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STATUTORY INSTRUMENTS

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**1986 No. 1925**

**The Insolvency Rules 1986**

THE FIRST GROUP OF PARTS

PART 4

COMPANIES WINDING UP

CHAPTER 19

PUBLIC EXAMINATION OF COMPANY OFFICERS AND OTHERS

**Order for public examination**

**4.211.**—(1) If the official receiver applies to the court under section 133 for the public examination of any person, a copy of the court's order shall, forthwith after its making, be served on that person.

(2) Where the application relates to a person falling within section 133(1)(c) (promoters, past managers, etc.), it shall be accompanied by a report by the official receiver indicating—

- (a) the grounds on which the person is supposed to fall within that paragraph, and
- (b) whether, in the official receiver's opinion, it is likely that service of the order on the person can be effected by post at a known address.

(3) If in his report the official receiver gives it as his opinion that, in a case to which paragraph (2) applies, there is no reasonable certainty that service by post will be effective, the court may direct that the order be served by some means other than, or in addition to, post.

(4) In a case to which paragraphs (2) and (3) apply, the court shall rescind the order if satisfied by the person to whom it is directed that he does not fall within section 133(1)(c).

**Notice of hearing**

**4.212.**—(1) The court's order shall appoint a venue for the examination of the person to whom it is directed (“the examinee”), and direct his attendance thereat.

(2) The official receiver shall give at least 14 days' notice of the hearing—

- (a) if a liquidator has been nominated or appointed, to him;
- (b) if a special manager has been appointed, to him; and
- (c) subject to any contrary direction of the court, to every creditor and contributory of the company who is known to the official receiver or is identified in the company's statement of affairs.

(3) The official receiver may, if he thinks fit, cause notice of the order to be given, by advertisement in one or more newspapers, at least 14 days before the date fixed for the hearing; but, unless the court otherwise directs, there shall be no such advertisement before at least 7 days have elapsed since the examinee was served with the order.

### **Order on request by creditors or contributories**

**4.213.**—(1) A request to the official receiver by creditors or contributories under section 133(2) shall be made in writing and be accompanied by—

- (a) a list of the creditors concurring with the request and the amounts of their respective claims in the liquidation or (as the case may be) of the contributories so concurring, with their respective values, and
- (b) from each creditor or contributory concurring, written confirmation of his concurrence.

This paragraph does not apply if the requisitioning creditor's debt or, as the case may be, requisitioning contributory's shareholding is alone sufficient, without the concurrence of others.

(2) The request must specify the name of the proposed examinee, the relationship which he has, or has had, to the company and the reasons why his examination is requested.

(3) Before an application to the court is made on the request, the requisitionists shall deposit with the official receiver such sum as the latter may determine to be appropriate by way of security for the expenses of the hearing of a public examination, if ordered.

(4) Subject as follows, the official receiver shall, within 28 days of receiving the request, make the application to the court required by section 133(2).

(5) If the official receiver is of opinion that the request is an unreasonable one in the circumstances, he may apply to the court for an order relieving him from the obligation to make the application otherwise required by that subsection.

(6) If the court so orders, and the application for the order was made *ex parte*, notice of the order shall be given forthwith by the official receiver to the requisitionists. If the application for an order is dismissed, the official receiver's application under section 133(2) shall be made forthwith on conclusion of the hearing of the application first mentioned.

### **Witness unfit for examination**

**4.214.**—(1) Where the examinee is suffering from any mental disorder or physical affliction or disability rendering him unfit to undergo or attend for public examination, the court may, on application in that behalf, either stay the order for his public examination or direct that it shall be conducted in such manner and at such place as it thinks fit.

(2) Application under this Rule shall be made—

- (a) by a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the examinee, or
- (b) by a relative or friend of the examinee whom the court considers to be a proper person to make the application, or
- (c) by the official receiver.

(3) Where the application is made by a person other than the official receiver, then—

- (a) it shall, unless the examinee is a patient within the meaning of the Mental Health Act 1983, be supported by the affidavit of a registered medical practitioner as to the examinee's mental and physical condition;
- (b) at least 7 days' notice of the application shall be given to the official receiver and the liquidator (if other than the official receiver); and
- (c) before any order is made on the application, the applicant shall deposit with the official receiver such sum as the latter certifies to be necessary for the additional expenses of any examination that may be ordered on the application.

An order made on the application may provide that the expenses of the examination are to be payable, as to a specified proportion, out of the deposit under sub-paragraph (c), instead of out of the assets.

(4) Where the application is made by the official receiver it may be made ex parte, and may be supported by evidence in the form of a report by the official receiver to the court.

### **Procedure at hearing**

**4.215.**—(1) The examinee shall at the hearing be examined on oath; and he shall answer all such questions as the court may put, or allow to be put, to him.

(2) Any of the persons allowed by section 133(4) to question the examinee may, with the approval of the court (made known either at the hearing or in advance of it), appear by solicitor or counsel; or he may in writing authorise another person to question the examinee on his behalf.

(3) The examinee may at his own expense employ a solicitor with or without counsel, who may put to him such questions as the court may allow for the purpose of enabling him to explain or qualify any answers given by him, and may make representations on his behalf.

(4) There shall be made in writing such record of the examination as the court thinks proper. The record shall be read over either to or by the examinee, signed by him, and verified by affidavit at a venue fixed by the court.

(5) The written record may, in any proceedings (whether under the Act or otherwise) be used as evidence against the examinee of any statement made by him in the course of his public examination.

(6) If criminal proceedings have been instituted against the examinee, and the court is of opinion that the continuance of the hearing would be calculated to prejudice a fair trial of those proceedings, the hearing may be adjourned.

### **Adjournment**

**4.216.**—(1) The public examination may be adjourned by the court from time to time, either to a fixed date or generally.

(2) Where the examination has been adjourned generally, the court may at any time on the application of the official receiver or of the examinee—

- (a) fix a venue for the resumption of the examination, and
- (b) give directions as to the manner in which, and the time within which, notice of the resumed public examination is to be given to persons entitled to take part in it.

(3) Where application under paragraph (2) is made by the examinee, the court may grant it on terms that the expenses of giving the notices required by that paragraph shall be paid by him and that, before a venue for the resumed public examination is fixed, he shall deposit with the official receiver such sum as the latter considers necessary to cover those expenses.

### **Expenses of examination**

**4.217.**—(1) Where a public examination of the examinee has been ordered by the court on a creditors' or contributories' requisition under Rule 4.213, the court may order that the expenses of the examination are to be paid, as to be specified proportion, out of the deposit under Rule 4.213(3), instead of out of the assets.

(2) In no case do the costs and expenses of a public examination fall on the official receiver personally.