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STATUTORY INSTRUMENTS

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**1986 No. 1925**

**The Insolvency Rules 1986**

THE SECOND GROUP OF PARTS

PART 6

BANKRUPTCY

CHAPTER 10

THE TRUSTEE IN BANKRUPTCY

*SECTION A: APPOINTMENT AND ASSOCIATED FORMALITIES*

**Appointment by creditors' meeting**

**6.120.**—(1) This Rule applies where a person has been appointed trustee by resolution of a creditors' meeting.

(2) The chairman of the meeting shall certify the appointment, but not unless and until the person to be appointed has provided him with a written statement to the effect that he is an insolvency practitioner, duly qualified under the Act to act as trustee in relation to the bankrupt, and that he consents so to act.

(3) The chairman (if not himself the official receiver) shall send the certificate to the official receiver.

(4) The official receiver shall in any case file a copy of the certificate in court; and the trustee's appointment is effective as from the date on which the official receiver files the copy certificate in court, that date to be endorsed on the copy certificate.

The certificate, so endorsed, shall be sent by the official receiver to the trustee.

**Appointment by the court**

**6.121.**—(1) This Rule applies where the court under section 297(3), (4) or (5) appoints the trustee.

(2) The court's order shall not issue unless and until the person appointed has filed in court a statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the trustee, and that he consents so to act.

(3) Thereafter, the court shall send 2 copies of the order to the official receiver. One of the copies shall be sealed, and this shall be sent by him to the person appointed as trustee.

(4) The trustee's appointment takes effect from the date of the order.

**Appointment by Secretary of State**

**6.122.**—(1) This Rule applies where the official receiver—

- (a) under section 295 or 300, refers to the Secretary of State the need for an appointment of a trustee, or

(b) under section 296, applies to the Secretary of State to make the appointment.

(2) If the Secretary of State makes an appointment he shall send two copies of the certificate of appointment to the official receiver, who shall transmit one such copy to the person appointed, and file the other copy in court.

The certificate shall specify the date from which the trustee's appointment is to be effective.

### **Authentication of trustee's appointment**

**6.123.** Where a trustee is appointed under any of the 3 preceding Rules, a sealed copy of the order of appointment or (as the case may be) a copy of the certificate of his appointment may in any proceedings be adduced as proof that he is duly authorised to exercise the powers and perform the duties of trustee of the bankrupt's estate.

### **Advertisement of appointment**

**6.124.**—(1) Where the trustee is appointed by a creditors' meeting, he shall, forthwith after receiving his certificate of appointment, give notice of his appointment in such newspaper as he thinks most appropriate for ensuring that it comes to the notice of the bankrupt's creditors.

(2) The expense of giving the notice shall be borne in the first instance by the trustee; but he is entitled to be reimbursed by the estate, as an expense of the bankruptcy.

The same applies also in the case of the notice or advertisement under section 296(4) (appointment of trustee by Secretary of State), and of the notice or advertisement under section 297(7) (appointment by the court).

### **Hand-over of estate to trustee**

**6.125.**—(1) This Rule applies only where—

- (a) the bankrupt's estate vests in the trustee under Chapter IV of Part IX of the Act, following a period in which the official receiver is the receiver and manager of the estate according to section 287, or
- (b) the trustee is appointed in succession to the official receiver acting as trustee.

(2) When the trustee's appointment takes effect, the official receiver shall forthwith do all that is required for putting him into possession of the estate.

(3) On taking possession of the estate, the trustee shall discharge any balance due to the official receiver on account of—

- (a) expenses properly incurred by him and payable under the Act or the Rules, and
- (b) any advances made by him in respect of the estate, together with interest on such advances at the rate specified in section 17 of the Judgments Act 1838 on the date of the bankruptcy order.

(4) Alternatively, the trustee may (before taking office) give to the official receiver a written undertaking to discharge any such balance out of the first realisation of assets.

(5) The official receiver has a charge on the estate in respect of any sums due to him under paragraph (3). But, where the trustee has realised assets with a view to making those payments, the official receiver's charge does not extend in respect of sums deductible by the trustee from the proceeds of realisation, as being expenses properly incurred therein.

(6) The trustee shall from time to time out of the realisation of assets discharge all guarantees properly given by the official receiver for the benefit of the estate, and shall pay all the official receiver's expenses.

(7) The official receiver shall give to the trustee all such information, relating to the affairs of the bankrupt and the course of the bankruptcy, as he (the official receiver) considers to be reasonably required for the effective discharge by the trustee of his duties in relation to the estate.

(8) The trustee shall also be furnished with any report of the official receiver under Chapter 6 of this Part of the Rules.