

---

STATUTORY INSTRUMENTS

---

**2009 No. 356**

**The Bank Insolvency (England and Wales) Rules 2009**

**PART 18**

**COURT PROCEDURE AND PRACTICE**

**CHAPTER 1**

**APPLICATIONS (GENERAL)**

**Preliminary**

**188.** This Part applies to any application made to the court under the 2009 Act or these Rules except an application under section 95 of the 2009 Act for a bank insolvency order.

**Interpretation**

**189.** Apply rule 7.2 of the 1986 Rules.

**Form and contents of application**

**190.** Apply rule 7.3 of the 1986 Rules.

**Application under section 176A(5) to disapply section 176A**

- 191.**—(1) Apply rule 7.3A(1) of the 1986 Rules.  
(2) In paragraph (1), ignore “administrator or receiver.”  
(3) Ignore paragraph (2)(a).

**Filing and service of application**

**192.** Apply rule 7.4 of the 1986 Rules.

**Notice of application under section 176A(5)**

**193.** Apply rule 7.4A(2) of the 1986 Rules. Leave out the words from “save that notice” to the end.

**Other hearings without notice**

**194.** Apply rule 7.5 of the 1986 Rules.

---

(1) Rule 7.3A was inserted by the [S.I. 2003/1730](#).  
(2) Rule 7.4A was inserted by [S.I. 2003/1730](#).

**Hearing of application**

195. Apply rule 7.6 of the 1986 Rules.

**Use of evidence**

196. Apply rule 7.7 of the 1986 Rules.

**Filing and service of witness statements**

197. Apply rule 7.8 of the 1986 Rules. Ignore paragraph (2).

**Use of reports**

198.—(1) Unless the application involves other parties, or the court orders otherwise, a report may be filed in court instead of a witness statement by—

- (a) the bank liquidator,
- (b) the provisional bank liquidator, or
- (c) the special manager.

(2) In any case where a report is filed instead of a witness statement, the report shall be treated for the purposes of rule 197, and any hearing before the court, as if it were a witness statement.

**Adjournment of hearings: directions**

199. Apply rule 7.10 of the 1986 Rules.

CHAPTER 3

SHORTHAND WRITERS

**Nomination and appointment of shorthand writers**

200.—(1) Apply rule 7.16 of the 1986 Rules.

(2) In paragraph (1) leave out “and, in a county court, the registrar”.

(3) In paragraph (2) leave out “133” and “290 or 366”.

(4) Ignore paragraph (3).

**Remuneration**

201. Apply rule 7.17 of the 1986 Rules(3).

CHAPTER 4

ENFORCEMENT PROCEDURES

**Enforcement of court orders**

202.—(1) Apply rule 7.19 of the 1986 Rules.

(2) Ignore paragraph (2).

---

(3) Paragraph (2) was substituted by [S.I. 1993/602](#).

### **Orders enforcing compliance with the rules**

**203.**—(1) The court may, on the application of the bank liquidator (or the provisional bank liquidator as the case may be,) make such orders as it thinks necessary for the enforcement of obligations falling on any person in accordance with—

- (a) section 143(2) (liquidator to furnish information, books, papers etc.) of the 1986 Act or
- (b) section 235 (duty to cooperate with liquidator) of that Act.

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

### **Warrants (general provisions)**

**204.**—(1) A warrant issued by the court under any provision of the 1986 Act shall be addressed to such officer of the High Court as the warrant specifies, or to any constable.

(2) The person described in section 236(5) of the 1986 Act as the prescribed officer of the court is the tipstaff and his assistants of the court.

(3) In this Chapter, references to property include books, papers and records.

### **Warrants under section 236**

**205.** Apply rule 7.23 of the 1986 Rules. In paragraph (1), leave out “or 366 (the equivalent in bankruptcy)”.

## **CHAPTER 5**

### **COURT RECORDS AND RETURNS**

#### **Title of proceedings**

**206.** Every proceeding under Part 2 of the 2009 Act shall, with any necessary additions, be titled “IN THE MATTER OF ..... (naming the bank to which the proceedings relate) AND IN THE MATTER OF THE BANKING ACT 2009”.

#### **Court records**

**207.** Apply rule 7.27 of the 1986 Rules.

#### **Inspection of records**

**208.** Apply rule 7.28 of the 1986 Rules.

#### **File of court proceedings and inspection**

**209.**—(1) The Court shall open and maintain a file for each bank insolvency and (subject to the direction of the registrar) all documents relating to that bank insolvency shall be placed on that file.

(2) Where a file has been opened under paragraph (1), the following have the right, at all reasonable times, to inspect that file—

- (a) the bank liquidator,
- (b) any person stating in writing that they are a creditor of the bank to which the bank insolvency relates,
- (c) a member of the bank,

- (d) any person who is, or at any time has been, a director or officer of the bank to which the bank insolvency relates,
  - (e) any person who is a contributory of the bank to which the bank insolvency relates, and
  - (f) the Bank of England, the FSA and the FSCS.
- (3) The right of inspection conferred on any person by paragraph (2) may be exercised on their behalf by a person properly authorised by them.
- (4) Any person may, with permission of the court, inspect the file.
- (5) The right of inspection conferred by this rule is not exercisable in respect of documents, or parts of documents, which the court has directed (either generally or specially) are not to be open to inspection without the court's permission.
- (6) An application for a direction of the court under paragraph (5) may be made by the bank liquidator or by any party appearing to the court to have an interest in the bank insolvency.
- (7) If, for the purposes of powers conferred by the 1986 Act, the 2009 Act or these rules, the Secretary of State wishes to inspect the file on a bank insolvency and requests the court to transmit the file, the court shall comply with the request or, if the file is for the time being in use for the court's own purposes, as soon as the file is no longer in such use.
- (8) Rule 208 applies in respect of the court's records on any bank insolvency as they apply in respect of court records of general insolvency proceedings.

#### **Filing of Gazette notices and advertisements**

**210.** Apply rule 7.32 of the 1986 Rules. For “an officer of the court” substitute “the bank liquidator”.

### **CHAPTER 6**

#### **COSTS AND DETAILED ASSESSMENT**

#### **Application of the CPR**

**211.** Apply rule 7.33 of the 1986 Rules(4).

#### **Requirement to assess costs by the detailed procedure**

**212.—**(1) Apply rule 7.34 of the 1986 Rules(5).

(2) In paragraph (1)—

- (a) for “company insolvency” and “liquidation” substitute “bank insolvency”,
- (b) ignore sub-paragraph (b), and
- (c) for the words from “court to which” to the end substitute “High Court”.

(3) In paragraph (2), leave out “or creditors”.

(4) In paragraph (5), for “trustee in bankruptcy or a liquidator” substitute “bank liquidator.”

(5) Ignore paragraph (6).

#### **Procedure where detailed assessment required**

**213.** Apply rule 7.35 of the 1986 Rules. Ignore paragraph (6).

---

(4) All the rules applied by this Chapter were substituted by [S.I. 1999/1022](#).

(5) Paragraph (1) was amended by [S.I. 2008/737](#).

### **Costs of officers charged with executions of writs or other process**

- 214.**—(1) Apply rule 7.36 of the 1986 Rules<sup>(6)</sup>.  
(2) In paragraph (1)(a), leave out “or 346(2)”.  
(3) In paragraph (1)(b), leave out “or 346(3)”.

### **Costs paid otherwise than out of the insolvent estate**

- 215.** Apply rule 7.38 of the 1986 Rules.

### **Award of costs against responsible insolvency practitioner**

- 216.**—(1) Apply rule 7.39 of the 1986 Rules.  
(2) Leave out from the beginning to “expenses” and “the official receiver or”.

### **Application for costs**

- 217.**—(1) Apply rule 7.40 of the 1986 Rules.  
(2) In paragraph (1) for “insolvency” substitute “bank insolvency”.  
(3) In paragraph (2), leave out the words from “, and, in winding up” to the end.  
(4) In paragraph (3), leave out “and, where appropriate, the official receiver”.

### **Costs and expenses of witnesses**

- 218.**—(1) Apply rule 7.41 of the 1986 Rules.  
(2) In paragraph (1), leave out “the bankrupt or”.  
(3) Ignore paragraph (2).

### **Final costs certificate**

- 219.** Apply rule 7.42 of the 1986 Rules.

## **CHAPTER 7**

### **PERSONS INCAPABLE OF MANAGING THEIR AFFAIRS**

#### **Introductory**

- 220.** Apply rule 7.43 of the 1986 Rules<sup>(7)</sup>. In paragraph (1), for (a), substitute “ by reason of being a protected person within the meaning of Part 21 of the CPR or”.

#### **Appointment of another person to act**

- 221.** Apply rule 7.44 of the 1986 Rules. Ignore paragraph (3)(c).

#### **Witness statement in support of application**

- 222.**—(1) Apply rule 7.45 of the 1986 Rules.  
(2) In paragraph (1) leave out from the beginning to “receiver”.

---

(6) Paragraph (1) was amended by [S.I. 2005/527](#).

(7) Paragraph 1 was amended by [SI 2007/1898](#).

(3) Ignore paragraph (2).

### **Service of notices following appointment**

**223.** Apply rule 7.46 of the 1986 Rules.

## **CHAPTER 8**

### **APPEALS IN BANK INSOLVENCY PROCEEDINGS**

#### **Appeals and review of court orders**

**224.**—(1) The High Court may review, rescind or vary any order made by it in the exercise of its jurisdiction under Part 2 of the Banking Act 2009.

(2) An appeal from a decision of a registrar of the High Court lies, with the permission of the registrar or a judge of the High Court, to a single judge of the High Court, and a second appeal lies, with the permission of the Court of Appeal to the Court of Appeal.

(3) An appeal of a decision of first instance of a judge of the High Court lies, with the permission of the judge or the Court of Appeal, to the Court of Appeal.

(4) A bank insolvency order made under rule 16 cannot be appealed under this rule.

#### **Procedure on appeal**

**225.** Part 52 of the CPR applies with regard to the procedure for appeals.

#### **Appeal against a decision of the Secretary of State**

**226.** Apply rule 7.50 of the 1986 Rules<sup>(8)</sup>. Ignore the reference to the official receiver and paragraph (2).

## **CHAPTER 9**

### **GENERAL**

#### **Principal court rules and practice to apply**

**227.**—(1) The CPR and the practice and procedure of the High Court (including any practice direction) apply to bank insolvency proceedings in the High Court, with any necessary modifications, except so far as inconsistent with these Rules.

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

#### **Right of attendance**

**228.** Apply rule 7.53 of the 1986 Rules. In paragraph (1) for “company insolvency proceedings” substitute “bank insolvency proceedings”.

---

<sup>(8)</sup> Rule 7.50 was amended by [S.I 2003/1730](#).

### **Restriction on concurrent proceedings and remedies**

**229.** Where in a bank insolvency, the court makes an order staying any action, execution or legal process against the property of the bank, service of the order may be effected by delivering a sealed copy by personal service to the applicant for the bank insolvency order.

### **Security in court**

**230.** Apply rule 7.58 of the 1986 Rules.

### **Payment into court**

**231.** Apply rule 7.59 of the 1986 Rules<sup>(9)</sup>.

### **Further information and disclosure**

**232.**—(1) Apply rule 7.60 of the 1986 Rules<sup>(10)</sup>.

(2) After paragraph (2) insert—

“(3) Before the passing of a full payment resolution the court shall only grant an order on an application under paragraph (1)(b) if satisfied that granting the order is unlikely to prejudice the achievement of Objective 1.”

### **Office copies of documents**

**233.** Apply rule 7.61 of the 1986 Rules.

---

<sup>(9)</sup> Rule 7.59 was amended by [S.I.1999/1022](#).

<sup>(10)</sup> Rule 7.60 was substituted by [S.I. 1999/1022](#).