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STATUTORY RULES OF NORTHERN IRELAND

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**1991 No. 364**

**The Insolvency Rules (Northern Ireland) 1991**

PARTS 7 TO 12

**PART 7**

**COURT PROCEDURE AND PRACTICE**

**CHAPTER 2**

**APPLICATIONS**

**Preliminary**

**7.05.** This Chapter applies to any application made to the court under the Order or the Rules except a petition for—

- (a) an administration order under Part III,
- (b) a winding-up order under Part V, or
- (c) a bankruptcy order under Part IX

of the Order.

[E.R.7.1]

**Interpretation**

**7.06.—(1)** In this Chapter, except in so far as the context otherwise requires—

“originating application” means an application to the court which is not an application in pending proceedings before the court; and

“ordinary application” means any other application to the court.

(2) Every application shall be in the form appropriate to the application concerned.

[E.R.7.2]

**Form and contents of application**

**7.07.—(1)** 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 the Order or the 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) An originating application shall set out the grounds on which the applicant claims to be entitled to the relief or order sought.

(3) 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.

[E.R.7.3]

### **Filing and service of application**

**7.08.**—(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 to paragraph (6) and Rule 7.09, 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 for 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 Order or the Rules;
- (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 paragraph (3).

(5) Unless the provision of the Order or the 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 hearing date.

(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.

[E.R.7.4]

### **Other hearings ex parte**

**7.09.**—(1) Where the relevant provisions of the Order or the 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 ex parte.

(2) Where the application is properly made ex parte, the court may hear it forthwith, without fixing a venue as required by Rule 7.08(2).

(3) Alternatively, the court may fix a venue for the application to be heard, in which case Rule 7.08 applies (so far as relevant).

[E.R.7.5]

### **Use of affidavit evidence**

**7.10.**—(1) In any proceedings evidence may be given by affidavit unless by any provision of the 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 leave of the court.

[E.R.7.7]

### **Filing and service of affidavits**

**7.11.** Unless the provision of the Order or the Rules under which the application is made provides 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 hearing date, 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 hearing date.

[E.R.7.8]

### **Use of reports**

**7.12.**—(1) A report may be filed in court instead of an affidavit—

- (a) in any case, by the official receiver (whether or not he is acting in any capacity mentioned in sub-paragraph (b)), or
- (b) unless the application involves other parties or the court otherwise orders, by—
  - (i) an administrator, a liquidator or a trustee in bankruptcy,
  - (ii) a provisional liquidator or an interim receiver,
  - (iii) a nominee or a supervisor of a voluntary arrangement under Part II or VIII of the Order,
  - (iv) a special manager, or
  - (v) an insolvency practitioner appointed under Article 247(2).

(2) In any case where a report is filed instead of an affidavit, the report shall be treated for the purposes of Rule 7.11 and any hearing before the court as if it were an affidavit.

(3) Any report filed by the official receiver in accordance with the Order or the Rules is prima facie evidence of any matter contained in it.

[E.R.7.9]

### **Adjournment of hearing; directions**

**7.13.**—(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;

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- (b) whether particulars of claim 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 the Master on the hearing in court or in chambers, of any deponents to affidavits;
  - (iii) any report to be given by the official receiver or any person mentioned in Rule 7.12(1)(b);
- (d) the matters to be dealt with in evidence.

[E.R.7.10]