receiver attached to the court to which the proceedings are transferred is not already, by virtue of directions given by the Secretary of State under section 399(6)(a) of the 1986 Act, the official receiver in relation to those proceedings, he becomes, in relation to those proceedings, the official receiver in place of the official receiver attached to the other court concerned.

Shorthand writers

40.—(1) The judge may in writing nominate one or more persons to be official shorthand writers to the court.

(2) The court may, at any time in the course of proceedings under these Regulations, appoint a shorthand writer to take down the evidence of a person examined in pursuance of a court order under article 19 or 21 of the Model Law.

(3) The remuneration of a shorthand writer appointed in proceedings under these Regulations shall be paid by the party at whose instance the appointment was made or otherwise as the court may direct.

(4) Any question arising as to the rates of remuneration payable under this paragraph shall be determined by the court in its discretion.

Enforcement procedures

41. In any proceedings under these Regulations, orders of the court may be enforced in the same manner as a judgment to the same effect.

Title of proceedings

42.—(1) Every proceeding under these Regulations shall, with any necessary additions, be intitled “IN THE MATTER OF . . . (naming the debtor to which the proceedings relate) AND IN THE MATTER OF THE CROSS-BORDER INSOLVENCY REGULATIONS 2006”.

(2) Sub-paragraph (1) shall not apply in respect of any form prescribed under these Regulations.

Court records

43. The court shall keep records of all proceedings under these Regulations, and shall cause to be entered in the records the taking of any step in the proceedings, and such decisions of the court in relation thereto, as the court thinks fit.

Inspection of records

44.—(1) Subject as follows, the court’s records of proceedings under these Regulations shall be open to inspection by any person.

(2) If in the case of a person applying to inspect the records the Registrar is not satisfied as to the propriety of the purpose for which inspection is required, he may refuse to allow it. That person may then apply forthwith and *ex parte* to the judge, who may refuse the inspection or allow it on such terms as he thinks fit.

(3) The decision of the judge under sub-paragraph (2) is final.

File of court proceedings

45.—(1) In respect of all proceedings under these Regulations, the court shall open and maintain a file for each case; and (subject to directions of the Registrar) all documents relating to such proceedings shall be placed on the relevant file.

(2) No proceedings under these Regulations shall be filed in the Central Office of the High Court.

Right to inspect the file

46.—(1) In the case of any proceedings under these Regulations, the following have the right, at all reasonable times, to inspect the court’s file of the proceedings—

- (a) the Secretary of State;
 - (b) the person who is the foreign representative in relation to the proceedings;
 - (c) if a foreign representative has been appointed in any other foreign proceeding regarding the debtor to which the proceedings under these Regulations relate, that person;
 - (d) if a British insolvency officeholder is acting in relation to the debtor to which the proceedings under these Regulations relate, that person;
 - (e) any person stating himself in writing to be a creditor of the debtor to which the proceedings under these Regulations relate;
 - (f) if a member State liquidator has been appointed in relation to the debtor to which the proceedings under these Regulations relate, that person; and
 - (g) the debtor to which the proceedings under these Regulations relate, or, if that debtor is a company, corporation or partnership, every person who is, or at any time has been—
 - (i) a director or officer of the debtor;
 - (ii) a member of the debtor; or
 - (iii) where applicable, a person registered under Part 23 of the Companies Act 1985⁽¹⁾ as authorised to represent the debtor in respect of its business in England and Wales.
- (2) The right of inspection conferred as above on any person may be exercised on his behalf by a person properly authorised by him.
- (3) Any person may, by leave of the court, inspect the file.
- (4) The right of inspection conferred by this paragraph is not exercisable in the case of documents, or parts of documents, as to which the court directs (either generally or specially) that they are not to be made open to inspection without the court's permission.
- An application for a direction of the court under this sub-paragraph may be made by the foreign representative or by any party appearing to the court to have an interest.
- (5) If, for the purpose of powers conferred by the 1986 Act or the Rules, the Secretary of State or the official receiver wishes to inspect the file of any proceedings under these Regulations, and requests the transmission of the file, the court shall comply with such request (unless the file is for the time being in use for the court's purposes).
- (6) Paragraph 44(2) and (3) apply in respect of the court's file of any proceedings under these Regulations as they apply in respect of court records.
- (7) Where these Regulations confer a right for any person to inspect documents on the court's file of proceedings, the right includes that of taking copies of those documents on payment of the fee chargeable under any order made under section 92 of the Courts Act 2003⁽²⁾.

Copies of court orders

- 47.—(1) In any proceedings under these Regulations, any person who under paragraph 46 has a right to inspect documents on the court file also has the right to require the foreign representative in relation to those proceedings to furnish him with a copy of any court order in the proceedings.
- (2) Sub-paragraph (1) does not apply if a copy of the court order has been served on that person or notice of the making of the order has been given to that person under other provisions of these Regulations.

(1) 1985 c. 6.

(2) 2003 c. 39; section 92 is amended by the Constitutional Reform Act 2005 (c. 4), Schedule 11, paragraph 4 (from a day to be appointed) and Schedule 4, paragraphs 308 and 345.

Filing of Gazette notices and advertisements

48.—(1) In any court in which proceedings under these Regulations are pending, an officer of the court shall file a copy of every issue of the Gazette which contains an advertisement relating to those proceedings.

(2) Where there appears in a newspaper an advertisement relating to proceedings under these Regulations pending in any court, the person inserting the advertisement shall file a copy of it in that court.

The copy of the advertisement shall be accompanied by, or have endorsed on it, such particulars as are necessary to identify the proceedings and the date of the advertisement's appearance.

(3) An officer of any court in which proceedings under these Regulations are pending shall from time to time file a memorandum giving the dates of, and other particulars relating to, any notice published in the Gazette, and any newspaper advertisements, which relate to proceedings so pending.

The officer's memorandum is prima facie evidence that any notice or advertisement mentioned in it was duly inserted in the issue of the newspaper or the Gazette which is specified in the memorandum.

Persons incapable of managing their affairs—introductory

49.—(1) Paragraphs 50 to 52 apply where in proceedings under these Regulations it appears to the court that a person affected by the proceedings is one who is incapable of managing and administering his property and affairs either—

- (a) by reason of mental disorder within the meaning of the Mental Health Act 1983(3); or
- (b) due to physical affliction or disability.

(2) The person concerned is referred to as “the incapacitated person”.

Appointment of another person to act

50.—(1) The court may appoint such person as it thinks fit to appear for, represent or act for the incapacitated person.

(2) The appointment may be made either generally or for the purpose of any particular application or proceeding, or for the exercise of particular rights or powers which the incapacitated person might have exercised but for his incapacity.

(3) The court may make the appointment either of its own motion or on application by—

- (a) a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the incapacitated person; or
- (b) any relative or friend of the incapacitated person who appears to the court to be a proper person to make the application; or
- (c) in any case where the incapacitated person is the debtor, the foreign representative.

(4) Application under sub-paragraph (3) may be made *ex parte*; but the court may require such notice of the application as it thinks necessary to be given to the person alleged to be incapacitated, or any other person, and may adjourn the hearing of the application to enable the notice to be given.

Affidavit in support of application

51. An application under paragraph 50(3) shall be supported by an affidavit of a registered medical practitioner as to the mental or physical condition of the incapacitated person.

(3) 1983 c. 20.

Service of notices following appointment

52. Any notice served on, or sent to, a person appointed under paragraph 50 has the same effect as if it had been served on, or given to, the incapacitated person.

Rights of audience

53. Rights of audience in proceedings under these Regulations are the same as obtain in proceedings under British insolvency law.

Right of attendance

54.—(1) Subject as follows, in proceedings under these Regulations, any person stating himself in writing, in records kept by the court for that purpose, to be a creditor of the debtor to which the proceedings relate, is entitled at his own cost, to attend in court or in chambers at any stage of the proceedings.

(2) Attendance may be by the person himself, or his solicitor.

(3) A person so entitled may request the court in writing to give him notice of any step in the proceedings; and, subject to his paying the costs involved and keeping the court informed as to his address, the court shall comply with the request.

(4) If the court is satisfied that the exercise by a person of his rights under this paragraph has given rise to costs for the estate of the debtor which would not otherwise have been incurred and ought not, in the circumstances, to fall on that estate, it may direct that the costs be paid by the person concerned, to an amount specified.

The rights of that person under this paragraph shall be in abeyance so long as those costs are not paid.

(5) The court may appoint one or more persons to represent the creditors of the debtor to have the rights conferred by this paragraph, instead of the rights being exercised by any or all of them individually.

If two or more persons are appointed under this paragraph to represent the same interest, they must (if at all) instruct the same solicitor.

Right of attendance for member State liquidator

55. For the purposes of paragraph 54(1), a member State liquidator appointed in relation to a debtor subject to proceedings under these Regulations shall be deemed to be a creditor.

British insolvency officeholder's solicitor

56. Where in any proceedings the attendance of the British insolvency officeholder's solicitor is required, whether in court or in chambers, the British insolvency officeholder himself need not attend, unless directed by the court.

Formal defects

57. No proceedings under these Regulations shall be invalidated by any formal defect or by any irregularity, unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court.

Restriction on concurrent proceedings and remedies

58. Where in proceedings under these Regulations the court makes an order staying any action, execution or other legal process against the property of a debtor, service of the order may be effected by sending a sealed copy of the order to whatever is the address for service of the claimant or other party having the carriage of the proceedings to be stayed.

Affidavits

59.—(1) Where in proceedings under these Regulations, an affidavit is made by any British insolvency officeholder acting in relation to the debtor, he shall state the capacity in which he makes it, the position which he holds and the address at which he works.

(2) Any officer of the court duly authorised in that behalf, may take affidavits and declarations.

(3) Subject to sub-paragraph (4), where these Regulations provide for the use of an affidavit, a witness statement verified by a statement of truth may be used as an alternative.

(4) Sub-paragraph (3) does not apply to paragraphs 4 (affidavit in support of recognition application), 7 (affidavit in support of interim relief application), 10 (affidavit in support of article 21 relief application), 13 (affidavit in support of application regarding status of replacement foreign representative) and 16 (affidavit in support of review application).

Security in court

60.—(1) Where security has to be given to the court (otherwise than in relation to costs), it may be given by guarantee, bond or the payment of money into court.

(2) A person proposing to give a bond as security shall give notice to the party in whose favour the security is required, and to the court, naming those who are to be sureties to the bond.

(3) The court shall forthwith give notice to the parties concerned of a venue for the execution of the bond and the making of any objection to the sureties.

(4) The sureties shall make an affidavit of their sufficiency (unless dispensed with by the party in whose favour the security is required) and shall, if required by the court, attend the court to be cross-examined.

Further information and disclosure

61.—(1) Any party to proceedings under these Regulations 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 paragraph may be made without notice being served on any other party.

Office copies of documents

62.—(1) Any person who has under these Regulations the right to inspect the court file of proceedings may require the court to provide him with an office copy of any document from the file.

(2) A person's right under this paragraph may be exercised on his behalf by his solicitor.

(3) An office copy provided by the court under this paragraph shall be in such form as the Registrar thinks appropriate, and shall bear the court's seal.

“The court”

63.—(1) Anything to be done in proceedings under these Regulations by, to or before the court may be done by, to or before a judge of the High Court or a Registrar.

(2) Where these Regulations require or permit the court to perform an act of a formal or administrative character, that act may be performed by a court officer.