

SCHEDULE

PART 1

AMENDMENT OF THE PRINCIPAL RULES

SECTION 7: AMENDMENT OF PART 6 OF THE RULES

Amendment of Rule 6.8

91. In subparagraph (c) of paragraph (1) of Rule 6.8 there shall be added at the end the words “, provided that such amount or rate must, in the case of a petition based on a statutory demand, be limited to that claimed in that demand”.

Amendment of Rule 6.9

92. After paragraph (4) of Rule 6.9 there shall be inserted the following paragraph:—

“(4A) Notwithstanding any other provision of this Rule, where there is in force for the debtor a voluntary arrangement under Part VIII of the Act, the petition shall be presented to the court to which the nominee’s report under section 256 was submitted.”.

Amendment of Rule 6.10

93.—(1) In subparagraph (a) of paragraph (3) of Rule 6.10 the word “and” shall be omitted and there shall be added at the end of subparagraph (b) of that paragraph the following words:—

“, and

(c) if there is in force for the debtor a voluntary arrangement under Part VIII of the Act, and the petitioner is not the supervisor of the arrangement, one copy for him”.

(2) After paragraph (5) of Rule 6.10 there shall be added the following paragraph:—

“(6) Where a petition contains a request for the appointment of a person as trustee in accordance with section 297(5) (appointment of former supervisor as trustee) the person whose appointment is sought shall, not less than 2 days before the day appointed for hearing the petition, file in court a report including particulars of—

(a) a date on which he gave written notification to creditors bound by the arrangement of the intention to seek his appointment as trustee, such date to be at least 10 days before the day on which the report under this paragraph is filed, and

(b) details of any response from creditors to that notice, including any objections to his appointment.”.

Amendment of Rule 6.11

94.—(1) In paragraph (1) of Rule 6.11 there shall be inserted after the word “affidavit” the words “or affidavits”.

(2) In paragraph (2) of Rule 6.11 for the words “The affidavit” there shall be substituted the words “Every affidavit”.

(3) In paragraph (5) of Rule 6.11:—

(a) after the words “applies, the affidavit” there shall be inserted the words “or affidavits”;

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- (b) after the word “person” where it first appears there shall be inserted the words “or persons”; and
- (c) in subparagraph (a) of that paragraph after the word “demand” there shall be inserted the word “personally”.

Amendment of Rule 6.14

95. After paragraph (3) of Rule 6.14 there shall be added the following paragraph:—

“(4) If to the petitioner’s knowledge there is in force for the debtor a voluntary arrangement under Part VIII of the Act, and the petitioner is not himself the supervisor of the arrangement, a copy of the petition shall be sent by him to the supervisor.”.

Amendment of Rule 6.18

96. In paragraph (3) of Rule 6.18 after the word “debtor” there shall be inserted the words “, the supervisor of any voluntary arrangement under Part VIII of the Act in force for the debtor”.

Omission of Rule 6.19

97. Rule 6.19 shall be omitted.

Amendment of Rule 6.39

98. After paragraph (2) of Rule 6.39 there shall be added the following paragraph:—

“(3) If there is at the date of the petition in force for the debtor a voluntary arrangement under Part VIII of the Act, the particulars required by paragraph (2) above shall contain a statement to that effect and the name and address of the supervisor of the arrangement.”.

Amendment of Rule 6.40

99. For paragraph (3) of Rule 6.40 there shall be substituted the following:—

“(3) If, in a case not falling within paragraph (1), it is more expedient for the debtor with a view to expediting his petition—

- (a) it may in any case be presented to whichever court is specified by Schedule 2 to the Rules as being, in relation to the debtor’s own court, the nearest full-time court, and
- (b) it may alternatively, in a case falling within paragraph (2)(b), be presented to the court for the insolvency district in which he has resided for the greater part of the 6 months there referred to.

(3A) Notwithstanding any other provision of this Rule, where there is in force for the debtor a voluntary arrangement under Part VIII of the Act the petition shall be presented to the court to which the nominee’s report under section 256 was submitted.” .

Amendment of Rule 6.42

100.—(1) In paragraph (2) of Rule 6.42 at the beginning there shall be inserted the words “Subject to paragraph (2A),”.

(2) After paragraph (2) of Rule 6.42 there shall be inserted the following paragraph:—

“(2A) If the petition contains particulars of a voluntary arrangement under Part VIII of the Act in force for the debtor, the court shall fix a venue for the hearing and give at least

14 days' notice of it to the supervisor of the arrangement; the supervisor may appear and be heard on the petition.”.

(3) In subparagraph (b) of paragraph (3) of Rule 6.42 for the words from “retained by the court” to the end there shall be substituted the words “sent by the court to the official receiver; and”.

(4) For subparagraph (a) of paragraph (4) of Rule 6.42 there shall be substituted the following:—

“(a) one shall be sent by the court to the official receiver; and”.

(5) After paragraph (5) of Rule 6.42 there shall be added the following paragraphs:—

“(6) Where the court hears a petition forthwith, or it will in the opinion of the court otherwise expedite the delivery of any document to the official receiver, the court may, instead of sending that document to the official receiver, direct the bankrupt forthwith to deliver it to him.

(7) Where a petition contains a request for the appointment of a person as trustee in accordance with section 297(5) (appointment of former supervisor as trustee) the person whose appointment is sought shall, not less than 2 days before the day appointed for hearing the petition, file in court a report including particulars of—

- (a) a date on which he gave written notification to creditors bound by the arrangement of the intention to seek his appointment as trustee, such date to be at least 10 days before the day on which the report under this paragraph is filed, and
- (b) details of any response from creditors to that notice, including any objections to his appointment.”.

Amendment of Rule 6.44

101.—(1) In paragraph (2) of Rule 6.44 the words “with one copy,” shall be omitted and there shall be added at the end the words “, and a further copy to the official receiver”.

(2) Paragraph (4) of Rule 6.44 shall be omitted.

Insertion of Rule 6.46A

102. After Rule 6.46 there shall be inserted the following rule:—

“Expenses of voluntary arrangement

6.46A. Where a bankruptcy order is made on a debtor’s petition and there is at the time of the petition in force for the debtor a voluntary arrangement under Part VIII of the Act, any expenses properly incurred as expenses of the administration of the arrangement in question shall be a first charge on the bankrupt’s estate.”.

Amendment of Rule 6.56

103.—(1) In paragraph (3) of Rule 6.56 for the words from the beginning to “accordingly)” there shall be substituted the words:—

“Without prejudice to any order the court may make as to costs, the interim receiver’s remuneration (whether the official receiver or another) shall be paid to him, and the amount of any expenses incurred by him (including the remuneration and expenses of any special manager appointed under section 370) reimbursed—

(a) if a bankruptcy order is not made, out of the property of the debtor”.

(2) After paragraph (3) of Rule 6.56 there shall be added the following paragraph:—

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“(4) Unless the court otherwise directs, in a case falling within paragraph (3)(a) above the interim receiver may retain out of the debtor’s property such sums or property as are or may be required for meeting his remuneration and expenses.”.

Amendment of Rule 6.57

104. Paragraph (3) of Rule 6.57 shall be omitted.

Amendment of Rule 6.73

105. In Rule 6.73 the existing paragraph shall be numbered “(1)” and there shall be added after it the following paragraph:—

“(2) The official receiver shall file in court a copy of any report sent under this Chapter.”.

Amendment of Rule 6.75

106. In paragraph (1) of Rule 6.75 there shall be inserted after the words “summary of the statement” the words “(if he thinks fit, as amplified, modified or explained by virtue of Rule 6.66 or 6.72)”.

Amendment of Rule 6.88

107.—(1) In paragraph (1) of Rule 6.88 there shall be inserted at the beginning the words “Subject as follows,”.

(2) In subparagraph (a) of paragraph (2) of Rule 6.88 there shall be added at the end the words “, provided that such support represents a majority in value of all those present (in person or by proxy) at the meeting and entitled to vote”.

(3) In the second subparagraph of paragraph (4) of Rule 6.88:—

(a) there shall be inserted after the word “person” the words “(whether personally or on his behalf by a proxy-holder)”; and

(b) there shall be substituted for the word “proxy” the word “proxy-holder”.

Amendment of Rule 6.91

108. In paragraph (2) of Rule 6.91 there shall be substituted for the words from “by virtue of this Rule” to the end the words “the chairman may, at his discretion, adjourn the meeting to such time and place as he may appoint”.

Omission of Rule 6.92

109. Rule 6.92 shall be omitted.

Amendment of Rule 6.97

110. In paragraph (1) of Rule 6.97 there shall be substituted for the words “to be used for the purpose of proving bankruptcy debts” the words “of proof”.

Amendment of Rule 6.98

111. In paragraph (1) of Rule 6.98 there shall be inserted at the beginning the words “Subject to Rule 6.96(4),”.

Amendment of Rule 6.113

112.—(1) At the end of the first subparagraph of paragraph (3) of Rule 6.113 there shall be added the words “and for all the purposes of the Act and the Rules shall be chargeable at a rate not exceeding that mentioned in paragraph (5)”.

(2) For the second subparagraph of paragraph (3) and for paragraph (4) of Rule 6.113 there shall be substituted the following:—

“(4) Interest under paragraph (3) may only be claimed for the period from the date of the demand to that of the bankruptcy order.

(5) The rate of interest to be claimed under paragraphs (2) and (3) is the rate specified in section 17 of the Judgments Act 1838 on the date of the bankruptcy order.”.

Amendment of Rule 6.120

113. For paragraphs (3) and (4) of Rule 6.120 there shall be substituted the following:—

“(3) The trustee’s appointment is effective from the date on which the appointment is certified, that date to be endorsed on the certificate.

(4) The chairman of the meeting (if not himself the official receiver) shall send the certificate to the official receiver.

(5) The official receiver shall in any case send the certificate to the trustee and file a copy of it in court.”.

Amendment of Rule 6.126

114. After paragraph (4) of Rule 6.126 there shall be added the following paragraphs:—

“(5) If there is no quorum present at the meeting summoned to receive the trustee’s resignation, the meeting is deemed to have been held, a resolution is deemed to have been passed that the trustee’s resignation be accepted and the creditors are deemed not to have resolved against the trustee having his release.

(6) Where paragraph (5) applies any reference in the Rules to a resolution that the trustee’s resignation be accepted is replaced by a reference to the making of a written statement, signed by the person who, had there been a quorum present, would have been chairman of the meeting, that no quorum was present and that the trustee may resign.”.

Amendment of Rule 6.141

115. In paragraph (4) of Rule 6.141 after the word “appearing” in both places where it occurs there shall be inserted the words “or being represented”.

Amendment of Rule 6.145

116. For Rule 6.145 there shall be substituted the following:—

“Notice to official receiver of intention to vacate office

6.145.—(1) Where the trustee intends to vacate office, whether by resignation or otherwise, he shall give notice of his intention to the official receiver together with notice of any creditors’ meeting to be held in respect of his vacation of office, including any meeting to receive his resignation.

(2) The notice to the official receiver must be given at least 21 days before any such creditors’ meeting.

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(3) Where there remains in the bankrupt's estate any property which has not been realised, applied, distributed or otherwise fully dealt with in the bankruptcy, the trustee shall include in his notice to the official receiver details of the nature of that property, its value (or the fact that it has no value), its location, any action taken by the trustee to deal with that property or any reason for his not dealing with it, and the current position in relation to it.”.

Amendment of Rule 6.151

117. For paragraph (3) of Rule 6.151 there shall be substituted the following:—

“(3) No person may act as a member of the committee unless and until he has agreed to do so and, unless the relevant proxy contains a statement to the contrary, such agreement may be given by his proxy-holder present at the meeting establishing the committee.

(3A) The trustee's certificate of the committee's due constitution shall not issue before at least 3 persons elected to be members of the committee have agreed to act.”.

Amendment of Rule 6.156

118.—(1) In paragraph (2) of Rule 6.156 the words from “specially” to the end shall be omitted and there shall be substituted the words “specially) and signed by or on behalf of the committee-member, and for this purpose any proxy in relation to any meeting of creditors of the bankrupt shall, unless it contains a statement to the contrary, be treated as such a letter of authority to act generally signed by or on behalf of the committee-member”.

(2) After paragraph (6) of Rule 6.156 there shall be added the following paragraph:—

“(7) The acts of the committee are valid notwithstanding any defect in the appointment or qualifications of any committee-member's representative.”.

Amendment of Rule 6.162

119.—(1) In paragraph (2) of Rule 6.162 for the words from “a statement incorporating” to the end there shall be substituted the words “a copy of any proposed resolution on which a decision is sought, which shall be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent”.

(2) In paragraph (3) of Rule 6.162 before the word “day” there shall be inserted the word “business”.

Amendment of Rule 6.179

120. After paragraph (6) of Rule 6.179 there shall be added the following paragraph:—

“(7) A notice or copy notice to be served on any person under the age of 18 in relation to the disclaimer of property in a dwelling-house is sufficiently served if sent or given to the parent or guardian of that person.”.

Amendment of Rule 6.206

121.—(1) In paragraph (4) of Rule 6.206 the words “, not less than 28 days before the hearing,” shall be omitted and there shall be added at the end the words:—

“(a) where the application is made under section 282(1)(a), in sufficient time to enable them to be present at the hearing, and

(b) where the application is made under section 282(1)(b), not less than 28 days before the hearing”.

(2) After paragraph (4) of Rule 6.206 there shall be added the following paragraph:—

“(5) Where the application is made under section 282(1)(a), paragraph (4) shall additionally be complied with in relation to the person on whose petition the bankruptcy order was made.”.

Amendment of Rule 6.208

122. For paragraph (2) of Rule 6.208 there shall be substituted the following:—

“(2) Except in relation to an application for an order staying all or any part of the proceedings in the bankruptcy, application for an order under this Rule may be made *ex parte*.

(3) Where application is made under this Rule for an order staying all or any part of the proceedings in the bankruptcy, the applicant shall send copies of the application to the official receiver and (if other) the trustee in sufficient time to enable them to be present at the hearing and (if they wish to do so) make representations.

(4) Where the court makes an order under this Rule staying all or any part of the proceedings in the bankruptcy, the rules in this Chapter nevertheless continue to apply to any application for, or other matters in connection with, the annulment of the bankruptcy order.

(5) If the court makes an order under this Rule, it shall send copies of the order to the applicant, the official receiver and (if other) the trustee.”.

Amendment of Rule 6.209

123.—(1) In subparagraph (a) of Rule 6.209 after the word “trustee” there shall be inserted the words “or, if no trustee has been appointed, the official receiver”.

(2) In subparagraph (b) of Rule 6.209 after the word “trustee” there shall be inserted the words “or, if no trustee has been appointed, the official receiver”.

Insertion of Rule 6.212A

124. After Rule 6.212 there shall be inserted the following rule:—

“Annulment under section 261

6.212A. Rules 6.206 to 6.212 apply to an application for annulment under section 261 as they apply to such an application under section 282(1)(a).”.

Amendment of Rule 6.213

125. In paragraph (1) of Rule 6.213 after the word “section” there shall be inserted the words “261 or”.

Amendment of Rule 6.214

126. In paragraph (1) of Rule 6.214 after the word “section” there shall be inserted the words “261 or”.

Amendment of Rule 6.223

127. At the end of Rule 6.223 there shall be added the words “or section 1 of the Criminal Justice (Scotland) Act 1987”.

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Amendment of Rule 6.232

128. For paragraph (4) of Rule 6.232 there shall be substituted the following:—

“(4) In criminal bankruptcy, forms of proof shall be sent out by the official receiver within 12 weeks from the making of the bankruptcy order, to every creditor who is known to him, or is identified in the bankrupt’s statement of affairs.”.

Amendment of Rule 6.234

129.—(1) In paragraph (1) of Rule 6.234 for the words “Chapter 11” there shall be substituted the words “Chapter 10”.

(2) In paragraph (2) of Rule 6.234 for the words “Chapter 12” there shall be substituted the words “Chapter 11”.

Amendment of Rule 6.237

130. In paragraph (6) of Rule 6.237 the following subparagraphs shall be substituted for subparagraphs (d) and (f) respectively:—

“(d) indicate, by reference to any, or the total, amount which is payable otherwise than to the bankrupt out of the estate and of interest on that amount, how the amount of the charge to be imposed is to be ascertained;”, and

“(f) identify when any property charged under section 313 shall cease to be comprised in the bankrupt’s estate and, subject to the charge (and any prior charge), to vest in the bankrupt.”.