
STATUTORY INSTRUMENTS

2007 No. 3141

The PPP Administration Order Rules 2007

PART 6

COURT PROCEDURE AND PRACTICE

CHAPTER 1

APPLICATIONS

Preliminary

39. This Chapter applies to any application made to the court in PPP administration proceedings, except a petition for a PPP administration order.

Form and contents of application

40.—(1) Each application shall be in writing in Form PPP20 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 the 1986 Act or these Rules 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.

(2) 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

41.—(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.

(2) Subject as follows in this rule and in the next, or unless the rule under which the application is brought provides otherwise, or the court otherwise orders, upon the presentation of the documents mentioned in 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 the 1986 Act or these Rules;

- (b) that the giving of notice to any person be dispensed with;
- (c) that notice be given in some way other than that specified in paragraph (3).

(5) Unless the provision of the 1986 Act or these Rules under which the application is made provides otherwise, and subject to paragraph (6), the application must be served at least 14 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 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 without notice

42.—(1) Where the relevant provisions of the 1986 Act or these Rules do not require service of the application on, or notice of it to be given to, any person, the court may hear the application without notice being served on any other party.

(2) Where the application is properly made without notice being served on any other party, the court may hear it forthwith, without fixing a venue as required by rule 41(2).

(3) Alternatively, the court may fix a venue for the application to be heard, in which case rule 41 applies (so far as relevant).

Hearing of application

43.—(1) Unless allowed or authorised to be made otherwise, every application before the registrar shall, and every application before the judge may, be heard in chambers.

(2) Unless either—

- (a) the judge has given a general or special direction to the contrary; or
- (b) it is not within the registrar’s power to make the order required,

the jurisdiction of the court to hear and determine the application may be exercised by the registrar, and the application shall be made to the registrar in the first instance.

(3) Where the application is made to the registrar he may refer to the judge any matter which he thinks should properly be decided by the judge, and the judge may either dispose of the matter or refer it back to the registrar with such direction as he thinks fit.

(4) Nothing in this rule precludes an application being made directly to the judge in a proper case.

Use of affidavit evidence

44.—(1) In any proceedings evidence may be given by affidavit unless by any provision of these Rules it is otherwise provided or 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

45.—(1) Unless the provisions of the 1986 Act or these Rules under which the application is made provide otherwise, or 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 14 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 7 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.

Use of reports

46.—(1) The special PPP administrator may file a report in court instead of an affidavit, unless the application involves other parties or the court otherwise orders.

(2) In any case where a report is filed instead of an affidavit the report shall be treated for the purpose of rule 45(1) and any hearing before the court as if it were an affidavit.

Adjournment of hearing: directions

47.—(1) The court may adjourn the hearing of an application on such terms (if any) as it thinks fit.

(2) The court may at any time give such directions as it thinks fit as to—

- (a) service or notice of the application on or to any person, whether in connection with the venue of a resumed hearing or for any other purpose;
- (b) whether particulars of claims and defence are to be delivered and generally as to the procedure on the application;
- (c) the manner in which any evidence is to be adduced at a resumed hearing and in particular (but without prejudice to the generality of this sub-paragraph) as to—
 - (i) the taking of evidence wholly or in part by affidavit or orally;
 - (ii) the cross-examination either before the judge or registrar on the hearing in court or in chambers, of any deponents to affidavits; and
 - (iii) any report to be given by the special PPP administrator; and
- (d) the matters to be dealt with in evidence.

CHAPTER 2

SHORTHAND WRITERS

Appointment and remuneration of shorthand writers

48.—(1) The court may, at any time in the course of PPP administration proceedings, appoint a shorthand writer to take down the evidence of a person examined in the course of those proceedings in Form PPP21. Any shorthand writer so appointed shall complete a declaration in Form PPP22.

(2) The remuneration of a shorthand writer appointed in PPP administration proceedings shall be paid by the party who requested that the court make such an appointment, or out of the assets of the PPP company, or otherwise, as the court may direct.

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

CHAPTER 3

ENFORCEMENT PROCEDURES

Enforcement of court orders

49. In any PPP administration proceedings, orders of the court may be enforced in the same manner as a judgment to the same effect.

Orders enforcing compliance with these Rules

50.—(1) The court may, on application by the special PPP administrator, make such orders as it thinks necessary for the enforcement of obligations falling on any person in accordance with section 22 (statement of affairs to be submitted to administrator) or section 235 (duty to co-operate with office-holder) of the 1986 Act.

(2) An order of the court under this rule may provide that all costs of and incidental to the application for it shall be borne by the person against whom the order is made.

Warrants under section 236 of the 1986 Act

51.—(1) A warrant issued by the court under section 236 (inquiry into company's dealings, etc) of the 1986 Act shall be addressed to such officer of the High Court as the warrant specifies, or to any constable.

(2) The persons referred to in section 236(5) of the 1986 Act as the prescribed officer of the court are the tipstaff of the court and his assistants.

(3) When a person is arrested under a warrant issued under section 236 of the 1986 Act, the officer arresting him shall forthwith bring him before the court issuing the warrant in order that he may be examined.

(4) If he cannot immediately be brought up for examination, the officer shall deliver him into the custody of the governor of the prison named in the warrant, who shall keep him in custody and produce him before the court as it may from time to time direct.

(5) The court shall appoint the earliest practicable time for the examination, and shall—

(a) direct the governor of the prison to produce the person for examination at the time and place appointed; and

(b) forthwith give notice of the venue to the person who applied for the warrant.

(6) Any property in the arrested person's possession which may be seized shall be—

(a) lodged with, or otherwise dealt with as instructed by, whoever is specified in the warrant as authorised to receive it; or

(b) kept by the officer seizing it pending the receipt of written orders from the court as to its disposal,

as may be directed by the court.

(7) In this rule references to property include books, papers and records.

CHAPTER 4 COURT RECORDS AND RETURNS

Title of proceedings

52. Every PPP administration proceeding shall, with any necessary additions, name the PPP company to which the proceedings relate and be entitled “IN THE MATTER OF THE INSOLVENCY ACT 1986 AND THE GREATER LONDON AUTHORITY ACT 1999”.

Court records

53. The court shall keep records of all PPP administration proceedings, 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

54.—(1) Subject to paragraphs (2) and (3), the court’s records of PPP administration proceedings 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 without notice being served on any other party 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 paragraph (2) is final.

File of court proceedings

55.—(1) In respect of all PPP administration proceedings, 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 PPP administration proceedings shall be filed in the Central Office of the High Court.

Right to inspect the file

56.—(1) In the case of any PPP administration proceedings, the following persons have the right, at all reasonable times, to inspect the court’s file of the proceedings—

- (a) the Mayor;
- (b) Transport for London;
- (c) the special PPP administrator;
- (d) the PPP Arbiter;
- (e) any person stating himself in writing to be a creditor of the PPP company to which the PPP administration proceedings relate;
- (f) every person who is, or at any time has been, a director or officer of the PPP company to which the PPP administration proceedings relate and every person who is a member of that company; and
- (g) the Secretary of State.

(2) The right of inspection conferred on any person by paragraph (1) may be exercised on his behalf by a person properly authorised by him.

(3) Any person may, with the special permission of the court, inspect the file.

(4) The right of inspection conferred by this rule 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.

(5) An application under paragraph (4) for a direction of the court may be made by the special PPP administrator or by any party appearing to the court to have an interest.

(6) If, for the purpose of powers conferred by the 1986 Act, these Rules or the Insolvency Rules, the Secretary of State wishes to inspect the file of any PPP administration proceedings 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).

(7) Paragraphs (2) and (3) of rule 54 apply in respect of the court's file of any proceedings as they apply in respect of court records.

Filing of Gazette notices and advertisements

57.—(1) In any court in which PPP administration proceedings 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 PPP administration proceedings pending in any court, the person inserting the advertisement shall file a copy of it in that court.

(3) 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.

(4) An officer of any court in which PPP administration proceedings 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.

(5) The officer's memorandum shall be prime 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.

CHAPTER 5

COSTS AND DETAILED ASSESSMENT

Application of the Civil Procedure Rules

58. 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 PPP administration proceedings with any necessary modifications.

Requirement to assess costs by the detailed procedure

59.—(1) The amount of any costs, charges or expenses of any person which are payable out of the assets of the PPP company shall be decided by detailed assessment unless the special PPP administrator and the person entitled to payment agree to the contrary.

(2) In the absence of such agreement, the special PPP administrator may serve notice in writing requiring the person entitled to payment 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 PPP administration proceedings are allocated.

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

(4) Nothing in this rule prevents the special PPP administrator from making payments on account to any 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(1) on the date payment was made and for the period from the date of payment to that of repayment.

Procedure where detailed assessment required

60.—(1) Before making a detailed assessment of the costs of any person employed in PPP administration proceedings by a special PPP administrator, the costs officer shall require a certificate of employment, which shall be endorsed on the bill and signed by the special PPP administrator.

(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 PPP administration proceedings are required to be decided by detailed assessment shall, on being required in writing to do so by the special PPP administrator, 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 special PPP administrator may deal with the assets of the PPP company 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 a special PPP administrator in his personal capacity, that claim is also forfeited by such failure to commence proceedings.

Costs paid otherwise than out of the assets of the PPP company

61. Where the amount of costs is decided by detailed assessment under an order of the court directing that the costs are to be paid otherwise than out of the assets of the PPP company, 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 special PPP administrator

62. Without prejudice to any provision of the 1986 Act, the 1999 Act, the Insolvency Rules or these Rules by virtue of which the special PPP administrator is not in any event to be liable for costs and expenses, where a special PPP administrator 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

63.—(1) This rule applies where a party to, or person affected by, any PPP administration proceedings—

(1) 1838 c. 110 (1 & 2 Vict.). Section 17 was amended by S.I. 1993/564, article 2 and 1998/2940, article 3 and by other enactments which are not relevant to these Rules.

- (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 special PPP administrator.
- (3) The special PPP administrator 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

- 64.**—(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 an officer of the PPP company to which the PPP administration proceedings relate.
- (2) A person presenting a petition in PPP administration 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

- 65.**—(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 costs certificate has been lost or destroyed, he may issue a duplicate.

CHAPTER 6

PERSONS INCAPABLE OF MANAGING THEIR AFFAIRS

Introductory

- 66.**—(1) The rules in this Chapter apply where in PPP administration proceedings 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 a lack of capacity (within the meaning of the Mental Capacity Act 2005)(2); 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

- 67.**—(1) The court may appoint such person as it thinks fit to appear for, represent or act for the incapacitated person in Form PPP23.
- (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

(2) 2005 c.9.

- (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) the special PPP administrator.

(4) Application under paragraph (3) may be made without notice being served on any other party, 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

68. An application under rule 67(3) shall be supported by an affidavit of a registered medical practitioner as to the mental or physical condition of the incapacitated person.

Service of notices following appointment

69. Any notice served on, or sent to, a person appointed under rule 67 has the same effect as if it had been served on, or given to, the incapacitated person.

CHAPTER 7

APPEALS IN PPP ADMINISTRATION PROCEEDINGS

Appeals and reviews of PPP administration orders

70.—(1) Every court having jurisdiction under the 1986 Act to wind up companies may review, rescind or vary any order made by it in the exercise of that jurisdiction.

(2) An appeal from a decision made in the exercise of that jurisdiction by a registrar of the High Court lies to a single judge of the High Court; and an appeal from a decision of that judge on such an appeal lies to the Court of Appeal.

Procedure on appeal

71.—(1) Subject to paragraphs (2) and (3), the procedure and practice of the Supreme Court relating to appeals to the Court of Appeal apply to appeals in PPP administration proceedings.

(2) In relation to any appeal to a single judge of the High Court under Rule 70 above, 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 PPP administration proceedings.

(3) In PPP administration proceedings, the procedure under CPR Part 52 (appeals to the Court of Appeal) is by an application in Form PPP20 and not by application notice.

CHAPTER 8

GENERAL

Principal court rules and practice to apply

72.—(1) The CPR and the practice and procedure of the High Court (including any practice direction) apply to PPP administration proceedings, with necessary modifications, except so far as inconsistent with these Rules.

(2) All PPP administration 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.

Right of audience

73. Rights of audience in PPP administration proceedings are the same as obtain in insolvency proceedings.

Right of attendance

74.—(1) Subject as follows, in PPP administration proceedings, any person stating himself in writing, in records kept by the court for that purpose, to be a creditor or member of the PPP company 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 to attend may request the court in writing to give him notice of any step in the PPP administration 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 rule has given rise to costs for the assets of the PPP company which would not otherwise have been incurred and ought not, in the circumstances, to be paid out of those assets, the court may direct that the costs be paid by the person concerned, to an amount specified.

(5) Where the court makes a direction under paragraph (4) in relation to a person, the rights of that person under this rule shall be in abeyance so long as those costs are not paid.

(6) The court may appoint one or more persons to represent the creditors or the members of a PPP company, or any class of them, to have the rights conferred by this rule, instead of the rights being exercised by any or all of them individually.

(7) If two or more persons are appointed under paragraph (6) to represent the same interest, they must (if at all) instruct the same solicitor.

Special PPP administrator's solicitor

75. Where in PPP administration proceedings the attendance of the special PPP administrator's solicitor is required, whether in court or in chambers, the special PPP administrator himself need not attend, unless directed by the court.

Formal defects

76. No PPP administration proceedings 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.

Affidavits

77.—(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 PPP administration proceedings.

(2) Where in PPP administration proceedings an affidavit is made by the special PPP administrator, the deponent shall state the capacity in which he makes it, the position which he holds and the address at which he works.

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

(4) Paragraph (3) does not apply to rules 91 and 92.

(5) Where paragraph (3) applies, any form prescribed by rule 100 shall be modified accordingly.

Security in court

78.—(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.

Payment into court

79. 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 these Rules.

Further information and disclosure

80.—(1) Any party to PPP administration 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.

Office copies of documents

81.—(1) Any person who has under these Rules the right to inspect the court file of PPP administration 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 rule may be exercised on his behalf by his solicitor.

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